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6 March 1996

United States Sentencing Commission  
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Attention: Public Information

To the Commission:

On behalf of The Sentencing Project, an independent non-profit organization which supports sentencing reform, including decreased reliance upon incarceration and greater use of more effective alternative approaches to the problem of crime, I am pleased to submit this comment on the United States Sentencing Commission's proposed amendments to Chapter Two, Part D (Offenses Involving Drugs), specifically cocaine offenses.

In our view, the Commission took the correct position on the crack/powder cocaine issue in its Special Report to Congress, Cocaine and Federal Sentencing Policy (February 1995). I would add, for the record, what we have stated in public many times: the Commission's Special Report is one of the more carefully researched and principled documents on sentencing policy to have been produced by a government agency in recent years. It is a resource document that will withstand scrutiny in years to come. Moreover, it is clearly written and readable. We refer the press and criminal justice researchers to it often, and we make use of it with public audiences. With deep regret we observed its rejection by Congress and the executive, searching hard for evidence that those rejections were in some modest way based upon research data or empirical evidence which supported a different approach than that adopted by the Commission.

The fact that the Commission's recommendations were rejected does not preclude the Commission from adhering to its principled approach in recognizing and addressing the disparity between sentencing of crack and powder cocaine offenders in the federal courts. We encourage it to do so.

As the Commission knows, the disparity between sentencing for crack and powder cocaine offenders is one of several contributors to the over-representation of African-

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Americans in the criminal justice system. Our report, "Young Black Americans and the Criminal Justice System: Five Years Later" documents that one in three young black males was under some form of criminal justice control, compared to one in four in 1989, and compared to one in fifteen white males in the same age group. We reported an increase of more than 800% for women incarcerated in state prison on drug offenses between 1986 and 1991, and, using the Commission's own data, the increasingly harsh impact of cocaine sentencing laws upon this same population. Other contributing factors to over-representation of African Americans in the criminal justice system which we cited include: patterns of arrests by police; increased arrests for some offenses; selective prosecution policies; and, overall lengthier sentences for drug offenders.

I am pleased to attach a copy of our report, which coincidentally was published in October 1995, just before Congress and the President rejected the recommendations set forth in the Commission's Special Report, as further documentation of the magnitude of the racial disparity problem in criminal justice.

While clearly there is no single solution or response to racial disparities, the Commission's Special Report was the first step by a major policy-making agency to take a stand and to propose a solution to a problem that affects --and is understood-- by many African Americans. The Commission's actions had a symbolic and leadership value that is perhaps better understood by those outside Congress and government than by those within. The problems the Commission described and attempted to remedy at the federal level are not going to go away. For these reasons we hope that the Commission will continue to address racial disparity and other issues of fundamental fairness in the same principled manner that it demonstrated with its Special Report. The integrity of the criminal justice system remains at stake.

Given that the Commission must now make a new set of recommendations, we would urge that the following be considered during its hearings and deliberations so that the issue of racial disparity is addressed as effectively as is possible under the circumstances:

- 1) If the sentences imposed for trafficking in a quantity of crack cocaine must "exceed the sentence imposed for trafficking in a like quantity of powder cocaine," the drug quantity ratio should reflect the de minimis difference in harm reported by the Commission. Most commentators suggest a difference not exceeding 5%, as opposed to the current 100%.
- 2) We recognize that Congress suggested several enhancements to punishments for crack cocaine, some are already provided for in the federal guidelines. We hope the Commission will carefully consider the extent to which the guidelines, as written, satisfy Congress's suggestions, and trust that the Commission will avoid

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duplicating enhancement provisions within the guidelines. Moreover, we would respectfully submit that, since the enhancing provisions are included in the sentencing scheme, the base penalties for crack cocaine can be lowered. The enhancements provided for in the guidelines, and any that the Commission might add, will allow courts to impose longer sentences when the facts merit, eliminating any need for greater penalties for the base offense.

- 3) Congress's recommendations seem to have dealt mostly with enhancements and factors pertaining to longer sentences. We would urge consideration of factors which should pertain to lower sentences. Some of these would help offset some concerns about the racial impact of the crack/powder cocaine sentencing differential. Factors which should pertain to lower sentences include:
- A) the offender played a minor or subordinate role in the offense;
  - B) the offender was intimidated by other actors in the crime or by economic dependency, a history of abuse, or by implied or actual threats to those dependent upon the offender. This factor would be particularly applicable to youths and women,<sup>1/</sup> but could equally apply to males, when appropriate, based on the facts;
  - C) the offender is a substance abuser or dependent person for whom treatment resources appropriate to the dependency have been essentially unavailable, for reasons beyond the offender's direct control. This factor would simply avoid penalizing the poor and inner-city minorities for whom meaningful drug treatment resources were virtually unavailable; and
  - D) the offender is a substance abuser or dependent person for reasons related to the offender's prior victimization from violent crimes or abuse, or history of trauma, post-traumatic stress disorders, or stress resulting from violence in his or her community. These factors help explain substance abuse and involvement in drug trafficking among some minority and inner-city offenders, notably women, unable to escape intolerable living

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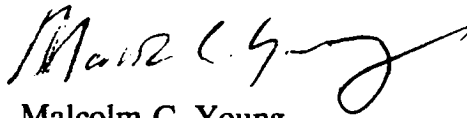
<sup>1/</sup> Myrna Raeder, "Gender and Sentencing: Single Moms, Battered Women, and Other Sex-based Anomalies in the Gender-free World of the Federal Sentencing Guidelines," 20 Pepperdine Law Review No. 3 (1993).

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conditions.<sup>2/</sup> They certainly are as relevant to questions of intent as are the enhancing factors proposed by Congress.

Thank you for this opportunity to comment on the Commission's proposed amendments. Please feel free to contact me if we can provide additional information.

Sincerely,



Malcolm C. Young

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Enc.

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<sup>2/</sup> Mindy T. Fullilove and Robert Fullilove, "Violence, Trauma and Post-Traumatic Stress Disorder Among Women Drug Users," Vol. 6 Journal of Traumatic Stress No. 4 (1993); Angela Browne and Mary Harvey, "Mental Health Consequences of Interpersonal and Family Violence," Report of the Council on Scientific Affairs, American Medical Association (June 1993).

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**Young Black Americans and  
the Criminal Justice System:  
Five Years Later**

**By  
Marc Mauer  
and  
Tracy Huling**

**October 1995**

# **YOUNG BLACK AMERICANS AND THE CRIMINAL JUSTICE SYSTEM: FIVE YEARS LATER**

## **OVERVIEW**

In 1990, The Sentencing Project released a report that documented that almost one in four (23%) African American males in the age group 20-29 was under some form of criminal justice supervision -- in prison or jail, on probation or parole.<sup>1</sup> That report received extensive national attention and helped to generate much dialogue and activity on the part of policymakers, community organizations, and criminal justice professionals.

Despite these efforts, many of the factors contributing to the high rates of criminal justice control for African American males remain unchanged or have worsened during the succeeding five years. Public policies ostensibly designed to control crime and drug abuse have in many respects contributed to the growing racial disparity in the criminal justice system while having little impact on the problems they were aimed to address.

The key findings of this report, as seen in Tables 1-7, are the following:

- Almost one in three (32.2%) young black men in the age group 20-29 is under criminal justice supervision on any given day -- in prison or jail, on probation or parole.
- The cost of criminal justice control for these 827,440 young African American males is about \$6 billion a year.
- In recent years, African American women have experienced the greatest increase in criminal justice supervision of all demographic groups, with their rate of criminal justice supervision rising by 78% from 1989-94.
- Drug policies constitute the single most significant factor contributing to the rise in criminal justice populations in recent years, with the number of incarcerated drug offenders having risen by 510% from 1983 to 1993. The number of Black (non-Hispanic) women incarcerated in state prisons for drug offenses increased more than eight-fold -- 828% -- from 1986 to 1991.
- While African American arrest rates for violent crime -- 45% of arrests nationally -- are disproportionate to their share of the population, this proportion has not changed significantly for twenty years. For drug offenses, though, the African American proportion of arrests increased from 24% in 1980 to 39% in 1993, well above the African American proportion of drug users nationally.

- African Americans and Hispanics constitute almost 90% of offenders sentenced to state prison for drug possession.

The criminal justice control rates documented in this report should prove even more disturbing than those revealed five years ago. Combined with the potential impact of current social and criminal justice policies, they attest to the gravity of the crisis facing the African American community.

The current high rates of criminal justice control are also likely to worsen considerably over the next several years. In addition to the steady twenty-year increase in criminal justice populations, the impact of current "get tough" policies in particular suggests continuing increases in criminal justice control rates and increasing racially disparate impacts.

### CRIMINAL JUSTICE CONTROL RATES IN THE 1990s

Our 1990 report documented shockingly high rates of criminal justice control for young African American males in particular. We find that many of the contributing factors to these high rates endure or have worsened in the intervening years. As a result, they have failed to slow the increasing rate of criminal justice control for young black males and they have contributed to a dramatic rise in the number of black women in the criminal justice system. These factors include:

- The continuing overall growth of the criminal justice system;
- The continuing disproportionate impact of the "war on drugs" on minority populations;
- The new wave of "get tough" sentencing policies and their potential impact on criminal justice populations;
- The continuing difficult circumstances of life for many young people living in low-income urban areas in particular.

### 1994 Criminal Justice Control Rates

The data below represent estimates of the numbers of persons in each demographic group under criminal justice control -- in prison or jail, or on probation or parole -- on a given day in 1994.<sup>2</sup>

- As seen in Table 1, as of 1994, 30.2% of African American males in the age group 20-29 were under criminal justice control -- prison, jail, probation, or parole -- on any given day. This represented an increase of 31% from the figures of 1989.

Table 1

### 1994 CRIMINAL JUSTICE CONTROL RATES

| Population Group 20-29 | State & Federal Prisons | Jails   | Probation | Parole  | TOTAL     | Criminal Justice Control Rate |
|------------------------|-------------------------|---------|-----------|---------|-----------|-------------------------------|
| <b><u>MALES</u></b>    |                         |         |           |         |           |                               |
| White                  | 180,915                 | 110,585 | 640,956   | 136,620 | 1,069,076 | 6.7%                          |
| Black                  | 211,205                 | 95,114  | 351,368   | 130,005 | 787,692   | 30.2%                         |
| Hispanic               | 81,391                  | 41,641  | 138,703   | 56,412  | 318,147   | 12.3%                         |
| <b><u>FEMALES</u></b>  |                         |         |           |         |           |                               |
| White                  | 9,875                   | 11,872  | 177,360   | 15,802  | 214,909   | 1.4%                          |
| Black                  | 12,138                  | 10,876  | 96,481    | 14,921  | 134,416   | 4.8%                          |
| Hispanic               | 3,537                   | 4,171   | 36,099    | 6,137   | 49,944    | 2.2%                          |

These data all examine criminal justice control rates on any given day. If we were able to examine the flow of people through the criminal justice system over the course of a year or ten-year period, the rates would obviously be much higher. Other researchers have attempted to calculate these rates. A 1987 study by Robert Tillman found that 2/3 of black males in California had been arrested between the ages of 18 and 29, double the rate for white males.<sup>3</sup>

These figures only reflect arrest rates through the early 1980s, well before the dramatic rise in drug arrests and criminal justice populations overall. More recently, researchers at Northwestern University have estimated that it is possible that 1/3 - 2/3 of the 100,000 poorest black male three-year olds of today will eventually end up in prison.<sup>4</sup>

1995 Criminal Justice Control Rate for African American Males

• Using the annual rate of increase for criminal justice populations overall from 1989 to 1994 as a basis, we have calculated the estimated rate of control of young black males for 1995 as well. As seen in Table 2, these estimates suggest that almost one in three young black men is now under criminal justice supervision on any given day. Based on average costs for various components of the criminal justice system, we estimate that the cost of criminal justice control for these 827,440 males is about \$6 billion a year.

**Table 2**

**AFRICAN AMERICAN MALE CONTROL RATES**  
(Ages 20-29)

| Year | Number  | Control Rate |
|------|---------|--------------|
| 1989 | 609,690 | 23.0%        |
| 1994 | 787,692 | 30.2%        |
| 1995 | 827,440 | 32.2%        |

Changes in Criminal Justice Control Rates, 1989-1994

• As seen below, the largest increase of the demographic groups studied in this period is for black women whose numbers increased from 78,417 in 1989 to 134,416 by 1994 and whose rate of criminal justice control increased by 78% during this period. We believe that much of this increase is due to the impact of the "war on drugs," a subject which is discussed later in this report.

Table 3

**CHANGES IN CRIMINAL JUSTICE  
CONTROL RATES: 1989-1994  
(Ages 20-29)**

| Population Group      | 1989<br>Control Rate | 1994<br>Control Rate | % Increase |
|-----------------------|----------------------|----------------------|------------|
| <b><u>Males</u></b>   |                      |                      |            |
| White                 | 6.2%                 | 6.7%                 | 8%         |
| Black                 | 23.0%                | 30.2%                | 31%        |
| Hispanic              | 10.4%                | 12.3%                | 18%        |
| <b><u>Females</u></b> |                      |                      |            |
| White                 | 1.0%                 | 1.4%                 | 40%        |
| Black                 | 2.7%                 | 4.8%                 | 78%        |
| Hispanic              | 1.8%                 | 2.2%                 | 18%        |

Changes in Hispanic Incarceration

• Because of the difficulties in obtaining accurate data on Hispanics (see "Methodology"), we cannot be certain of the extent by which this population increased within the criminal justice system. Data on imprisonment rates for Hispanics (see Table 4) indicate that the proportion of Hispanic inmates in state and federal prisons has doubled since 1980.

**Table 4**

**HISPANIC INMATES (ALL AGES)  
IN STATE AND FEDERAL PRISONS**

| <b>Year</b> | <b>Number of Inmates</b> | <b>Percent of Total<br/>Inmate Population</b> |
|-------------|--------------------------|-----------------------------------------------|
| 1980        | 25,200                   | 7.7%                                          |
| 1985        | 54,700                   | 10.9%                                         |
| 1990        | 103,100                  | 13.6%                                         |
| 1993        | 138,700                  | 14.3%                                         |

## THE OVERREPRESENTATION OF YOUNG BLACK MALES IN THE CRIMINAL JUSTICE SYSTEM

We have documented the dramatically high rates of criminal justice control for young black men. In many respects it would be quite surprising if these rates were not high, given the social and economic circumstances and crime rates in their communities.

The growth of the criminal justice system in the past twenty years has coincided with a host of economic disruptions and changes in social policy that have had profound effects on income distribution, employment and family structure. Since the 1970s, many urban areas have witnessed the decline of manufacturing, the expansion of low-wage service industries and the loss of a significant part of the middle class tax base. Real wages have declined for most Americans during this period, with a widening of the gap between rich and poor beginning in the 1980s. For black male high school dropouts in their twenties, annual earnings fell by a full 50 percent from 1973 to 1989.<sup>5</sup> Social service benefits such as mental health services and other supports have generally declined while the social problems that they address have been exacerbated.

The impact of these changes on the African American community has resulted from the intersection of race and class effects. Since African Americans are disproportionately represented in low-income urban communities, the effects of these social ills are intensified. As Douglas Massey and Nancy Denton have illustrated, the persistence of housing segregation exacerbates the difficult life circumstances of these communities, contributing to extremely high rates of unemployment, poor schooling, and high crime rates.<sup>6</sup>

Over the years many researchers have examined the extent to which racial disparity within the criminal justice system can be explained by higher crime rates among blacks or other relevant factors. Historically, there can be little doubt about the prominent role played by race in criminal justice processing, given the history of lynching in the South, the development of chain gangs, and the well-documented racial patterns involved in the imposition of the death penalty.

More recently, though, researchers have found that the evidence on these issues is mixed. While some studies have documented specific cases of racially unwarranted outcomes, much research has concluded that, with one significant exception, race plays a relatively minor role in sentencing and incarceration. Michael Tonry's review, for example, concludes that "for nearly a decade there has been a near consensus among scholars and policy analysts that most of the black punishment disproportions result not from racial bias or discrimination within the system but from patterns of black offending and of blacks' criminal records."<sup>7</sup> Similarly, Alfred Blumstein's research has concluded that 76 percent of the racial disparity in prison populations is explained by higher rates of offending among blacks for serious offenses.<sup>8</sup>

But both authors find, as Tonry indicates, that "Drug law enforcement is the conspicuous exception. Blacks are arrested and confined in numbers grossly out of line with their use or sale of drugs." <sup>9</sup> Blumstein concludes that for drug offenses, fully half of the racial disproportions in prison are not explained by higher arrest rates.

While scholars will continue to study the relative influence of race within the criminal justice system, several key issues should not go unaddressed in explaining these disparities. First, as noted above, it is difficult to isolate the relative influence of race and class in public policy and decisionmaking. That is, to the extent that African Americans are overrepresented in the criminal justice system, to what degree is this a function of their being disproportionately low-income?

In its comprehensive examination of the problem of violence, the National Research Council reviewed existing studies of homicide victimization and class.<sup>10</sup> The Council found that among low-income populations blacks had much higher rates of homicide victimization than whites but that among higher income groups, there was essentially no difference. The Council suggests that the more concentrated effects of inner-city poverty may contribute to a more serious breakdown of family and community support than in other low-income neighborhoods.

Studies of sentencing practices reveal that the current offense and the offender's prior record are the most significant factors determining a prison sentence. But if low-income youth are more subject to police scrutiny and have fewer counseling and treatment resources available to them than middle class adolescents, their youthful criminal activities will more likely result in a criminal record that will affect their chances of going to prison later on.

The most prominent example of the intersection of race and class in criminal justice processing, of course, is the O.J. Simpson case. Regardless of where one stands on his guilt or innocence, what is clear is that a wealthy and famous African American was able to assemble a very formidable defense. This is contrasted with the typical scene in almost every courthouse in cities across the country, where young African American and Hispanic males are daily processed through the justice system with very limited resources devoted to their cases.

Comparing sentencing policies in the U.S. with those of other nations sheds light on this issue as well. Although it is difficult to make comparisons across cultures, a number of studies have concluded that American sentencing policies tend to be harsher than those of many European nations, particularly regarding the length of sentence imposed for various crimes.<sup>11</sup> Given the relatively greater homogeneity of many European countries, one can ask whether policymakers and the public in these nations are less willing to lock up their fellow citizens for long periods of time since they view their societies as more cohesive.

## IMPACT OF THE "WAR ON DRUGS"

While debate will continue on the degree to which the criminal justice system overall contributes to racial disparities, there is increasing evidence that the set of policies and practices contained within the phrase "war on drugs" has been an unmitigated disaster for young blacks and other minorities. Whether or not these policies were consciously or unconsciously designed to incarcerate more minorities is a question that may be debated. In essence, though, what we have seen are policy choices that have not only failed to reduce the scale of the problem but have seriously eroded the life prospects of the primary targets of those policies. The main elements of these policies have been the following:

### Increased arrests

Arrest policies beginning in the 1980s have disproportionately affected African Americans and other minorities: first, through greatly increased numbers of drug arrests, and second, through an increased rate of minority drug arrests. Drug arrests increased dramatically in the 1980s, rising from 471,000 in 1980 to 1,247,000 by 1989.<sup>12</sup> As the number of arrests grew, so did the proportion of African Americans, from 24% of all drug arrests in 1980 to 39% by 1993.<sup>13</sup>

Some persons would contend that African Americans are arrested in larger numbers because of their higher rates of drug use and sales. There are no reliable data on the overall composition of drug sellers in the total population, but we have reasonably good data available on drug possession through the annual household surveys of the National Institute on Drug Abuse (NIDA). Their most recent survey reveals that African Americans comprise 13% of monthly drug users, compared to the 1993 arrest proportion of 39%. Even if we only consider arrests for drug possession, which should be reflective of drug use, African Americans still constitute 34.7% of such arrests. Although the NIDA surveys have some limitations,<sup>14</sup> the degree of disparity between drug use and drug possession arrests is of such magnitude that it clearly points to disproportionate arrest practices.

A recent analysis by James Lynch and William Sabol points to additional significant racial effects of law enforcement practices.<sup>15</sup> Lynch and Sabol analyzed data on incarceration rates, race, and class during the period 1979-91. They identified inmates as either being "underclass" or "non-underclass" (working class or middle class) based on educational levels, employment history, and income. They concluded that the most significant increase in incarceration rates was for working class black drug offenders, whose rates increased six-fold from 1.5 per 1,000 in 1979 to match that of underclass blacks at 9 per 1,000 in 1991. The trends for whites, on the other hand, were just the opposite, with the underclass drug incarceration rate being double that of the non-underclass by 1991.

Lynch and Sabol suggest several factors that may explain these trends. The "spillover" effect of residential racial segregation, along with law enforcement targeting of black neighborhoods, may sweep more non-underclass blacks into the criminal justice system than is the case in the more stratified white housing patterns. They conclude that:

All of the processes described above lead to the same result, an increased targeting of black working and middle class areas for discretionary drug enforcement and ultimately increased incarceration for drug offenses. The immunity that working and middle class status used to bring in the black community (and still does among whites) may have been lost. While the processes that produced these outcomes may not have been racially motivated in intent, they have resulted in racially disparate outcomes.

#### Prosecution policies

Aggravating the racial disparities in arrest patterns are decisions made by prosecutors which can increase the severity of the impact of drug policies on minorities. A recent survey of prosecutions for crack cocaine offenses conducted by the Los Angeles Times revealed that not a single white offender had been convicted of a crack cocaine offense in the federal courts serving the Los Angeles metropolitan area since 1986, despite the fact that whites comprise a majority of crack users.<sup>16</sup> During the same period, though, hundreds of white crack traffickers were prosecuted in state courts. While federal prosecutors contend that they target high level traffickers, the Times analysis found that many African Americans charged in federal court were low-level dealers or accomplices in the drug trade.

The consequences of this prosecutorial discretion are quite serious since federal mandatory sentencing laws require five- and ten-year minimums even for first offenders. The study found that whites charged with crack offenses and prosecuted in California state courts received sentences as much as eight years less than in the federal courts.

#### Sentencing policies

Compounding the higher arrest rates for drug offenses have been changes in sentencing policies that have also disproportionately affected African Americans. The advent of a renewed generation of mandatory minimum sentencing statutes, now in place in all states and the federal system, has led to dramatic increases in the number of incarcerated drug offenders.

The impact of these policies can be seen in several ways. First, the risk of incarceration per drug arrest increased more than 400% from 19 per 100,000 in 1980 to 104 per 100,000 by 1992, far greater than for any other offense during that period.<sup>17</sup> As seen below, this has led to a 510% increase in the number of incarcerated drug offenders between 1983 and 1993, with one out of four inmates now serving time or awaiting trial for a drug offense.

Table 5

**DRUG OFFENDERS IN PRISON AND JAIL - 1983 AND 1993**

|                | Total # Inmates |                  | % Drug Offenders |              | # Drug Offenders |                |
|----------------|-----------------|------------------|------------------|--------------|------------------|----------------|
|                | 1983            | 1993             | 1983             | 1993         | 1983             | 1993           |
| Jail           | 223,552         | 459,804          | 9.3%             | 23.0%        | 20,790           | 105,755        |
| Federal Prison | 31,926          | 89,586           | 27.6%            | 60.8%        | 8,812            | 54,468         |
| State Prison   | 405,322         | 859,295          | 7.0%             | 22.5%        | 28,373           | 193,341        |
| <b>Total</b>   | <b>660,800</b>  | <b>1,408,685</b> | <b>8.8%</b>      | <b>25.1%</b> | <b>57,975</b>    | <b>353,564</b> |

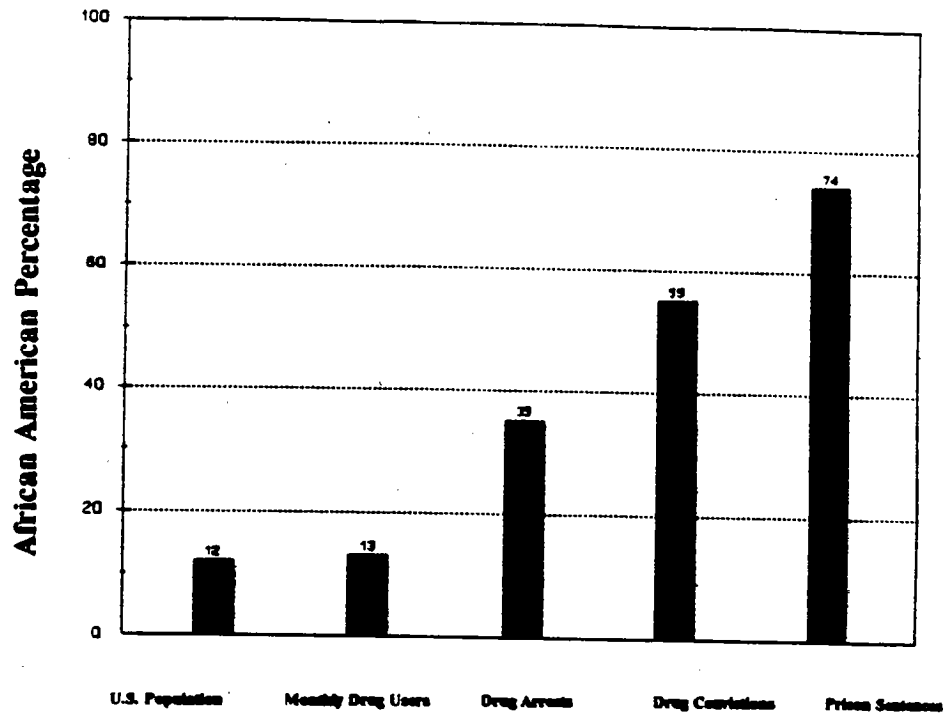
The full impact of these policies has yet to be seen, since many of the mandatory sentences only began to be applied in large numbers in the late 1980s. In state prison systems, therefore, while average time served in prison has not changed appreciably in recent years, we can expect it to rise in the years ahead due to the impact of mandatory sentencing and other harsh policies.

In the federal system, the impact of these changes is already being felt, with the average time served by drug offenders increasing 50% from 22 months in 1986 to 33 months by 1992. Compounding this has been the much-discussed disparity in sentencing between crack cocaine and powder cocaine, whereby those persons convicted of crack possession receive a mandatory prison term of five years by possessing only one-hundredth of the quantity of cocaine as those charged with powder cocaine possession. Fourteen states also have statutes that distinguish between crack and powder cocaine in sentencing.<sup>18</sup> The U.S. Sentencing Commission found that blacks accounted for 84.5% of federal crack possession convictions in 1993, while comprising 38% of those who report using crack in the past year.<sup>19</sup> The Sentencing Commission has also calculated that a person convicted of trafficking in five grams of crack with a maximum retail value of \$750 will receive the same sentence as an offender charged with selling 500 grams of powder cocaine retailing for \$50,000.<sup>20</sup>

The cumulative impact of arrest and sentencing policies on African Americans can be seen in Figure 1 below. For drug arrests, convictions, and prison sentences, we only look at drug possession, and not trafficking, since this offense should presumably be more highly correlated with drug use.

Figure 1

## AFRICAN AMERICANS AND DRUG POSSESSION



### Criminal Justice Response to Drug Use

Note: Data are for 1992 or 1993 depending on the most recent available figures

Looking at minorities overall, we find that African-Americans and Hispanics represented almost 90% of all sentences to state prison for drug possession offenses in 1992, the most recent year for which data are available. While we have no available data regarding other factors which often correlate with a higher likelihood of incarceration, particularly prior criminal record, the findings displayed here are of such magnitude that they raise serious questions about the racial implications of current drug policies.

**Table 6**

**SENTENCES TO STATE PRISON  
FOR DRUG POSSESSION, 1992**

| <b>Racial/Ethnic Group</b>                 | <b>% of Total Drug Sentences</b> |
|--------------------------------------------|----------------------------------|
| African-American                           | 73.7%                            |
| Hispanic <sup>21</sup>                     | 16.0%                            |
| <b>Total African-American and Hispanic</b> | <b>89.7%</b>                     |

In summing up the rationale and impact of prevailing drug policies, Professor Michael Tonry states:

All that is left is politics. The War on Drugs and the set of harsh crime control policies in which it was enmeshed were undertaken to achieve political, not policy, objectives. It is the adoption for political purposes of policies with foreseeable disparate impacts, the use of disadvantaged black Americans as means to achieving politicians' electoral ends, that must in the end be justified. It cannot.<sup>22</sup>

## MEDIA IMAGES, CRIME RATES AND VIOLENCE

In recent years, a succession of media images and racially divisive political campaigns have created public images of a violent young African American male community. One need only turn on the 11 o'clock news in almost any urban area to witness that day's evidence of young black men engaging in murder and mayhem. To what extent is this image justified? An examination of crime rates and criminal justice populations shows that the issue is more complex than it might appear on the evening news.

First, as is true for other racial and ethnic groups, the typical African American male in the criminal justice system is not a violent offender. Combining the four components of the criminal justice system -- prison, jail, probation, and parole -- we find that about 3/4 of all offenders under supervision have been convicted of a non-violent offense.<sup>23</sup> (While these data apply to offenders of all races, it is unlikely that the black proportions differ substantially). Media interest in portraying violent and sensational crimes clearly contributes to the lack of understanding on this issue.

When we look at violent crime, we find that African American males are identified as the perpetrators and are arrested in numbers disproportionate to their makeup in the overall population. For 1993, African Americans (both male and female) constituted 45.7% of all arrests for violent crime.<sup>24</sup> While clearly disturbing and very disproportionate to the overall percentage of blacks in the population, it is nonetheless clear that the majority of arrestees for violent offenses are white.

Further, the proportion of overall violent crime attributed to African Americans has not changed appreciably over time, but has fluctuated within a narrow range of 44-47% of all violent crime for the past twenty years. What has changed in recent years is the age composition of those males engaged in violent crime, particularly with a substantial and disturbing increase in the murder rate of young black men since the mid-1980s. The murder rate for 14-17 year-old black males, for example, has risen from 32 per 100,000 in 1984 to 111.8 per 100,000 in 1991.<sup>25</sup>

Thus, the image on the evening news, while indicative of some disturbing trends, is highly misleading in its overall impact. In recent years, we have seen some of the far-reaching impact that media images can have on public policy. In its comprehensive report on crack cocaine, the United States Sentencing Commission described how the adoption of harsh federal sentencing policies for crack followed upon the intense media attention devoted to the death of basketball star Len Bias in 1986 from cocaine intoxication.<sup>26</sup> While it was widely reported at the time that Bias had probably died of "free-basing" cocaine, it was not until a year later that Bias's drug supplier revealed that Bias and other players had snorted powder cocaine on the night of Bias's death. By that time, the crack cocaine laws were fully in place.

## WHO ARE THE AFRICAN AMERICAN MALES IN THE CRIMINAL JUSTICE SYSTEM?

As we have seen, increasingly larger numbers of African American males have come under criminal justice supervision as a result of drug offenses. Despite the national concern about drugs, the nature of the drug distribution process and the individuals involved in it remain poorly understood.

Several recent studies provide insight into the lives of young men who become involved in the drug trade. A 1990 study by Peter Reuter and colleagues at RAND examined the criminal histories and demographic characteristics of groups of young black males arrested for drug distribution in Washington, D.C., representing the overwhelming majority of persons arrested for that offense.<sup>27</sup> The researchers documented the vast extent to which drug dealing has become a source of income for this group, with fully one-sixth of the black males born in 1967 having an arrest for drug distribution by the age of 20, and projections of one-quarter having an arrest by the age of 29. Somewhat surprisingly, though, the study found that about two-thirds of the offenders had been employed at the time of arrest, primarily at low-wage jobs with a median income of \$800 a month. Thus, drug dealing became a type of "moonlighting" for some of these young men, with the daily sellers achieving median earnings of \$2000 a month in drug sales.

Similarly, Samuel Myers, Jr. has examined the potential for increasing legitimate wages earned by drug sellers as a means of reducing criminal activity.<sup>28</sup> Analyzing data from inmate surveys, Myers found that whites incarcerated for drug dealing had significantly higher legal wages than blacks relative to their illegal earnings. He concludes that "the dominant factor contributing to drug selling, especially among black males, is unattractive labor market opportunities."<sup>29</sup>

Finally, research by John Hagedorn on African American and Latino gangs and drug dealing in Milwaukee has found great variation both in the extent to which gang members were involved in drug dealing and in their orientation toward conventional lifestyles.<sup>30</sup> While a small proportion of gang members were committed to drug dealing as a career, the majority "were not firmly committed to the drug economy." The main characteristics that they shared were: (1) working regularly at legitimate jobs, with occasional drug dealing, (2) conventional aspirations toward economic security; and (3) conventional ethical beliefs about the immorality of drug dealing, even while justifying their drug sales as necessary for survival.<sup>31</sup>

The findings of these studies enlighten us about the potential effectiveness of various responses to drug dealing. The RAND researchers found that despite the actual and perceived risks of drug dealing in Washington -- the chances of arrest or physical harm being significant -- "such risks failed to deter substantial numbers of young males from participating in the trade."<sup>32</sup> They speculate that the prospects of immediate rewards combined with adolescents' lesser concern for physical harm and/or their future prospects

combined to make drug selling very appealing. They conclude that "The prospects for raising actual and perceived risks enough to make for markedly more deterrence through heavier enforcement against sellers do not appear promising."<sup>33</sup> Noting that many drug sellers are also users and therefore feel compelled to sell drugs to support their addiction, they suggest that reducing demand is critical if the rewards of the legitimate labor market are to be viewed as attractive.

Hagedorn asks whether current drug policies are actually producing criminogenic effects, by reducing the prospects of these young gang members for productive employment and life experiences, since the "key to their future lies in building social capital that comes from steady employment and a supportive relationship, without the constant threat of incarceration."<sup>34</sup> He concludes that:

Long and mandatory prison terms for use and intent to sell cocaine lump those who are committed to the drug economy with those who are using or are selling in order to survive. Our prisons are filled disproportionately with minority drug offenders ... who in essence are being punished for the "crime" of not accepting poverty or of being addicted to cocaine. Our data suggest that jobs, more accessible drug treatment, alternative sentences, or even decriminalization of nonviolent drug offenses would be better approaches than the iron fist of the war on drugs.<sup>35</sup>

## IMPACT OF HIGH RATES OF CONTROL ON THE AFRICAN-AMERICAN COMMUNITY

The high rate of incarceration of African American males raises concerns about its impact not only on the individuals who are incarcerated, but on their communities, as well.<sup>36</sup> As increasing numbers of young black men are arrested and incarcerated, their life prospects are seriously diminished. Their possibilities for gainful employment are reduced, thereby making them less attractive as marriage partners and unable to provide for children they father. This in turn contributes to the deepening of poverty in low-income communities.

The large scale rates of incarceration may contribute to the destruction of the community fabric in other ways as well. As prison becomes a common experience for young males, its stigmatizing effect is diminished. Further, gang or crime group affiliations on the outside may be reinforced within the prison only to emerge stronger as the individuals are released back to the community. With so few males in underclass communities having stable ties to the labor market, the ubiquitous ex-offenders and gang members may become the community's role models.

The cumulative impact of these high rates of incarceration has been to postpone the time at which large numbers of African American males start careers and families. While we should not ignore the fact that these men have committed crimes that led to their imprisonment, current crime control policies may actually be increasing the severity of the problem, particularly when other options for responding to crime exist.

## INCREASING CRIMINAL JUSTICE CONTROL RATES FOR WOMEN

While we have seen that criminal justice control rates for young black men are shockingly high and increasing, from 1989 to 1994 young African-American women experienced the greatest increase in criminal justice control of all demographic groups studied. The 78% increase in criminal justice control rates for black women was more than double the increase for black men and for white women, and more than nine times the increase for white men.

What is causing this dramatic increase in the numbers of young black women under criminal justice control? Although research on women of color in the criminal justice system is limited, existing data and research suggest it is the combination of race and sex effects that is at the root of the trends which appear in our data. For example, while the number of blacks and Hispanics in prison is growing at an alarming rate, the rate of increase for women is even greater. Between 1980 and 1992 the female prison population increased 276%, compared to 163% for men. Unlike men of color, women of color thus belong to two groups that are experiencing particularly dramatic growth in their contact with the criminal justice system.

The key factor behind this explosion in the women's prison population is the war on drugs. We see this taking place at several levels.

### Arrests

The majority of female arrests are for drug offenses and crimes committed to support a drug habit, particularly theft and prostitution.<sup>37</sup> According to Drug Use Forecasting (DUF) data, more than half of women arrestees test positive for drugs; in some cities, more than three-fourths.<sup>38</sup> From 1982 to 1991, the number of women arrested for drug offenses increased by 89%, compared with an increase of 51% for men during the same period.<sup>39</sup>

### Incarceration

By 1991, one in three women in state prisons was incarcerated for a drug offense – up from 1 in 8 in 1986 and 1 in 10 in 1979.<sup>40</sup> By comparison one out of five men in prison in 1991 was a drug offender. The Bureau of Justice Statistics has reported that drug offenders represented 55% of the national increase in women prisoners from 1986 to 1991.<sup>41</sup> Trends in women's commitment to prison for drug offenses can be even more dramatic at the state level. In New York, in 1982, 67 women were committed to prison for drug offenses. By 1993, the figure had increased by 1863% to 1,315. In California, the state with the largest number of women prisoners, 37.8% of women prisoners in 1993 were drug offenders compared to 23.8% of men.<sup>42</sup> Nationwide, the number of women in state prisons for drug offenses increased 433% between 1986 and 1991 compared to a 283% increase for men (see Table 7).

### Sentencing

Overall, female prisoners have shorter maximum sentences than men. While it is often assumed that women benefit from chivalrous or lenient treatment by sentencing judges,

recent research and available data suggest that shorter sentences for women are in fact a result of gender differences in the offenses for which they are incarcerated, criminal histories and crime roles.<sup>43</sup> On average, women incarcerated in state prisons in 1991 had fewer previous convictions than men, and their record of past convictions was generally less violent. Women are more likely than men to be in prison for drug and property offenses, and less likely than men to be incarcerated for violent offenses.<sup>44</sup>

While the question of bias for or against women in sentencing is often assumed to be made irrelevant by mandatory sentencing and sentencing guidelines systems which reduce or eliminate judicial discretion, some scholars have found such "gender-neutral" sentencing models may actually place women at a distinct and unfair disadvantage with respect to gender-specific characteristics, experiences and roles. Myrna Raeder's analysis of federal mandatory minimums, for example, concludes that these policies do not allow for the court's consideration of key issues regarding the role of women, including the role of single mothers in particular in caring for children; the minor and subordinate roles women play in many crimes, including drug conspiracies; the abusive/coercive environments in which many women play these roles; and the lower recidivism rates for women.<sup>45</sup>

Raeder's conclusion is supported by a 1994 Department of Justice study on low-level drug offenders in federal prisons. The study found that women were over-represented among "low-level" drug offenders who were non-violent, had minimal or no prior criminal history, and were not principal figures in criminal organizations or activities, but who nevertheless received sentences similar to "high-level" drug offenders under the mandatory sentencing policies.<sup>46</sup>

Examining data on sentence length for federal prisoners for 1988 and 1989, Raeder found that the number of women with sentences of more than one year rose at twice the rate of men and that women with sentences of less than a year rose at nearly five times the rate of men. Raeder suggests that women who would have received straight probation prior to the enactment of the federal mandatory minimums were being sentenced to serve time in prison, and those who would have been previously incarcerated now faced longer sentences.<sup>47</sup>

#### African American Women and The War on Drugs

Looking at the criminal justice data that are available by gender and race/ethnicity a picture emerges of individuals who are doubly disadvantaged. Nationally, between 1980 and 1992 the number of black females in state or federal prisons grew 278% while the numbers of black males grew 186%; overall the inmate population increased by 168% during this period.

An enormous increase in the numbers of black women incarcerated for drug offenses is the primary factor causing this trend. Our analysis of Justice Department data shows that between 1986 and 1991, the number of black non-Hispanic women in state prisons for drug offenses nationwide increased more than eight-fold in this five-year period, from 667 to

6,193. This 828% increase was nearly double the increase for black non-Hispanic males and more than triple the increase for white non-Hispanic females. (See Table 7).

**Table 7**  
**STATE PRISONERS INCARCERATED FOR DRUG OFFENSES**  
**BY RACE/ETHNIC ORIGIN AND SEX**  
**1986 AND 1991**

|                    | 1986          |              | 1991           |               | % Increase  |             |
|--------------------|---------------|--------------|----------------|---------------|-------------|-------------|
|                    | Male          | Female       | Male           | Female        | Male        | Female      |
| White non-Hispanic | 12,868        | 969          | 26,452         | 3,300         | 106%        | 241%        |
| Black non-Hispanic | 13,974        | 667          | 73,932         | 6,193         | 429%        | 828%        |
| Hispanic           | 8,484         | 664          | 35,965         | 2,843         | 324%        | 328%        |
| Other              | 604           | 70           | 1,323          | 297           | 119%        | 324%        |
| <b>Total</b>       | <b>35,930</b> | <b>2,370</b> | <b>137,672</b> | <b>12,633</b> | <b>283%</b> | <b>433%</b> |

As we have seen, prosecutions for crack cocaine offenses have had a disproportionate impact on African-Americans. The harsher treatment of crack cocaine offenders may also be having a significant impact on young black women in particular since there are indications that women are more likely to use crack<sup>48</sup> and are more likely to be involved in crack distribution relative to other drugs.<sup>49</sup>

U.S. Sentencing Commission data show that in fiscal year 1994 black women represented 82% of all women sentenced for crack offenses (trafficking and possession). Of black women sentenced for drug offenses overall, half were sentenced for a crack offense compared to 5% of all Hispanic women drug offenders and 7% of all white women.<sup>50</sup>

#### Urban Social and Economic Decline and its Impact upon Women

The social and economic decay in many inner-city communities has contributed to the rise of African American women under criminal justice control both in ways that resemble these processes for men and in ways that are substantially different. Both black men and black women, for example, have become increasingly involved in drug crime as legitimate economic opportunities have narrowed and underground drug economies have expanded.

The relationship between community decline and increased substance abuse, though, may be particularly strong for women. For example, several measures show that women in contact with the criminal justice system -- the majority of whom come from distressed communities -- are more likely than men to use drugs, to use more serious drugs more frequently and to be under the influence of drugs at the time of their arrest.<sup>51</sup> Research showing alarming levels of violence in such communities<sup>52</sup>; a high rate of violent victimization among women drug users and incarcerated women<sup>53</sup>; and significant associations between violent victimization (including sexual abuse), post-traumatic stress disorders and substance abuse among women,<sup>54</sup> further suggest that many women in inner-cities are caught in a progressively tightening web with imprisonment as the likely outcome of their drug addiction.

Recent studies of black women crack users by Mindy Fullilove and her colleagues at the Columbia University School of Public Health describe a complex pattern whereby users initiate crack use to relieve the symptoms of depression or trauma associated with victimization, become traumatized by their efforts to secure it (often involving dangerous and degrading sex in exchange for drugs), and then relieve the new trauma by seeking additional occasions to obtain the drug. Since these efforts all too frequently provide added opportunities for trauma, the cycle is re-initiated.<sup>55</sup>

#### Lack of Access to Treatment

Problems caused by the limited availability of drug treatment programs and facilities, particularly for low-income individuals, are also compounded for women. Overall, while women make up 33% of the addicted population, only 20.6% of treatment resources are used for women.<sup>56</sup> A 1991 Bureau of Justice Assistance report indicates that women arrestees (interviewed at 4 DUF sites) have had limited treatment experience. Nearly three-fourths (71%) had never been in treatment for substance abuse, and only 4% were in treatment at the time of their arrest.<sup>57</sup>

Several studies have also shown that most treatment programs are based on male models and do not meet the special needs of women, such as accommodation for children. Also, few programs address the multiple problems of women in contact with the criminal justice system -- women who are apt to be indigent, undereducated, cut off from social networks such as family and community institutions, and who suffer disproportionately from histories of family violence, incest, rape and mental illness.<sup>58</sup> Although a number of treatment programs have been established specifically for women in the past decade, there are still serious gaps in meeting these needs.<sup>59</sup>

The lack of appropriate or accessible drug treatment for women may also play a role in rendering women vulnerable to re-incarceration. A recent study of women felons in Hawaii revealed that half were in prison after having returned there for violations of parole for positive drug tests.<sup>60</sup> Another study of a randomly-selected sample of 294 women in prison in California in 1993 found that 40% of the women were probation or parole violators. Only 13% of the women reported no prior drug use.<sup>61</sup>

Women, Children, and the Criminal Justice System: Is There a Better Way?

While more research is needed to determine how race and gender bias may have contributed to the rise in the number of women of color under criminal justice control, it seems clear that the war on drugs has succeeded only in criminalizing women already suffering under extreme socio-economic and psychological stress. The consequences of continuing on this path are dire -- not only for the women involved but for future generations. The multiple negative effects of parental arrest and incarceration on children, particularly if that parent is the primary caretaker, are well-documented, and include traumatic stress, loss of self-confidence, aggression, withdrawal, depression, gang activity, and interpersonal violence.<sup>62</sup> As more and more inner-city children lose not only their fathers but their mothers, most often the primary caretakers, to the criminal justice system, their own risks for future involvement in crime and incarceration increase dramatically.

In recent testimony before the U.S. Senate Judiciary Committee, Elaine Lord, the warden of New York State's maximum security prison for women, suggests a very different course:

We need to be more honest with ourselves that the vast majority of women receiving prison sentences are not the business operatives of the drug networks. The glass ceiling seems to operate for women whether we are talking about legitimate or illegitimate business. They (women) are very small cogs in a very large system, not the organizers or backers of illegal drug empires. This, coupled with a growing mood among the American public reportedly concerned about early intervention for troubled kids and more drug treatment in preference to more prisons, should give us the opening we need to look at better and more cost-effective ways of dealing with women offenders.<sup>63</sup>

## PROJECTIONS FOR THE FUTURE

The criminal justice system has experienced unprecedented growth for more than twenty years. Since 1973, the number of inmates in prisons and jails nationally has quadrupled, and the United States is now second in the world only to Russia in its rate of incarceration.<sup>64</sup> Probation and parole populations have increased dramatically as well, rising by 173% in the period 1980-94.

These dramatic increases, along with the fiscal and human costs entailed, might make one think that the end of this cycle might be in sight. A look at recent policy changes, though, shows that, if anything, these problems may be exacerbated in coming years.

In recent years, the federal government and many states have adopted a variety of harsh sentencing policies. Among the most prominent of these have been the "Three Strikes and You're Out" policies, adopted by the federal system and fourteen states. These laws generally provide for a sentence of life without parole upon a third conviction for a violent felony.

While it is too early to assess the full consequences of these laws, it is already clear that there will be a broad variation in their impact on prison populations. In Washington state, for example, the first state to adopt such a policy in 1993, fewer than two dozen offenders were sentenced under its provisions during the first year of implementation.

In California, though, the law has already had a substantial impact on courts, jails and prisons during its first year of operation. The California law, the broadest of any state, requires a sentence of 25 years to life for an offender with two prior violent felony convictions who commits any third subsequent felony. Thus, in the well-publicized case of Jerry Williams, his third "strike" for stealing a slice of pizza from children at a boardwalk brought the same sentence as would a rape or armed robbery. The California Legislative Analyst's Office has estimated that the state prison population will rise from 125,000 in 1994 to 211,000 by 1999, largely as a result of the "Three Strikes" law.<sup>65</sup>

Other policy changes are expected to have similarly large impacts. In Virginia, for example, parole has been abolished and violent offenders are now expected to serve up to 500% more time in prison than in the past. The combined impact of this policy along with other changes is projected to almost double the prison population from 27,000 in 1995 to 51,000 by 2005.<sup>66</sup>

A 1995 survey of corrections officials by Corrections Compendium confirmed this anticipated rise in the prison population. State corrections officials estimated that their 1994 inmate populations would rise 51% by the year 2000.<sup>67</sup>

The rise in prison populations is likely to be exacerbated as well by the impact of federal crime legislation passed by Congress in 1994 and another bill proposed in 1995. Under the

prison funding provisions of these bills, "Truth in Sentencing" grants will be made available to states that enact sentencing policies that require violent offenders to serve 85% of their sentence before release. Currently, violent offenders serve an average of 48% of their sentence.<sup>68</sup> One analysis of the 1995 legislation estimated that for every dollar states receive under the six-year funding cycle of the bill, they would spend \$2-7 due to higher costs of incarceration.<sup>69</sup>

An additional sobering factor that does not portend well for controlling the growth of the criminal justice system regards the demographics of crime. Since young males are responsible for a disproportionate amount of crime, the age distribution of the population has a significant effect on overall crime rates. Over the course of the next decade, the number of 15-19 year olds in the population will increase by 25%; for Hispanics, there will be a 47% rise in this group.<sup>70</sup> Unless we see substantial changes both in criminal justice and social policy, we can anticipate increases in crime generated by the rise in the numbers of young males.

Disturbing as these anticipated increases appear, even more so is the potential impact on African American and Hispanic communities. A number of factors suggest that the rise in criminal justice populations may affect minority communities even more so than the population as a whole. For example, the initial impact of the "Three Strikes" law in California appears to be having a disproportionate impact on African Americans. An analysis of the first six months experience with the law in Los Angeles County found that African Americans constituted 57% of the third "strike" cases charged, compared to 31% of all felony cases.<sup>71</sup>

As we have also seen, the impact of the "war on drugs" has fallen disproportionately on low-income African Americans. To the extent that current policies remain in place, change in these disparities in the coming years is unlikely.

## RECOMMENDATIONS

Addressing the racial disparities in the criminal justice system documented in this report requires both a political will and a comprehensive strategy. Unfortunately, it is far from clear that the political will to do so exists to any significant extent in the current climate. Unless these disparities are confronted, high crime rates will continue, the urban economy will decay further, and social divisions will deepen.

Although much of the necessary response to these problems is obviously within the realm of family, community, and the economy, we do not address them here because this report is primarily concerned with the ways in which the criminal justice system affects the racial disparities we have highlighted. Our recommendations for public policy in this area are as follows:

### 1. Drug Policies.

As we have demonstrated, drug policies of the past decade have been the single most significant factor contributing to the rise in criminal justice control rates for African Americans. In order to reverse this trend and to have a more significant impact on drug abuse, national policy should reflect the following:

A. Revise national spending priorities. Since the mid-1980s, both Republican and Democratic administrations have directed about two-thirds of federal drug funding toward law enforcement and only one-third toward prevention and treatment. The lack of available treatment has been documented by the Department of Health and Human Services which reports that of the 2.4 million drug users who could benefit from treatment, 1 million can not have access to treatment each year.<sup>72</sup>

Despite candidate Clinton's pledge to support increased treatment efforts, the Administration's requests to increase substantially treatment for hard core addicts received little support in Congress. These policies continue even as comprehensive studies document the positive results of drug treatment. A 1994 study by RAND researchers, for example, found that treatment is seven times more cost-effective in reducing cocaine consumption than supply-control programs. The study calculated that increasing cocaine treatment funding in the \$13 billion federal budget from \$1 billion to \$4 billion would provide enough funding to treat all heavy users once each year (vs. 30% at present), and cause a one-third reduction in annual cocaine consumption.<sup>73</sup>

Another study conducted for the state of California provides the most comprehensive cost-benefit examination to date on the effectiveness of substance abuse treatment. Looking at all treatment programs in the state, researchers concluded that every dollar spent on treatment resulted in \$7 in savings on reduced crime and health care costs.<sup>74</sup>

Given what is known about the effectiveness of treatment when compared to law enforcement and interdiction efforts, it is imperative to begin to reverse these funding

priorities. Unless demand-for drugs is reduced, the lure of the drug trade will continue to attract young entrepreneurs seeking to make quick profits.

B. Expand drug treatment within the criminal justice system. Criminal justice personnel throughout the country uniformly cite the need for expanded treatment options. New programs such as drug courts and prosecutorial diversion to treatment have met with widespread professional and community support. With the exception of treatment in prison, efforts to expand funding for drug courts and other treatment options have been folded into block grant funding where they are not likely to receive a high level of support.

C. Provide treatment programs which address the multiple and specific needs of women. Despite the fact that women involved with the criminal justice system are more likely than men to use drugs, and use more serious drugs, existing treatment models have not always been designed to incorporate the particular circumstances and multiple needs of women. Programs that accommodate children and address the range of economic, social and psychological stressors that contribute to substance abuse and drug-related crime among women should be developed and made available to women.

D. Promote a renewed dialogue on drug policy. While drug policy discussions of the 1980s were often heated and contentious, they nonetheless served to explore the range of options available to respond to substance abuse. Little such discussion exists today, as seen by the low priority given by the Justice Department to its 1994 report on mandatory sentencing or the disciplining of former Surgeon General Joycelyn Elders for advocating a discussion of drug policy. It is unconscionable to inhibit a broad discussion of a range of policy alternatives, particularly as we continue to be confronted by the tragic consequences of current policies.

## 2. Sentencing Options.

A long-term goal clearly should be to reduce crime and the numbers of people entering the criminal justice system. An intermediate strategy, though, could reduce the severity of criminal justice control without compromising public safety by creating a broader array of sentencing options for non-violent offenders who would otherwise be sentenced to prison.

Criminologist Joan Petersilia has estimated the potential for this type of a strategy in California.<sup>75</sup> She concludes that as many as a quarter of offenders sentenced to prison in that state could be appropriate candidates for structured alternatives. This group consists of offenders who are being sent to prison for technical violations of probation and parole, minor drug use, and nonviolent property offenses, and who currently serve four to eight months in prison. Diverting such offenders would enable corrections officials to reallocate 17-20 percent of their budget to community-based treatment, supervision, and other programs.

### 3. Sentencing Policies.

A variety of sentencing policies adopted nationally since 1980 have exacerbated the problems faced by women and minorities in the criminal justice system. The injustices caused by mandatory sentencing and its failure to have an impact on crime have been well documented. Of particular concern here is the disparity in sentencing between crack cocaine and powder cocaine that is present in the federal courts and many states. In addition to the racial disparities that have been demonstrated, eliminating this disparity in the federal system would lead to a long-term reduction of about 15,000 person-years in the federal prisons.<sup>76</sup>

While sentencing guidelines systems have been adopted with a goal of reducing sentencing disparity, their "gender-neutral" policies have often worked to the disadvantage of women. Factors which are often directly relevant to women -- child care responsibilities, histories of abuse, etc. -- are often not considered to be relevant at sentencing. While reduction of sentencing disparity is a laudatory goal, so is an individualized approach to sentencing that incorporates an analysis of offender responsibility and appropriate sentencing options.

### 4. Legislative Racial/Ethnic Impact Statements.

In recent years the federal government and some state legislatures have adopted policies requiring a fiscal impact statement prior to consideration of any sentencing legislation in an effort to help legislators assess the long-term costs of any changes.

Similarly, legislatures should be required to prepare racial/ethnic impact statements for any sentencing policy legislation and to consider any adverse or unanticipated consequences that would affect minorities disproportionately. If a proposed policy were shown to have this type of impact, then policymakers would be free to decide if the impact was warranted or if an alternative policy might accomplish the same objective without creating such a disparity. Had such a policy been in effect in the 1980s when Congress enacted crack cocaine legislation, perhaps current penalties would be less severe.

### 5. Long-range Crime Control Policies and Strategies.

Criminal justice policy is often short-sighted and formulated in response to emotional appeals. The political power of the crime issue, the media sensationalism around atypical crimes, and the persistence of high crime rates join to limit discussion and planning. Unfortunately, we have seen the consequences of more than two decades of heavy investment in the criminal justice system to the detriment of other social programs.

Those who suggest that high rates of crime and drug abuse demand immediate solutions need only look back a decade to the inception of the current "drug war." Despite an enormous increase in the number of drug offenders in prison since then, little progress can be claimed for the law enforcement approach. Had a different set of choices been made at that time, the country might have been the beneficiary of more humane and effective solutions.

## CONCLUSION

"I came here to make a better America. And, by the way we measure a better America, it is better. There are more people working than on the day I took office. There are more people in prison cells than on the day I took office...." [emphasis added]

-- Democratic political consultant James Carville, suggesting Clinton campaign themes for 1996. The New Yorker, April 3, 1995.

"I wonder if because it is blacks getting shot down, because it is blacks who are going to jail in massive numbers, whether we -- the total we, black and white -- care as much? If we started to put white America in jail at the same rate that we're putting black America in jail, I wonder whether our collective feelings would be the same, or would we be putting pressure on the president and our elected officials not to lock up America, but to save America?"

-- Former Atlanta Police Chief Eldrin Bell. Legal Times, October 10, 1994.

If the goal of public policy in recent years had been to incarcerate record numbers of black Americans, then that policy would have been a tremendous success. But if the goal was to make our streets safer and to build strong families and communities, then public policy has been a dramatic failure.

Former Police Chief Bell's question is the appropriate place to begin our discussion of public policy. If nearly one in three young white men were under some form of criminal justice control, how would the nation react?

We can only speculate, of course, but there are some historical examples to inform us. In the 1960s and 1970s, for example, the country experienced substantial changes in both marijuana use and public policy regarding its use. As white middle class Americans began to use marijuana in large numbers, public attitudes and policy changed, generally becoming much more tolerant. In some jurisdictions, personal possession of marijuana was either decriminalized or essentially ignored by the police. Nothing about the drug itself had changed, only the composition of the "offenders" using it.

The intent of this report has not been to deny the reality of crime or the harm it imposes on all our communities. We are also not unaware of the individual's responsibility to

respect the reasonable norms of a society. What we have been concerned with, though, are the broader social forces and criminal justice policies that have served to marginalize increasing numbers of African Americans and to impose severe constraints on their life prospects.

Rescuing a generation of young black men and women from the various social ills that confront them will not be easy, quick, or accomplished without many pitfalls along the way. But if the task is to be eventually completed it would behoove us to learn from the mistakes of recent years and to begin implementing a strategy that will insure that the next generation of children will face a future filled with greater opportunity and promise.

## NOTES

1. Marc Mauer, "Young Black Men and the Criminal Justice System: A Growing National Problem," The Sentencing Project, February 1990.
2. Data are based on estimates derived from reports of the Bureau of Justice Statistics on corrections populations, and population data from the Bureau of the Census. Because data on race, sex, and age were not available for all components of the criminal justice system, the total rates of control should not be considered exact, but rather reasonable estimates of the population within each category. See "Methodology" section for a discussion of this process and the assumptions used in the calculations.
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9. Tonry, p. 49
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14. As a *household* survey of drug abuse, the NIDA data do not include institutionalized persons, homeless people not living in a shelter, and people with less stable residences generally. Therefore, low-income African Americans may be undercounted in these surveys.
15. James P. Lynch and William J. Sabol, "The Use of Coercive Social Control and Changes in the Race and Class Composition of U.S. Prison Populations," paper presented at the American Society of Criminology, November 9, 1994.
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17. Allen J. Beck and Peter M. Brien, "Trends in U.S. Correctional Populations: Recent Findings from the Bureau of Justice Statistics," in Kenneth C. Haas and Geoffrey P. Alpert, The Dilemmas of Corrections, Waveland Press, 1995.
18. United States Sentencing Commission, Cocaine and Federal Sentencing Policy, February 1995, pp. 129-134.
19. Ibid., p. 156.
20. Ibid., p. 175.
21. Since Hispanics as an ethnic group can be of any race, there is a slight overlap between African-Americans and Hispanics. The Census Bureau reports that in the overall population, about 6% of Hispanics are identified as African-American. Assuming a similar proportion among drug offenders would reduce the total by about 1%.
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## METHODOLOGY

Data for this report were generated using statistics provided by the Bureau of Justice Statistics (BJS), and using a similar methodology to that of our 1990 report, "Young Black Men and the Criminal Justice System: A Growing National Problem."

Total prison and jail populations were taken from BJS reports for mid-year 1994. The most recent data for probation and parole populations are for year-end 1994.

To obtain estimates of the number of each demographic group in the age range 20-29 under criminal justice supervision we used the 1992 BJS figures for state and federal inmates (Correctional Populations in the United States, 1992), and for the jail population, data from the 1989 inmate survey. Probation and parole data for 1994 were used for gender distribution, and for 1992 for racial breakdowns (due to problems with the 1994 data). Since no age distribution was available for probationers and parolees, we used proportions of each demographic group in prison or jail for the age range 20-29 as an estimate of the probation and parole age distributions as well. We view this as a conservative estimate for the following reason: the median prison inmate (representing about two-thirds of the total inmate population) is about 30 years old and the median jail inmate is in the late 20s; probationers are likely to be younger on average than inmates, and parolees older, but probationers far outnumber parolees.

These data were used to produce the following estimates of the proportion of the criminal justice population for each demographic group that was in the 20-29 age range: white males - 41.5%; African American males - 45.5%; Hispanic males - 47.8%; white females - 43.2%; African American females - 47%; Hispanic females - 46.8%. Data for Native Americans, Asian Americans and other groups are too small to allow for meaningful analysis.

After estimating the total number of persons under criminal justice supervision, we calculated the average rate of increase for the period 1989-94 (5.3%) and used this figure to estimate the 1995 total criminal justice population. Since African American males in the age group 20-29 represented 15.3% of the total criminal justice population in 1994, we used this proportion for 1995 as well to estimate the number of young African American males in the criminal justice system. Then, using Census Bureau estimates, we derived a criminal justice control rate for 1995. Since the estimated number of African American males in this age group declined slightly from 1994 to 1995, it is possible that the proportion of 15.3% represents a slight overcount. It is unlikely, though, to be of any significant magnitude.

Data for Hispanics are somewhat unreliable and should be interpreted with caution. For state and federal inmates, we utilized inmate self-report data for 1991 on ethnicity. The jail data rely on the 1989 inmate survey. The most current figures for the Hispanic proportion of the probation caseload are 7% for 1992 and 9% for 1994. These are almost certainly low figures, though, since the figures for prior years are significantly higher. Much of the difference can be explained by the absence of 1992 data on ethnicity from Texas, a state with a high proportion of Hispanics on probation and one which had previously reported these figures. In order to account for this, we estimated the number of Hispanics on probation in Texas for 1992 using the proportion for 1990 (the most immediate prior figure), and therefore derived a national figure of 12.4%. We also note that the complete absence of reporting on ethnicity of probationers in California and the large fluctuations in the Florida data from year to year, two states with large numbers of Hispanics, make these figures less reliable than for racial groups.

The overall rates of criminal justice control include a small degree of overlap. The most significant instance of this involves individuals on probation or parole who are jailed for a new offense and remain on probation or parole caseloads for a period of time while incarcerated. BJS has derived estimates of this doublecounting as ranging from 3.4% - 10.8%, with the higher figure being described as "an extreme assumption." Offsetting this, we note that in our examination of criminal justice control rates we have not attempted to account for persons awaiting trial but not incarcerated in jail. These persons are clearly under criminal justice control and often subject to supervision as extensive as probationers.

Estimated costs of criminal justice control were obtained by using the BJS estimate of the annual cost of incarceration for jail inmates for 1993 (\$14,667) and 1994 estimates published by the Criminal Justice Institute for prisons (\$19,119), probation (\$850), and parole (\$1080). No distinction is made here between capital and operating costs of incarceration.

Data for Table 4 (Hispanic Inmates in State and Federal Prisons) are taken from Correctional Populations in the United States, 1992. Data for Table 5 (Drug Offenders in Prison and Jail) are derived from BJS estimates of drug offenders in state prisons for 1993 and jails for 1989, along with Department of Justice estimates for federal prisons for 1993. Overall state prison figures are jurisdiction totals, and therefore do not account for a slight overlap of state prisoners held in local jails. Data for Table 6 (Sentences to State Prison for Drug Possession, 1992) are taken from the BJS report, "National Corrections Reporting Program 1992." Data for Table 7 (State Prisoners Incarcerated for Drug Offenses) are taken from state prisoner data for 1986 and 1991 from the Bureau of Justice Statistics. Data for Figure 1 (African Americans and Drug Possession) are derived from the National Institute on Drug Abuse, the Uniform Crime Reports and BJS reports on felony sentencing and corrections for 1992.

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