

The Disproportionate Impact of the Criminal Justice System
on People of Color in the Capital Region



Alice P. Green
The Center for Law and Justice
February 2012

“If there is no struggle, there is no progress” - Frederick Douglass

The Disproportionate Impact of the Criminal Justice System on People of Color in the Capital District

Prepared by:

Dr. Alice P. Green, Executive Director
The Center for Law & Justice, Inc
Albany, New York

Contact Information: 518-427-8361
wwwcflj.com
cflj@verizon.net

Executive Summary

This report, the first in a series of three by the Center for Law and Justice examining the impact of federal, state and local criminal justice system practices on minorities in the Capital Region, details the overrepresentation of minorities among Capital Region arrests, convictions, and sentences to state prison. It further chronicles the devastating impact the criminal justice system has on minority individuals and communities, and makes recommendations for change.

Section I of the report presents statistical data culled from state and local criminal justice agencies and the United States Census Bureau to demonstrate the disproportionate representation of minorities among arrests, convictions, and sentences to state prison in Albany, Rensselaer, and Schenectady counties. The percentage of Capital Region arrests and convictions that are minorities is twice their representation in the general population, and the percentage of minorities among prison sentences is as high as almost four times greater than their representation in the general population. Contrary to the sometimes asserted contention that this is due to a higher rate of commission of crimes by minorities, the literature indicates that this disproportionality is more likely due to facially neutral policies that have racially disparate effects.

Section II explains the concept of the “collateral consequences” of a criminal conviction: conditions that, beyond the actual incarcerative sentence, often attach automatically upon conviction. Conviction and/or incarceration can impose highly restrictive educational, employment, housing, and civic conditions on an individual, including losing the right to vote. In addition to the destructive consequences of a criminal conviction to individuals, mass incarceration of people of color wreaks havoc in the neighborhoods in which they reside, resulting in severely impoverished communities.

Section III describes the historic impact of the federal “War on Drugs” and New York’s Rockefeller Drug Laws on the mass incarceration of Capital Region people of color. In 2002, Albany County had one of the highest drug crime prison admission rates in the entire country, and one of the most racially disproportionate rates. More recent data from 2011 indicate that Albany County maintains its dubious distinction of having comparatively higher (and more racially disparate) prison admission rates than other jurisdictions in the state.

Section IV examines the relationships between the police department and the community in the cities of Albany, Troy and Schenectady. All three departments have expressed a commitment to “community policing,” and the extent to which each department has operationalized this commitment is assessed.

Section V considers the Capital Region statistics in the context of “The New Jim Crow” movement, which asserts that mass incarceration serves to maintain a racial caste system that denies education, employment, housing, and voting rights to those who carry the label “felon,” in much the same way that the post-Civil War Jim Crow laws denied rights to blacks. Lastly, Section VI provides recommendations for change.

The Disproportionate Impact of the Criminal Justice System on People of Color in the Capital Region

Introduction

In an effort to stimulate dialogue and promote meaningful change in the Capital Region criminal justice system, the Center for Law and Justice (CFLJ) is publishing three reports documenting current areas of concern. This first report focuses on the disproportionate impact of the adult criminal justice system on people of color in the Capital Region. A second report will examine similar issues within the juvenile justice system, and a third will analyze the impact of federal drug law enforcement efforts.

The Center for Law and Justice is a community-based organization that envisions a peaceful, just, and compassionate community that provides each resident with equal access to the goods, services and opportunities of that community. The Center also seeks the fair and just treatment of all people throughout the civil and criminal justice systems, and works to reduce reliance upon incarceration.

Founded nearly three decades ago and located in the City of Albany, the Center has been at the forefront of most major criminal justice issues of concern to residents of New York State. Troubled by the historical racial, ethnic, and economic disparities that exist throughout the criminal justice system, it is the Center’s primary mission to promote a fair and equitable criminal justice system devoted to public safety and social justice. Not only has the Center advocated strenuously for the rights of the poor and people of color, but also has worked closely with key players in local and state criminal justice systems. CFLJ has helped to develop policing and training policies, crime prevention programs and strategies, and legal rights advocacy and education programs. In addition, the Center has worked to reduce sentencing disparities and promote sound probation, parole, judicial, and sentencing policies, and has been a leader in efforts to empower families and communities adversely affected by incarceration.

Criminal justice system policies and practices have a disproportionately adverse impact on people of color in the Capital Region. From arrest to reentry, the numbers of minorities at each stage of the criminal justice system far exceed their representation in the general population in Albany, Schenectady and Rensselaer counties. This disproportionality is most starkly evident in the communities in which minorities are most concentrated: the cities of Albany, Schenectady, and Troy. Once involved in the criminal justice system, individuals are at risk of losing rights and privileges often taken for granted. And, if incarcerated in state prison, an individual loses the most fundamental right in a democracy: the right to vote for the people who enact and enforce the laws that govern the citizenry.

In addition to the onerous barriers to success imposed on individuals by imprisonment, mass incarceration takes an enormous toll on families and entire communities:

The effects of high rates of incarceration go beyond the experience of imprisonment itself, and have broad consequences for both the offender and the community. A prison term results in challenges in gaining employment, reduced

lifetime earnings, and restrictions on access to various public benefits. Families of offenders themselves experience the shame and stigma of incarceration, as well as the loss of financial and emotional support with a loved one behind bars. And for the community at large, the challenges of reentry result in high rates of recidivism and the consequent costs of a burgeoning prison system.¹

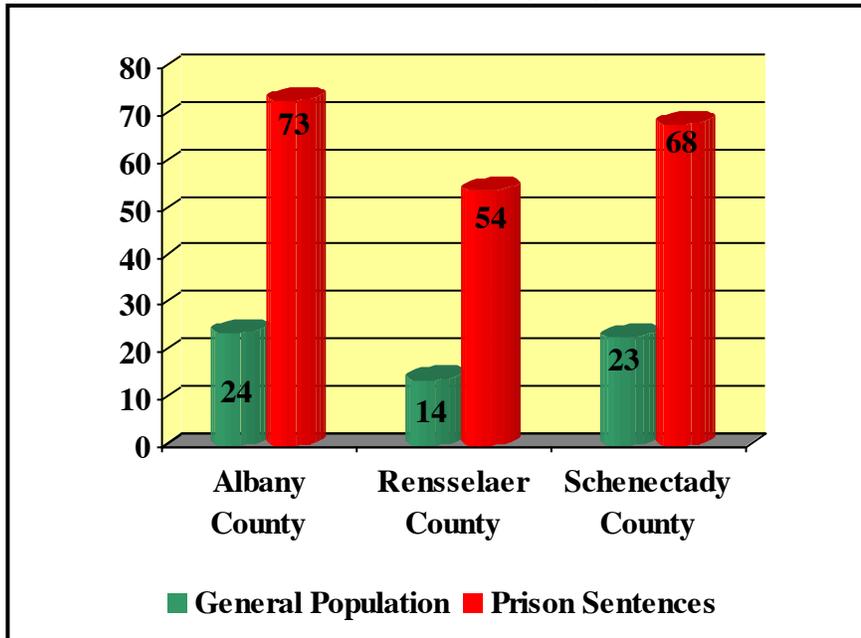
In her 2010 book, The New Jim Crow: Mass Incarceration in the Age of Colorblindness, Michelle Alexander contends that the restrictions imposed upon African Americans by mass incarceration serve to create a new “racial caste” system in which “people of color are locked into an inferior position by law and custom.”² Alexander argues that “nothing short of a major social movement can successfully dismantle the new caste system.”³ Mass incarceration continues to exert a particularly onerous impact on people of color in the Capital Region. In producing this region-specific report, it is the Center’s intention to stimulate dialogue among community members, and between community members and the law enforcement agencies that serve them, to initiate and sustain the major social movement described by Alexander.

This report first presents data documenting the disproportionate representation of minorities at all stages of the criminal justice system in the three Capital Region counties, followed by a discussion of the collateral consequences of involvement in the criminal justice system. (“Collateral consequences” are conditions that, in addition to an incarceration or community supervision sentence meted out by the court, often automatically attach to an individual upon conviction.) The report then examines criminal justice system policies and practices that have contributed in recent decades to the disproportionate overrepresentation of minorities in the criminal justice system, with a particular focus on the overreliance on incarceration. This phenomenon is then examined within the context of “The New Jim Crow” movement, based on Alexander’s contention that mass incarceration serves to create a racial caste system that suppresses people of color in much the same manner as slavery in the seventeenth, eighteenth, and nineteenth centuries, and Jim Crow laws in the post-Civil War years. Lastly, the Center presents recommendations for change.

Section I: Disproportionate Minority Representation in the Criminal Justice System

The proportion of state prison sentences that are minorities (i.e., other than non-Hispanic whites) far exceeds their representation in the general population in all three Capital Region counties. As can be seen in Chart 1, in Albany and Schenectady counties minorities among state prison sentences are about three times their representation in the general population. In Rensselaer County, minority representation among prison sentences is nearly four times their representation in the general population.

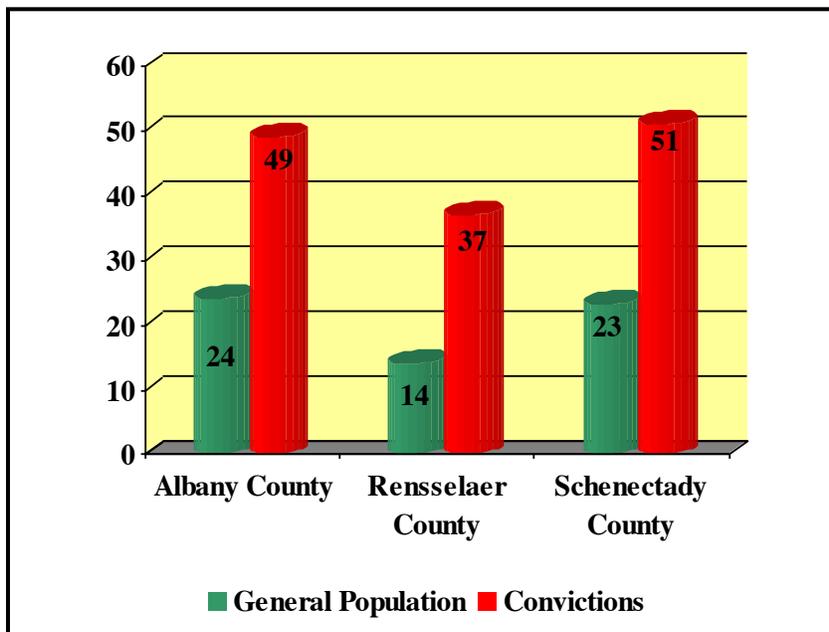
Chart 1: Percentage Minority Representation, Prison Sentences (2010)



Sources: New York State Division of Criminal Justice Services; United States Census Bureau

Overrepresentation of minorities among prison sentences results from their overrepresentation among convictions. Chart 2 indicates that minorities in Albany and Schenectady counties account for about half of the convictions, though they represent less than a quarter of the general population. In Rensselaer County, minorities comprise more than a third of convictions, though they comprise less than a fifth of the general population.

Chart 2: Percentage Minority Representation, Convictions (2010)

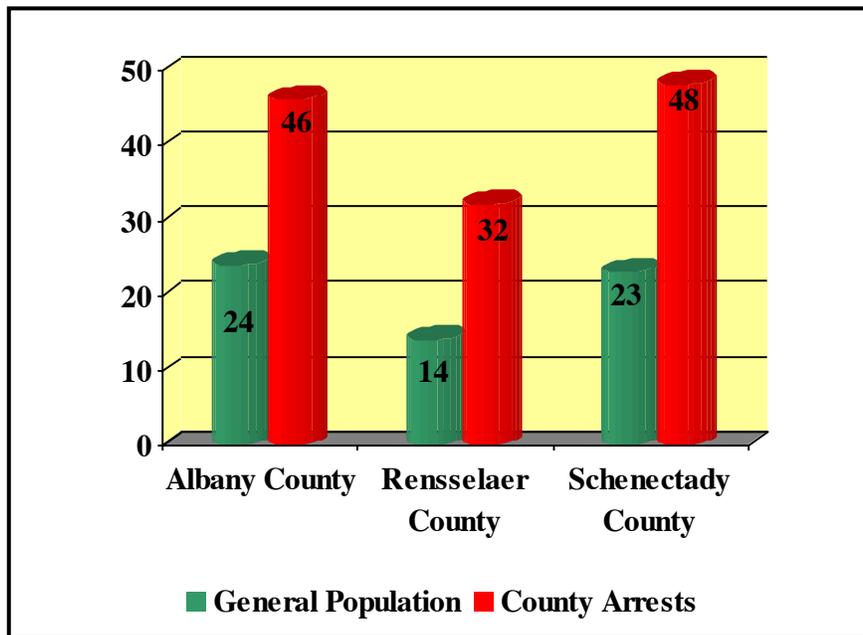


Sources: New York State Division of Criminal Justice Services; United States Census Bureau

Minority overrepresentation among convictions flows from an overrepresentation among arrests. Chart 3 shows that in all three counties, representation of minorities among arrests is about double that of their representation in the general population. Narrowing the perspective to focus just on the three major cities where minorities are concentrated, the overrepresentation of minorities is readily apparent.

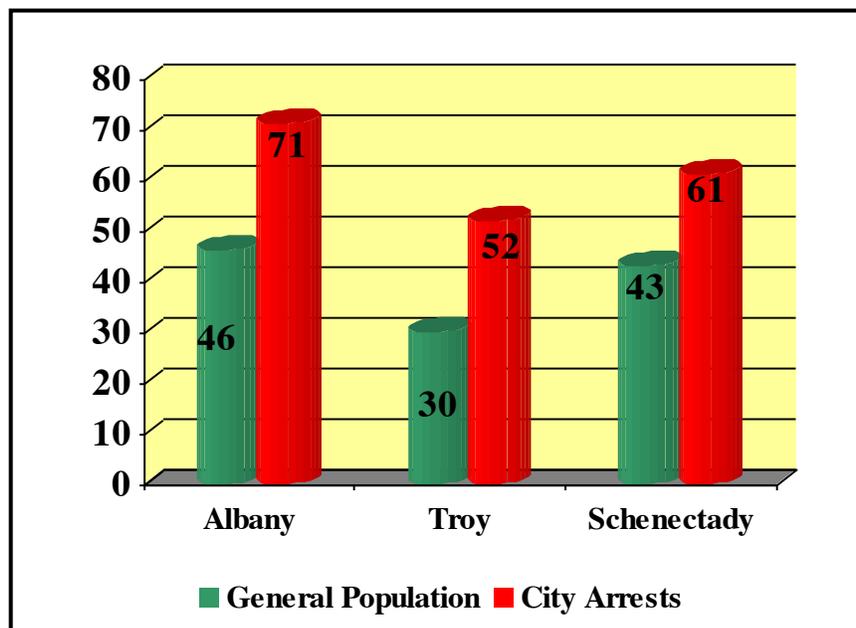
Chart 4 indicates that minorities accounted for nearly three quarters of the arrests in the city of Albany, though less than half of the general population was minority. In Schenectady in the same year, with slightly more than two-fifths of its population minority, more than three-fifths of the arrests were of minorities. And in Troy, more than half of the arrests were of minorities though less than a third of the general population was minority.

**Chart 3: Percentage Minority Representation,
County Arrests (2010)**



Sources: New York State Division of Criminal Justice Services; United States Census Bureau

**Chart 4: Percentage Minority Representation,
City Arrests (2010)**



Sources: New York State Division of Criminal Justice Services; United States Census Bureau

Clearly, disproportionate numbers of minority arrests result in disproportionate numbers of minority convictions, which in turn result in the disproportionate incarceration of minorities. Disproportionate minority representation in the criminal justice system often is attributed --- without empirical validation --- to disproportionate commission of crimes by minorities. Recent research indicates, however, that much of the cumulatively disproportionate representation of minorities in the criminal justice system “is explained by facially neutral policies that have racially disparate effects.” (The impact of such policies is further explored in Section IV.)

To fully appreciate the role disproportionate minority arrests play in affecting the rights and privileges of Capital Region people of color, an examination of the relationships between the police departments and the communities they serve is needed. First, though, a description of the impact of a criminal conviction and incarceration is warranted.

Section II: “Collateral Consequences”: The Impact of a Criminal Conviction

In “The Consequences of Criminal Charges: A People’s Guide,” the Bronx Defenders explain the concept of “collateral consequences:”

“Collateral consequences,” is a popular label for the legal, social, and economic barriers to a person’s reentry into his or her community. Although many people released from prison or jail leave with the hope of a fresh start, these barriers to reintegration can feel like the continuation of a prison sentence. In fact, these collateral consequences may take place at both ends of the criminal process system: at the beginning when an individual is arrested, charged, and perhaps considering a plea bargain; and at the end when an individual is released from prison. Even a mere arrest, or minor charges with no jail time, may result in collateral consequences. Collateral consequences have been described as “invisible punishment” because they are not clearly set forth in the New York criminal law. Therefore, they are not usually explained the way prison terms and parole eligibility typically are, as part of the direct consequences of criminal convictions. Instead, the rules that result in collateral consequences are found scattered throughout New York and federal civil laws, making them more difficult to find and understand, and avoid.⁴

The collateral consequences of a criminal conviction vary from state to state, and being convicted of a crime may place limitations on rights and privileges granted by the federal government. In New York, a convicted felon may face barriers to employment, housing, and educational opportunities. An American Bar Association database lists 1,113 statutes that impose collateral consequences, in New York State alone!⁵ Although employers in New York may not discriminate against a job applicant simply on the basis of a criminal conviction, some specific occupations (particularly those requiring a license, such as bus drivers and barbers), may have additional requirements for those with criminal convictions (e.g., applying for a Certificate of Relief from Disabilities or Certificate of Good Conduct.)

Federal law provides municipal housing authorities the right to deny public housing to an applicant with a criminal history. In some jurisdictions, the housing authority conducts a criminal background check on not only the applicant, but everyone the applicant currently lives with, everyone 16 or older who might live with the applicant, and the biological parent(s) of any of the children in the household (even if that person doesn’t live with the applicant).

Eligibility for federal student financial aid can be affected by a criminal conviction. A person convicted of any offense involving the possession or sale of drugs may have his or her financial aid eligibility suspended for one to two years.

Perhaps the most significant collateral consequence of a criminal conviction is suspension of the right to vote. As of 2010, incarcerated felons in forty-eight states (all but Maine and Vermont) and the District of Columbia were ineligible to vote; in thirty-five of these states, persons on probation and/or parole were also ineligible, and in twelve states even people who completed their felony sentence may be ineligible to vote, and are subject to lifetime

disenfranchisement in four of those states.⁶ In New York, those incarcerated for a felony conviction or on parole for a felony conviction may not vote. Once released from incarceration and/or parole supervision, a person with a felony conviction may register or re-register to vote.⁷

Disenfranchisement of those with a felony conviction serves to not only stifle the political voices of individuals, but diminishes the electoral power of an entire subset of the American population: minorities. An estimated 38% of the total disenfranchised population in the country is African American, far greater than their share of the national population (about 13%).⁸ Nationally, an estimated 13% of all black men are unable to vote due to felony disenfranchisement.⁹ In New York State, African Americans comprise 16% of the general population, but an astounding 64% of the disenfranchised.

Given the severe consequences of a criminal conviction in New York State and the demonstrably disproportionate impact of the criminal justice system on minorities, it is imperative to explore the roots of the disparate treatment of minorities in that system. The declaration of a federal “war on drugs” and the passage of the state “Rockefeller Drug Laws” spurred a phenomenal surge in mass incarceration in New York during the last three decades of the twentieth century. Regrettably, the mass incarceration of people of color from the Capital Region, particularly from Albany County, has historically far exceeded (and continues to exceed) other jurisdictions in the state.

Section III: The “War on Drugs” and Its Local Impact

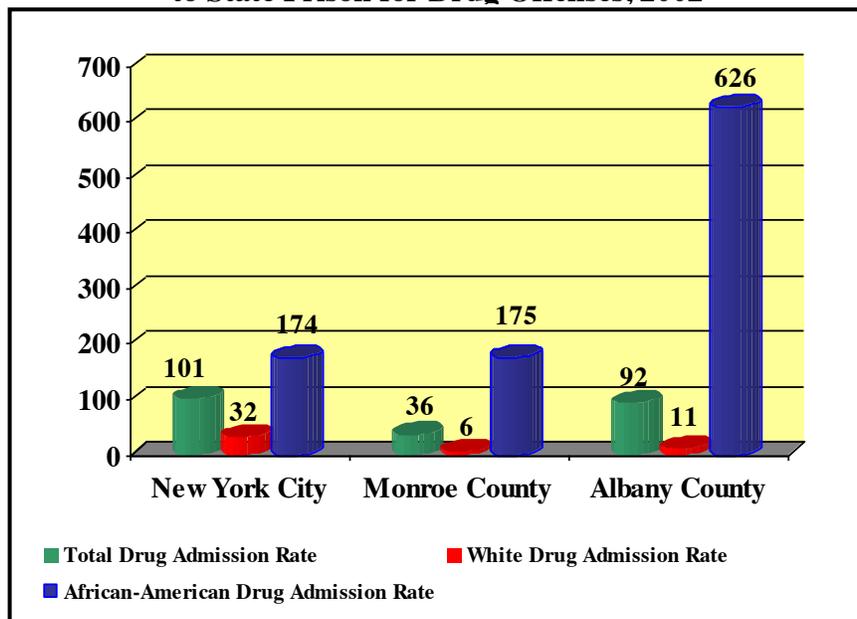
As a result of the “War on Drugs” declared by President Richard Nixon in 1971, there has been a 1,100% increase in the number of imprisoned drug offenders in the United States since 1980, far greater than the overall inmate population increase of about 350%.¹⁰ Nationwide, two-thirds of imprisoned drug offenders are African American or Hispanic.¹¹ In New York, the infamous “Rockefeller Drug Laws” enacted in 1973 produced an even more pronounced effect in the state: from 1970 to 2000, the number of inmates incarcerated in state prisons for all offenses increased by 468%, but the number of inmates incarcerated for drug offenses increased by an astounding 2,000%.¹²

Because of the way federal and state laws were constructed and enforced, the increased imprisonment for drug offenses produced a disproportionate impact on minorities. For example, a federal sentencing structure established in 1986 gave far harsher penalties for crack cocaine (associated with blacks) than for powder cocaine (associated with whites). Known as the “100-to-1 drug ratio,” crack cocaine was accorded 100 times the weight of powder cocaine.¹³ Thus, one convicted of selling 5 grams of crack was subject to the same five-year mandatory minimum sentence as one convicted of selling 500 grams of powder cocaine.

Discriminatory enforcement only exacerbated the inherent structural inequity of the drug laws. Despite the fact that several self-report studies indicate that whites are either equally or more likely to use illicit drugs as blacks, blacks are far more often arrested and prosecuted. A “Monitoring the Future” survey conducted by the National Institute on Drug Abuse found, for example, that although African-American adolescents have slightly lower rates of illicit drug use than their white counterparts, in 2002 African-American youth were brought to court for drug-related cases at a rate of 8.2 per 1,000, compared with 6.0 per 1,000 for white youth.¹⁴ For that same year, SAMHSA (the federal Substance Abuse and Mental Health Services Administration) indicated that 24 percent of crack cocaine users were African American and 72 percent were white or Hispanic, yet more than 80 percent of defendants sentenced for crack cocaine offenses were African American.¹⁵

Albany County historically has been particularly vigorous in arresting and prosecuting people for drug offenses. A 2007 study conducted by the Justice Policy Institute, “The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties,” compared the 2002 prison admission rates for felony drug convictions in United States counties with a population larger than 250,000. Of the 198 counties, Albany ranked 48th in the rate of admissions to prison for drug offenses, 11th in the rate at which African Americans are admitted to prison for drug offenses, and 5th in the ratio of African American to white drug admission rates.¹⁶ When compared to other New York jurisdictions, Albany County has had a particularly harsh adverse impact on African Americans. The number of African Americans (per 100,000 population) admitted to state prisons for drug crimes was more than triple that of Monroe County and New York City (see Chart 5).

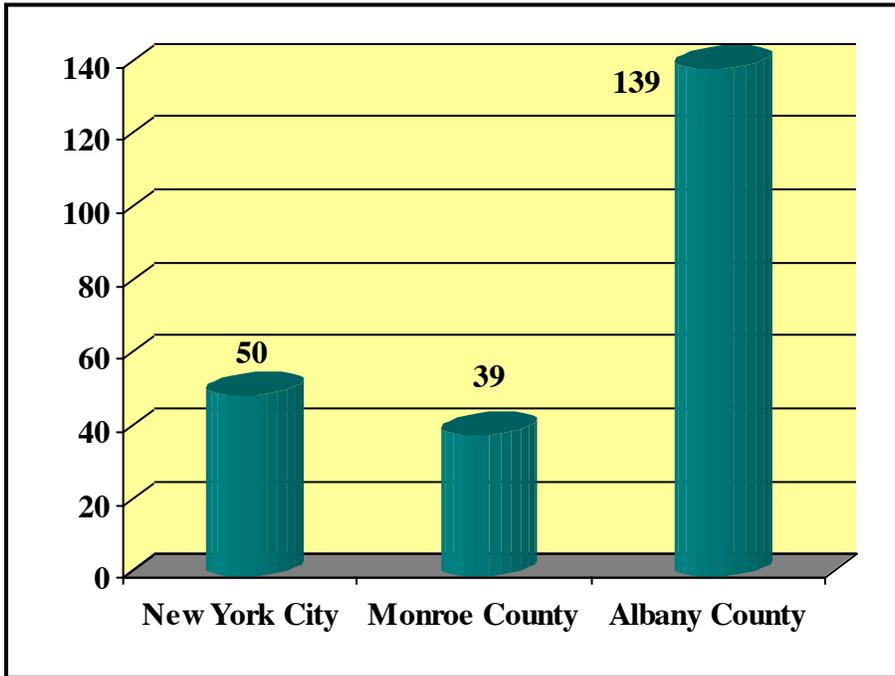
Chart 5: Admission Rates (per 100,000 Population) to State Prison for Drug Offenses, 2002



Source: Justice Policy Institute, “The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties,” 2007

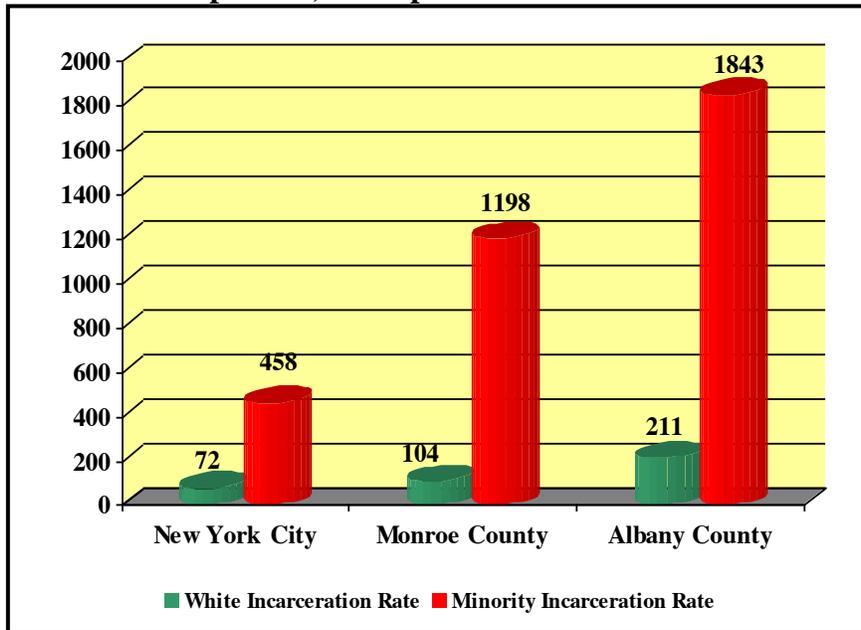
Reform of the Rockefeller Drug Laws and recent adjustments to federal sentencing guidelines have introduced the promise of a reduction in racial disparities among those incarcerated in New York State. Although the numbers of minorities and drug offenders incarcerated has declined statewide over the past decade, analysis of data recently published by the Poughkeepsie Journal shows that Albany County’s incarceration numbers have substantially increased, and its incarceration rates continue to far exceed those of other counties. Comparing data for those incarcerated within New York state prisons on a single day in 2011 to data for those incarcerated on a single day in 2000, the Journal concluded that, statewide, there has been a significant drop in people serving time for drug crimes. Statewide, from 2000 to 2011 the number of minorities incarcerated dropped by 29%; in Albany County, the number of minorities incarcerated increased by 60% over the same time period. Statewide, the number of individuals incarcerated for drug crimes fell by 62%; in Albany County, the number of those incarcerated for drug crimes rose by 42%.¹⁷ An examination of the Journal 2011 data in concert with 2010 U.S. Census Bureau data further reveals that Albany County’s 2011 *drug offense* incarceration rate is about three times that of New York City and Monroe County (see Chart 6). Additionally, Albany County’s 2011 *minority* incarceration rate is more than 50% higher than Monroe County’s and more than four times higher than New York City’s minority incarceration rate (see Chart 7).

Chart 6: Drug Crime Incarceration Rates per 100,000 Population in 2011



Sources: The Journal News, “New York State Prison Sentencing Statistics 2000-2011,” LOHUD.com; United States Census Bureau

Chart 7: White and Minority Incarceration Rates per 100,000 Population in 2011



Sources: The Journal News, “New York State Prison Sentencing Statistics 2000-2011,” LOHUD.com; United States Census Bureau

As indicated in Chart 1, minorities comprise 73% of Albany County’s sentences to state prison, though they represent only 24% of the general population. The incarceration of a substantial proportion of a community’s population can have devastating economic consequences for that community, as evidenced by data from the United States’ Census Bureau’s American Community Survey 1-Year Estimates. In 2010 in the city of Albany, the African-American unemployment rate was 16.8%, while the white unemployment rate was 9.2%. The median income for white households in the city was \$42,159 and for African American households, \$24,620. The percentage of African American households living below the poverty level was more than four times that for white households, 31.3% and 7.6% respectively.¹⁸

Given the dire legal, economic, and political collateral consequences of a criminal conviction described in the previous section, and this section’s demonstration of the disproportionate impact of the criminal justice system on minorities and the communities they live in, an assessment of Capital Region gateways into the criminal justice system is warranted. The next section examines the relationships between local communities and their police departments.

Section IV: Police/Community Relations in the Three Major Capital Region Cities

As noted earlier in this report, despite the fact that disproportionate minority representation in the criminal justice system often is attributed (without empirical validation) to disproportionate commission of crimes by minorities, research indicates that much of the cumulatively disproportionate representation of minorities in the criminal justice system “is explained by facially neutral policies that have racially disparate effects.”¹⁹ An example of a “facially neutral policy” with “racially disparate effects” is the differential sentencing structure for crack and powder cocaine discussed in Section III, resulting in harsher sentences for minorities though race is not referenced in the law.

Additionally, a recent study of the state of Washington’s criminal justice system determined “that racial and ethnic bias distorts decision-making at various stages in the criminal justice system, thus contributing to disproportionalities in the criminal justice system.”²⁰ This bias is less often manifested in overt racism than it is in more subtle actions:

A structurally racist system can be understood best as a system in which a society and its institutions are embedded, and from which racial disparity results. Within such systems, notions and stereotypes about race and ethnicity shape actors’ identities, beliefs, attitudes and value orientations. In turn, individuals interact and behave in ways that reinforce these stereotypes. Thus, even with facially race-neutral policies, processing decisions are informed by actors’ understandings (or lack thereof) about race and ethnicity, often leading to disparities in treatment of people of color. As a consequence, structural racism produces cumulative and persistent racial and ethnic inequalities.²¹

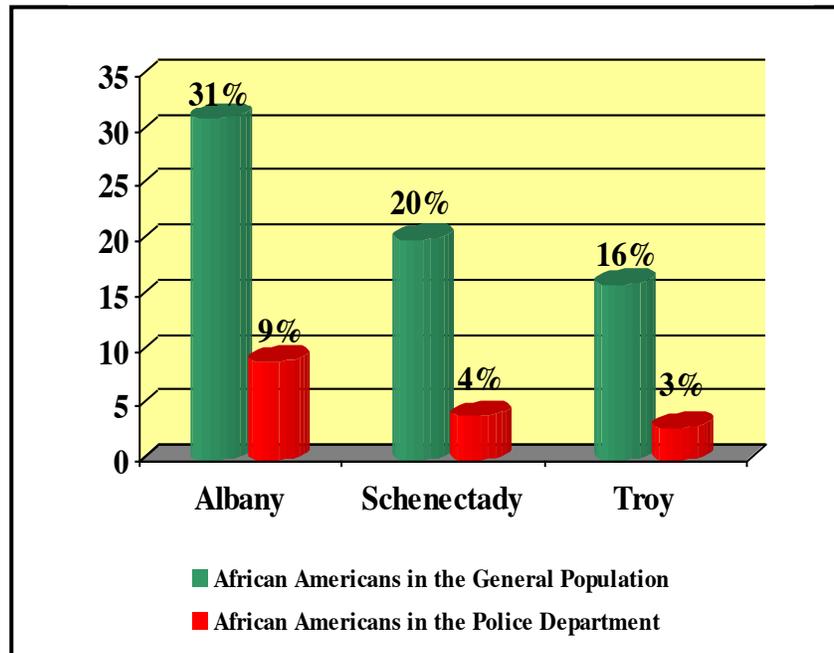
Thus, once an individual has been arrested and has entered the criminal justice system, he or she is subject to structural racism at every subsequent decision-making stage of the process: pre-trial detention, prosecution, conviction, sentencing, and release. As suggested by the Drug Policy Alliance, one way to minimize the inadvertent inclusion of “facially neutral policies that have racially disparate effects” is to require governing bodies at all levels to provide racial and ethnic impact statements for all proposed changes to statute and/or policy:

Sometimes, policies have unintended consequences. The premise behind racial and ethnic impact statements is to address those potential consequences before adopting new policies. With the Rockefeller Drug Laws, their implementation led to unprecedented, unwarranted racial disparities in New York’s criminal justice system, and a range of collateral consequences for marginalized communities of color.²²

Clearly, the most promising way to alleviate disproportionate minority representation in the Capital Region criminal justice systems would be to minimize the likelihood that individuals ever enter the system. And to do that, police departments and their respective communities must work together to identify problems in the community that lead to crime and arrest, and strategize together to solve those problems.

The cities of Albany, Schenectady and Troy are the locations of the most concentrated African American populations in the three counties. The racial distributions of the three cities’ police departments, however, hardly reflect the diversity of their communities. Chart 8 presents the relatively small percentages of African American officers in each department, compared to the percentages of African Americans in the general population.

Chart 8: Percentages of City African Americans, 2012



Sources: New York State Division of Criminal Justice Services; Albany Police Department; Troy Police Department; United States Census Bureau

In the Capital Region’s three major cities, the disparity between the composition of the community and the police force has contributed to historically rocky police/community relationships. In Albany, Schenectady, and Troy, accusations of racism and racial profiling persist, despite recent efforts by all three departments to strengthen their relationships with their respective communities. All three departments claim a commitment to a *community policing* approach rather than a strictly *law enforcement* approach, though the degree to which that commitment is perceived by the community varies among the cities. And all three departments have launched minority recruitment campaigns that, unfortunately, have yet to produce significant results.

Given the highly disproportionate impact of the criminal justice system on minorities in the Capital Region, the destructive effects of mass incarceration, and the dire collateral consequences of a conviction, the adoption of a community policing approach by local police departments is a welcome change. According to the United States Bureau of Justice Assistance, “The goal of community policing is to reduce crime and disorder by carefully examining the characteristics of problems in neighborhoods and then applying appropriate problem-solving remedies.”²³ Their monograph on the subject further explains:

The foundations of a successful community policing strategy are the close, mutually beneficial ties between police and community members. Community policing consists of two complementary core components, *community partnership* and *problem solving*. To develop community partnership, police must develop positive relationships with the community, must involve the community in the quest for better crime control and prevention, and must pool their resources with those of the community to address the most urgent concerns of community members. Problem solving is the process through which the specific concerns of communities are identified and through which the most appropriate remedies to abate these problems are found. Community policing does not imply that police are no longer in authority or that the primary duty of preserving law and order is subordinated. However, tapping into the expertise and resources that exist within communities will relieve police of some of their burdens. Local government officials, social agencies, schools, church groups, business people—all those who work and live in the community and have a stake in its development—will share responsibility for finding workable solutions to problems that detract from the safety and security of the community.²⁴

In the remainder of this section, police/community relationships in each of the three cities are examined to assess their potential impact on the disproportionate representation of minorities in the criminal justice system.

Albany

The city of Albany’s 30,110 African Americans represent 30.8% of its total population of 97,856. However, the most recent department report to the state (2011) indicated that the police department’s 312 officers included only 26 (8%) African Americans. In an effort to make the composition of the police department more closely reflect that of the city, the department launched a community-based effort to recruit minorities by raising awareness of the 2011 police exam within Albany’s minority community, and providing exam preparation support.²⁵ As a result of that exam, among the 31 new recruits sworn in on January 12, 2012 were an additional 4 African Americans (three males and one female) --- bringing the representation of African Americans to 9%. The department expresses disappointment that its most recent recruitment efforts did not result in a greater number of minority officers, and expects to continue its minority recruitment efforts; it is anticipated that more officers will be sworn in in 2012. The need for a police department that more closely resembles the population of the community is evidenced by tense police/community relations spanning decades.

Charges of racism had been leveled at the department for many years, and the police shooting death of Jesse Davis in 1984 galvanized Albany’s minority community into action. Davis was an unarmed, mentally-challenged young black man shot to death by Albany police in his own apartment. Since that time, community advocates have fielded many complaints regarding police abuse and brutality against minorities. Indeed, the last police chief retired abruptly upon being accused of using a racial epithet.²⁶ Most recently, a New York Civil Liberties Union report detailing police departments’ use of Tasers indicated that in Albany, 68

percent of the police use of Tasers involved a black person.²⁷ This percentage is more than double the representation of blacks in the general population. (It should be noted that the lack of information regarding the specific circumstances of each Taser use makes it difficult to accurately assess the role of racial bias.)

While these incidents can be perceived to be indications of poor police/community relationships, perhaps more significant in contributing to disproportionate minority representation in the criminal justice system are enforcement policies adopted by the department. Until recently, the Albany Police Department had taken a decidedly *law enforcement* (as opposed to community policing) approach. In 2006, the former chief reorganized the Police Department to concentrate on “street crimes,” without any input from the community regarding what they thought was important --- despite the fact that several community organizations had requested involvement.²⁸ The reorganization closed neighborhood police stations on which the communities had come to rely, and established the “Strategic Deployment Unit.” Though the chief intended the SDU to be a data-driven force to saturate crime hot-spots and focus on “street crimes,” most in the community perceived it to be an occupational force, complete with its own mobile fortress anchored in a minority neighborhood.

After the former chief retired abruptly in September 2009, the mayor appointed a search committee to advise him on the selection of a new chief, including on the committee community members who had been critical of the former chief. The search committee held several community forums to solicit input from residents and neighborhood groups; the overwhelmingly most consistent request was for a new police chief committed to community policing.

Based on the work of the search committee the mayor appointed Steven Krokoff, who had been acting chief since the former chief’s retirement, to the position. After unanimous approval by the Albany Common Council (the first time in history that Common Council approval of the mayoral appointment was required), Krokoff was sworn in as chief in July 2010, stating of the community at the time, “They’ll see the relationships built. They’ll see a police department responsive to needs that their community is seeing.”²⁹ The new chief turned to neighborhood associations and other community groups for assistance in developing a community policing plan. The APD deployed the Neighborhood Engagement Unit, allocating regular foot/bicycle patrols throughout the City, not merely as an isolated tactical approach to law enforcement but as one component of a department-wide community policing philosophy.

In response to the Center’s request for information regarding its community policing efforts, the department indicated that it has implemented several operational and support mechanisms in its community policing model. Upon the implementation of the Neighborhood Engagement Unit, all thirty-nine members attended a 40-hour training program. The training, soon to be expanded to include the remaining department members, consisted of the SARA (*Scanning, Analysis, Response and Assessment*) model of problem solving, and allowed for community partners to make presentations regarding what resources they can provide. The department states it is also working with the National Coalition Building Institute to help break down barriers between youth and police officers. This is being done in conjunction with the Albany City School District; approximately 20 officers have attended training sessions to facilitate working groups of educators, police, and youth.

The department has identified a lead officer for each area of the city. These areas are broken up by neighborhood association and have a member of the Neighborhood Engagement Unit as the main point of contact. This person attends all neighborhood association meetings and is charged with keeping the neighborhood association up to date on all crime trends, and working to establish “walk and watch” programs. These officers are to be the point people as the rest of the department folds into the community policing model.

The department cautions that it is important to recognize that it is still in the early stages of implementing its community policing model. Each step in the plan continues to be evaluated so that once full implementation is reached, the model maintains integrity. Additionally, the Albany Community Police Advisory Committee is also still working towards ensuring that the goals and objectives of its recommendations are met.

The department has started work on a strategic plan. Through this plan a new vision, mission, and core values will be established, and work plans will be developed to meet the objectives of the plan.

Schenectady

The city of Schenectady’s 13,354 African Americans represent 20.2% of its total population of 66,135. However, the most recent department report to the state (2011) indicates that the police department’s 105 officers include only 4 (4%) African Americans.* Though the department launched a campaign to recruit minorities in 2009, the overwhelming majority of new officers sworn into the department since then have been white males.³⁰ As in Albany, the Schenectady Police Department has often faced charges of race-based brutality and abuse. Additionally, the department has been plagued by “in-house” corruption for years, with officers being fired and even imprisoned for criminal activity.

Though the department’s website professes a commitment to working in partnership with the community, it appears that the department’s approach is decidedly more *law enforcement* than *community policing*. With funding from Operation IMPACT, a state initiative to control crime, the department established the Office of Field Intelligence at police headquarters.³¹ Though the crime control efforts have been statistically effective in reducing crime, there has been criticism that the department needs to involve the community more. Said Professor Scott Phillips of the Buffalo State College’s Department of Criminal Justice, “They have to go beyond an in-house examination and get outside and get the community involved,” Phillips said. “If they are doing that, then they have a better leg to stand on when using statistics as a measure of success.”³²

Community perceptions regarding the department’s community policing efforts include opinions that black males are decidedly overrepresented among those in the jail; that the police department has not sufficiently reached out to form a partnership with the community; and that

* Repeated requests to the Schenectady department for updated data received no response by the report release date.

little has been done by either the police department or the community to attempt to engage in collaborative problem-solving.*

Troy

The city of Troy’s 8,211 African Americans represent 16.42% of its total population of 50,129. However, the police department’s 127 officers include only 4 (3%) African Americans. In 2011, the department promoted an African American officer to the rank of sergeant, the first minority to be promoted to that rank in the history of the Troy Police Department.³³

Within the past decade, the department had been severely criticized for its “zero tolerance” policy in “high crime areas.” A series of Troy Record stories reported that police arrested 274 people for jaywalking and 88 people for riding a bike without a bell or a light.³⁴ More than three-quarters of those arrested were minorities. When members of the black community expressed their displeasure with the system, they were told that the city did not have tickets in place that would satisfy the judiciary, and the only way to enforce the laws was to arrest people. It was suspected that arrests were being executed because an arrest allowed for a search of the suspect. According to the Troy Record reports, though, of the 362 arrests for jaywalking and bike violations, there were only 110 instances where other charges were levied -- mostly for minor violations.

In April 2010, John Tedesco was promoted to Chief of the Troy Police Department. Having served as the first captain of the community policing unit in 1998, Chief Tedesco launched a new commitment to community policing.³⁵ Training is being provided first to rookie cops, and then to experienced officers in the uniformed and detective ranks. Tedesco has said that when officers move into patrol duty, they will be expected to use their community policing experience to develop ties and resolve problems.

In response to the Center’s request for information regarding its community policing efforts, the department indicated that the primary focus of the community policing effort has been the establishment, training, and support of community groups throughout the city. Officers assigned to the Community Police Unit regularly attend community meetings, and patrol officers are now being assigned to attend meetings, as well. Additionally, e-mail and cell phone contact between the officers and their assigned groups are now accepted and frequently used methods of communication.

In an effort to promote problem-solving, the department states that it continually encourages community groups to use the police as a last resort to remedy most problems. For example, groups are now sending letters to owners of problem properties advising of the issue and what will take place if remedial actions are not taken. Also, the groups normally feature monthly guests from the political and administrative components of city government so they can interact to address community issues and report back to the group on the progress of issues previously addressed.

* Repeated requests to the Schenectady department for information regarding their community policing efforts received no response by the report release date.

The department further notes that it is in the midst of transitioning to a department-wide problem-solving philosophy, rather than having it practiced only by officers assigned to a particular unit. This idea features a heavy patrol emphasis and will take time, as it involves collective bargaining regarding items such as scheduling and assignments; the department is hopeful that the community understands that organizational change of this magnitude takes several years to accomplish.

Section V: Disproportionate Minority Impact in the Context of “The New Jim Crow”

In her book **The New Jim Crow: Mass Incarceration in the Age of Colorblindness**,^{*} Michelle Alexander reports that more African Americans are under the control of the criminal justice system today – in prison or jail, on probation or parole – than were enslaved in 1850. Discrimination in housing, education, employment, and voting rights, which many Americans thought was eliminated by the civil rights laws of the 1960s, is now perfectly legal against anyone labeled a “felon.” And since many more people of color than whites are made felons by the entire system of mass incarceration, racial discrimination remains as powerful as it was under slavery or under the post-slavery era of Jim Crow segregation.

Alexander describes how mass incarceration today serves the same purpose as pre-Civil War slavery and the post-Civil War Jim Crow laws: to maintain a racial caste system. She defines “racial caste” as a racial group locked into an inferior position by law and custom. Jim Crow and slavery were caste systems, and our current system of mass incarceration is also a caste system: “The New Jim Crow.” The original Jim Crow laws, after slavery ended, promoted racial discrimination in public housing, employment, voting, and education. The powerful Civil Rights struggles of the 1950s and 1960s seemingly ended the Jim Crow era by winning the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Alexander demonstrates, however, that the racial caste system has not ended; it has simply been redesigned.

The criminal justice system functions as a new system of racial control by targeting black men through the “War on Drugs.” The Anti-Drug Abuse Act of 1986, for example, included far more severe punishment for distribution of crack (associated with blacks) than powder cocaine (associated with whites). Civil penalties, such as not being able to live in public housing and not being able to get student loans, have been added to the already harsh prison sentences. “Today,” says Alexander, “a criminal freed from prison has scarcely more rights, and arguably less respect, than a freed slave or a black person living ‘free’ in Mississippi at the height of Jim Crow.”³⁶

The statistics in the previous sections demonstrate the disproportionate representation of people of color in the Capital Region criminal justice system. To reverse the establishment of this racial caste system, government leaders and the communities they serve must conduct a careful and thorough examination of Capital Region criminal justice policies and their impact, and then take the appropriate steps to implement meaningful change.

* A summary of the book may be found at the end of this document.

Section VI: Recommendations

To alleviate disproportionate representation of people of color in the Capital Region criminal justice system, the Center for Law and Justice recommends the following:

- A. A regional review of policing, prosecution, public defense, and sentencing policies, procedures, and practices should be undertaken to determine their contribution to the disproportionate representation of people of color in the criminal justice system, and their impact on individuals, families, and communities. This review should be conducted by one or more Capital Region colleges or universities.
- B. All proposed changes to policing, prosecutorial, public defense, and sentencing statutes and policies should be accompanied by a racial and ethnic impact statement.
- C. All police departments, district attorney’s offices, public defenders and the judiciary must be trained in cultural competency (the ability to work with people from all cultural identities in a way that promotes respect and dignity), including the examination of personal biases.
- D. Prisoner rights advocacy groups and civil and human rights advocacy groups should focus on the passage of state and local legislation to promote universal suffrage; restore eligibility for federal and state student financial aid; remove legal barriers to education, housing, and employment for persons with criminal convictions; and promote the use of alternatives to incarceration.
- E. There should be a series of community-wide discussions regarding “The New Jim Crow in the Capital Region.” Additionally, community organizations should devise and implement methods to educate the general public regarding the impact of mass incarceration on people of color in the Capital Region.
- F. There should be stronger enforcement of the prohibition of employer discrimination against job applicants with criminal convictions.
- G. Though Capital Region city police departments have implemented minority recruitment efforts, to date they have had minimal impact on the racial/ethnic composition of the departments. All departments should conduct comprehensive analyses to determine at which point(s) in the process (e.g., written testing, background check, physical fitness testing, psychological testing, interview) minority candidates are eliminated from consideration, and take appropriate actions to strengthen the process.

Notes

¹ Marc Mauer, “Racial Impact Statements: Changing Policies to Address Disparities,” The Sentencing Project 30 Jan. 2012 <http://www.sentencingproject.org/doc/rd_abaarticle.pdf>

² Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (New York: The New Press, 2010) 12.

³ Alexander 16.

⁴ The Bronx Defenders, “The Consequences of Criminal Charges: A People’s Guide” (New York: Reentry Net, 2008) 1.

⁵ American Bar Association, “Adult Collateral Consequences Project,” 01 Feb. 2012, <<http://isrweb.isr.temple.edu/projects/accproject/pages/GetStateRecords.cfm?State=NY>>.

⁶ Marc Mauer, *Voting Behind Bars: An Argument for Voting by Prisoners*, 54 Howard Law Journal 551 (2011).

⁷ League of Women Voters of New York State, “Your Right to Vote in New York State: Individuals with Criminal Convictions and Those Detained in Jail or Prison” (New York, 2011) 1-2.

⁸ Marc Mauer, *Voting Behind Bars: An Argument for Voting by Prisoners*, 54 Howard Law Journal 552 (2011).

⁹ The Sentencing Project, “Voting Rights,” 25 Jan. 2012, <<http://www.sentencingproject.org/template/page.cfm?id=133>>

¹⁰ Marc Mauer, *Voting Behind Bars: An Argument for Voting by Prisoners*, 54 Howard Law Journal 561 (2011).

¹¹ Marc Mauer, *Voting Behind Bars: An Argument for Voting by Prisoners*, 54 Howard Law Journal 561 (2011).

¹² Peter Wagner, “Importing Constituents: Prisoners and Political Clout in New York,” 25 Jan. 2012, <<http://www.prisonpolicy.org/importing/importing.html>>

¹³ Theo Emery, “Will Crack-Cocaine Sentencing Reform Help Current Cons?,” Time 7 Aug. 2009

¹⁴ Justice Policy Institute, “The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties” (Washington, D.C., 2007) 6.

¹⁵ Justice Policy Institute 7.

¹⁶ Justice Policy Institute 25.

¹⁷ Mary Beth Pfeiffer, “Prison population falls 22 percent in 11 years; drug convicts down 62 percent,” 01 Feb. 2012, <<http://www.poughkeepsiejournal.com/article/20111016/NEWS01/110160362/Prison-population-falls-22-percent-11-years-drug-convicts-down-62-percent>>

¹⁸ United States Census Bureau, American Community Survey 1-year Estimates (2010: S2301, S1903, S1702).

¹⁹ Chang, Robert S., *Preliminary Report on Race and Washington's Criminal Justice System*, Gonzaga Law Review 29 November 2011, 1.

²⁰ Chang 2.

²¹ Chang 4.

²² The Drug Policy Alliance, “Promoting Racial Equity in Policy Making,” 30 Jan. 2012, <<http://www.drugpolicy.org/about-us/departments-and-state-offices/new-york/promoting-racial-equity-policy-making>>

²³ United States Department of Justice, Bureau of Justice Assistance, Understanding Community Policing: A Framework for Action (Washington, D.C.: DOJ, 1994) 13.

²⁴ United States Department of Justice 13.

²⁵ Jason Chura, “Just Add Color: The Albany Police Department gets serious about recruiting minority officers,” Metroland 6 Apr. 2011

²⁶ Brendan Lyons and Jordan Carleo-Evangelist, “The fall of a police chief,” Albany Times Union 2 Sept. 2009.

²⁷ Bryan Fitzgerald, “Report: Cops misuse Tasers,” Albany Times Union 18 October 2011.

²⁸ Lyons and Carleo-Evangelist.

²⁹ Your News Now, “Krokoff sworn in as chief of police,” 29 July 2010, <http://capitalregion.ynn.com/content/top_stories/512535/krokoff-sworn-in-as-chief-of-police/>

³⁰ Rebecca Strum, “Schenectady police minority recruitment effort stumbles,” Daily Gazette 21 July 2010.

³¹ Michael Lamendola, “IMPACT funds helping to make city a safer place,” Daily Gazette 20 July 2008.

³² Lamendola.

³³ Andrew Beam, “Troy Police promote three of their own,” The Record 18 November 2011.

³⁴ James Franco, “Are the Troy police profiling?,” The Record 08 September 2005.

³⁵ Kenneth C. Crowe II, “Chief launches mayor's directive to emphasize community policing,” The Record 09 Aug. 2010.

³⁶ Alexander 138.

The following is a summary of The New Jim Crow: Mass Incarceration in the Age of Colorblindness (Michelle Alexander, The New Press, 2010), composed by Capital Region advocacy groups.

Book Summary: The New Jim Crow: Mass Incarceration in the Age of Colorblindness

More African Americans are under the control of the criminal justice system today – in prison or jail, on probation or parole – than were enslaved in 1850. Discrimination in housing, education, employment, and voting rights, which many Americans thought was wiped out by the civil rights laws of the 1960s, is now perfectly legal against anyone labeled a “felon.” And since many more people of color than whites are made felons by the entire system of mass incarceration, racial discrimination remains as powerful as it was under slavery or under the post-slavery era of Jim Crow segregation.

This is the premise of a book which has sparked a new social movement: Michelle Alexander’s The New Jim Crow: Mass Incarceration in the Age of Colorblindness (The New Press, New York 2010). Alexander describes how mass incarceration today serves the same purpose as pre-Civil War slavery and the post-Civil War Jim Crow laws: to maintain a racial caste system. Alexander defines “racial caste” as a racial group locked into an inferior position by law and custom. She asserts that Jim Crow and slavery were caste systems, and that our current system of mass incarceration is also a caste system: “The New Jim Crow.” The original Jim Crow laws, after slavery ended, promoted racial discrimination in public housing, employment, voting, and education. The powerful Civil Rights struggles of the 1950s and 1960s seemingly ended the Jim Crow era by winning the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. The book demonstrates, however, that the racial caste system has not ended; it has simply been redesigned.

Alexander explains how the criminal justice system functions as a new system of racial control by targeting black men through the “War on Drugs.” The Anti-Drug Abuse Act of 1986, for example, included far more severe punishment for distribution of crack (associated with blacks) than powder cocaine (associated with whites). Civil penalties, such as not being able to live in public housing and not being able to get student loans, have been added to the already harsh prison sentences.

“Today,” says Alexander, “a criminal freed from prison has scarcely more rights, and arguably less respect, than a freed slave or a black person living ‘free’ in Mississippi at the height of Jim Crow.”

The author argues that nothing short of a major social movement can end the new caste system. Alexander challenges us to establish a grass-roots movement to deal with the very foundation of the mass incarceration system: “If the movement that emerges to end mass incarceration does not meaningfully address the racial divisions and resentments that gave rise to mass incarceration, and if it fails to cultivate an ethic of genuine care, compassion and concern for every human being – of every class, race, and nationality – within our nation’s borders, including poor whites, who are often pitted against poor people of color, the collapse of mass incarceration will not mean the death of racial caste in America. Inevitably a new system of racialized social control will emerge ... No task is more urgent for racial justice today than ensuring that America’s current racial caste system is its last.”

Alexander’s call is being answered through the rise of a new movement to end mass incarceration and its racial underpinnings. The New Jim Crow movement is formed of loosely-linked local study groups reading and discussing The New Jim Crow, and beginning to develop a grass-roots strategy first for exposing the injustice of mass incarceration, and then for challenging and ultimately ending it. At this moment of global awakening in the face of injustice, the focus on mass incarceration and racial injustice could not be more timely.

The Disproportionate Impact of the Criminal Justice System on People of Color in the Capital Region



**The Center for Law and Justice Inc.
Alice P. Green, Ph.D.
Executive Director
427-8361**