



Reducing Jail Populations by Addressing Racial Disparity in the Criminal Justice System

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Thank you for inviting me to speak with you today. This is an important time for criminal justice. As we are seeing a renewed commitment to critically examining the role that race plays in our country's dynamics, there's no better place to begin that review than with the criminal justice system. I hope we will observe much-needed changes in the racial and ethnic composition of our prisons and jails in the coming years and want to share with you some of what we know about approaches that might assist with that. Reentry is an important component of reducing jail populations through addressing racial and ethnic disparities.

The Sentencing Project is a research-based advocacy organization that was created in 1986. We assist states in reforming their sentencing laws that result in overincarceration, while addressing the overincarceration of people of color. Our work on the national scale involves engagement with federal legislators toward enacting more rational crime policy. In addition to advocacy on Capitol Hill, we produce research on issues of sentencing, drug policy, and incarceration, and regularly work with the media to advance crime reporting. Over the past few years, our organization worked closely with Donald Murray of NACo and other committed advocates on getting the Second Chance Act enacted and now we hope to see funds appropriated soon. We are also engaged with juvenile justice issues and I am currently working with about 15 other national organizations to educate policymakers on the importance of youth reentry in stopping the cycle of incarceration at its earliest stages.

The first perspective I'd like to put forth today is that working toward reducing racial and ethnic disparity in the criminal justice system is a necessary component of the larger reentry conversation. This is because racial disparity is a large driver in the unprecedented growth in our criminal justice population, now at 2.3 million people incarcerated, 60% of whom are minorities. Reducing racial disparities should begin at the front end of the system. To that end, I'll talk some about a publication we recently released, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*. In this manual we share a number of tools that

have worked to reduce racial disparity at various stages of the criminal and juvenile justice systems. The efforts we review in this manual are taken from real experiences at the state, county, and city-level.

Reducing racial disparity can also be achieved at the back end, through reentry efforts. Because of one's minority status, gaining access to job, housing, education, and health care opportunities is much more difficult for people of color. Once we tack on a criminal justice record, these difficulties are simply aggravated, placing the individual at a heightened likelihood of recidivating and returning to jail. At the end of my comments, I'll mention a few ways in which race interacts with the criminal justice system to produce a more difficult reentry experience for people of color.

RACIAL DISPARITY MANUAL

The Sentencing Project released a manual in 2008 that aims to provide policymakers and practitioners with hands-on tools to use in lowering the criminal justice population by reducing racial disparities. This manual is intended to serve as both a practical set of tools and as a beacon of hope for communities around the nation that are courageous enough to tackle racial disparities at various points in the justice system. We are told again and again that disparities won't budge, but we know they can. What is needed is coordination, dedication, collaboration, data-driven responses, and persistence. Efforts that begin at the community-level appear to work best.

Our system did not get this way overnight, and it won't be reformed overnight either. Small successes should be built upon, and even when efforts don't produce the results we want, we can learn important lessons from them. We wrote the manual with this in mind, and the following are examples of jurisdictions that have addressed these issues. These include:

Multnomah County, Oregon

When it comes to reducing disproportionate minority contact (DMC), Multnomah County is one of the few sites in the country that has been committed to DMC reduction in the juvenile justice system for 15 years. Starting in 1994, the Multnomah County Department of Community Justice, Juvenile Services Division embarked on an effort to lower DMC through instituting well-researched, structured objective assessments for risk management that would provide structured guidelines for probation violations. Initial study of the situation found that police practices and detention processing were resulting in too many detentions of high-need/low-risk juveniles that were overwhelmingly youth of color. Reforms of the juvenile justice system since 1994 have led Multnomah County to become a model site under the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative. In addition to lowering its overall average daily population in detention from 92 in 1993 to only 19 in 2007, the rate of detention among African American youth has dropped significantly as well.

Two attributes of Multnomah County's experience make it noteworthy. First, this initiative has been based on collaboration and commitment since its beginning. This is one of the few DMC reduction efforts that have been sustained for such a long period of time. And, while its rates of racial disparity have fluctuated somewhat over the years, the County stays loyal to the project and continues to analyze data annually.

Portland Drug Free Zone

Also in Portland, but part of a different initiative, local policy was determined to be a driving factor in minorities entering the city jail at a disturbing rate. Defense counsel leadership and advocacy challenged a 15-year old ordinance that excluded people from certain areas of the city after arrest for a qualifying drug because it resulted in a disparate impact on African Americans.

In 2007, the Mayor commissioned a study to examine whether charges of racial disparity were supported. Researchers found that while African Americans comprised just 8% of Portland's residents, they comprised 53% of people arrested for excludable crimes in Portland's three drug-free exclusion zones during the study period. For drug arrests in the exclusion zones there was an apparent disparity related to type of drug: 70% of those arrested for cocaine got an exclusion notice but only 30% of those arrested for methamphetamines received an exclusion notice. The ordinance was not renewed as a result.

Minneapolis Pre-Trial Risk Assessment

Another jurisdiction which addressed racial disparities at the front end is Hennepin County, Minnesota. In 2006, the 4th Judicial District engaged in a pretrial risk scale validation study to determine whether the Hennepin County pretrial risk assessment scale reliably predicted the risks of pretrial offending and failure to appear in court, and to learn whether racial bias was associated with any of the scale items. The risk tool used had been developed in 1992, but never validated for accuracy. In 2006, using rigorous statistical tests, researchers found that 3 of the 9 indicators were correlated with race but not with risk of pretrial offending or failure to appear. (The factors were: whether a weapon was used during the main offense, whether the defendant lived alone, and whether the defendant was under 21 years old when booked.) Two of these three indicators had been added to the scale for policy-related reasons since the scale's original development. As a result, the study authors recommended that the three indicators be removed from the risk scale. A new scale has been in use since 2007.

WHO COMPRISES THE JAIL POPULATION?

Despite these pockets of success, our jails and prisons are still overwhelmingly filled with people of color. While involvement in crime explains some of the disparity, policies and practices within the justice system are also contributing factors.

Most of those who enter our jails are young – nearly 30% are under 24 years old—they are disproportionately male, and they are likely to be people of color: 40% are African American and 16% are Hispanic. For whites, 170 out of 100,000 are in jail; for blacks this figure is nearly 5 times as high at 815 per 100,000. We know that about 800,000 individuals are in jail on any given day, representing a 200% increase since 1985. On the front end, there are 12 million admissions to our nearly 4,000 jails each year, representing 9 million individuals. Most are confined for a short time and have been charged with nonviolent offenses, and many are being held pre-trial. On the back end, roughly 12 million people leave jail every year, a much higher figure than the 700,000 leaving our prisons. This means we can target a much greater number of people with reentry services when they leave jail. If programs are successful, they will reduce the prospects of coming back. Unfortunately, we know that many people in jail do not receive the necessary services, health care, training, or counseling in jail or after they leave. We also know that many of our inmates have been to jail before: in fact, as many as two thirds have had a previous incarceration. This means that something didn't work the last time.

CONNECTION BETWEEN RACIAL DISPARITIES AND REENTRY

Disparity mounts quickly when looking at the aggregate impact of lack of community resources, employment and housing discrimination, disparate access to education, and substandard health care for people of color. These disparities worsen after incarceration.

One group of researchers writes, “The individual, family, and community disruption caused by repeated short incarcerations may contribute to the disparities in health that distinguish low-income, urban communities with high incarceration rates and high proportions of blacks and Latinos from communities with low-incarceration rates and higher incomes.”¹ It is critical not only to prepare the individual for reentry but to prepare the community for his or her return as well.

Two examples illustrate the ways in which racial disparities are an essential topic for the reentry process. The first demonstrates that resources are wasted when spent solely on incarceration without supporting prisoners as they return to the community. The second demonstrates the relative challenges, compared to Whites, faced by people of color when returning to the labor force with a felony conviction.

Community Resources

Million Dollar Blocks: In this study, located in neighborhoods of Brooklyn, NY, researchers used geo-spatial mapping techniques to study the flow of individuals to and from prisons and jails. They discovered that some neighborhoods are home to “million dollar blocks” in which more than a million dollars per year are spent to incarcerate and return residents. These results showed again that reentry affects not only individuals but entire communities. They also lend great support to the

¹ Freudenberg, N., Galea, S., and Vlahov, D. (2005). Beyond Urban Penalty and Urban Sprawl: Back to Living Conditions as the Focus of Urban Health. *Journal of Community Health* 30 (1), 1-11.

argument that reentry resources need to go to the communities where reentering individuals will reside upon exit from prison or jail.

Employment: Researcher Devah Pager looked at two groups of testers, one black and one white, who indicated they had a criminal record when applying for a job.² Among those without a criminal record, African Americans were less than half as likely to receive callbacks from prospective employers as equally qualified white applicants (14 vs. 34 percent). Pager interpreted this to mean that young black men needed to work twice as hard and apply to twice as many jobs to secure the same opportunities as whites with identical qualifications. Her overall conclusion was that “...being black today is just about the same as having a felony conviction in terms of one’s chances of finding a job.”

Reentry is not merely “a program,” but is a philosophical shift in the way we respond to those coming out of jail. It is helpful to broaden the definition of reentry to include a focus on training jail staff and involving community-based organizations. It involves pre-discharge planning, communication and actively working together to support public safety.

Since jail is often the entry point to what could become years or even decades of cycling through the criminal justice system, it is the ideal opportunity to invest resources in both the individuals coming out of the system and the neighborhoods where they are returning. It is also important to recognize that not everyone comes out of jail with equal opportunities for success; we know that race and ethnicity play a role in accelerating the entrance into the criminal justice system, and these factors also contribute to difficulties upon reentry in terms of education, housing, civic participation, employment, and access to health care.

² Pager, D. (2007). *Marked: Race, Crime and Finding Work in an Era of Mass Incarceration*. Chicago: University of Chicago Press.

CONCLUSION

Research on reentry is still nascent, but themes are emerging that signal strategies are working. Reentry expert Jeremy Travis, for instance, identified strategies that should be incorporated into any reentry work: collaboration, access to benefits, sustainability, culture/gender components, and community linkages.³ Everyone is concerned about costs today and it is a challenge to argue that investments today will yield benefits in the future. We know from the research, however, that front-end efforts to reduce racial and ethnic disparity are an effective way to lower our overall jail and prison populations. And we are coming to appreciate that efforts at the back-end—reentry services and programs—are valuable investment that can produce less crime and lower jail populations as well.

³ Travis, J. (2005). *But They All Come Back: Facing the Challenges of Prisoner Reentry*. Washington, D.C.: The Urban Institute Press.



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