

ASA SERIES ON HOW RACE AND ETHNICITY MATTER

Race, Ethnicity, and the Criminal Justice System

SEPTEMBER 2007

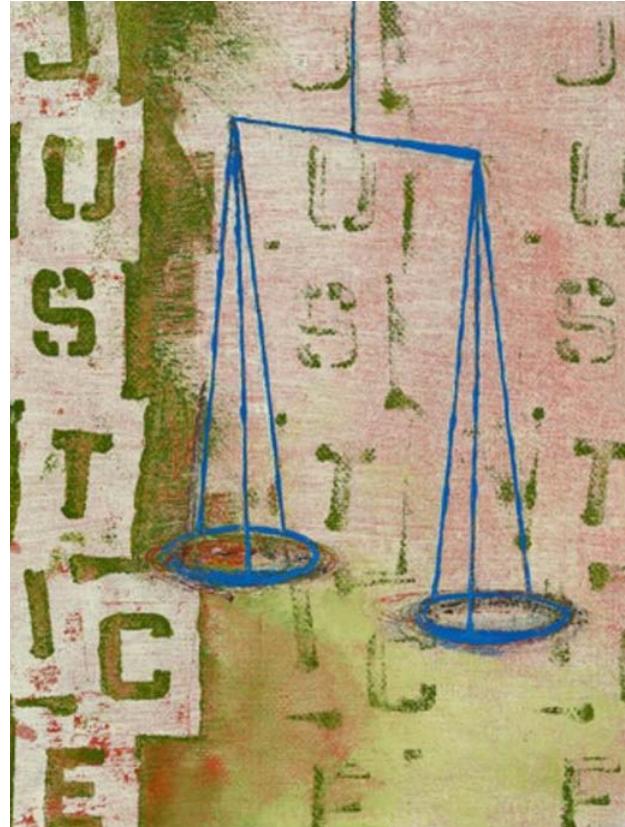
SERIES BACKGROUND

This online publication by the American Sociological Association (ASA) is one in a multipart series on the institutional aspects of race, racism, and race relations, a project that began as part of the commemoration of ASA's centennial (1905–2005) and designed for a general readership. As a professional membership association, the ASA seeks to promote the contributions and uses of sociology to the public. These synthetic summaries provide an overview of the research evidence on how race remains an important social factor in understanding disparities in the well being of Americans in many important areas of life (including employment, health, income and wealth, housing and neighborhoods, and criminal justice)—although demonstrable changes have occurred in American society over the last century.

Published under the auspices of ASA's Sydney S. Spivack Program in Applied Social Research and Social Policy, these syntheses are based upon a vast literature of published research by sociologists and other scholars. They build on bodies of research that were reviewed and assessed at a working conference of 45 social scientists that attempted to create an integrated map of social science knowledge in these areas. The effort was organized by Felice J. Levine, former ASA Executive Officer, Roberta Spalter-Roth, Director of the ASA Research and Development Department, and Patricia E. White, Sociology Program Officer at the National Science Foundation (then on detail to ASA), and supported by generous grants from the Ford Foundation and the W.G. Kellogg Foundation.

In conjunction with the Clinton administration's *Presidential Initiative on Race: One America*, the ASA was encouraged by the White House Office of Science Technology Policy to undertake this ambitious examination of relevant arenas of research, explicate what the social sciences know, dispel myths and misconceptions about race, and identify gaps in our knowledge. The purpose of the President's overall initiative, begun in late 1997, was to "help educate the nation about the facts surrounding the issue of race" and included many activities such as university, community, and national dialogues; government initiatives and conferences; and topical reports.

Two other publications in this series, *Race, Ethnicity, and the Health of Americans* and *Race, Ethnicity, and the American Labor Market: What's at Work?* can be found on the ASA Web site at
http://www.asanet.org/galleries/defaultfile/race_ethnicity_health.pdf
http://www.asanet.org/galleries/defaultfile/RaceEthnicity_LaborMarket.pdf



This research brief highlights data and research findings on racial and ethnic disparities in crime and the criminal justice system in the United States, with particular emphasis on studies that illustrate differences that can be explained by discrimination. The discussion focuses on issues relating to race/ethnicity in different stages of criminal justice processing at the beginning of the twenty-first century; data reflecting trends over time are presented for context. It seeks to present a balanced picture of what is known about these issues from systematic research evidence. While the concluding section presents some areas where research is incomplete, the thrust of this brief is to lay out some of the important scientific knowledge that helps us understand the intersection of race/ethnicity and the criminal justice system in America.

This ASA series is published under the leadership of Roberta Spalter-Roth, Director of the Research and Development Department at ASA. The article on Race, Ethnicity, and the Criminal Justice System is authored by Katherine J. Rosich. The ASA is also grateful to Darnell F. Hawkins who offered valuable suggestions and insights in a review of an early draft of the manuscript. In addition to this research brief, an extensive bibliography of articles primarily from peer-reviewed journals and books on race, ethnicity, and the U.S. criminal justice system is also available from ASA (*Race, Ethnicity, and the Criminal Justice System: A Selected Bibliography*).

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1. INTRODUCTION

For much of the twentieth century, crime and punishment have provided some of the most powerful symbols of the racial divide in America. In the early decades, lynchings, chain-gang style penal practices, and prosecutorial and judicial bigotry were common, particularly in the southern criminal justice systems (44; 4). Throughout the United States, racial minorities were generally tried by all white juries in all white courtrooms, as was the case, for example, in the 1931–32 Scottsboro rape trial.¹ In 1910, African Americans, who were about 11 percent of the U.S. population, were 31 percent of the prison population (85:22). African Americans accounted for 405 of the 455 of executions for rape between 1930 and 1972 (101). Sentencing laws were discriminatory, with the harshest sanctions given to blacks who victimized whites. The police were also instrumental in racial violence, by actively participating in, encouraging, or failing to restrain mobs (71). Over much of the last century, police

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instigated or participated in race riots in cities nation-wide, and police behavior encouraged hostility toward and violence in minority communities.

Over the past fifty years, however, U.S. Supreme Court cases and legislation inspired and led by the civil rights movement, “due process,” and other reform movements have made discrimination on the basis of race unconstitutional. Minority defendants are no longer routinely denied bail, charged indiscriminately, without legal representation, or punished disproportionately. Law enforcement policies and practices place far greater emphasis on professionalism and accountability, although incidents involving police violence still occur and tensions between minority communities and police persist.

Although overt discrimination has diminished in the criminal justice system over recent decades (14), at the beginning of the twenty-first century, we continue to grapple with the perceptions of and the reality of unfairness in our justice system. Racial and ethnic disparities persist in crime and criminal justice in the United States. Minorities remain

overrepresented² in delinquency, offending, victimization, and at all stages of the criminal justice process from arrest to pretrial detention, sentencing (including capital punishment), and confinement. Since the trailblazing work of W.E.B. DuBois on race and criminality more than a century ago, researchers have made significant efforts to examine the causes and consequences of racial/ethnic disparities in criminal justice processing; the extent to which these differences are attributable to discrimination or to differential rates of offending; and whether these patterns of overrepresentation have changed over time. Substantial emphasis has also been placed on studying patterns of victimization and offending and the social factors (such as poverty, segregation, unemployment) that underlie and explain race/ethnic differences in data on serious violent crime.

SOCIAL SCIENCE RESEARCH ON RACE AND CRIME
The large body of research has contributed greatly toward our understanding of race and crime in America; yet many issues continue to generate debate and controversy. Differences emanating from the use of varying research methodologies and theoretical frameworks, the quality of the data, and the use of data in studies of race and crime are just a few areas that produce debate and discussion over what the data mean. For example, studies have produced conflicting findings about whether or how much racial bias exists in the criminal justice system, but researchers point out that such inconsistencies are not surprising because the studies used different designs, timeframes, and jurisdictions (e.g., 81). Scholars have raised questions about whether official crime counting systems—the basis of much research data—are intrinsically biased.³ Official statistics, for example, focus on street crime (much committed by blacks) rather than all crimes (e.g., white collar crime, which is most of the crime, including many drug crimes, and is largely committed by whites), thereby creating a biased picture of offending and

offenders. Some scholars argue that the data systems themselves perpetuate racism because they create statistical support for stereotyping of blacks as prone to criminality.

While some researchers have argued that racial discrimination is pervasive and deeply rooted throughout the criminal justice system (59), and others have maintained that intentional discrimination does not exist (111), the empirical picture is more complex. Many researchers have concluded that the social science research overall shows that racial discrimination does occur in *some* stages of justice processing, *some* of the time, and in *some* places, and that *small* differences in treatment *accumulate* across the criminal justice system and over time, resulting in larger racially different outcomes (e.g., 88:362–63; 48:498).

2. DISPARITIES IN OFFENDING AND VICTIMIZATION

The evidence from research strongly and consistently demonstrates that some racial and ethnic minorities are involved in violent crime far beyond their numbers in the population. This section presents data that describe disparities in violent victimization and offending, and summarizes some research-based explanations for these differences. The focus of this review of the research literature is on comparisons between the African American and white populations, the subject of much of the research on criminal justice system activity (although some recent data summarizing Native American and Hispanic criminal victimization are also included). Particular emphasis is placed on the experiences of young African Americans males in the criminal justice system in order to highlight the extremely severe impacts of differential justice treatment and their implications for the broader society.

This review examines what we know about race/ethnic differences in the criminal justice system at the beginning of the twenty-first century. However, it is important to emphasize that the discrimination experienced by African Americans and other minorities has deep roots in U.S. history. These experiences reveal an important part of the story of discrimination and racial prejudice in America. The focus of much historical analysis has been on the experiences of African Americans under slavery, Jim Crow laws, Black Codes, and other forms of legal discrimination (including decisions by the U.S. Supreme Court upholding slavery), as well as oppressive and brutal treatment by legal authorities. In the late nineteenth and early twentieth centuries, Native Americans were also oppressed and brutalized through enforcement of legal systems, particularly those encouraging the movement westward and the process of industrialization. On the frontier, as local legal institutions gradually replaced the U.S. army as the instrument of authority, Native Americans were excluded from white society and its laws because they continued to be perceived as enemy groups (39:158).

A growing historiography on the treatment of Mexican Americans in the Southwest since the U.S. conquest of the former Spanish colonies also documents the extremely harsh discriminatory tactics in systems of criminal justice. Especially in the late nineteenth and early twentieth centuries, other ethnic and racial groups—in particular Asians and new European immigrants—were also victimized by discriminatory laws and criminal justice processes. Although much more work needs to be done in this area, research studies have addressed the criminal patterns of white ethnics during this period, who were disproportionately represented in crime and in state prisons and jails in some regions. Referred to as the foreign-born, white ethnics were subjected to forced labor practices and chain gangs and victimized by lynchings (44). Members of these immigrant groups were frequently portrayed as

prone to drunkenness and persistent crime (e.g., 63; 15), and a considerable body of research developed around various theories linking immigration to crime (e.g., 60). Indeed, the crimes of immigrant groups and their perceived criminality were used in public policy campaigns aimed at curbing immigration of various groups into the United States well into the twentieth century, and enters into debates on immigration reform up to the present.

OFFENDING AND VICTIMIZATION

Minorities, particularly African Americans, are generally overrepresented in the criminal justice system both as offenders and as victims. According to the *Uniform Crime Reports (UCR)* for 2003, African Americans (who were 12.7 percent of the population in 2003) were arrested for 37 percent of violent crimes (murder and nonnegligent manslaughter, forcible rape, robbery and aggravated assault) and 29 percent of property crime (102:288). African Americans are disproportionately arrested for violent crimes and whites for burglaries and property crimes. Although most crime is committed by males, black women are also disproportionately involved in the criminal justice system. The rate of black women under control of the criminal justice system is growing faster than for any other group, including black men and white men (86:136). Blacks are victims of serious violent crimes at far higher rates than whites. In 2002, blacks were 6 times more likely to be murdered than whites; and although homicide levels have declined for all groups over the past decade, during the 1976 to 2002 period, rates were disproportionately high for African Americans at 47 percent of victims (28).

Native Americans also have disproportionately high rates of criminal offending and victimization. Arrest data from the 2003 *UCR* indicate that American Indian or Alaskan Natives, who were approximately 0.9 percent of the population in 2000 account for 1.3 percent of all arrests (102:288). These figures are

probably undercounts, because the *UCR* does not include arrests by tribal police or federal law enforcement (107:13). The arrest rate for alcohol violations (driving under the influence [DUI], liquor law violations, and drunkenness) for Native Americans was double the national rate (74). Native Americans experienced violent victimization at an annual average rate 2.5 times the national rate from 1992 to 2001. Two-thirds of violent victimizations of Native Americans are by persons who were either white or black—a substantially higher rate of interracial violence than is experienced by white or black victims (74).

Data from the National Crime Victimization Survey (NCVS) indicate that persons of Hispanic origin, who comprised about 10 percent of the population in 2000, experienced about the same percentage of all violent crimes (82:2). Young Hispanic males are victims of homicides at high levels—in 1999, homicide was the second leading cause of death for youths in the 15 to 24 age groups (69:6). The rates of victimization of Hispanics declined by nearly 56 percent between 1993 and 2000 to levels comparable to that of whites (82:2). Because of the complexities and confusion about defining “Hispanic” in official record systems that provide most data on criminal offending, it is not possible to easily determine Hispanic level of criminal involvement.⁴

UNEVEN RACIAL EFFECTS OF RECENT CRIMINAL JUSTICE POLICIES AND PRACTICES

Over the past thirty years, the most severe effects of criminal justice policies and practices have been concentrated in staggering proportions on one group—young African American males from inner cities and low-income communities. Since the 1970s, crime control policies such as mandatory minimum sentencing, truth-in-sentencing, sentencing guidelines, and “3-strikes” legislation have been enacted widely at the state and federal levels. Some argued that these tough measures

(through incapacitation and deterrent effects) have reduced crime in some areas (e.g., 10). Others have argued that these sentencing policies represent deliberate efforts to link crime to minority groups (especially young African American men) in order to generate public support for crime control policies by creating “moral panic” about crime (17:245), and fear of the threat of this racial group (85; 113). Evidence from public opinion polls and research studies indicates that whites widely believe that blacks are prone to criminality (44; 85), causing whites to be fearful of blacks—especially of young black males.

Public policies labeled the “War on Drugs” of the 1980s and 1990s largely targeted minorities—a fact recognized by politicians and policymakers, and documented by research. In 1993, Senator Daniel Patrick Moynihan warned that by choosing policies focused on prohibition of drugs “we are choosing to have an intense crime problem concentrated among minorities” (68:361). Researcher Michael Tonry noted that, “[a]nyone with knowledge of drug-trafficking patterns and of police arrest policies and incentives could have foreseen that the enemy troops in the War on Drugs would consist largely of young, inner-city, minority males” (97:4). Since the mid-1980s, the War on Drugs has produced legislative initiatives by politicians attempting to demonstrate that public safety is a priority. However, evidence suggests that by 1989 drug use was in decline, except among poor urban minorities (97). Apparently, the proponents of using the tough criminal sanctions rather than other strategies (e.g., those linked to public health) to curtail drug use in these communities knew, or chose to ignore, that it would disproportionately affect young blacks and Hispanics and their communities.

A comparison of criminal penalties for crack cocaine and powder cocaine offenses demonstrates the disproportionate effects of criminal sanctions on

minorities. The federal statutes relating to crack prescribe a five-year mandatory prison term for possession of five grams of crack cocaine; but under the same law, possession of five *hundred* grams of powder cocaine is required for the same five-year prison term. In 1999, 85 percent of those serving long sentences for crack cocaine under this law were African American (86:139). The tougher policy for crack was based on the belief that it was more addictive and a greater threat to public safety (45:432; also see 23). Economic competition in illicit street crack markets produced significant violence in poor communities, but not crack addiction. Powder cocaine markets, however, were concentrated indoors in wealthier communities, thereby avoiding the violence but not the addiction. Policies emphasizing the criminal rather than the public health aspects of the use and trafficking of illegal drugs over the past two decades, coupled with more aggressive policing against street crack markets

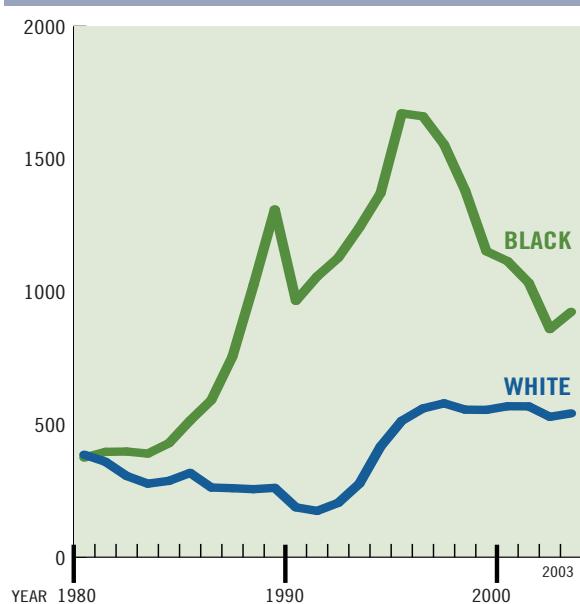
in poor urban communities contributed to widening racial disparities in the criminal justice system and produced consequences of crisis proportions in the black community, especially for young black males.

Increases in drug arrests combined with an increased use of incarceration for punishment for drug offenses during the 1990s had a particularly severe effect on minority youth. Drug arrests for juveniles (10 to 17 age group) in the 1980 to 1993 period fell 28 percent for whites but increased by 231 percent for blacks. In 1980, black and white rates for juvenile drug arrests were similar; by 1993 black rates were more than four times the white rate (Figure 1), and 46 percent of all juvenile drug arrests were black youth (92:144).

The number of young black men under control of the justice system increased sharply. In 1994, one in three young black men between the ages of 20 and 29 was under correctional supervision, compared with one in four in 1990. In contrast, 1 in 16 white men in the same age group was under correctional supervision. In some cities, more than half the young black men in their 20s were under control of the criminal justice system (62:3; 113:525). At the end of 2004, 8.4 percent of black males age 25 to 29 were in prison, compared to 2.5 percent of Hispanic males and about 1.2 percent of white males (43:8). About 10 percent of young black males in inner cities and smaller urban areas were incarcerated on a given day in 2004; 33 percent were likely to be incarcerated in their lifetime (58:269).

Surveys of illicit drug use (in both the juvenile and adult populations) however, reveal another side to this picture. Data obtained in the *Monitoring the Future Survey* indicate that, “for all drugs, [emphasis in original] licit and illicit, African American [high school] seniors reported lifetime, annual, 30-day, and daily prevalence of use rates that are lower—sometimes dramatically lower—than those reported

FIGURE 1: JUVENILE DRUG ARREST RATES, 1980–2003
Arrests per 100,000 juveniles ages 10 to 17



Source: 92:144.

FIGURE 2: USE OF ILLICIT DRUGS BY TWELFTH GRADERS BY RACE AND ETHNICITY, 1975–2000

	ANY ILLICIT DRUGS*	MARIJUANA	COCAINE	CRACK
LIFETIME	%	%	%	%
White	54.8	49.4	9.9	4.4
Black	48.7	45.7	1.9	0.8
Hispanic	60.0	55.0	13.3	6.3
ANNUAL				
White	42.8	38.2	6.2	2.5
Black	32.7	30.0	1.0	0.5
Hispanic	44.8	40.5	7.6	3.4
30-DAY				
White	25.9	22.7	2.5	1.0
Black	20.3	19.0	0.8	0.4
Hispanic	27.4	24.6	3.6	2.1

Source: 49:Table 4.9. Data are from the Monitoring the Future Study. Percentages are based on 1999 and 2000 data combined.

*Use of “any illicit drug” includes any use of marijuana, LSD, other hallucinogens, crack, other cocaine, or heroin, or any use of other narcotics, amphetamines, barbiturates, or tranquilizers not under a doctor’s orders.

by White or Hispanic seniors” (49:80). Thus, contrary to popular belief, African Americans use most drugs (including crack cocaine) at far lower rates than whites (see Figure 2). Yet, in the juvenile justice system in 2002, black youth who were 16 percent of the population, were 25 percent of arrests and 36 percent of detentions for drug abuse violations for that year (91:9; 92:176).

The “War on Gangs” policies of the 1980s and 1990s had a similar effect on minorities. Antigang legislation passed in many states provides sentencing enhancements for certain types of offenses “committed for the benefit of a gang” (113:527). Given the lack of consistent definition of what a “gang” is, researchers have observed that police strategies often lead to identifying large numbers of young men and women of color as members of

“gangs,” and creating databases of suspected gang members. Miller reports that by 1992 almost half of all black men ages 21 to 24 in Los Angeles county were identified by the District Attorney’s Office as “gang” members (65:91), and in Denver, black young men between ages 12 and 24, who were 5 percent of the city’s population, made up 57 percent of the police department’s list of suspected “gang” members. Hispanics were another one-third of the list (65:109).

Street drug markets are related to the large increases in homicide offending *and victimization* in the late 1980s and early 1990s that especially affected young black males. During this period, the level of firearm-related homicide among young blacks increased sharply in urban areas, with rates (per 100,000) for black males at 85.3, and 7.5 for white males (27:3048–49). Homicide continues to be the leading cause of death among African American youths in the 15 to 24 age group (69:41). After declines for all groups during the 1990s, homicide levels have stabilized over the past several years, but black males in the 18 to 24 age group still have the highest rates of homicide victimization. In 2002, rates in this age group (per 100,000) were 102.3 for blacks and 12.7 for whites (28). In 2002, rates of homicide offending were also highest in the 18 to 24 age group; for black males rates (per 100,000) rates were 191.1, and for whites 24.9 (28).

Other impacts of criminal justice practices over the past 30 years are profound but harder to measure. Research has tracked how youth in minority communities have adapted to aggressive surveillance by law enforcement and the criminal justice system. Researchers have documented the widespread harassment, verbal abuse, arbitrary stops and searches by police in many minority communities that have produced distrust, suspicion, and hostility. Ethnographic research describes how such persistent harassment leads to a “code of the streets,” which

emanates from a “profound sense of alienation from mainstream society and to its institutions [particularly the police and the judicial system] felt by many poor inner-city black people, particularly the young” (2). Other research on the conditions that lead to compliance with laws has shown that people’s *perception of fairness* is essential for their support and acceptance of laws and authority (99). In a democratic society, the voluntary acceptance of laws is an essential element in maintaining social order. The “disconnection” of inner city youth from the mainstream society has serious implications for American society.⁵

EXPLANATIONS FOR RACE DIFFERENCES IN VICTIMIZATION AND OFFENDING

Scholars explain race-crime differentials from a variety of perspectives. Researchers who focus on the race-*victimization* connection emphasize “lifestyle” or “routine activities” situations as “facilitators” of crime and violence, and assert that the convergence of weak informal community controls, motivated offenders, and likely targets place certain types of individuals (including groups of minorities) at greater risk for victimization (96; 88). Explanations of racial disparities in *offending* have centered on biological, cultural (e.g., culture of poverty, deviant subcultures), inequality/deprivation, and structural explanations. Studies focusing on deprivation, for example, stress the importance of factors such as persistent racial inequality and concentrated poverty that cause frustration among youth leading to their delinquency and potential aggression (7).⁶

Research studies also focus on the very different communities in which blacks and whites live, and emphasize contextual factors that explain race-crime differences. Communities that are racially segregated and have high concentrations of poverty and unemployment (or marginal employment), population change and turnover, family disruption, and extreme social isolation (e.g., few kinship and

intergenerational links, unsupervised teenage peer groups, minimal levels of organizational participation) experience higher levels of crime and violence (e.g., 89; 42). Massey demonstrates how rising black poverty and high levels of racial segregation have interacted to concentrate poverty geographically and to create the social conditions leading to the crime waves experienced in the U.S. over recent decades (61). Other researchers have documented how discriminatory housing policies and practices have reinforced racial segregation, thus increasing and concentrating disadvantage for blacks, but not whites (77). Peterson and Krivo show how the adverse social conditions created by concentrated disadvantage resulting from segregation have a strong effect on black but not white homicides.

The plight of groups experiencing concentrated poverty has worsened over recent decades. The social and economic inequalities experienced by African Americans and other minorities create similar challenges in many areas at once, including barriers to economic opportunity and education. Because earnings for low-skilled men have been declining since the 1970s, and African Americans, Hispanics, and Native Americans are overrepresented at the bottom of the skill ladder, these factors may help explain their involvement in illegal activities (19; 23; 56). In 1989, the Committee on the Status of Black Americans of the National Academy of Sciences concluded that, “as long as great disparities in the socioeconomic status of blacks and whites remain, blacks’ relative deprivation will continue to involve them disproportionately in the criminal justice system as victims and offenders” (48:498).

RECENT DECLINES IN CRIME LEVELS

After increasing steadily for decades, violent crime rates peaked in 1991 and then began the longest period of decline since the 1960s. From 1994 to 2003, the total violent crime rate fell more than 33 percent (103). Because explanations for serious social

“...as long as great disparities in the socioeconomic status of blacks and whites remain, blacks’ relative deprivation will continue to involve them disproportionately in the criminal justice system as victims and offenders.”

issues generally involve multiple, interacting factors, the reasons for these impressive decreases in violent crime remain unclear (84:31). Declines for youth are tied to the same cycles that resulted in the increase in youth homicide rates in the 1980s and early 1990s. During that period, violence increased in and around urban street crack markets, and the proliferation of firearms on the streets of urban America linked to drug markets. As the crack epidemic crested about 1990, street drug markets began to shrink, and firearm homicides declined, especially in large cities and among young African American males (84:28). Other factors that may have contributed to the declines include a favorable economy, targeted policing, and policies focusing on incarceration of violent offenders and control of firearms (see also 55). In addition, from studies of 180 Chicago neighborhoods, Sampson has reported significantly lower rates of violence among Mexican Americans than among blacks or whites. After controlling for factors such as poverty and immigrant status, the researchers concluded that communities of concentrated immigration provided an insulating factor and are directly associated with lower levels of violence (87).

3. FINDINGS ON RACE DIFFERENCES IN THE CRIMINAL JUSTICE SYSTEM

Varying explanations for the persistence of minority disadvantage in the U.S. criminal justice system are drawn from research findings in several areas: (1) minority juveniles are more likely to be disadvantaged in the juvenile justice system, thus creating a cumulative record of disadvantage over the life course; (2) police discretion results in higher arrest rates (as well as harsher treatment at arrest) for minorities; (3) the War on Drugs, and other “get tough” legislation enacted since the 1980s at the state and federal levels disadvantage African Americans; (4) persistent, unwarranted sentencing disparities as well as differentials in rates of incarceration indicate racial biases; and (5) directly or indirectly, the death penalty targets blacks.

A. THE JUVENILE JUSTICE SYSTEM

A strong and consistent body of research shows significant disparities for minorities (especially African Americans) at most stages of the American juvenile justice system (92:188; 51:432). Research findings on racial disparities vary from place to place and over time, reflecting jurisdictional differences in a fragmented juvenile justice system, and/or differences in study designs. Researchers also caution that disparity or overrepresentation may be evidence for discrimination, but they do not necessarily prove discrimination (92:188; 107:14–18; 5:24–25).⁷

Although Snyder and Sickmund report declines in racial disparity in the juvenile justice system since 1992 in two key areas (arrest and transfer/waiver to adult criminal court) (92:190), the evidence is strong that black youth are still overrepresented at all stages of case processing (92:176, 188-89), with especially significant levels of disparity at arrest and detention. Moreover, disparities accumulate through the process: In 2002, black youth, who were 16 percent of the U.S. population and 28 percent of

FIGURE 3: PROPORTION OF YOUTH AT STAGES OF CASE PROCESSING IN DELINQUENCY CASES IN THE JUVENILE JUSTICE SYSTEM, 2002

	% Black*	% White*	Population**
In population (ages 10 to upper age)*	16	78	31,425,700
Arrested	28	72	2,201,900
Referred to Juvenile Court	29	67	1,559,800
Detained	36	61	318,300
Petitioned by Juvenile Court	33	64	902,800
Waived to Criminal Court	35	62	6,900
Adjudicated Delinquent	29	67	600,400
Ordered to Residential Placement	33	63	137,900
Ordered to Formal Probation	29	67	385,400
New Admissions to Adult Jails	59	28	4,100

**Population ages 10–17: 25,994,400 (white) and 5,431,300 (black).

Source. *Based on data from: 92:176, 189, and 238; **Based on 92:174, 189, and 237–38; juvenile court data are based on 94:58–59. See also 70:37. Row percentages do not add to 100 because other population categories are excluded.

youth arrests, accounted for 33 percent of juvenile court cases resulting in out-of-home placement (Figure 3). In a “snap-shot view” of custody levels on October 22, 2003, nation-wide, the custody rates for black youth was highest at 754 (per 100,000 juveniles in the U.S.); compared with rates of 190 for white, 348 for Hispanic, 496 for American Indian, and 113 for Asian youth (92:213).

There is consensus among researchers that the most widespread forms of racial discrimination in the American justice system occur in the treatment of juvenile offenders. Feld notes that research on juvenile court sentencing consistently shows that “after controlling for the present offense and prior record, individualized sentencing discretion [in juvenile case processing] is often synonymous with racial discrimination” (26:267). From their review of

46 studies of juvenile justice processing and minority status, Pope and Feyerherm found that two-thirds showed evidence of discrimination against minority youth, either directly (e.g., differences in case processing decisions such as detention, after controlling for other relevant case characteristics), or indirectly (operating through some other case characteristics, such as “family situation”), or as a mixed pattern (race differences being significant at some stages, or for specific subgroups of offenders or offenses). Moreover, according to Pope and Feyerherm, these effects are cumulative, with relatively small differences in outcomes at early stages of the process becoming “more pronounced as minority youths proceed further into the juvenile justice system” (80:3; also see 88:363; 14:140–44; 92:188).

Some researchers have suggested that the greater informality and flexibility permitted in the juvenile justice system creates the potential for abuse of discretion (16; 51). Research studies indicate that racial disparity is most evident at arrest, the first point of contact between youth and the justice system: In 2002, for youths ages 10 to 17, the arrest rate for blacks was almost double that of white rates (92:188–89). While there is little research evidence of overt bias by police, law enforcement policies and practices have the effect of racial and ethnic discrimination. For example, police are prone to more assertive surveillance of low-income communities, stereotyping them as “bad neighborhoods.” Minority youth who appear hostile are more likely to be stopped, interrogated, arrested, charged with more serious offense, referred to court, and detained (5:45; 79). However, criminologists emphasize that juvenile arrests remain poorly understood because relatively little research has been done on police actions and decisions that lead up to and include arrests (5:66).

Minority youth are also disadvantaged at other stages of the criminal justice process. At court intake, where nearly half of all juvenile arrests are closed or diverted, minority youth are less likely to be diverted (referred from formal processing) or released outright (5:47-48). Bishop and Frazier examined procedures in processing African American and white youths in Florida from intake to disposition, and concluded that, “while the magnitude of the race effect varies from stage to stage, there is a consistent pattern of unequal treatment. Non-white youths referred for delinquent acts, are more likely than comparable white youths to be recommended for petition to court, to be held for pre-adjudicatory detention, to be formally processed in juvenile court, and to receive the most formal or the most restrictive judicial dispositions” (6:405–406).

Although, the more informal nature of the juvenile justice system was designed to provide responses that fit the “best interest” of each child, there is evidence that such informality does not always result in the most appropriate responses for minority youth (51:439). Subjective interpretations of reports and differing perceptions of whites and minorities by probation officers have been shown to have a negative impact on black youth. Bridges and Steen examined 233 narrative reports written by juvenile probation officers in three counties in Washington State during 1990 and 1991, and concluded that those officials perceived black and white youths and their crimes quite differently. Probation officers more frequently attributed delinquency of blacks to “negative attitudinal and personality traits,” while focusing on the “influence of the social environment” for white youths. Bridges and Steen note that such attributions shape assessments of youths’ culpability and future criminality, as well as sentence recommendations (13:567).

Juveniles in the Adult Criminal Justice System

As in the adult criminal justice system, policy changes in the juvenile justice system over the past several decades have emphasized severity of punishment over rehabilitation of young offenders. Dramatic increases in violence by juveniles, as well as highly publicized cases of very young children accused of extremely violent crimes, resulted in a perception of public demand for tough responses. Feld and others, however, provide evidence that politicians often raised fears among the public about a coming generation of “superpredators” to gain support for policies that transferred youths from the juvenile court to the adult criminal court (26:208). Recent data reported by Snyder and Sickmund indicate that the dire predictions about juvenile predation did not come to pass: Indeed, by 2003, juvenile arrest rates for weapons laws violations dropped to levels close to those of the mid-1980s (92:143). Also by 2003, the overall juvenile arrest rate dropped by 18 percent to its lowest level in a generation. In contrast, adult arrest rates for serious violent crime fell by 1 percent during the same 1994 to 2003 period (92:127,132).

Since the 1990s, most states have passed laws that have had the effect of blending the adult and juvenile justice systems. Some states lowered the age for admission to prison; others lowered the age for transfer of children and youth from juvenile court to criminal court, and/or expanded the list of offenses for which juveniles could be sent to the criminal court. A 1995 report by the U.S. General Accounting Office (GAO) indicated that 44 states and the District of Columbia passed laws between 1978 and 1995 on such juvenile “waivers” to criminal court (105:2). All states now allow juveniles to face adult criminal sanctions in certain cases (92:110).

These changes have emphasized public safety concerns and offender accountability, rather than

individualized interventions, including treatment, education, and rehabilitation. The shifts in the juvenile justice system are thus a radical departure from the goal of rehabilitating youth in trouble—the central objective of the juvenile court system at its origins more than a century ago (16). Legislation, court decisions, and administrative changes have substantially transformed the juvenile court system into what Feld describes as a “second-class criminal court . . . that provides young offenders with neither therapy nor justice” (26:3).

Snyder and Sickmund report that the number of youth under age 18 held in adult jails quadrupled between 1990 and 1999, then dropped sharply by 2004 (92:236–37). Citing figures from the U.S. Bureau of Justice Statistics, they state that an estimated 7,083 youths younger than 18 were held in adult jails on June 30, 2004 (or about 1 percent of jail inmates) (92:236). They also note that of youth younger than 18 who were admitted to adult prison in 2002, blacks were 59 percent of new admissions, whites 28 percent, Hispanics 11 percent, and youth of other race/ethnicity 2 percent (92:238). Research examining sentencing outcomes of juveniles processed in adult criminal court compared with those of young adults sentenced in similar crimes found that juveniles in adult court are sentenced more severely (54). Analyses by the National Council on Crime and Delinquency also support the conclusion that youth tried as adults are treated more harshly than youth in the juvenile justice system.

The transfer of juveniles to the adult criminal court raises questions including whether they have the developmental maturity to understand the consequences of “reckless” behavior and the capacity to understand decisions they must make as part of adult criminal proceedings. Developmental psychology and neuroscience research show that adolescents think, act, react, and exercise judgment

in ways that differ significantly from adults—factors that should diminish the responsibility and culpability of youth (38).⁸ Research studies have questioned whether youth have the competencies for making judgments and decisions in legal proceedings that may have long term consequences. For example, studies have found that younger adolescents have difficulty grasping the abstract concept of rights, as well as the meaning of rights within the criminal justice process. They may not fully appreciate the implications of plea bargains and sentences to imprisonment in adult correctional facilities. Whether these youthful limitations affect racial disparities remains uncertain. A study by Grisso reports that, while some studies show that minorities have poorer knowledge of relevant legal information, his research on Miranda rights comprehension shows that the “only reliable and substantial race difference . . . occurred among delinquent youths of lower socioeconomic status with I.Q. scores below ninety; for that group alone, African American youths manifested poorer comprehension than [w]hite youths” (37:152).

B. THE POLICE AND MINORITIES

In 1968, after major race riots across the United States, the National Advisory Commission on Civil Disorders (the Kerner Commission) concluded that, in almost every city that experienced disruptions since the summer of 1964, the violence was caused by deeply hostile and abrasive relations between minorities and the police in ghetto communities (52:299). The Kerner Commission and other bodies identified a range of problems (including systematic police bias and brutality) that severely affected the African American communities. A growing body of research on public attitudes toward police during the late 1960s and early 1970s also focused considerable attention on the need for reforms in policing (35). Since then, many programs and practices in the policing profession, such as higher educational requirements, community policing, expanded

For racial and ethnic minorities, the two core issues are “under-policing and abusive policing.”

programs for recruiting minorities and women into police forces, sensitivity training for officers, citizen review boards, applications of new crime analysis systems (e.g., crime mapping), and internal police surveillance and audit systems have been initiated to promote effectiveness, fairness, and accountability by the police.

For racial and ethnic minorities, the two core issues are “under-policing and abusive policing” (108:21). Empirical evidence indicates that minorities are still more likely than white Americans to be arrested far beyond their numbers in the population, to be victimized by excessive police force, to be stopped, questioned, and frisked on the street, pulled over for humiliating searches while driving (e.g., “racial profiling” or “DWB, driving while black”), or subjected to verbal abuse and harassment by police. Although these situations are not necessarily the result of explicit racial discrimination, research shows that blacks widely believe that police racism against blacks is widespread, that the criminal justice system treats blacks more harshly than whites (19:52; 109:450), and that police provide too little protection for their neighborhoods (108; 107:94; 52:307). A 2004 Gallup poll found that 70 percent of whites compared to 43 percent of nonwhites surveyed indicated that they “had a great deal/quite a lot” of confidence in the police (72:113).

According to the 2004 Report of the National Academies of Science Committee to Review Research on Police Policy and Practices, “[t]here is a widespread perception of systematic police bias against racial and ethnic minority groups” (90:122). The NAS Committee examined a sizable body of

research dating back to the late 1960s and concluded that the research evidence on police behavior is mixed: Some studies find bias against minorities, others find bias in favor of minorities, and still others find no race effect. The NAS Committee concluded that, these varying results appear to be contingent on a number of factors (e.g., measures of police practice, time and location, context of the study, other influences), and advocated for a high priority to be placed on research that would establish how, and to what extent, race and ethnicity affect police practices and behaviors, independent of other legal and extralegal considerations (90:125–26).

Use of Excessive Force by Police

Highly publicized incidents of brutality by police, such as the cases of Abner Louima, a Haitian immigrant in Brooklyn in 1997, and the killing of Amadou Diallo, an unarmed West African immigrant in 1998 by four New York police officers, focus attention on police use of extreme or deadly force. The importance of a suspect’s race in such encounters, however, appears to vary across contexts (e.g., neighborhoods, cities) and police agencies. The NAS Committee on Police Research concluded that “[s]tudies have consistently found that police officer use of force is statistically rare” (90:67; also see 34; 35). Nevertheless, the differences across communities and even single events can have powerful consequences.

A study of police shootings in New York City found no evidence of systematic racial bias in the encounters (32), while a similar study of shootings in Memphis (31) found discriminatory patterns of behavior by police. In Memphis, the absence of clear shooting guidelines as well as more permissive use of the “fleeing felon rule” resulted in the killing of more African American suspects than whites who were in the “unarmed and not assaultive category.” After the U.S. Supreme Court decision in *Tennessee*

v. Garner (471 U.S. 1 [1985]), many police departments began to adopt “defense of life rules” that have significantly changed their record of deadly police assaults—the number of persons shot and killed by police declined from a peak of 559 in 1975 to 300 in 1987 (107:96). The number of fatal police shootings increased during the late 1980s, and then began to decline after the mid-1990s (90:67). A 2002 U.S. Bureau of Justice Statistics (BJS) national survey found that police officers used or threatened force in about 1.5 percent (or about 664,500 incidents) of all encounters with persons, an increase from less than 1 percent in 1999 (22; also see 33; 1).

Racial Profiling

Although “racial profiling” is now widely associated with police using race as a key factor in deciding whether to make a traffic or street stop and interrogate a member of the public (109), it is not a new phenomenon. Discretionary decisionmaking based on stereotypes (race, ethnicity, or gender) has long been in use by police. Indeed, since the 1980s, legislation and court decisions have granted law enforcement officers increased latitude in making judgments about whom to stop, search, and arrest.

While there is a widespread view among the public that race should not be the criterion used as the basis to stop or search a citizen (90:325), considerable debate continues—especially in the wake of terrorist threats—about police legitimately using race or ethnicity as a factor in making a stop or conducting a search. The NAS Committee on Police Research also cautioned that current data gathering methods used to determine whether police agencies are engaging in inappropriate or illegal racial profiling are not very effective (90:323), and recommended that greater effort should be made to collect more accurate and reliable data (see also 106).

A growing body of research suggests that the belief that police engage in racial profiling is widely held

by the public, and that support for police is undermined if they are thought to be doing so (e.g., 100). An overwhelming majority of minorities (67 percent of blacks, 63 percent of Hispanics) believe that racial profiling is widespread in traffic stops (72:126). Using self-reported data, Lundman and Kaufman (57) found that citizens indicate that police make more stops of African American male drivers, that African American drivers (male and female) and Hispanic male drivers are less likely than whites to report that the police had a legitimate reason for making the stop, and that African American and Hispanic men are more likely than whites to report that police acted improperly at the stop. Weitzer and Tuch found that race and personal experience shape attitudes about the police, with African Americans more likely than whites to “view racial profiling as widespread, and to disapprove of profiling” (109:445–48). The Tyler and Wakslak study (100) also concluded that views about the procedural fairness of police (i.e., neutrality, objectivity, and consistency in decision-making; treatment with dignity and respect; and trustworthiness) significantly affects inferences people made about their contacts with police.

BJS also collects data on the nature and characteristics of contacts between members of the public and the police over a 12-month period. A nationally representative sample of nearly 80,000 residents aged 16 or older provides information on their face-to-face contacts with police, including the reason for the contact, outcomes, and respondent opinion on police behavior during the contact. Data from the 2002 survey indicated that the likelihood of being stopped by police did not differ significantly among white, black, and Hispanic (about 9 percent) drivers. However, blacks and Hispanics with police contacts were more likely than whites to experience police threat or force during the contact. About 3 percent of black and Hispanic drivers versus about 1 percent of white drivers

stopped by police were to report that excessive force had been used. In addition, black and Hispanic drivers were more likely to report being subjected to a physical search of the driver or having their vehicles searched (black, 7.1 percent; Hispanic, 10.1 percent; white, 2.9 percent) (22:4, 8–11).

C. ADJUDICATION

Studies of race and sentencing have generally focused on whether or not defendants are imprisoned (“in/out” decisions) and on sentence length. Some research has also examined the earlier presentencing stages (bail decision making, charging, and plea bargaining). Because presentencing processes are often less visible and sometimes based on less clear criteria, the potential exists for racial discrimination in these decisions that then have later serious “spillover” effects at trial and sentencing (107:148; 88:345).

Research on the Pretrial Process

Research has addressed whether minority defendants are disadvantaged at the pretrial stage of the criminal justice system because: (1) Public defender or other programs established by states to provide counsel for indigent defendants (many of whom are racial minorities) do not provide the same quality of legal assistance as do retained counsel for defendants who can afford to pay; (2) The bail system creates conditions that increase the chances for detention of poor defendants; and (3) Unfettered prosecutorial discretion to charge offenses is a powerful tool that has been used with the effect of racial discrimination.

Studies have shown that pretrial detention procedures disadvantage minorities (41:619), and that blacks and Hispanics are more likely to be detained than white defendants at the pretrial stage (e.g., 21). In general, however, research results are mixed on whether systematic racial bias occurs in these early stages of criminal justice processing. Free reviewed 68 studies conducted since 1970 to

Considerable evidence exists from a large body of empirical research that race and ethnicity do play a role in contemporary sentencing practices.

determine whether racial bias occurred in pretrial decisions. Focusing on bail and pretrial release decisions, decisions to prosecute or to dismiss the case, and decisions to seek the death penalty, Free reported, that “race was neither the sole nor the strongest predictor” of outcomes in the studies reviewed (29:226). However, Free also observed that a fuller understanding of the role race plays in these decisions is limited because most studies tended to ignore victim characteristics, including race, in their analyses.

Prosecutorial power, which has been enhanced over the past several decades through sentencing policies that emphasize tough penalties that have shifted discretion from the sentencing judge to the charging prosecutor, is a key instrument in shaping outcomes in the criminal justice system. However, little social science research has examined racial discrimination in charging, plea bargaining, or other prosecutorial functions and discretionary practices, and studies that do show race effects reveal complex interaction patterns. There is also little empirical research evidence indicating that minorities are discriminated at the criminal conviction stage (88:346; 93:472; 107:148).

Overview of Studies on Racial Disparities in Sentencing

Changes in sentencing policies over the past several decades have aimed to eliminate or reduce

unwarranted disparities by race, religion, national origin, or creed resulting from discretion in sentencing. However, considerable evidence exists from a large body of empirical research that race and ethnicity do play a role in contemporary sentencing practices. Research results generally conclude that the primary determinants of sentencing decisions are legally relevant factors—seriousness of the offense and the offender's prior criminal record. But studies also show that black and Hispanic offenders (particularly the young, male, or unemployed) are more likely than similar white offenders to be sentenced to prison, to receive longer sentences, and to obtain fewer benefits from departures from sentencing guidelines. Research evidence shows that minorities who are (1) convicted of drug offenses, of less serious crimes, or of victimizing whites, (2) detained in jail prior to trial, (3) represented by a public defender rather than a private attorney, (4) convicted at trial rather than plea, or who (5) accumulate more serious prior criminal records, receive harsher punishment. Moreover, significant race effects have been found in both the state and federal systems, across jurisdictions with a range of sentencing regimes, and in southern and non-southern jurisdictions (93:427–28, 462–63, 482).

Meta-Analyses of Studies on Sentencing

Several hundred studies on sentencing (the earliest dating back to the 1920s) have been systematically reviewed by scholars (e.g., 40; 53; 112; 18; 93; and 67) in order to synthesize what is known about the effects of race on sentencing outcomes. In general, these reviews find that early studies typically concluded that sentencing disparities were the result of racial discrimination, but that the study designs were methodologically crude (e.g., they did not take offense seriousness or prior record into account in the analyses). Using more technically appropriate designs, research on sentencing that began in the late 1960s, found little or no direct race discrimination in sentencing (i.e., race effects disappeared when

seriousness of the offense and prior record were taken into account)—giving rise to the so-called “no discrimination” thesis.

Beginning in the 1970s and 1980s, however, studies began to use more sophisticated methodologies and argued that racial discrimination had not declined or disappeared but had simply become more subtle and harder to detect (112). Zatz and Spohn, for example, concluded that study designs need to test for indirect race effects as well as direct effects, and to use interactive as well as additive models for examining the role that race plays in sentencing decisions, especially to examine the “cumulative disadvantage” to minorities that can come from a series of small disadvantages at different stages in the criminal justice process (112; 93:476–78).

In 1995, the Chiricos and Crawford review of thirty-eight studies on race and sentencing found that black defendants were more likely than white defendants to receive prison sentences in the South, in jurisdictions with a large proportion of African Americans, and in places with relatively high rates of unemployment (18:300–301). Mitchell and MacKenzie moved beyond the earlier narrative reviews of race and sentencing by using meta-analytic techniques to address the issue of whether unwarranted sentencing disparity exists and why the body of research on sentencing disparities has produced inconsistent findings. The Mitchell and MacKenzie review concluded that, “even after taking legal factors into account, Latinos and African Americans were sentenced more harshly than whites on average” (67:12).

D. CORRECTIONS

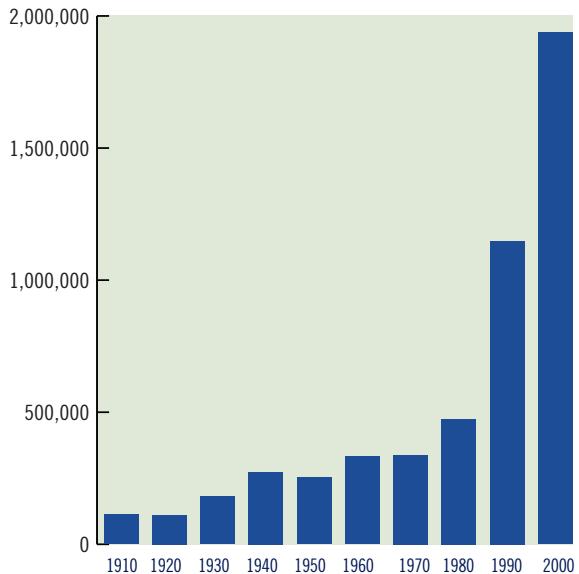
Throughout most of the last century, prison populations in the United States were relatively stable (Figure 4). Over the last three decades, however, the number of incarcerated persons in the United States has grown to unprecedented levels,

from less than 200,000 inmates in 1973 to 2,267,787 at year end 2004 (43). The U.S. leads the world in rates of incarceration at 700 inmates (per 100,000 population), followed by Russia at 601 inmates, and Belarus at 554 inmates (98:23). A brief overview of incarceration trends and demographics shows that:

- Incarceration rates at the state and federal level grew by more than 200 percent from 1980 to 1996. During this period, incarceration rates increased by 184 percent for African Americans, 235 percent for Hispanics, and 164 percent for non-Hispanic whites (10:17).
- Incarceration rates of blacks in 1999 were 2.8 times the rates in 1980, and 8.2 times the incarceration rate for non-Hispanic whites (9:22).
- An estimated 16.6 percent of adult black males in 2001 were current or former state or federal prisoners—twice the rate for Hispanic males (7.7 percent), and 6 times that for white males (2.6 percent) (11:5).
- Minorities were 60 percent of all inmates in U.S. prisons in 2004 (black inmates were an estimated 41 percent of all inmates, whites were 34 percent and Hispanics, 19 percent) (43:8).
- At current incarceration rates, about 1 in 3 black males, 1 in 6 Hispanic males and 1 in 17 white males are expected to go to prison during their lifetime (11:1, 8).

Most researchers agree that these huge increases in incarceration can be attributed to policy changes that began in the 1970s and 1980s with shifts from rehabilitative to incapacitative sentencing policies, enactment of legislation mandating tougher penalties for drug offenses, more aggressive drug enforcement, and implementation of more stringent post-release

FIGURE 4: PRISON AND JAIL POPULATION GROWTH, 1910–2000



Source: 50:1 for data from 1910 to 1990; 43:2 for data for 2000.

supervision under new determinate sentencing models (see, e.g., 98:26). Although there is some recent evidence that the number of incarcerated individuals has begun to level off (and even decline in some states), the sheer number of individuals under correctional supervision remains enormous. At year end 2003, 6.9 million people (3.2 percent of all U.S. adult residents) were incarcerated (in prisons and jails at the state level and at the federal level), on probation, or on parole. The majority of these (about 4 million people) were on probation and 775,000 were on parole (36:1).

Such large-scale incarceration has had a particularly negative effect on minorities, and especially young African Americans males, who, as noted earlier, are disproportionately represented in these increases. There is wide consensus among researchers that increases in the prison population during the 1990s can largely be accounted for by drug control strategies, and that punitive drug policies are largely

“Serving a prison term is becoming almost a normal experience in some poor, minority communities.”

responsible for the darkening of America’s prisons over the past several decades (23; 97). Petersilia notes that “[s]erving a prison term is becoming almost a normal experience in some poor, minority communities” (76:28).

Research has addressed whether the overrepresentation of minorities in the correctional system reflects discrimination or other factors. Blumstein sought to determine what portion of the racial overrepresentation in prison is attributable to racial discrimination by comparing national arrest and incarceration rates for selected years during the 1970s (8; 9). For more serious cases (murder and robbery), the arrest/incarceration ratios explained all of the racial disproportionality; for less serious crimes, about 80 percent of the racial disproportionality in incarceration rates could be explained by disproportionality in arrests rates. Blumstein concluded that the remaining 20 percent may include legitimate factors, such as prior record—or it may include racial discrimination.⁹

Other researchers, however, have found that when such national level data are disaggregated to the state level, significantly different conclusions are reached about discrimination. Crutchfield, Bridges, and Pitchford (20) found that in some states such as New York, Delaware, Pennsylvania, and Kentucky, arrest rates explain nearly all of the prison disparity (indicating no discrimination); while in other states (e.g., Idaho, Alabama, Colorado, Maine, and Massachusetts) the racial differentials in arrest compared to imprisonments were high (indicating discrimination).

The Effects of Mass Incarceration

Scholars have also examined the broader implications of incarcerating such large numbers of people for the long-term health and viability of communities, including levels of participation in labor markets, civic and community life, and social interaction in general. Some economists who focus on crime, for example, have questioned whether incarceration is the most “efficient” approach for dealing with crime and the social problems underlying it (30); others argue that incarceration has been both extremely costly and has sharpened the social and racial inequities in this country. Moreover, there is increasing recognition among policy makers and researchers alike that the large numbers of people in prisons (and what happens to them there) ultimately has a negative effect on public safety and public health generally (19).

The adverse effects of removing such large numbers of individuals from communities are particularly acute in minority communities with high concentrations of poverty to which most prisoners return. The large numbers of incarcerated youth and adults returning to inner-city black communities raise the possibility of undermining and disrupting families, social networks, and other community structures (the informal, less coercive institutions of social control)—thus raising the possibility of increasing rates of crime in the future (58; 83; 73).

In 2001, about 592,000 state prison inmates were released to communities. About 95 percent of all state prisoners will be released from prison at some point, with 80 percent released on parole. Petersilia has noted that the supervision systems to which they are returned are vastly different from those of the mid-1970s when parole boards determined if and when inmates would be released. Under current sentencing structures in 14 states, for example, inmates receive fixed term sentences and are automatically released at the end of their prison

term. In California more than 125,000 prisoners are released each year; on release, they are subject to one year of parole supervision, and generally must be returned to the county where they lived before entering prison. Since many people are returned to poor, inner-city neighborhoods, their chances for successful reintegration into the community are slim (75:2; 98:52).

This massive “prisoner reentry” and the problem of devising strategies for reintegrating inmates who are released from prison to community supervision is a pressing issue in most states. As Petersilia points out, the number of persons being released is so large, their range of needs so great, and the rehabilitation and treatment services so few, that “unfortunate collateral consequences” are likely (75; 76; 98). About 47 percent of prisoners released to parole are African American, 16 percent Hispanic, and 35 percent white (76:25). Thus, minorities make up more than two thirds of returning prisoners—about three times the percentage of minorities in the U.S. population. Most are uneducated, unskilled, and, with the added disadvantage of a prison record, are ill-prepared for reentry into communities. Consequently, two-thirds of all parolees are rearrested within three years, with most rearrests occurring in the first six months after release (75:3).

Western, Schiraldi, and Ziedenberg (2000) indicate that during the 1990s, incarceration became increasingly concentrated among men with little schooling. They show that in 1999, 13 percent of white and 52 percent of African American high school dropouts age 30 to 34 had a prison record (110:7). (Their data also show that 3 percent of all white men and 22 percent of all African American men age 30 to 34 had a prison record.) Analyses of U.S. Department of Justice and National Center for Education Statistics data by the Justice Policy Institute found “more African American men of any age incarcerated (791,000) than were enrolled in higher education (603,000) in 2000” (110:9).

Yet investment in education has not risen to levels needed to deal with this crisis. In 2003, justice activities (police protection, corrections and judicial and legal services) accounted for 7.2 percent of total state and local expenditures, while 29 percent was spent on education. Total State and local expenditures from 1977 to 2003 increased by 567 percent (46). However, as shown by Figure 5, during this period increases in spending on corrections (1,173 percent) grew at about twice the rate of increases in spending on education (505 percent).

Finally, the correctional system itself presents large challenges. The correctional system in the United States is a multibillion dollar public enterprise. Federal, state, and local government direct expenditures for corrections were about \$60,855 billion in 2003, or about one third of the \$185,490 billion expenditure for justice activities in the U.S. for that year (46). State governments, which have the primary responsibility for corrections, accounted

FIGURE 5: INCREASES IN STATE AND LOCAL DIRECT EXPENDITURES FOR SELECTED FUNCTIONS, 1977–2003

	Percent increase
JUDICIAL AND LEGAL: Increase in spending	1,974
CORRECTIONS: Increase in spending	1,173
POLICE PROTECTION: Increase in spending	545
EDUCATION: Increase in spending	505
HOSPITALS AND HEALTH CARE: Increase in spending	572
INTEREST ON DEBT: Increase in spending	577
PUBLIC WELFARE: Increase in spending	766

Source: 46:4; also see 110:4.

There is strong evidence that racial discrimination exists in the capital sentencing process of many states.

for 61 percent of all expenditures for corrections in 2003. The corrections system has also become more complex: With privatization of some facilities and operations, the criminal sanction and punishment process has entered the domain of profit-making businesses. At the end of 2004, about 6.6 percent of federal and state inmates were held in privately operated prisons (43). Powerful lobbies associated with the correctional industry are emerging to influence public policies and shape state budgets relating to the corrections system (47:64–69), creating real challenges to mounting effective reforms in sentencing and corrections policy.

E. THE DEATH PENALTY

There is strong evidence that racial discrimination exists in the capital sentencing process of many states. Numerous empirical studies clearly and consistently demonstrate that African Americans are at far greater risk for capital punishment, particularly when considered in context of victimization patterns. Even before the landmark death penalty cases of the 1970s, research (mostly conducted in the South) showed that African Americans were much more likely than whites to receive the death penalty (see 3:248–52). The review by Baldus and his colleagues indicates that, although these early studies (dating back to the 1930s) have methodological limitations (i.e., key information such as defendants' relative culpability, the heinousness of the crime, prior criminal record, or the race of the victim may not be included), several show strong race-of-victim effects.

The United States is the only Western industrialized nation that permits capital punishment. In 1972, the U.S. Supreme court ruled in *Furman v. Georgia* (408 U.S. 238) that the death penalty, as then administered, was arbitrary and racially discriminatory and therefore unconstitutional. The death penalty was reinstated in 1976 (*Gregg v. Georgia*, 428 U.S. 153) if states could show that risk of arbitrariness had been removed through the application of specific sentencing criteria and judicial protections. From January 1, 1977 to December 31, 2003, 32 states and the federal Bureau of Prisons have executed 885 prisoners. In this 27-year period, two-thirds of the executions have occurred in five states (Texas, Virginia, Oklahoma, Missouri, and Florida). The statistics also show racial disparity in application of capital punishment: Of those who received a death sentence during this period, 49 percent were white, 41 percent were black, 9 percent were Hispanic, and 2 percent were other races. At the end of 2003, 37 States and the Federal prison system held 3,374 prisoners under sentence of death, 188 fewer than at the end of 2002. (All data are from 12:1, 6, 9–10.)

Post-*Gregg* decision studies indicate that race is linked to prosecutors' decisions to seek the death penalty and the imposition of the death penalty in homicide cases (88:354; 3; 78). In 1990, a GAO report evaluated the results of 28 post-*Furman* empirical studies of the capital sentencing process, and concluded that in 23 of them, the race of victim influenced the likelihood of a defendant being charged with capital murder or receiving the death penalty. Those who murdered whites were at the highest risk of being charged with capital murder and of being sentenced to death; offenders of either race who murdered African Americans were least likely to receive the death penalty. Legally relevant variables, such as the defendant's prior criminal record, the heinousness of the crime, or the number of victims, did not explain the differences. Moreover,

the GAO reported that the studies showed that racial disparities were evident at all stages of the criminal justice process (104: 5–6; see also 107:225–68).

4. CONCLUSION

A large body of research has been produced on race effects at all stages of the criminal justice system, but the empirical evidence suggests complex interactions rather than simplistic processes. Some studies find direct or overt race discrimination in the criminal justice system, while other studies find race effects in specific situations, contexts, or jurisdictions—or find no race effects at all. Without a doubt, great racial disparities and overrepresentation of minorities exist at all decision points in criminal justice processing, and have significant social consequences, but they may not all reflect race biases.

The direct influence of race is statistically insignificant for the most serious offenses when legally relevant variables (such as severity of the offense, or prior criminal record) are included in analyses; in these cases, the race differences in sentencing are explained by race differences in offending. Social and behavioral science research, however, has moved beyond an examination of the direct effects of race on criminal justice processing into more methodologically sophisticated and nuanced studies, which show that indirect and cumulative racial effects continue to produce significant race differentials. Race may also interact with other variables (such as socioeconomic or family status) to affect outcomes in criminal justice processing. Much more research is needed, however, to understand the dynamics of criminal careers at different stages—particularly how experiences in the juvenile justice system affect future processing in the adult criminal justice system (88:363–64).

There is strong and compelling evidence that racial discrimination does exist at various points in the criminal justice system. A considerable body of empirical research demonstrates that African Americans, and in particular, those African Americans who murder whites, are more likely to get the death penalty than those who murder African Americans, or than whites who are convicted of murdering whites. Offenders of either race found guilty of murdering black victims are least likely to receive the death penalty. There is also a substantial body of social science research that demonstrates significant race effects in the juvenile justice system. Moreover, these differentials accumulate, so that small disparities at the initial stages (e.g., arrest or detention as a juvenile) translate into very large disparities as individuals are processed further through the justice system.

The most severe impacts of these outcomes have been experienced by young black males, who bear a disproportionately heavy burden at all stages of the criminal justice process. They are stopped and searched by police, arrested, sentenced, and incarcerated at levels far beyond their representation in the general population. Steffensmeier, Ulmer, and Kramer explored the relationship between race, gender, and sentence severity, and found that the three factors interact to produce substantially harsher sentences for young black males than for any other age-race-gender combination—illustrating the “high cost of being black, young, and male” (95:789). Researchers note that more young black men age 20 to 29 are under criminal justice supervision than in college (76:27; 110); and, according to BJS, about one in three young black males is likely to be incarcerated at some point during their lives (11).

Policymakers, practitioners, and academics generally agree that much more research is needed to better understand racial disparities in criminal justice processing. A great deal is still not known about the

causes and consequences of criminal victimization and offending. This lack of knowledge suggests that innovative research models (cross-jurisdictional, macrolevel, multidimensional, and longitudinal) are needed to disentangle complex interactions among, for example, criminal offending, socioeconomic status, and race/ethnicity. Mixed-method analytic techniques that use both rigorous qualitative and quantitative techniques are necessary to better understand the dynamics of criminal justice processing starting with arrest—in particular for juveniles. Demographic trends indicate that the racial character of the nation is changing, with significant increases in the proportion of Hispanic

populations—yet relatively few studies have focused on Hispanics, or on Asians and Native Americans. Complex new challenges for criminal justice are evolving from the “genome revolution.” In his Presidential address at the Centennial Meeting of the American Sociological Association in 2005, Troy Duster outlined some of these issues, including the need to closely scrutinize DNA identification and classification claims, which are increasingly penetrating criminal justice processing (24). These are illustrative of the areas requiring solid and systematic social science research in order to better understand the link between race and crime in America. ■

ENDNOTES:

¹ This case involved nine illiterate black “hoboes” pulled from a train and charged with raping two white women during the ride, resulting in a U.S. Supreme Court decision that produced sweeping changes in the criminal justice system (*Powell vs. State of Alabama* 287 U.S. 45 [1932]; *Norris vs. State of Alabama* 294 U.S. 587 [1935]).

² Snyder and Sickmund provide brief definitions of “overrepresentation,” “disparity,” and “discrimination.” (1) “Overrepresentation refers to a situation in which a larger proportion of a particular group is present at various stages within the . . . justice system (such as intake, detention, adjudication, and disposition) than would be expected based on its proportion in the general population.” (2) “Disparity means that the probability of receiving a particular outcome (e.g., being detained vs. not being detained) differs for different groups. Disparity may in turn lead to over representation.” (3) “Discrimination occurs when . . . justice system decision makers treat one group of [offenders] differently from another group based wholly, or in part, on their gender, race, and/or ethnicity” (92:188).

³ There are three major sources of official data on crime: the *Uniform Crime Reports (UCR)* compiled by the FBI and consisting of data collected by police agencies nationally; the National Crime Victimization Survey (NCVS) (formerly the National Crime Survey [NCS]), taken at 6 month intervals with all persons living in a household 12 years or older on victimizations; and the National Center for Health Statistics (NCHS), which tabulates data on homicides from death certificates. Other data, such as those on prisoners and corrections processes are also compiled by the U.S. Bureau of Justice Statistics (BJS). The National Incident Based Reporting System (NIBRS), an incident-based reporting system for crimes known to police is also used as a data source (still being implemented). Data are also collected through self-reports for special studies and surveys.

⁴ Widely diverse peoples—Puerto Ricans, Mexicans, Cubans, Central Americans—are generally included in categories that include “Hispanics.” Hispanics may be categorized in classification schemes as a racial group or as an ethnic group (i.e., race and ethnicity are not mutually exclusive), and they may be included as “white,” “black,” “nonwhite,” or “other” (88:322). As a result, Latinos (as well as American Indians and Asian Americans) are excluded from many data sets (113:510).

⁵ Recent studies by Edelman, Holzer, and Offner (25) and Mincy (66) examine the broader implications of the critical problem of disconnected young black males. According to the Annie B. Casey Foundation, there were 3.8 million disconnected youth in the 18 to 24 age group in 2003 (25:8).

⁶ There are many ways to categorize theories that explain variations in crime. For a general discussion of theoretical developments in criminology, see Tittle (96).

⁷ In assessing levels of disparity, it is also important to factor in geographic location of the jurisdiction. The outcomes at each stage of case processing in jurisdictions in urban areas (where minority youth are concentrated) tend to be more severe than non-urban areas.

⁸ A considerable body of research has been produced on delinquency, including the individual, social, and community conditions and their interactions that shape antisocial and delinquent behaviors among youth (e.g., 64).

⁹ Blumstein (9) updated these analyses in 1993, and found that the racial disproportionality in prison that could be explained by arrests declined from 80 to 76 percent—which he attributed to the growing numbers of drug offenders in prison.

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