

**Testimony of Marc Mauer
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**Before the House Judiciary
Subcommittee on Crime,
Terrorism and Homeland
Security**

**Hearing on Reducing Racial Disparity
in the Criminal Justice System
“Violent Crime—Prevention and
Solutions from the Experts: A
Summit on Crime Policy”**

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My name is Marc Mauer and I am the Executive Director of The Sentencing Project. I appreciate the opportunity to appear at the crime summit to discuss issues of racial disparity and the criminal justice system. These are issues that have been the focus of much of our research and advocacy at The Sentencing Project, and are among the most critical challenges faced by the criminal justice system.

In this testimony, I will not pretend to provide a comprehensive analysis of the causes of racial disparity, nor the range of policies and practices that might respond to that in effective ways. Many people have written about these issues, and other panels at this summit will be addressing some of these questions. Instead, let me offer a few specific recommendations for how we could address unwarranted racial disparity in a way that is consistent with promoting public safety. These are as follows:

REPEAL OR REFORM SENTENCING LAWS THAT HAVE AN UNWARRANTED RACIAL EFFECT

A variety of sentencing policies at the federal and state level have been demonstrated to produce unwarranted racial disparities. Such policies not only result in unfairness within the justice system, but contribute to a delegitimization of law enforcement in many communities of color due to the perception that the system is biased. In addition, these policies have not been effective in promoting public safety.

Policies that fall in this category include the following:

- *Crack cocaine sentencing* – The guidelines amendment submitted to Congress by the U.S. Sentencing Commission will partially address the longstanding unwarranted disparity in sentencing for crack cocaine sentences, under which more than 80% of defendants have been African American. The amendment

would reduce the sentence length for crack offenses to the mandatory minimum level, and will go into effect unless disapproved by Congress by November 1st. This change would address part of the problem with crack cocaine guidelines, whereby there is a built-in presumption that crack sentences should be more punitive due to the drug's assumed association with violence, even though most crack convictions do not in fact involve violent behavior. In addition, Congress should consider seriously the various legislative proposals that are being discussed that would address the disparity in a more fundamental way through a change in the drug quantity levels that trigger mandatory sentencing penalties.

- *School zone drug laws* – Laws that penalize drug offenses committed near a school zone may appear unobjectionable at first glance, given their intent to protect school children, but they produce a variety of unintended consequences. First, they are often drafted in an overly broad manner, even applying to a drug transaction between consenting adults committed in the middle of the night. Second, they produce a predictable racial disparity, since the urban neighborhoods where many people of color live are more densely populated than suburban or rural areas. Therefore, they are more likely to be within the legal boundaries of a school zone. A number of states are beginning to consider reforms to such policies. Connecticut legislators changed state law to grant judges discretion in applying the school zone penalty, and New Jersey lawmakers are considering a proposal to reduce the size of the school zone.
- *Criminal history scores in federal sentencing* – Sentencing under the federal sentencing guidelines is based on consulting a sentencing grid that is guided by two key factors, the severity of the offense and the offender's criminal history. While these are both clearly relevant to sentencing considerations, the structure of the criminal history score may incorporate racial bias at previous stages of the criminal justice system. In the case of *U.S. v. Leviner*, for example, a federal judge reduced the defendant's criminal history score after finding that several of his prior convictions resulted from traffic stops by the police. While not questioning the validity of the convictions, the judge asserted that as an African American man the defendant was likely to be subject to racial profiling and therefore, more likely to acquire a criminal record than a white man engaged in similar conduct. Such cases call for a close examination of these factors by those in the court system prior to imposing sentence.

ADDRESS POTENTIAL RACIAL DISPARITIES THROUGH POLICY OVERSIGHT AND PROJECTIONS

Racial disparities in the criminal justice system are a result of a complex set of factors, but policymakers and the public have an obligation to engage in oversight and evaluation of the ways in which these are produced and to address in particular any unwarranted disparities. Some means by which this can be accomplished include:

- *Establish racial disparity task forces* – Congress should provide funding and technical assistance through the National Institute of Corrections to encourage local jurisdictions to establish multi-disciplinary task forces to identify unwarranted disparities in local criminal justice processing and to recommend changes in policy and practice to address these issues. This process could involve the following components: a data-driven assessment of crime rates, arrest rates, and charging and sentencing practices; engagement with community organizations regarding public safety concerns and approaches to their resolution; and, assessing best practices that can reduce unwarranted disparities while promoting public safety. Such task forces have previously been established in Monroe County, Indiana, and in Seattle, Washington to examine disparities in processing of juvenile cases.
- *Require racial impact statements for proposed sentencing legislation* – Policies such as the federal crack cocaine mandatory sentencing laws have had a severely disproportionate racial effect which has been decried for many years. Yet given law enforcement and prosecutorial patterns, the effect of these laws could have been fairly reliably predicted prior to their adoption. Had lawmakers engaged in such an analysis in the 1980s, it is possible that alternative means of responding to the drug problem might have been developed that would not have exacerbated ongoing racial disparities.

As a means of addressing such issues, lawmakers should be obligated to conduct a *racial impact statement* prior to the adoption of any policy that would affect the size of the prison population. Similar to a fiscal impact statement, such policies would require that lawmakers *consider* the impact of legislative changes, but would not *prohibit* the adoption of new policies due to any projected racial disparities. Their primary value would be to

incorporate the issue of racial dynamics into the overall policy discussion so that lawmakers could consider whether alternative policies might accomplish their goals without exacerbating disparities.

STRENGTHEN COMMUNITIES THROUGH JUSTICE REINVESTMENT

Among many other consequences, our world-record prison population has produced a substantial shift in public spending. Prison budgets have escalated dramatically over the past three decades, placing pressure both on other criminal justice agencies and on spending for prevention services. In order to produce a more appropriate balance of interventions, policymakers should consider both the scale and allocation of resources to various institutions, including the following:

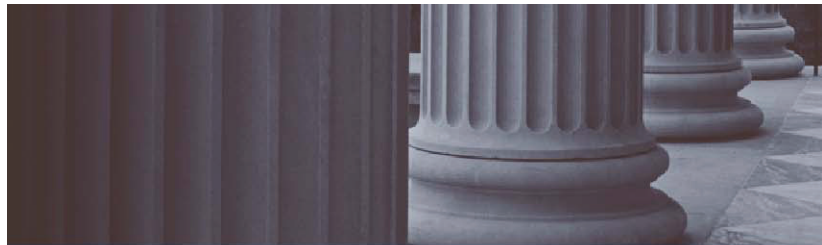
- *Justice reinvestment* –The emerging concept of justice reinvestment provides a means of addressing reentry issues as well as broader crime prevention. The goal of such a policy is to shift resources in order to provide a more effective mix of criminal justice services and community-building. This could involve a shift in resources to provide more effective parole supervision and services, while using prison savings to strengthen community institutions that enhance social and economic opportunity.

In recent years the Council of State Governments has worked in several states to provide technical assistance for shifting resources from incarceration at the back end of the justice system to front-end interventions in the community. In Connecticut, for example, the legislature enacted policies to curb prison growth, increase public safety, and reinvest \$13 million from projected savings into community corrections programs. In Kansas, a new Re-Entry Policy Council is developing justice reinvestment strategies directed toward saving money, reducing parole revocations, and employing neighborhood-based initiatives to increase public safety. During 2007, the state enacted law changes that are designed to avert the need to build 1,300 new prison beds, saving the state an estimated \$80 million in construction and operating costs over five years. These changes included strengthening community

corrections programs in order to reduce revocation rates by 20%. In addition, the Council seeks to focus on key neighborhoods in which to improve housing stock, integrate delivery of services, and expand employment opportunities as means of preventing crime.

- *Invest in pre-school programming* – Studies conducted over many years have demonstrated that pre-school interventions with families at-risk produce long-term reductions in crime and effective cost savings. The primary challenge of strengthening such programs in the political world is that the benefits to taxpayers and the community take a decade or more to achieve. Public policy on crime prevention should incorporate both short-term interventions to respond to immediate crises along with long-term investments that promote opportunity and help to reduce crime.

Implementing policies and procedures to reduce racial disparity in the criminal justice system is important to ensure that our system is fundamentally fair in how it treats all citizens. But such changes are equally important in promoting public safety, by scaling back unnecessarily punitive sentencing policies and by reinvesting in more cost-effective crime prevention programs. The research literature is increasingly stronger in making the case for such changes. What is needed is the political will to embark on such a course.



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