

Disparate treatment

Amanda Petteruti reviews the startling over-representation of African Americans and other minority communities at each stage of the criminal justice process.

The United States has the highest incarceration rate in the world. With more than 2.3 million people in prison and jails, and another five million on probation or parole, there are more than 7.4 million people currently under the control of the US criminal justice system.

People of colour, particularly African Americans, carry the overwhelming burden of incarceration. Although African Americans make up approximately one-third of the total population of the United States, official data shows they account for 61 per cent of the criminal justice population and are more than five times as likely as whites, and more than twice as likely as Hispanics, to be held in jail or prison. The Pew Center on the States (2008) revealed that one in nine African American men between the ages of 20 and 34 are in prison in the United States.

The juvenile justice system in the United States is similarly filled with a disproportionate number of children of colour. Youths of colour make up approximately 22 per cent of all people under the age of 18 in the United States, but more than two-thirds of the youths in detention facilities (Puzzanchera et al., 2006).

People of colour face disparate treatment at all levels of the criminal justice system. Despite similar offence histories, individuals are often treated differently based on the colour of their skin: African Americans are arrested more often, detained pretrial more often and are more likely to receive a prison sentence than whites. The effect of the war on drugs on African Americans clearly demonstrates these disparities. Although whites

and African Americans use and sell drugs at similar rates, African Americans are admitted to prison for drug offences at nearly 10 times the rate of whites each year (Beatty et al., 2007).

Why is there a disparity?

The possible explanations for the criminal justice system's disparate treatment of people of colour vary and accumulate at each stage of the justice system. Specific policies concerning policing, pre-trial practices and mandatory sentences disproportionately affect people of colour. Finally, the misunderstandings and generalisations of court personnel and staff about groups of people based on the colour of their skin may result in different sentencing outcomes.

Differences in the allocation and availability of resources outside prison accumulate to create a series of disadvantages for communities of colour. Since the 1980s, states with larger African American populations spend, on average, less on social welfare programmes. These states also tend to spend more on incarceration. This state-level relationship between the size of the African American prison population and punitive public spending patterns has been growing substantially over the course of the last three decades. Substance abuse treatment resources are also disparately allocated. The proportion of white people admitted to substance abuse treatment in 2004 was more than double that of white people incarcerated for drug offences, yet the opposite was true for African Americans (Beatty et al., 2007).

Policing practices that focus attention on certain communities lead to greater arrest rates for African Americans, despite similar self-reports of criminal behaviour between whites and African Americans. For example, police often focus their efforts on low-income, urban or racial or ethnic minority neighbourhoods, rather than on more affluent or white neighbourhoods (Levine and Small, 2008). Police are also more likely to spot an offence occurring on the street than in a suburban home.

These disparities affect each stage of the system. Jails, which hold individuals who are awaiting trial, are increasingly contributing to incarceration rates in the United States. Based on the discretion of a judge, people held in jail pre-trial are offered an opportunity to pay the court to be released until their court date. However, research indicates that people of colour, and Hispanics in particular, are less likely to be offered bail and are the least likely to be able to pay it when offered (DeMuth, 2003).

Mandatory minimum sentencing was implemented in the 1980s and 1990s, with the underlying intention of lowering disparities in sentencing by training judges to confer sentences based solely on the crime. However, these sentencing schemes have led to a dramatic increase in the number of people sent to prison for drug offences and to significantly longer sentences. African Americans were hit particularly hard by the implementation of these policies. Some argue that they were specifically targeted, and treated more harshly, by policies that punished certain types of illicit drugs, such as crack – and that sentences were based on a perception of who used the drugs. For example, in the State of Maryland, over the last five years, 500 people were sent to prison on a mandatory minimum; nearly 89 per cent of these people were African American. Nationally, official data shows the average time African Americans served in prison for a drug offence rose 77 per cent between 1994 and 2003, compared with a 28 per cent increase in time

served for white people convicted of drug offences during the same time period.

Generalisations and misunderstandings contribute to disparities in sentencing. In a study of juvenile court probation officers, researchers found that probation officers were more likely to think that African American youths involved with the court were there because of personal failure. However, probation officers thought that white youths, charged with similar offences as African American youths, were before the court due to environmental factors out of their control (Bridges and Steen, 1998). These generalisations can have severely detrimental effects on youths of colour, who may already face disadvantages in their communities that limit their access to education or employment programmes.

Potential lessons: what is the US doing to challenge racial disparities in the criminal justice system?

Jurisdictions across the United States have made specific attempts to address racial disparities in both the juvenile and adult justice systems by publicly prioritising the need to reduce racial disparities, making data-driven decisions, diversifying staff, re-examining sentencing structures and establishing specific, targeted plans to reduce racial disparities (Hoytt et al, 2002). Making a public statement that prioritises the need to reduce racial disparities makes it clear that governments are investing in addressing the problem. Wisconsin established the Commission on Reducing Racial Disparities in 2008 and proposed specific solutions to the problem, which stimulated other local activities, such as improving data collection.

Current, accurate and comprehensive data collection at each point in the judicial process is

critical to uncovering racial disparities in the criminal justice system. Policy makers are able to determine how and when people of colour involved in the criminal justice system receive different treatment. Upon examination of data on the utilisation of alternatives to detention for youths, officials in Santa Cruz, California found that Hispanic youths were not opting to enter those programmes. Further examination revealed that the alternatives were not culturally responsive to Hispanic youths and their families (Hoytt et al., 2002).

Re-examining the impact of sentencing structures has yielded, perhaps, the most immediate changes in the disproportionate incarceration of people of colour. In 2007, the US Supreme Court case heard *Kimbrough v. United States*, which involved an African American veteran arrested while in possession of both crack and cocaine. Under the sentencing guidelines, possession of one gramme of crack yields the same penalty as possession of 100 grammes of cocaine. The presiding judge in the case disagreed with the harsh sentencing guidelines for possession of crack and sentenced Mr. Kimbrough below the sentencing guidelines. An appellate court contested the decision and the case eventually reached the US Supreme Court. The Supreme Court returned some discretion to judges in sentencing, allowing them to sentence below the guidelines. The Federal Sentencing Commission has since made that decision retroactive. More than 13,000 people, most of whom are African Americans charged with drug offences, may be eligible to receive a reduced sentence.

The United States, like many other Western countries, is at a critical point in its history. Budget crises make it untenable for governments to continue to incarcerate people at the current rate. Punitive policies that imprison

millions of people, frequently for non-violent offences, have not been found to make us safer, but do bring enormous fiscal costs, to the tune of approximately \$68 billion each year. Changes in policy show that the United States is beginning to re-evaluate not only how many people are going to prison, but who is being affected by imprisonment. ■

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References

- Beatty, P., Petteruti, A. and Ziedenberg, J. (2007), *The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties*, Washington, DC: Justice Policy Institute.
- Bridges, G. and Steen, S. (1998), 'Racial disparities in official assessments of juvenile offenders; attributional stereotypes as mediating mechanisms', *American Sociological Review*, 63(4), pp.554–570.
- DeMuth, S. (2003), 'Racial and ethnic differences in pretrial release decisions and outcomes: A comparison of Hispanic, Black, and White felony arrestees', *Criminology*, 41(3), pp.873–907.
- Hoytt, E. H., Schiraldi, V., Smith, B. V. and Ziedenberg, J. (2002), *Pathways to Juvenile Detention Reform: Reducing Racial Disparities in Juvenile Detention*, Baltimore, MD: Annie E. Casey Foundation.
- Levine, H. and Small, D. (2008), *Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City, 1997-2007*, New York: New York Civil Liberties Union. www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf (accessed 12 November 2008).
- Pew Center on the States (2008), *One in 100: Behind Bars in America 2008*, Washington, DC: Pew Charitable Trusts.
- Puzzanchera, C., Finnegan, T. and Kang, W. (2006), *Easy Access to Juvenile Populations*, Washington, DC: Office of Juvenile Justice and Delinquency Prevention. www.ojjdp.ncjrs.gov/ojstatbb/ezapop/ (accessed 14 September 2007).