

Disproportionate Number of African American Males in the Correctional System

Annette T. Delifus

Abstract

Researchers have found that the “war on drugs” and mandatory minimum sentencing have contributed to the disparity of African American males incarcerated in state and federal prisons at an astonishing rate. Low-level drug dealers’ penalties for crack cocaine are harsher compared to penalties for powder cocaine. The enactment of the Fair Sentencing Act in 2010, attempts to eliminate the disparity in the federal minimum mandatory sentences for crack and powder cocaine. To study the act’s impact on Florida, a survey was sent to the Florida U.S. District Courts, but no results were received. However, recommendations are provided that may assist in eliminating minimum mandatory sentences at the state level.

Introduction

Two of the most frequent questions that are asked among African American females are, “What has happened to our African American males?” and “Why are so many ‘Missing in Action’?” A large number of incarcerated African American males can be found in state and federal prisons. They are no longer able to be active participants in the family unit and assist in the rearing of their children. African American families are left without a male role model, and the father is vital in the lives their children. As a result of the absent father, young African American males look to outside influences to define manhood and for acceptance. Many young African American females lack the security and fatherly love that can only be provided by the father. Without the strong family unit, the young African American female has no foundation to build upon in understanding a healthy relationship between two partners. They, too, seek acceptance by others and become entangled in unhealthy, inappropriate relationships.

Previous research has been conducted on the incarceration and overrepresentation of the African American male in state and federal prisons. Statistics indicate in the United States, racial/ethnic minorities, particularly Black and Hispanic males, face a disproportionately high risk of incarceration. This is the most serious issue facing contemporary criminal justice policymakers (Garland, Spohn, & Wodahl 2007). In 2001, African American males were at highest risk for being incarcerated (32%), followed by Hispanic males (17.2%); White males had the lowest risk with 5.9% of that population being sentenced (Bonczar, 2003).

This study will examine the effect that drug policies and mandatory minimum sentences have had in contributing to racial disparity resulting in the disproportionate number of African American males incarcerated in in the correctional system.

Literature Review

The Anti-Drug Abuse Act launched the war on drugs in the United States (Bureau of Justice Statistics, 2002d). The combat on illegal drugs and law enforcement initiatives that focus on drug arrests, including those for drug sales, drastically contributed to the increase in the inmate population in corrections. Since the 1980s, this focus has increased the national arrest and incarceration rate, and drug offenses have been the largest categories of arrests. The number of drug offenses doubled between the year of 1980 to 2000, and more than 1.5 million persons were arrested for drug offenses. The crack-down on drug related offenses has been expensive and costly to local, state, and federal government (Bureau of Justice Statistics, 2002d).

The Vera Institute of Justice (2012) conducted a survey to collect data on the cost of prisons. The survey was distributed to every state in United States. Forty (40) states returned the survey and provided their department of corrections' prison expenditures and other associated costs that were paid by other departments. Vera Institute of Justice used the collected information and calculated the total cost of prisons in fiscal year 2010.

Four participating states reported a budget over 2 billion dollars for fiscal year 2010: California \$7 billion; New York \$2.7 billion; Texas \$2.5 billion and Florida \$2.05 billion. The average annual cost per inmate ranged from \$20,553 to \$47,421 of the four states that have a budget exceeding \$2 billion, Vera Institute of Justice (2012).

Price of Prisons What Incarceration Costs Taxpayers			
State	Prison Budget	Total State Cost of Prisons	Average Annual Cost Per Inmate
California	\$7 Billion	\$7.9 Billion	\$47,421
New York	\$2.7 Billion	\$3.6 Billion	\$60,076
Texas	\$2.5 Billion	\$3.3 Billion	\$21,390
Florida	\$2.05 Billion	\$2.08 Billion	\$20,553
<i>Vera Institute of Justice Center on Sentencing and Corrections January 2012</i>			

The war on drugs and minimum mandatory sentences contributed to the mass incarceration of African-American males. The increase in incarceration and lengthy sentences is costly for the American taxpayers.

As a result of the war on drugs, the United States prison population grew dramatically. The record high prison admissions occurred in 1995. It increased by 89,404 during the 12 months ending June 30, 1995, and this record high elevated the prison population count in state and federal prisons to 1,104,074 (Bureau of Justice Statistics, 1995). During this growth period, offenders were sentenced to prison for a longer period with limited rehabilitative services or chances for parole (Lurigio, 2004). "The sentencing disparity between powder and crack cocaine, a cheaper form of cocaine readily available in inner city neighborhoods, resulted in more African Americans being sentenced to mandatory prison terms. Almost 90 percent of the defendants sentenced for crack cocaine sales, at the federal level have been African

Americans” (Tonry, 1995). In Mauer’s, *Race to Incarcerate* 1999 (as cited in Lurigio,2004) since the 1980s greater political and media attention focused on the war on drugs that led law enforcement to place more police resources on targeting drug users and sellers in lower-income, minority communities and not higher-income, non-minority communities. Law enforcement efforts are concentrated on the inner city communities, because drug sales in poor neighborhoods are more likely to occur in an open drug market. This makes it easier for police officers to investigate and conduct target sting operations; whereas drug sales in suburban neighborhoods are more likely to occur indoors (Tonry as cited in Lurigio 2004).

The increase in prison admissions for drug related offenses has impacted Black communities. In 1996, 1 in every 20 African- American men was incarcerated in a state or federal prison, compared to 1 in every 180 White men (Human Rights Watch 2000, as cited in Lurigio, 2004). During the period of 1980 to 1996, African American incarceration rates were more than seven times higher than the incarceration rate for Whites. The incarceration rate increased from 554 to 1,574 per 100,000 Americans (Blumstein & Beck, 1999; Bureau of Justice Statistics, 2002e). Garland, et al. (2007), found that there is irrefutable evidence that Blacks comprise a disproportionate share of the U.S. prison population. At the end of 2005, there were 1,525,924 inmates incarcerated in state and federal prisons; 40 percent of these inmates were Black, 35 percent were White, and 20 percent were Hispanic (Harrison & Beck 2006). African Americans represent twelve percent (12%) of the U.S. population but two-fifths of the prison population. This disparity is more dramatic for African American males between the ages of 25 to 29. In 2005, 8.1 percent of all Black males in this age group were in prison, compared to 2.6 percent of Hispanic males and 1.1 percent of White males (Garland, et al. 2007).

The Sentencing Project (2007), *Uneven Justice: State rates of incarceration by race and ethnicity* (2007), provided data that reflected significant variations in the state rate of incarceration for African Americans, Whites and Hispanics. As reported in the table below, for every 100,000 in the population nationally, 2,290 African Americans were incarcerated compared to 412 Whites and 742 Hispanics in 2005. Over 4,000 African Americans were incarcerated in South Dakota and Wisconsin. South Dakota incarcerated 4,710 African Americans per 100,000 population compared to 470 Whites; Wisconsin 4,416 African Americans per 100,000 population compared to 415 Whites. Texas incarcerated 3,162 African Americans per 100,000 population compared to 667 Whites and 830 Hispanics. California incarcerated 2,992 African Americans per 100,000 population compared to 460 Whites and 782 Hispanics, and Florida incarcerated 2,615 African Americans per 100,000 population compared to 588 Whites and 382 Hispanics (Maurer & King, 2007).

**TABLE 3 - Prison & Jail Incarceration Rates, 2005, By BLACK Incarceration Rate
Rate of Incarceration per 100,000 Population**

State	White	Black	Hispanic	State	White	Black	Hispanic
South Dakota	470	4710	/	Louisiana	523	2452	244
Wisconsin	415	4416	/	Nebraska	290	2418	739
Iowa	309	4200	764	New Jersey	190	2352	630
Vermont	304	3797	/	Virginia	396	2331	487
Utah	392	3588	838	NATIONAL	412	2290	742
Montana	433	3569	846	Michigan	412	2262	397
Colorado	525	3491	1042	Ohio	344	2196	613
Arizona	590	3294	1075	West Virginia	392	2188	211
Oklahoma	740	3252	832	Alaska	500	2163	380
Texas	667	3162	830	Georgia	623	2068	576
Kansas	443	3096	/	Illinois	223	2020	415
California	460	2992	782	Tennessee	487	2006	561
Oregon	502	2930	573	Maine	262	1992	/
Nevada	627	2916	621	Minnesota	212	1937	/
Idaho	675	2869	1654	Alabama	542	1916	/
Kentucky	561	2793	757	South Carolina	415	1856	476
Pennsylvania	305	2792	1714	Arkansas	478	1846	288
North Dakota	267	2683	848	Rhode Island	191	1838	631
New Hampshire	289	2666	1063	Mississippi	503	1742	611
Florida	588	2615	382	North Carolina	320	1727	/
Missouri	487	2556	587	Massachusetts	201	1635	1229
Connecticut	211	2532	1401	New York	174	1627	778
Indiana	463	2526	579	Maryland	288	1579	/
Washington	393	2522	527	District of Columbia	56	1065	267
Delaware	396	2517	683	Hawaii	453	851	185

***Incarceration rates based on data from the Bureau of Justice Statistics, *Prison and Jail Inmates at Midyear 2005*. New Mexico and Wyoming have been excluded due to lack of data on race and ethnicity.**

According to Harrison & Beck (2006), African Americans and Hispanics were much more likely than Whites to be imprisoned for drug offenses. Twenty-four percent of the Blacks and 23 percent of the Hispanics were imprisoned for drug offenses, compared to only 14 percent of Whites. These disparities are noteworthy given that drug offenses constituted a larger share of the growth in state prison inmates for minorities than for Whites in 1999 (Bureau of Justice Statistics, 2000).

Garland, et al (2007), has determined that researchers and policymakers need to focus on the racial disproportionality in imprisonment, and it is the race and justice issue that demands the most attention. Garland, et al. considered the following criteria in making this determination: (1) the effects of disparate treatment on the racial/ethnic minority members themselves; (2) the effects of disparate treatment on the communities in which racial/ethnic minorities live; and (3) the impact on continued efforts to achieve greater integration of disconnected minority groups into the larger economic and cultural landscape of American society. Unequal incarceration and its effect on individuals is the most obvious in terms of its negative impact.

Although the “war on drugs” onset was in the early 1980s, and it has contributed to the overrepresentation of the African American male prison population, the disparity in the inmate population in United States still exists. With the desire to be hard on crime and to curtail the use and distribution of illegal drugs, law enforcement developed aggressive strategies in efforts to support the national “war on drugs.” The costs and benefits of this national “war on drugs” remain fiercely debated. “What is not debatable, however, is that this ostensibly race-neutral effort has been waged primarily against Black Americans.” Black Americans in comparison to their numbers in the general population and the number of drug offenders, are disproportionately arrested, convicted and incarcerated on drug charges (Fellner, 2009).

The United States of America, an industrialized country, massively incarcerates more people in prison than any other country. According to the Pew Center on States (2008), the United States’ incarceration rate exceeds that of China which is the most populated nation in the world. At the beginning of 2008, the American penal system incarcerated more than 2.3 million adults; China was second with 1.5 million and Russia was third with 890,000 inmates incarcerated based on available data at that time (The Pew Center on States, 2008).

The national prison population continues to grow and impact state budgets. In 2008, The Pew Center on States reported that more than one in 100 adults were incarcerated in an American jail or prison. In January 2008, the total inmate count was 2,319,258 which included 1,596,127 state or federal prisons and another 723,131 in local jails, with the general adult population at approximately 230 million adults (Pew Center on States, 2008).

The current prison growth is not primarily driven by an increase in crime or an increase in population. The increase is impacted by policies that are sending more offenders to prison or sentencing enhancements that are requiring offenders to remain incarcerated for a longer period of time. The increase in the prison population in turn has an effect on states’ operating budgets (The Pew Center on States, 2008).

In 2008, federal, state, and local governments spent approximately 75 billion in corrections, and the largest percentage of cost was for incarceration. Sixty percent of the inmate population is non-violent offenders. If the number of non-violent offenders in

our prison and jails are reduced by 1/2, it will lower the cost by \$16.9 billion per year (Schmitt, Warner & Gupta, 2010).

Incarceration affects more racial and ethnic minority men. There is a significant disparity in the number of African American males that are incarcerated compared to White males. “While one in 30 men between the ages of 20 and 34 are behind bars, for black males in that age group the figure is one in nine.” The Pew Center on States (2008) reports the following breakdown of who’s behind bars:

Gender Race	Age Group	Ratio
All men	ages 18 or older	1 in 54
White men	ages 18 or older	1 in 106
Hispanic men	ages 18 or older	1 in 36
Black men	ages 18 or older	1 in 15
Black men	ages 20-34	1 in 9

Although, there has been an increase in cost to manage the incarceration growth, the impact on recidivism or overall effect on crime rate is not clear. The Pew Center on States (2008) included an analysis of the prison growth in Florida between 1993 and 2007. During the 14 years, Florida prison growth increased drastically from 53,000 to over 97,000 inmates. The study acknowledged that crime and the state’s population growth in residency were contributing factors, but analysts agreed that most of the growth during 1993 and 2007 resulted from correctional policies and practices adopted by the state. In 1995, Florida’s legislature introduced and passed legislation requiring all inmates regardless of their crime, their prior record or risk to recidivate, serve 85 percent of their sentence. Corrections adopted the “zero tolerance” policy and other measures mandating probation officers to report every offender who violated any conditions of supervision to the courts. Also, prison time was increased for “technical violations.” These policies and legislations resulted in an increase of approximately 12,000 violators in Florida (The Pew Center on States, 2008). Black males are overly represented in prison, and policies and legislations have contributed to longer sentences for this group. In midyear of 2006 the U.S. Department of Justice reported that imprisonment is more prevalent reality for Hispanic and Black men than it is for white men. The young Black male is more likely to go to prison than their elders. One in every 15 Black males aged 18 or older is in prison or jail (The Pew Center on States, 2008). After they become involved in the Criminal Justice System, legislation such as the 85 percent mandate makes it difficult for inmates to be released.

As reported in Florida Department of Corrections Annual Report 2011, on June 30, 2011, the inmate population reached 102,319 in Florida’s prison system. Over the last five (5) years the inmate population rose by 10.2%, from 92,844 in June 2007 to 102,319 in June 2011. The top five categories of primary offenses for which inmates are incarcerated in Florida prisons are: drugs (18.4%), burglary (15.9%), robbery

(13.2%), murder/manslaughter (13.2%), and violent personal offenses such as carjacking and aggravated assault (12.0%). On June 30, 2011, for every 100,000 Floridians, 544 were incarcerated compared to 496 in 2007. The majority of inmates in prison on June 30, 2011, were males (95,139 or 93.0%). African American males represented 48.6% (49,686) of the inmate population. There has been a decline in the percentage of Blacks or African American inmates in prison from 50.2% in June 2007 to 48.6% in June 2011. In addition, there was less than a 0.1% increase in the total inmate population in 2010. Florida Department of Corrections no longer has a “zero tolerance” policy. The Department’s mission is to provide available reentry services for offenders and released inmates. Emphasis is placed on working with the offender and linking them to resources within their community. The linkage of services to fit the needs of the offender and released inmate reduces technical violations and the likelihood of the offender or released inmate returning to Florida Department of Corrections.

In data collected and reported in the 2010 Census, 97 percent of all respondents (299.7 million) reported themselves as one race. The largest group reported was White (223.6 million) which is 72 percent of all people living in the United States. The African American population was 38.9 million and represented 13 percent of the United States total population (Census, 2010).

There are 18,801,310 Floridians and African Americans make up 16.0% (2,999,862) of Florida’s population that identified themselves as one race (Census 2010). On June 30, 2010, African American males were incarcerated in Florida’s prison system at a rate of 49.3% and in year 2011 it was 48.6% (Department of Corrections, Annual Reports 2010 and 2011).

As prison growth increases, it cost states more to operate prisons with qualified, trained staff. In addition, it requires more to house, feed, clothe and provide healthcare for these inmates. According to the Pew study (2008), 13 states devoted more than \$1 billion a year in general funds to operate their corrections systems. California spent the most, with costs that totaled \$8.8 billion in 2007. Considering an inflation adjustment, this represents a 216 percent increase in spending over what the state of California spent 20 years earlier. Healthcare for the aging inmate is California’s major expense in their corrections’ budget. In 1976, the U. S. Supreme Court ruling *Estelle v. Gamble* requires states to provide adequate level of medical care or care that generally meets a community standard, Pew Center on States (2008).

When California implemented the “three strikes, you’re out” law, this drastically impacted the number of prison admissions. In addition, the law resulted in returning a significant number of inmates on probation to prison for technical violations (i.e. failed drug test or missed probation appointments), all of which have contributed to the increase in cost for the state of California (Pew Center on States, 2008).

According to findings from the California State Auditor Report inmates that were sentenced under the three strikes law, and including a small number of inmates receiving specialty health care absorbed a significant amount of California Department of Corrections’ budget. Approximately, 25 percent of the inmate population was sentenced under the three strikes you’re out law. It is estimated that on an average, striker inmates’ sentences are nine years longer than inmates who are not incarcerated under the three strikes law. These additional years of incarceration cost the State of

California \$19.2 billion. Many of the inmates' current convictions were not a serious or violent crime, as defined in California's state law. In addition, the auditor found that many individuals were convicted for multiple serious or violent crimes that occurred on the same day (California State Auditor Report, 2010). Based on the findings of the report, the striker law is not always applied as it is written. The mandatory sentence incarcerates inmates for longer periods and this keeps them out of society and away from their families.

The U.S. Sentencing Commission is an independent agency in the judicial branch of government. It was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. The U.S. Sentencing Commission was established to provide assistance to the U.S. District Courts and to Congress. Its principal purposes are: (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) advise and assist Congress and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute information on federal crime and sentencing issues, serving as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public (The U.S. Sentencing Commission, 2012).

In an attempt to eliminate the disparity in the federal mandatory minimum sentences for crack cocaine and powder cocaine, the Fair Sentencing Act was signed by President Obama on August 3, 2010. The Act is legislation that limits the federal mandatory minimum sentences for low-level crack cocaine offenses that bipartisan leaders agreed to be overly harsh and unjust. After many years of harsher sentences for the low-level drug offenders (street dealers), the Fair Sentencing Act attempted to ensure fairness in sentencing and rectify the problems caused by the Anti-Drug Abuse Act of 1986. It reduces the cocaine sentencing quantity disparity from 100 to 1 to 18 to 1 by raising the quantity of crack cocaine that a person must possess to receive a five- and ten-year mandatory minimum sentence; eliminated the mandatory minimum sentence for simple possession of crack cocaine for first time offense. However, it did not rectify previous sentences that so many offenders received under the unjust legislation, or offenders that were awaiting their sentence prior to the enactment of the Fair Sentencing Act. Without retroactive application, many offenders' lives continue to be affected by sentencing disparity of Anti-Drug Abuse Act of 1986 (The Sentencing Project, 2010).

The Federal Crack Cocaine Sentencing study conducted by The Sentencing Project (October 2010) provides clarification of the quantity of cocaine needed for both crack and powder cocaine as required by both Acts of 1986 and the Fair Act of 2010. Under the Anti-Drug Abuse Act of 1986, defendants who are convicted for five grams of crack cocaine received a sentence of no less than the five-year mandatory minimum sentence as required by law. The weight of five grams of crack cocaine is less than two sugar packets, and it equates to approximately 10 to 50 doses. The sale of 500 grams of powder cocaine has the same five-year penalty as 5 grams of crack cocaine, and the 500 grams is 100 times the minimum quantity for crack, and yields between 2,500 and 5,000 doses. The sale of 5,000 grams of power cocaine yields up to 50,000 doses, and the defendant was subject to a 10-year minimum

mandatory sentence. The defendant, selling only 50 grams of crack cocaine which produces about 100 to 500 doses, was subject to the same 10-year minimum mandatory sentence as the sale of 5,000 grams of powder cocaine (The Sentencing Project, October 2010).

In 2009, mandatory sentencing for crack cocaine offenses resulted in average sentences that were over two years longer than sentences for offenses involving powder cocaine. Under the Fair Sentencing Act of 2010, defendants convicted of a crack cocaine offense will require at least 28 grams to receive a five-year mandatory minimum compared to the previous five grams. The 10-year mandatory minimum requires a crack cocaine quantity of 280 grams. There were no changes in the quantity triggers for powder cocaine offenses. The Act eliminated the mandatory minimum for first-time offense for simple possession under the reformed law. First-time simple possession of any quantity of crack cocaine, like powder cocaine, will result in a sentence no longer than one year. Previously, a defendant convicted of simple possession of 5 grams of crack in federal court was subject to a mandatory five-year prison term (The Sentencing Project, October 2010).

Some researchers believe there has been disparity in the Criminal Justice System for decades and ask the question what is acceptable and what is too much? Crutchfield, Fernandes, Martinez (2010) examined several aspects of the Criminal Justice System and conclude that a little is too much in their article, *Racial, and Ethnic Disparity and Criminal Justice: How Much is Too Much*. Crutchfield, et al. (2010) reports that William Wilbanks, *in the Myth of a Racist Criminal Justice System* maintains that even in the studies that report statistically significant racial differences in criminal justice outcomes, the effect sizes are too small to really matter.

Crutchfield, et al. (2010) report that literature regarding the adult criminal justice system has not provided consistent and conclusive evidence for obvious discrimination or racial and ethnic bias. They contend that the majority of the studies indicate disparate treatment of African Americans which contributes to overrepresentation of African Americans in the Criminal Justice System. "But even these results vary from weak to strong, depending on both the jurisdiction studied and the decision point focused on by the researchers (Crutchfield, et al. 2010) .

According to The Human Rights Watch (2011), "The burden of incarceration falls disproportionately on members of racial and ethnic minorities, a disparity which cannot be accounted for solely by differences in criminal conduct: black non-Hispanic males are incarcerated at a rate more than six times that of white non-Hispanic males and 2.6 times that of Hispanic males."

In 2009, Black males in the age group of 25-29 were in prison or jail at a rate of one in 10; 1 in 25 for Hispanic males, and 1 in 64 for White males. The Human Rights Watch acknowledges the significance of the Fair Sentencing Act that altered the federal government's disparity in sentencing crack cocaine and powder cocaine offenders, but the Fair Sentencing Act does little to address the overwhelming racial disparities in drug law enforcement. Black people constitute 33.6 percent of drug arrests; 44 percent of persons convicted of drug felonies in state court are Black; 37 percent of people sent to state prison on drug charges are Black, even though only 13 percent of the US population is Black. Blacks and Whites engage in drug offenses at equivalent rates (Human Rights Watch, 2011).

According to the Human Rights Watch (2012), in the criminal justice system racial and ethnic minorities continue to be disproportionately represented. Although the engagement in drug offenses for Whites and African-Americans were roughly the same in 2009, forty-five (45) percent of inmates in state prisons for drug offenses were African Americans and twenty-seven (27) percent were White.

In October 2011, under a statutory directive, the U.S. Sentencing Commission submitted to Congress its second report in 20 years assessing the impact of federal mandatory minimum sentencing laws. The federal mandatory minimum sentencing report stated there were inconsistencies in the application of certain mandatory minimum penalties (The Sentencing Project, 2012). In addition, the key findings were:

- Mandatory minimum penalties have contributed to an increase in the federal prison population.
 - Between 1995 and 2010, mandatory sentences increased by 155% (29,603 to 75,579).
 - Forty percent of all people in custody were sentenced under a mandatory sentence.
- The number of offenses carrying a mandatory minimum penalty has increased substantially.
 - Doubled from 98 in 1991 to 195 in 2010.
 - Number of federal defendants convicted of a crime carrying a mandatory minimum penalty has tripled from 6,685 cases a year in 1990 to 19,896 in 2010.
- Mandatory minimum penalties are applied inconsistently.
 - The study found that the degree to which mandatory penalties are imposed is often related to the prosecutor's decision making.
- Judicial concerns with mandatory minimum penalties.
 - The majority of judges (52%) believe mandatory minimum penalties contribute to sentencing disparity.
 - Sixty-two percent of judges surveyed in 2010 felt that mandatory sentences across all offenses were too high.
- Most drug defendants were subject to a mandatory minimum penalty.
 - More than half (53.8%) of the population incarcerated in the Bureau of Prison in 2010 had been convicted of a drug offense.
 - More than half (52.9%) of those incarcerated for drug offenses were subject to mandatory minimum penalties at sentencing.
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- African American defendants were more likely to receive mandatory minimum penalties for drug offenses than other defendants.
 - African American defendants were subject to mandatory minimum penalties at sentencing most often, in 60.6% of drug cases carrying such a penalty, followed by Hispanic (41%) and White defendants (36.3%).

The commission recommended that if Congress enacts mandatory minimum penalties, the penalties should not be excessively severe and should be narrowly tailored to apply only to those offenders who warrant such punishment and be applied consistently (The Sentencing Project, 2012).

Sentencing disparity for African Americans continues to be a national problem that affects both federal and state correctional system. True reform will require all states to review their laws and policies to make the necessary changes to end sentencing disparity which are destroying lives for individuals and families. "What if the small differences reported in these studies affected your son, daughter, father, or mother? What if it was you who was subject to a slightly higher probability of being stopped by police, whose vehicle was searched without real probable cause, who received just a few more days or months in prison? We suspect that you would not dismiss these differences as trivial" (Crutchfield, et al. 2010).

Method

The enactment of the Federal Fair Sentencing Act was August 3, 2010. To evaluate the implementation of the act, and the possible impact it may have on Florida, a survey was developed and sent to Florida's U.S. Districts courts (Northern, Middle, and Southern Districts).

I contacted the districts by telephone, and on behalf of the chief judges, was given a contact person to work with regarding the survey. Each district's court designee was contacted to discuss the survey, and the data collection process. Upon the request of each district designee, I was required to send the survey to the district court designee for review and approval. A formal e-mail and survey was sent to each district court's designee as requested advising them of this writer's contact information for any further clarifications that may be needed.

To uphold anonymity, the survey did not solicit any judges' demographics or personal information other than years of experience as a district court judge. The answers were formulated using the Likert scale as applicable and other answers allowed for judges' individual responses based on their experiences and court rulings:

1. The Fair Sentencing Act of 2010 was enacted on August 3, 2010. Did the Act affect your decision making in rendering sentences?
2. Since the enactment of The Fair Sentencing Act of 2010, approximately how many cases were sentenced to a period of probation for possession of crack cocaine?
3. Since the enactment of The Fair Sentencing Act of 2010, approximately how many cases have you imposed a sentence of less than 5 years imprisonment for possession of crack cocaine?

4. Since the enactment of The Fair Sentencing Act of 2010, approximately how many cases have you imposed a sentence of 5 or more years of imprisonment for possession of crack cocaine?
5. Since the enactment of The Fair Sentencing Act of 2010, approximately how many cases have you imposed a sentence less than 10 years of imprisonment for possession of crack cocaine?
6. Since the enactment of The Fair Sentencing Act of 2010, approximately how many cases have you imposed a sentence of more than 10 years of imprisonment for possession of crack cocaine?

The length of sentence that a judge can imposed for specific offenses has been impacted by legislation that requires mandatory minimums. To determine if the Fair Sentencing Act impacted the length of sentences imposed for simple possession, the U.S. District Court Judges were asked to respond to the following question:

1. To what degree has the Fair Sentencing Act impacted the length of sentences you have rendered for simple possession?

The stated question response options were: sentences rendered or shorter, sentences rendered or longer; or sentences rendered have remained the same.

Two questions were asked regarding eligibility of the inmate to petition the court for a possible reduction in if the courts were in compliance with the Fair Sentencing Act:

1. Since the enactment of The Fair Sentencing Act of 2010, approximately how many eligible petitions seeking a sentence reduction was granted by your court?
2. Since the enactment of The Fair Sentencing Act of 2010, approximately how many eligible petitions seeking a sentence reduction was denied by your court?

To seek the opinion of the U.S. District Court Judges regarding sentencing guidelines that were established for the Fair Sentencing Act, the following questions were included in the survey:

1. You believe the current sentencing guidelines are appropriate?
2. You believe that current sentencing guidelines force judges to sentence offenders to prison.

Using the Likert scale, the judges' response options were: agree, somewhat agree, disagree or somewhat disagree.

Survey Results

The survey questions were formulated and sent to Florida U.S. District Courts (Northern, Middle and Southern Districts). Initially, the contact person in each area was very helpful and was willing to provide assistance. After the survey was sent to the districts for review as requested, one district wanted to know what courts received the survey? A response was sent to the inquiring district stating a survey was sent to all districts in Florida.

After several follow-up telephone calls and e-mails, one of the districts responded stating they did not wish to participate in the survey at this time. By not responding, the two remaining districts declined to participate in the survey. Therefore, results of the survey yielded no response from Florida U.S. District Courts (Northern, Middle and Southern Districts).

Discussion

The “war on drugs” campaign was originated by the federal government in an attempt to eradicate the rise of drug crimes in the nation. Many states in the U.S. adopted this philosophy to combat drug crimes in their communities. As a result, statutes, policies, sentencing guidelines and mandatory minimums were created in an effort to be “hard on crime.”

Disproportionate numbers of African American males are incarcerated in the correctional system and this impacts Floridians and other citizens throughout the United States. The massive imprisonment of African American males for drug offenses leaves communities and families broken. This has contributed to more single parent households and affects family stability. The rate of incarceration also affects the rest of America through the costs to house and support these inmates. This issue needs to remain a focus of our concerns. Unfortunately, when the research survey is depending on a specific group that has the only knowledge and expertise to answer the survey questions, it limits the analysis, if the group chooses not to participate. Researchers, advocacy groups and organizations have sustained courage, drive, perseverance to fight against this injustice. They continue to work hard to demand Congress to apply the Fair Sentencing Act retroactively. The Fair Sentencing Act of 2010 is definitely a positive step in the right direction, but it falls short by not including the retroactive application. There are African Americans that are in prison that may meet the eligibility requirements for a reduction in their sentence, but it will take an act of Congress to change legislation to apply the Fair Sentencing Act retroactively.

Recommendation

President Barack Obama and a bipartisan Congress acknowledged that the severity of the crack cocaine penalties compared to powder cocaine penalties were unjust. After many years of advocating by the U.S. Sentencing Commission and other groups and organizations, on August 3, 2010, President Obama signed the Fair Sentencing Act.

Researchers have proven that many African American males are incarcerated in disproportionate numbers. The overrepresentation of this group in prison devastates families, communities, and increases costs to society for housing them. The following recommendations are to assist in reducing the rate of incarceration, reducing prison cost, unifying families and effectively maximizing state resources:

1. It is recommended that Florida and all states remove mandatory minimums to allow sentencing to be determined solely by judges and not legislators.
2. Florida and other states need to review and make the necessary changes to alleviate laws that unfairly target African Americans and any race of people.
3. State legislators should adequately fund substance abuse treatment, educational, job building skills and other re-entry programs to assist African American males that are incarcerated or involved in the Criminal Justice System.
4. State legislators should adequately fund intervention and prevention programs that target high risk children and young adults (males and females) to reduce the likelihood of drug involvement and incarceration.
5. State agencies (Department of Corrections, Department of Children and Family Services, Department of Health, etc.), Sheriff's Departments, county agencies, family organizations and outreach programs should collaborate to develop a comprehensive plan for programs to reach at risk children and young adults (males and females).
6. State corrections and county jails should provide treatment, programs that are customized to fit the needs of the African American male.
7. It is recommended that Congress approves the retroactive application of the law to "right the wrong" for inmates that were sentenced prior to the enactment of the Fair Sentencing Act.

Annette T. Delifus is currently the Assistant Bureau Chief of Community-Based Programs in the Office of Re-Entry, Bureau of Substance Abuse and Treatment Services. She has been employed with the Florida Department of Corrections for approximately 25 ½ years. She has experience in contract management and oversight for residential, outpatient, mental health and sex offender treatment programs, Probation and Restitution Centers to include the Prison Diversion Program. As an employee of the Department, she has held the following positions: Correctional Program Administrator, Correctional Services Administrator, Correctional Services Assistant Administrator, Correctional Probation Senior Officer, Drug Offender Probation Officer and a Correctional Probation Officer in the Pretrial Diversion Program. Ms. Delifus received her Bachelor of Science Degree in Criminal Justice from the University of South Carolina in 1981. She received a Davis Productivity Certificate in 1999, and she is a recipient of the 2008 Leadership in Prevention Award.

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Appendix A

Survey

Disproportionate Number of African American Males in the Correctional System

1. How many years of experience do you have as a Federal District Court Judge?
 - Less than 2 years
 - 2 to 4 years
 - 5 to 9
 - 10 or more
2. The Fair Sentencing Act of 2010 was enacted on August 3, 2010. Did the Act affect your decision making in rendering sentences?
 - Significantly impacted my decision making
 - Somewhat impacted my decision making
 - No change (has not impacted my decision making)

3. Since the enactment of The Fair Sentencing Act of 2010, how many cases have you imposed a sentence utilizing the federal sentencing guidelines?
 - 1 to 50
 - 51 to 100
 - 101 to 150
 - 151 to 200
 - 201 or 250
 - 251 or 300
 - 301 or more
4. The Fair Sentencing Act of 2010 eliminated the mandatory minimum sentence for simple possession. Has this Act impacted the length of sentences that you have imposed for simple possession?
 - Significantly impacted the length of sentences
 - Somewhat impacted the length of sentences
 - No change (has not impacted the length of sentences)
5. To what degree has the Fair Sentencing Act impacted the length of sentences you have rendered for simple possession?
 - Sentences rendered or shorter
 - Sentences rendered or longer
 - Sentences rendered have remained the same
7. Since the enactment of The Fair Sentencing Act of 2010, approximately how many cases were sentenced to a period of probation for possession of crack cocaine?
8. Since the enactment of The Fair Sentencing Act of 2010, approximately how many cases have you imposed a sentence of less than 5 years imprisonment for possession of crack cocaine?
9. Since the enactment of The Fair Sentencing Act of 2010, approximately how many cases have you imposed a sentence of 5 or more years of imprisonment for possession of crack cocaine?
10. Since the enactment of The Fair Sentencing Act of 2010, approximately how many cases have you imposed a sentence less than 10 years of imprisonment for possession of crack cocaine?
11. Since the enactment of The Fair Sentencing Act of 2010, approximately how many cases have you imposed a sentence of more than 10 years of imprisonment for possession of crack cocaine?

12. Since the enactment of The Fair Sentencing Act of 2010, approximately how many eligible petitions seeking a sentence reduction was granted by your court?

13. Since the enactment of The Fair Sentencing Act of 2010, approximately how many eligible petitions seeking a sentence reduction was denied by your court?

14. You believe the current sentencing guidelines are appropriate.

- Agree
- Somewhat Agree
- Disagree
- Somewhat Disagree

15. You believe that the current sentencing guidelines force judges to sentence offenders to prison.

- Agree
- Somewhat Agree
- Disagree
- Somewhat Disagree

16. You believe Congress should make the statutory changes for The Fair Sentencing Act retroactive.

- Agree
- Somewhat Agree
- Disagree
- Somewhat Disagree

17. Additional Comments or Recommendations (Optional)