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## Young African Americans and the Criminal Justice System in California: Five Years Later

Schiraldi, Vincent, et al. *Young African Americans and the Criminal Justice System in California: Five Years Later*. Report from the Center on Juvenile and Criminal Justice; February 1996.

### Introduction

"Our nation is moving toward two societies, one black, one white -- separate and unequal."  
*The National Advisory Commission of Civil Disorders (Kerner Commission) 1967*

In 1990, the Center of Juvenile and Criminal Justice conducted an analysis of young African American men enmeshed in California's criminal justice system. That research was undertaken as a follow-up to a study by the Washington-based Sentencing Project which showed that nearly one in four young African American men in the United States were in prison or jail, on probation or parole. **(1)** At the time, CJCJ's California-specific research found that nearly one in three African American men in their 20's was under some form of criminal justice control in the Golden State. **(2)** Statistics such as these have led Laura Murphy, of the American Civil Liberties Union to declare that the criminal justice system is "the new frontier" for civil rights. This year, the Sentencing Project conducted a five year follow-up to their original study and found that, nationally, one in three young African American men are now serving some form of sentence. **(3)**

Since 1990, the use of imprisonment has grown substantially in California and around the United States, while the general plight of people of color, and particularly young black males, has deteriorated. In 1990, there were 94,000 inmates imprisoned in the California Department of Corrections (CDC). By 1995, the CDC's population had grown to 135,000, a 44% increase in only 5 years. Meanwhile, according to Children Now, in 1995 California's 26.2 percent Juvenile unemployment rate was the highest in the U.S., a rate which is even higher for African American youth. Children Now also found that California's schools are the most crowded in the nation. **(4)** California's classrooms have grown more crowded over the past 20 years as white families have pulled their children out of public schools and per pupil expenditures have plummeted.

While there has been little in the way of favorable change for minorities since 1990, there have been several watershed events in race relations in America emanating from California. From the uprising following the decision in the Rodney King case, to the polls showing a sharp racial division in public opinion on the guilt or innocence of O.J. Simpson, the already broad chasm between blacks and whites over the fairness of the criminal justice system is widening.

### African Americans and the Criminal Justice System

One reason for this divergence of public opinion is the growing body of evidence showing that the punishment meted out by the criminal justice system is brought most heavily to bear on persons of color. A review of the literature revealed the following:

- While blacks and whites use drugs at approximately the same rate, African Americans were arrested for drug offenses at approximately 5 times the rate of whites during the height of the drug war in 1989. **(6)**
- African Americans are imprisoned at 5 times the rate of their counterparts in apartheid South Africa. **(7)** In San Francisco, African Americans are imprisoned at 10 times the rate of blacks in South Africa. **(8)**
- Two-thirds of the men of color in California were arrested at least once between the ages of 19 and 30. **(9)**
- African Americans are charged under California's "Three Strikes and You're Out" law at 17 times the rate of whites in Los Angeles, **(10)** and 13 times the rate of whites in San Francisco. **(11)**
- While 78% of drug users in Sacramento County, California are white, only 34% of those arrested for narcotics offenses are white. Conversely, 52% of those arrested for drug offenses

in Sacramento are African American even though African Americans make up only 12% of the county's drug users. **(12)**

- At almost every stage of the criminal justice process, whites fair better than African Americans or Latinos. One third of white first offenders had their charges reduced compared to only one quarter of African Americans and Latinos. White first offenders received rehabilitative placements in the community at twice the rate of blacks or Latinos. Latinos went to prison for drug offenses at twice the rate of whites. African Americans received prison sentences one third more frequently than whites. **(13)**

It is difficult to exaggerate the magnitude at which the punitive aspects of the criminal justice system affect the African American community, particularly in the inner cities. Nationally, in 1980, African American and white juveniles were arrested for drug offenses at approximately the same rate. After declaring a "War on Drugs" in America in the middle 1990s, black youth were being arrested at nearly 5 times the rate of white youth, even though their levels or substance abuse were identical. **(14)** In Baltimore in 1991, 15 white juveniles and 86 African American juveniles were arrested for drug sales. By 1991, the number of white juveniles arrested on drug charges actually dropped to 13, while the number of African American juveniles arrested grew to 1,304. **(15)** Jerome Miller -- author of a series of articles on the damaging impact of the criminal justice system on African Americans -- analogizes the pervasive criminalization of black youth to the slave owners' practice of hobbling - or crippling young male slaves to prevent them from escaping to freedom.

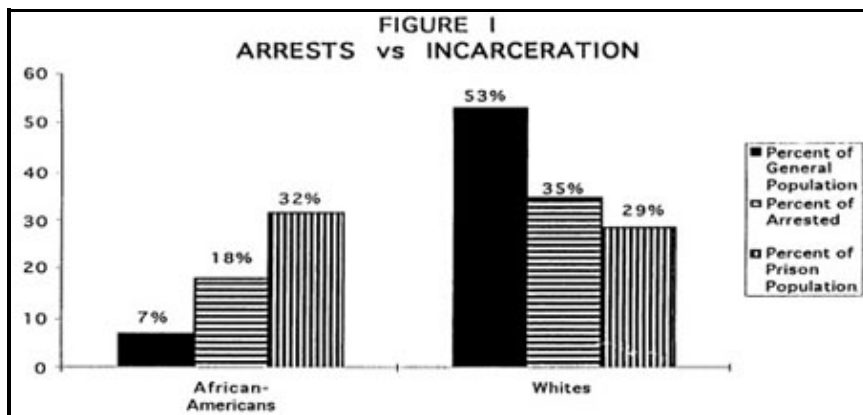
### Criminal Justice Control in California

This report compares the rates of criminal justice control of young African Americans, Latinos and whites in California. As is shown in Table 1, nearly four in 10 African American men in their twenties are under some form of criminal justice control in California. For white men, the comparable rate is one in 20 (5%), and for Latinos, the rate is more than one in 10 (11%).

Men	Prison *	Jails **	Probation	Parole *	CVA ***	Totals	Rates
African-American	14,317	7,362	41,457	12,807	2,155	78,098	39%
White	10,182	5,236	29,484	9,108	953	54,963	5%
Latino	21,550	11,082	62,400	19,276	2,928	117,236	11%
"Other"	2,586	1,330	7,488	2,313	586	14,303	5%
Women	Prison	Jails	Probation	Parole	CVA	Totals	Rates
African-American	933	480	2,703	835	99	5,050	3.0%
White	904	465	2,617	808	62	4,856	0.5%
Latino	760	391	2,200	680	54	4,085	0.5%
"Other"	144	74	417	129	16	780	0.3%

**SOURCES:**  
 \* California Department of Corrections  
 \*\* Jails and Provation, See Methodology Section for Calculations  
 \*\*\* California Youth Authority Incarcerated and Parole Populations, ages 20-25  
 \*\*\*\* Rates = Total under criminal justice control divided by statewide total population figures from California Department of Finance, July 1, 1994

As was shown in a San Jose Mercury News analysis of 700,000 criminal cases in California, African Americans are imprisoned at rates which exceed not only their representation in the general population but even in the arrest population. So, while African Americans make up 7% of the population in California, they make up 18% of those arrested and 32% of the prison population. Conversely, 53% of Californians are white; whites make up 35% of those arrested and only 29% of those sent to prison (See **Figure I**).



Put another way, while blacks are arrested at 2 1/2 times their representation in the general population, they are imprisoned at 4 1/2 times their overall representation.

A frequently overlooked criminal justice population, women make up the fastest growing segment of prisoners in California, and are far more likely to be imprisoned for non-violent offenses than are men. (16) This study found that African American women in their 20's are serving criminal justice sentences in California at rates approximating that of white men. While 5% of white men between the ages of 20 - 29 are under some form of sentence, 3% of African American women in their 20's are under the control of the criminal justice system. [See Table 1]

This phenomenon is largely driven by the "war on drugs", the impact of which has been extraordinary in all demographic groups, but which has fallen most heavily on African American women. [Table II] Eighteen times as many African American women were imprisoned for drug offenses in 1994 as in 1984. There has been a 10-fold increase in that category for white women, and a nine-fold increase for both white and black men. Overall, California has more inmates in prison today for drug offenses than the entire prison population of 1982.

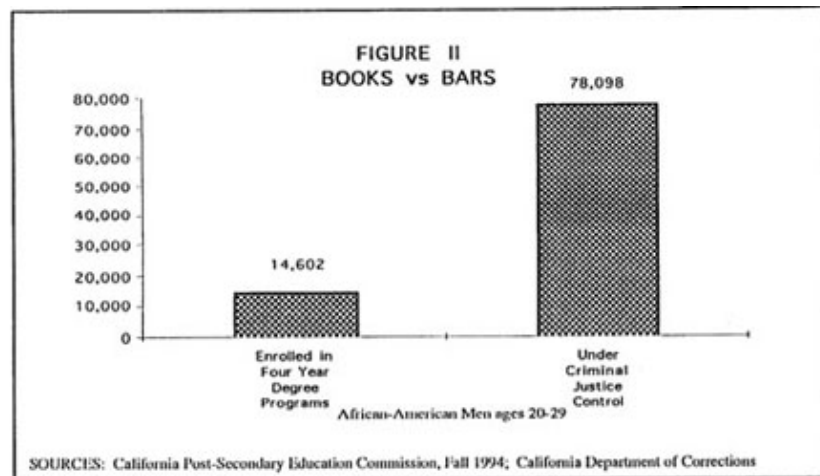
**Table II  
Increase in Imprisonment  
for Drug-Related Offenses**

Women	1984	1994	Increase
African American	55	1006	18 times
White	109	1117	10 times
Latino	135	634	5 times
"Other"	29	90	3 times
<b>Total Women</b>	<b>328</b>	<b>2847</b>	<b>9 times</b>
Men	1984	1994	Increase
African American	937	8838	9 times
White	704	6508	9 times

Latino	1448	10496	7 times
"Other"	2164	423	3 times
<b>Total Men</b>	<b>3253</b>	<b>26265</b>	<b>8 times</b>
SOURCE:			
California Department of Corrections			

This year, for the first time in its history, California will spend more on corrections than on higher education. The data revealed in Figure II indicates that the criminal justice system is already a public bureaucracy with which black men in California come into contact with much greater frequency than the university system.

Even when private institutions are included, there are more than five times as many young African American men under the control of the criminal justice system than black men of all ages enrolled in all four year degree programs.



### A Generation Hobbled

As white television audiences around America watched throngs of African Americans cheer the jury's decision in the O.J. Simpson case, many wondered at how it could come to pass that they viewed that trial and verdict so differently.

The data revealed in this report offers a glimpse at how that can be. Many middle class white parents do not even know anyone serving a criminal sentence. For the sons -- and increasingly daughters -- of African American mothers and fathers, "kissing the pavement" has become a routine far more frequently experienced than a college graduation ceremony. In his article *Doing Time, Marking Race*, John Edgar Wideman summed up just how pervasively the criminal justice system is impacting the African American community:

We're compiling a hit list. Retrogressing. Deciding once more it's in the nation's interest to treat some as more equal than others. Belief that America is burdened by incorrigibles - criminals, the poor and untrained,, immigrants too different to fit it - is an invitation to political leaders who can assure its they have the stomach and clean hands to dispose of surplus people pulling the rest of its down...'Prison' is being re-labeled to become a code word for a terrible place where blacks reside.

Racism, poverty, lack of job opportunities, and inadequate educational system doubtlessly have contributed to heightened levels of criminality in the African American community. Still, data on the rates at which African Americans are progressively overrepresented at deeper stages of the criminal justice process tell us that black men simply do not get a fair shake at the hands of California's system of justice. As one California public defender noted "If a white person can put together a halfway plausible excuse, people will bend over backward to accommodate that person. It's a feeling 'You've got a nice person screwing up,' as opposed to the feeling that 'this minority person is on track and eventually they're going to end up in state prison.' It's an unfortunate racial stereotype that pervades the system. It's all unconscious thing."**(17)**

Conscious or not, it is difficult to imagine the war on crime being waged with this vehemence if middle class white males were similarly affected. As Marc Mauer of the Sentencing Project has noted, "If one in three white men were under criminal justice supervision, the nation would declare a national emergency."

The failure of this approach as a means of crime-control is patent. Despite all epic level or social control for young black males; despite a huge public expenditure of resources on the criminal justice system; and despite a massive deployment of police in low income African American communities, young black males are more likely to be victimized by a criminal act than any other demographic category. (18) Even though California has more persons in prison for drug offenses than the entire prison population of 1982, a kilo of cocaine costs a fraction of what it did in 1982, and Virtually any sixth grader in the inner city can give directions to the local crack dealer.

These facts speak to the futility of much of the current "war strategy" waged so heavily against black males - ostensibly on their behalf - and is reminiscent of 16th Century philosopher Francis Bacon's quip "Cure the disease and kill the patient."

Perhaps this is a natural outgrowth of a policy flawed at its foundation. By declaring war against our own citizens, America entered a conflict less winnable than even Vietnam. And at least in Vietnam, we could pull out and go home. Now, we are home.

### **Waging "Peace" on Crime**

If California is to meaningfully tackle the problems of crime and their implications for race relations, we must develop a rational, peace-time solution. Part of that solution would be to recognize that spiraling prison populations exact a severe cost on entire communities of color and can often exacerbate the very problems they are purporting to solve. So, as one travels through many inner city neighborhoods, the contemporary expressions and subculture are increasingly being borrowed from the prison yard, a tangible sign of the "14 prisonization" of many communities of color.

Like the medical profession, whose credo is, "This above all - do no harm", criminal justice legislation should be geared toward protecting public safety while reducing disruption of minority communities. Persons should only be incarcerated as a solution of last resort, when no other reasonable, cost effective alternative can be found. In order to fully embrace a peace-time solution, the state should at least enact the following policies:

#### *Moratorium on prison construction and sentencing enhancement bills and the establishment of a sentencing commission*

The time to completely overhaul California's penal code is at hand. Despite massive growth in the state's correctional system at the expense of education, health and mental health programs, crime rates in California remain far too high. Our state's penal code has been amended over 1,100 times since 1977 to the point where it has become a confusing and arcane document.

As was recommended by George Deukmejian's Blue Ribbon Commission on Inmate Population Management, the state should immediately empanel a high level commission to completely revamp California's Penal Code and to reaffirm rehabilitation as a meaningful goal of sentencing. Rehabilitation was removed from the penal code in 1977. We must now recognize that that "reform" has fostered the notion that in entire generation of young blacks can be written off.

The commission should also ensure that prison populations do not exceed capacity. Part of the commission's mission should be to enact a policy of "honesty in sentencing legislation". Such a doctrine would mandate that when legislation increasing the use of imprisonment is passed, funds to build and operate sufficient prison beds are passed or other sentences shortened.

While the commission develops its recommendations, the state should suspend all prison construction and enact a moratorium on criminal justice legislation.

#### *Reserve Scarce Prison Space for Those Who Truly Need to be Incarcerated*

In 1977, 60% of prisoners in California were incarcerated for violent offenses and 40% for non-violent offenses. Driven largely by the war on drugs, that percentage is now reversed, with fully 60% of state prisoners serving time for non-violent offenses. If the state could divert only half of those offenders from imprisonment, it would save state taxpayers \$848 million annually. These funds could be used to operate drug treatment programs and other community based alternatives as recommended below, and for prevention programs such as Job training and healthy recreational activities to keep our young people productively occupied.

#### *Racial/Ethnic Impact Statement on all Sentencing Legislation*

Part of the Sentencing Commission's duties should be to assure against unwarranted racial and ethnic disparities in sentencing. On all proposed legislation and changes to the Penal Code, a racial impact statement should be developed and made part of the bill's analysis, estimating how the legislation will affect the racial and ethnic makeup of criminal justice populations.

#### *Enact a Community Corrections Act/Provide Treatment on Demand*

Currently in California, when a county places a defendant on probation and sends him or her to a community based treatment program, the county pays the entire bill for the supervision and treatment of that offender. Too frequently, cash strapped counties have no option but to send poor, non-violent minority offenders to state prison because there are no funds available to treat them locally.

In order to address this skewed system of financial incentives, we recommend that the state of California immediately adopt a Community Corrections Act, geared toward reducing the incarceration of low-level offenders by compensating counties for keeping them locally. Senate Bill 760, authored by Senator Bill Lockyer is a good start toward such a comprehensive statewide act.

Ultimately, in order for a peace-time solution to be truly enacted, California needs to fund and develop universal access to drug treatment. It is both fiscally and morally ruinous for a state to have six month waiting lists at drug treatment programs while offering immediate access to prison cells.

#### *Statewide Commission on Causes and Solutions to Violence*

Prisons must be the backstop, not the backbone, to our state's solution to violent crime. In order to address both the inordinate overrepresentation of young African American men in prison and the problems of crime which at least partially fuel that overrepresentation, a high level commission should be empanelled, along the order of the 1967 National Advisory Commission on Civil Disorders (Kerner Commission) which concluded "Segregation and poverty have created in the racial ghetto a destructive environment totally unknown to most white Americans."

Such a commission needs to engage in a rational and informed debate about the full range of policy options available to confront crime, including prevention, meaningful intervention, and imprisonment. Only by developing a well reasoned and broadly supported approach to crime can California peacefully and meaningfully tackle the crime problem and its implications for racial justice.

#### **Methodology**

Data on populations in the 20 - 29 age group was obtained from the 1993 Series Population Projections produced by the Demographic Research Unit of the State Department of Finance. The figures were projections for the state of California, July 1995 and were broken down by race, gender and age group. The count included estimations of undocumented immigrants in the state. The California Department of Corrections provided demographic information for prison and parole population as of December 31, 1994, also broken down by race, age and gender. The California Youth Authority gave us the populations between the age 20-25 in institutions or on parole by gender and race as of November 7, 1995. Unfortunately, there was no current or specific demographic data for probation and jail populations in the state. We obtained the total number of people on probation in California in 1995 from a personal interview with Susie Cohen, Executive Director of the California Probation Parole and Correctional Association, based on information she obtained from individual counties. We compared her estimation (390,000) to the figure given by the 1994 Corrections Yearbook: Probation and Parole published by the Criminal Justice Institute, Inc., (400,000). We chose to use the more conservative figure, 390,000 for our study. The average daily jail population, 69,264, was taken from the 1994 Jail Profile Data Summary issued by the California Board of Corrections, Corrections Standards and Services Division.

Using the figures from the California Department of Corrections, we calculated the percentage of the total prison and parole population for each racial and gender group between the ages of 20-29. For example, we found that African-American men between the ages of 20-29 made up 10.63% of the population in prison or on parole in the state of California. Because specific demographic data was not available for probation or jail populations, we used the CDC percentages to estimate numbers for each category of criminal justice control and each group by race and gender. We also applied the percentages to estimate current prison and parole populations. We used the Department of Corrections Weekly Report of Population as of midnight December 3, 1995 to estimate demographic figures for 1995. The resulting figure in Table I enabled us to estimate the total population under criminal justice control and the rate of criminal justice control for each population group.

Figure I, Rates of Arrest and Incarceration, used arrest figures from the 1994 California Criminal Justice Profile released by the California Department of Justice. The Incarceration rates were calculated from the 1994 data from the Department of Corrections. Both figures were divided by total population numbers from the Department of Finance to obtain rates.

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#### **Footnotes**

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2. Susan Fry and Vincent Schiraldi, "Young African American Men and the Criminal Justice System in California," Center on Juvenile and Criminal Justice, 1990.
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4. "California: The State of Our Children 1995," Children Now, 1995.
5. This report focuses on the impact of the criminal justice system on African Americans because they are failing under the control of the criminal system at higher rates than any other demographic group. Further, although overrepresentation also significantly affects young Latinos, data on Latino populations are kept with widely varying degrees of accuracy. For example, the California Department of Corrections does not count Central and South American, Puerto Rican or Cuban ethnicities in their "Hispanic" category. This problem is apparent on the county level as well. For example, San Francisco's 1993 arrest data offer the following tally: White = 20,809; Black = 16,823; Other = 8,331; Hispanic 886. This serious miscounting of Latinos caught up in the criminal justice system should be addressed, but doing so was beyond the data gathering capabilities of this research. It can be assumed, though, that the data in this report underrepresents the real number of Latino-Americans



under criminal justice control in California.

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