

Sentencing Times

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POLICY

Sentencing Commission considers alternatives to incarceration

The Sentencing Project's Ryan S. King kicked off the plenary session at the United States Sentencing Commission's Symposium on Alternatives to Incarceration in July. Convened in response to the alarming growth in the number of persons in federal prison, which has now reached 200,000, the symposium was attended by 250 judges, prosecutors, defense attorneys and corrections officials in addition to members of the Commission.

King provided an overview of state efforts to address prison overcrowding, encouraged the Commissioners to learn from the successes and failures of states, and to explore evidence-based alternatives that have proved effective.

The symposium included panels on drug and problem-solving courts, models of sentencing diversion, earned discharge models for prison and community supervision, and reentry practices.

Two states cite reduction in recidivism

Catherine McVey, Chair of the Pennsylvania Board of Probation and Parole, discussed how her state adjusted the management of its parole population to concentrate on persons

who were at a greater risk of revocation. The reforms resulted in a drop in the recidivism rate from 30% to 23% in one year.

Charles J. Hynes, District Attorney of New York's King County, discussed the Drug Treatment Alternative-to-Prison program, which has saved \$44 million by reducing recidivism and cutting reconviction rates in half. At one point, Hynes' district was the 5th most violent in the country, with 175,000 violent crimes per year. Now that figure is below 40,000. Hynes attributes this success in part to drug treatment and alternative adjudication that address the underlying factors that contribute to recidivism, such as employment, housing and education.

A common theme of the symposium was the need to ensure proportionality in punishment, and policy responses grounded in evidence-based practices, rather than a system based solely on punishing offenders. The symposium was designed to help Commissioners gather information as they consider potential amendments to the federal sentencing guidelines, and recommendations to Congress for changes in statutory sentencing law.

Biden introduces Justice Integrity Act

In late 2007, the office of Senator Joseph Biden (D-DE) invited The Sentencing Project and American Bar Association to collaborate on the development of legislation addressing racial and ethnic disparity in the federal justice system.

The product of that collaboration is the Justice Integrity Act of 2008 (S. 3245). Introduced in July, the bill mandates the creation of pilot programs in ten federal districts to evaluate racial and ethnic fair-

ness in the practices of U.S. Attorney offices.

The Act requires the gathering of data to disclose to what extent (a) racial and ethnic disparities are attributable to criminal justice policies and practice; (b) any policies and practices that produce disparities are fully justified as appropriate responses to criminal behavior; and (c) disparities may be attributable to discrimination or unconscious bias.

"Nowhere is the guarantee of equal protection more important than in our criminal justice system," said Sen. Biden. "The reality is that despite the best efforts and intentions of policymakers, racial and ethnic disparities continue to plague our justice system."

The bill requires designated U.S. Attorney offices to appoint an advisory group to gather and analyze data, and then produce a report on its findings.

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EXECUTIVE DIRECTOR'S MESSAGE

Prison visit brings fresh perspective

My staff and I recently spent a day at Jessup Correctional Institution in Maryland, a short drive from our office in downtown Washington. We were invited guests of a group of prisoners sponsoring a “Legal Awareness Seminar.”

Over the course of the day, we engaged in a broad range of discussions, involving our work for policy reform, concerns about sentencing policy and practice, and efforts to increase education and rehabilitation opportunities within the prison.

Many of the men we spoke with are either lifers or long-termers, and their stories and concerns clearly illustrate one of the hidden aspects of the criminal justice system. While there is growing national support for alternative sentencing and reentry programming, these developments are overshadowed by the increasingly punitive approaches to long-term sentences.

In Maryland and many other states, governors and parole boards have become increasingly hostile to even considering release for this group of people, often adopting policies that “life means life.” Until these developments, in most states people sentenced to life were eligible for parole in 15 to 20 years.

Many lifers are different people today

But the stories of the men we met at Jessup, and many others I’ve known in prison over the years, clearly show why any type of “one size fits all” sentencing policy does a disservice to us all.

Among the lifers we met with at Jessup is one man who earned a college degree through a correspondence course, overcoming the obstacles presented when Congress cut off Pell grant funding in prisons in the 1990s. Two other lifers have organized educational programs to meet the needs of the many people in prison who never finished high school.

In most cases, these lifers are imprisoned for serious offenses, crimes for which many feel great remorse. But now, 20 or 30 years later, they are very different people from the often reckless teenagers they were when they committed those crimes. So the question becomes, how much punishment is enough — either to provide protection to the public or to communicate society’s norms?

There are no easy answers to this question,

but the harsh policy trends of recent years demonstrate that policy makers have largely lost interest in asking the question. For taxpayers they raise the specter of the enormous cost of long-term prison housing and healthcare, along with the increasingly limited impact on public safety of incarcerating aging men and women. People sentenced to life are among the least likely to commit another crime after being released.

Some would say that to raise these issues does a disservice to victims of crime, but this strikes me as an unhelpful distinction. Most people either know someone who has been a victim of crime, or have themselves been a victim of crime. So, if we truly want to enhance public safety, we need to look closely at what works to prevent crime and victimization, as well as how to respond to people who commit crimes, including serious ones.

At The Sentencing Project, we try to address these issues through policy research and advocacy, but also by listening to the stories of people in the justice system. I always leave prison visits with fresh insights and understanding of sentencing issues, and have often thought that if most Americans had an opportunity to spend a day in prison, we would have a different national conversation about crime and punishment.

Elsewhere in this newsletter, you’ll read about The Sentencing Project’s recent successes. This year, Iowa and Connecticut adopted racial impact statement legislation, there has been substantial progress toward crack cocaine sentencing reform, and the President signed the Second Chance Act. You’ll also read about some of the people affected by harsh sentencing policies.

I hope that we can continue to be informed by the stories of these people, and their families, as we try to promote strategies that reduce victimization. We’ll keep you posted on our progress, and as always, I welcome your thoughts on accomplishing these goals.

To learn more about lifers, see *The Meaning of “Life”*: Long Prison Terms in Context at www.sentencingproject.org.



Marc Mauer

Iowa and Connecticut enact racial impact statements

State legislatures now routinely require analysis of the fiscal or environmental impact of proposed new laws prior to their adoption. Why not analyze the potential racial impact of new sentencing policies before they are implemented?

Since 2006, The Sentencing Project has been promoting the idea of racial impact statements as a tool states can use to reduce racial disparities in their criminal justice systems. This spring, Iowa and Connecticut became the first two states to adopt such policies.

As The Sentencing Project reported in our 2007 report, *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*, Iowa and Connecticut are two of the seven states with a black/white ratio of incarceration greater than 10-to-1. The analysis showed that in Iowa, African Americans are more than 13 times more likely to be incarcerated than whites. In Connecticut, African Americans are 12 times more likely to be incarcerated than whites.

Uneven Justice received significant attention from the media in Iowa, and captured the attention of policymakers, including Representative Wayne Ford, the longest serving African American in the Iowa legislature.

Mauer addresses Iowa state committees

Rep. Ford invited The Sentencing Project's Executive Director Marc Mauer to come to Iowa for two days in January to address the legislature's judiciary and human services committees, speak at a press conference at the Iowa State House, and meet with the Depart-

ment of Corrections' Committee on Overrepresentation of Blacks in Prison.

Rep. Ford later introduced a bill to require racial impact statements, a tool recommended in *Uneven Justice*. After Rep. Ford's bill passed both houses of the legislature, in April, Governor Chet Culver signed the nation's first racial impact statement into law.

In a recent *Washington Afro American* article, Rep. Ford remarked, "I believe we need to be tough on crime but we need to make sure our laws are fair and equitable."

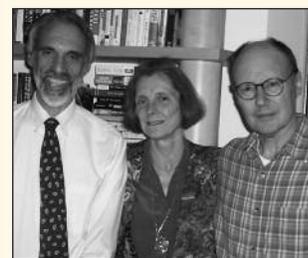
Connecticut's Lawlor guides bill

In Connecticut, longtime House Judiciary Committee Chair Michael Lawlor guided the racial impact legislation through the General Assembly. Governor M. Jodi Rell signed the bill in June, and the law will take effect in 2009.

"It can take decades to undo the damage caused by sentencing laws that are enacted in the heat of the moment, often without any real evidence that they are effective," says Marc Mauer.

"Unwarranted racial disparities weaken the criminal justice system, because people lose confidence in a system that is unfair. It just makes sense for policymakers to evaluate the impact of new laws before are implemented."

To read Marc Mauer's article on racial impact statements in the *Ohio State Journal of Criminal Law*, visit www.sentencingproject.org.



Annette and Cal Johnson with Marc Mauer (left), Executive Director of The Sentencing Project.

Johnsons match contributions

Longtime supporters Annette and Cal Johnson hosted a reception for The Sentencing Project in New York in May.

At the event, Board President Judge Renee Cardwell-Hughes introduced Marc Mauer, who discussed criminal justice policy developments on Capitol Hill.

Ted Shaw, former President of the NAACP Legal Defense Fund, shared his observations on race and litigation, and The Sentencing Project's critical role in policy reform.

Annette Johnson has been actively involved in prison issues for many years, and is the founder of the Prisoners' Reading Encouragement Project, which has facilitated the donation of more than 50,000 books to prison libraries since 2000.

Annette Johnson announced that she and her husband would match all contributions made that evening.

The Sentencing Project deeply appreciates the longstanding, generous support of Annette and Cal Johnson.

Iowa's governor, **Chet Culver**, signs the nation's first racial impact statement into law. He's joined by lead sponsor, Rep. Wayne Ford (far left).



Bush signs Second Chance Act; funding still in question



President Bush signs the Second Chance Act.

President George W. Bush signed the Second Chance Act in April, authorizing more than \$300 million to expand assistance for people currently incarcerated, those returning to their communities after incarceration, and children with parents in prison.

The Sentencing Project joined with the coalition advocating for passage of the Act, which received backing from law enforcement, state and local government, religious and justice reform organizations.

'Build new lives'

"The country was built on the belief that each human being has limitless potential and worth. We believe that even those who have struggled with a dark past can find brighter days ahead," said President Bush during the signing ceremony.

"One way we act on that belief is by helping former prisoners who've paid for their crimes — we help them build new lives as productive members of our society."

The Second Chance Act seeks to promote

public safety by reducing recidivism rates among people reentering communities from prisons and jails. Presently, two-thirds of people leaving prison are rearrested within three years after release.

Money falling short

In June, the Senate Appropriations Committee approved the Commerce, Justice, Science (CJS) 2009 appropriations bill, which allocated \$20 million for programs under the Second Chance Act.

In the House of Representatives, the appropriations committee reserved \$45 million for Second Chance Act funding.

The totals fall short of the money authorized for the year, and unfortunately are in jeopardy of being appropriated at all because Congress may not pass spending bills in this politically contentious year. If Congress passes a continuing resolution instead, funding for new programs will be excluded.

The Sentencing Project continues to advocate for full funding of the Second Chance Act.

Voting rights watch

As the countdown to the presidential election continues, The Sentencing Project continues to work for felony disenfranchisement reform.

A number of states have recently enacted reforms to their policies, which will bring new voters to the polls in November:

Florida: Governor Charlie Crist and the Executive Clemency Board eased the process of restoration for individuals with non-violent felony offenses in 2007.

Once the clemency board signs all the certificates, the number of restored voters may be about 115,000.

Maryland: In April 2007, Governor Martin O'Malley signed legislation restoring the right to vote to all formerly incarcerated individuals, affecting more than 50,000 residents and ending the state's lifetime voting ban.

Kentucky: Between March and July this year, Governor Steve Beshear granted the right to vote to nearly 800 citizens with felony convictions by easing the restoration application process.

Beshear eliminated the requirement of submitting an essay in addition to three letters of recommendation.

He also extended the time prosecutors have to protest a petition.

Virginia: In June, Governor Tim Kaine expedited the once arduous application review process for petitioners with non-violent criminal records. Virginia is one of only two states that perma-

See Voting rights, page 5

Services to be funded under the Second Chance Act

- Mentoring programs for adults and juveniles leaving prison;
- Drug treatment during and after incarceration, including family-based treatment for incarcerated parents;
- Education and job training in prison;

- Alternatives to incarceration for parents convicted of non-violent drug offenses;
- Supportive programming for children of incarcerated parents; and
- Early release for certain elderly prisoners convicted of non-violent offenses.

Voting rights watch

Continued from page 4

nently disenfranchise all citizens with previous felony convictions, although residents may request rights restoration from the governor. Since taking office in 2006, Governor Kaine has restored voting rights to 1,809 individuals convicted of a felony.

Two states took steps to require that people with felony convictions be informed of their eligibility to vote:

Louisiana: Governor Bobby Jindal signed a felon enfranchisement notice bill in July, which now requires the Department of Public Safety and Corrections to provide each person who completes a felony sentence with information about regaining the right to vote and a voter registration form.

North Carolina: In August 2006, the state passed an election reform bill requiring the Board of Elections, Department of Corrections, and Administrative Office of the Courts to provide written notice to individuals with felony convictions informing them of their right to vote upon completion of sentence, and provide them with a voter registration form.

Federal: Sen. Russ Feingold (D-WI) and Rep. John Conyers (D-MI) are each expected to introduce bills before the end of the year which would allow individuals on probation or parole, or those who have served their sentences, to vote in federal elections.

PROFILE

Teen copes with her mother in prison

Theresa N. Smith

began her senior year of high school this fall. The 16-year-old struggles daily with the reality that her mother — and namesake — is not available to nudge her out of the door in the morning, cheer her on at her softball games or offer a shoulder to cry on during those difficult high school days.

In her family, Theresa is known as “little” Theresa. Her mother, Theresa McIntyre, is in federal prison. Although she was a first-time, nonviolent offender, McIntyre was sentenced to a 10-year mandatory prison term for participating in a conspiracy to distribute in excess of ten kilograms of cocaine, which she began serving in 2007 after her appeal was denied. McIntyre says she unknowingly became friends with a drug dealer who eventually used her employment at an airline to facilitate his drug distribution.

Federal mandatory minimum sentencing laws punish drug crimes based on the quantity of the substance involved, rather than the depth of the offender's involvement. Judges are not able to consider how peripherally a person may have been involved.

“I thought when my parents got a divorce that would be the hardest thing for me.”

Little Theresa lives with Erica, 28, the eldest of her three sisters, who is married with children of her own. The sisters, Theresa, Erica, Latrece and Lisa are adjusting, but it has been difficult. Theresa recently shared with The Sentencing Project what it has been like for her living without easy access to her mother:

“All teenage girls go through a lot, but some things require a mother's guidance. Not too long ago, I had my first heart-break. We had been together for 2 years, and were pretty serious. He met my mom before she left and this was a big deal.



When me and the young man broke up all I could think about is how he was going to be the last guy to get her approval. I had my first breakdown when I realized that I couldn't call her since she was in a federal prison.

How could they take away the woman who had three girls that had graduated from college and a 16 year old with dreams you couldn't imagine? She was a single mother that was independent and took pride in her job. I thought when my parents got a divorce that would be the hardest thing for me. Now I know that her being in a federal prison is something I will never get over.

Before she left she threw me a sweet 16 birthday party. I had made straight A's the whole year and earned the 'most improved' title for softball, so we had a lot to celebrate. Although the party was the best gift ever, it felt like her going away party. All I could think about is how she had been at all three sisters' proms, graduations, and saw her grandchildren born. That made me jealous and I felt like life wasn't fair. This is my senior year of high school and it's going to hurt more than ever to look up in the stands and not hear my mother cheering for me.

She might not be with me but at least she's alive and well. Hopefully she will be here for my graduation, and once again I can be her 'pumpkindoodle.'”

“Little” Theresa (far right) with her Mom (far left) and two of her sisters.

— Theresa N. Smith

Two studies report wide drug war disparities by city and state

In May, **The Sentencing Project** and Human Rights Watch released two studies documenting the relationship between race and the “war on drugs.”

The Sentencing Project’s *Disparity By Geography: The War on Drugs in America’s Cities*, a first-of-its-kind analysis of more than 20 years of city-level drug arrest data by race, reveals that as the “war on drugs” was expanded during the 1980s, the racial disparity in arrests widened.

Human Rights Watch’s *Targeting Blacks: Drug Law Enforcement and Race in the United States* documented many of these same disparities in the incarceration of drug offenders in state prisons.

Other findings of *Disparity by Geography*:

- Since 1980 the rate of drug arrests for African-Americans in America’s largest cities increased by 225%, while the rate of arrest for whites increased by 70%.
- In 11 cities, African American drug arrest rates increased by more than 500% from 1980 to 2003.

This aggressive and proactive emphasis on targeting drug use and sales in the 1980s, primarily concentrated in urban areas, represented a heightened emphasis on drug enforcement and had devastating consequences for African-American communities.

Conscious policy decisions

The report concludes that “much of the increase in drug arrests in African-American communities stems from conscious policy decisions made at a city level.”

Research on drug use and sale patterns do

not justify the dramatic disparity between white and African-American drug arrest rates.

For example, a sophisticated analysis of drug arrests in Seattle found that while whites comprised the majority of persons who sell drugs in the city, more than two-thirds of persons arrested by police were African American.

The report also found significant inter-jurisdictional variation among drug arrest rates, sometimes in the same state.

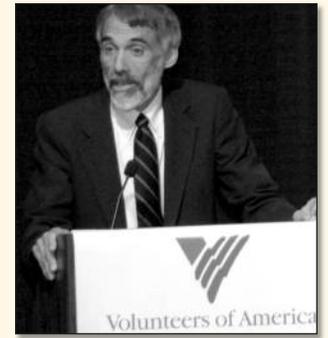
For example, in Texas, despite the fact that Dallas and Fort Worth are only separated by 30 miles, drug arrests decreased by 42% from 1980 to 2003 in Dallas while increasing by 81% in Fort Worth. In Arizona, Tucson’s arrest rate skyrocketed by 887%, 17 times that of the 52% increase in Phoenix.

Suggests shift to treatment, prevention

Recommendations in the report include that funding priorities be shifted away from an emphasis on enforcement and interdiction and focused on treatment and prevention of drug abuse.

In addition, the role of law enforcement in addressing drug abuse should be reconsidered, prosecution and defense counsel should play a larger role in pursuing alternatives to incarceration, and policymakers should act to restore judicial discretion in sentencing.

The report was covered extensively in the media, including a story and an editorial calling for reform in *The New York Times*, an extensive feature story and editorial in the *Tucson Citizen*, and an editorial in the *Milwaukee Journal Sentinel*.



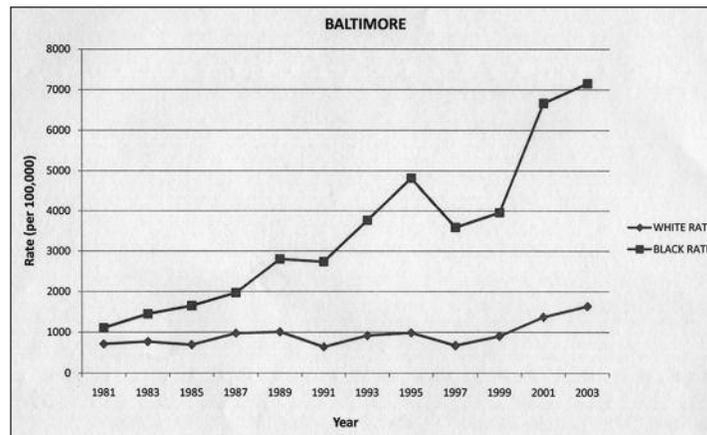
Marc Mauer honored by Volunteers of America

The Sentencing Project’s Executive Director Marc Mauer was named this year’s Volunteers of America Maud Booth Correctional Services Award honoree in August at the American Correctional Association’s 138th Congress of Correction in New Orleans, LA.

“Like Maud Booth, who founded Volunteers of America more than a century ago, Marc Mauer is a modern-day advocate working to challenge and change the status quo of our American society and its treatment of prisoners and the ex-offender population,” said Charles Gould, National President and Chief Executive Officer of Volunteers of America.

Volunteers of America helps more than 2 million people in over 400 communities in 44 states supporting at-risk youth, the frail elderly, men and women returning from prison, homeless individuals and families, people with disabilities, and those recovering from addictions.

Statistics for Baltimore, MD, show that drug arrest rates for whites increased 185% in a 23-year period, while arrest rates for blacks has increased more than 759%.



Activist casts first vote

Andres Idarraga had never cast a vote before he went to prison for six years at age 20.

When he was released in 2004, he realized he would not be eligible to vote until age 58. Rhode Island law barred people with felony convictions from voting until after completion of parole and probation.

In 2006, Andres helped organize voters to approve a successful referendum effort that restored voting rights to individuals upon release from prison.



Andres Idarraga looks forward to presidential election.

Andres voted for the first time in the recent primary election and now looks forward to the presidential election.

"I got to vote in the primaries and I was excited about that. I am now becoming more analytical about the election and paying a lot more attention to specific issues," the recent Brown University graduate said.

Andres started Yale Law School this fall, hoping to defend young people's access to a quality education.

MEDIA

Quoting The Sentencing Project

Newsweek

December 24, 2007

Sanity and Sentencing

"In this business, you don't get too many good days . . . now two in a row."

— Marc Mauer, Executive Director, on the Sentencing Commission's decision to make its crack cocaine sentencing guideline amendment retroactive, a day after the U.S. Supreme Court decided 7-2 to affirm a judge's

decision to sentence below the guideline range.

The New York Times

May 6, 2008

Reports Find Persistent Racial Gap in Drug Arrests

"Arresting hundreds of thousands of young African-American men hasn't ended street-corner drug sales."

— Ryan King, Policy Analyst, on The Sentencing Project's report, Disparity by Geography: The War on Drugs in America's Cities.



June 6, 2008

U.S. Prison population hits all-time high: 2.3 million incarcerated

"The unrivaled growth of the United States' incarcerated population over 30 years casts a great burden on this nation. The country's \$60 billion prison budget results in less money for education, health care, and child services. Communities need the resources to prevent crime by investing in youth and families."

— Marc Mauer, Executive Director

Richmond Times-Dispatch

March 3, 2008

Breaking the cycle of prison

"It's nothing to be proud of that we're the wealthiest society in the world and contain the world's largest prison population. There's a disconnect there."

— Marc Mauer, Executive Director, regarding the U.S. leading the world in incarceration.

THE CHRISTIAN SCIENCE MONITOR

October 2, 2007

Court looks again at sentencing laws

"There is near universal agreement that the current sentencing structure is unjust and unfair. The fact that 20 years have gone by and Congress has not sought to change this cocaine ratio disparity is unconscionable."

— Kara Gotsch, Advocacy Director, on the U.S. Supreme Court's consideration of judicial discretion in crack cocaine cases.



March 8, 2008

Weekend America/American Public Radio Voting Rights: Release or Restrict?

"When people come out of prison, we know that we need to get them good jobs. We need to get them housing; we want them connected with positive institutions in the community. People who have a stake in the community are going to be less likely to victimize their neighbors. And if we can get people engaged in the electoral process, that's affirmation of that connection with the community."

— Marc Mauer, Executive Director, on restoring voting rights to individuals convicted of felony offenses.

The Washington Post

June 12, 2008

New Criminal Record: 7.2 million

"It's really like a runaway train. Nobody's taking a step back and asking where all these billions of dollars are going."

— Ryan King, Policy Analyst, on America's rising incarceration rate.

THE SENTENCING PROJECT

works for a fair and effective criminal justice system by promoting reforms in sentencing law and practice, and alternatives to incarceration.

To these ends, it seeks to recast the public debate on crime and punishment.

To receive news and updates from The Sentencing Project electronically, send an email to: staff@sentencingproject.org



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RESEARCH

New manual provides tools for reducing racial disparities

Racial disparity is one of the most vexing problems facing the criminal justice system today.

To aid practitioners and policy makers in addressing this issue, The Sentencing Project has just released the second edition of its popular 2000 publication, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*.

The publication provides an overview of the stages in the criminal justice system in which racial and ethnic disparity might be introduced or exacerbated.

Possible causes of racial and ethnic disparity are discussed in depth, including racial profiling, inequitable access to resources, legislative mandates that disproportionately affect minorities, and overt bias in the criminal justice system.

The manual also offers suggestions for reform and tools that can be used to examine factors that might lead to disparity at one or more stages.



A “best practices” section spans each of eight possible decision points in the system, collected through interviews with justice practitioners, including law enforcement leaders, prosecutors, and judges around the country.

“Many people working in the criminal justice system are genuinely concerned about racial disparities. Judges, prosecutors, and leaders in law enforcement and corrections are looking for ways to

address them,” said Marc Mauer, executive director of The Sentencing Project, and one of the authors of the manual.

Reducing Racial Disparity in the Criminal Justice System provides strategies from practitioners around the country that can be replicated in other jurisdictions.

It’s also a useful tool for advocates, civil rights leaders and policy makers looking for ideas and strategies to make the criminal justice system more fair.”

Download the manual at www.sentencingproject.org.