

**Disproportionate Black Offending  
And  
Criminal Justice System Policy Implications**

**Draft**

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## INTRODUCTION

Since the beginning of this century, social scientists have recognized that there are racial differences in serious juvenile and adult offending in the United States (Hawkins, Laub & Lauritsen, 1998). Specifically, over the last two decades, the three primary sources of criminal offending data (Uniform Crime Reports, National Crime Victimization Survey & self-report) have consistently demonstrated that African Americans disproportionately criminally offend (for most index offenses).

Although a general consensus exists within the field of criminology that overt racism within the criminal justice system (e.g. the decision to arrest) does not explicate black disproportionate offending, the major theoretical explanations of this phenomenon have also proven inadequate (Sampson & Lauritsen, 1997).

Given this perennial and yet to be explained phenomenon of black disproportionate criminal offending, criminal justice system policies become of critical importance. For the last couple decades the United States has adopted a posture of increasingly punitive response to crime and, as a result, incarceration rates in this country are at historic highs. Although this "lock-em up" policy has obvious detriments to the entire nation, blacks have disproportionately suffered from such a policy. The War on Drugs and other "tough-on-crime" initiatives have had a devastating effect on the black community that could have and should have been considered in policy-making decisions (Tonry, 1995).

**The questions that this paper is designed to explore are: (1) What do we know about disproportionate black criminal offending? (2) Should policy-makers**

**construct criminal justice policies that take into consideration disproportionate black criminal offending? (3) Do policy-makers have an obligation to examine the social impact of criminal justice policies on blacks? And if so, (4) what criminal justice system policies would be least harmful to blacks?**

This paper is divided into three parts. In Part I, the author examines the phenomenon of disproportionate black criminal offending and some of the more prominent theoretical explanations of the phenomenon. In Part II, the author will explore the effects that “tough-on-crime” policies since the 1980’s have had on blacks in America given that blacks criminally offend at a disproportionate rate. Finally, in Part III, the author will review some proposals to ameliorate the current situation.

### **PART I: DISPROPORTIONATE BLACK CRIMINAL OFFENDING**

In this section, the author will explore the phenomenon of disproportionate black criminal offending. The section begins with an overview of the primary measures used by social scientist to assess race and crime: (1) official arrest statistics, (2) victimization surveys, and (3) self-report data. The author will review the strengths and limitation of each of these sources of data. Then, the author will discuss what these data sources reveal about black criminal offending patterns.

Also in this section, the author will review the prominent theoretical explanations of disproportionate black criminal offending. Although many theories have been proposed to explain disparity in offending between races, this paper is limited to those theories that are most widely promulgated and tested. For organizational purposes, the theories to be reviewed are classified as structural or process theories. Structural or strain theories are so named because they refer “to the notion that the social structure creates

tension within certain segments of society which can eventually lead to deviant behavior” (Free, 1996). In contrast, process theories attempt to explain how individuals become involved in crime.

### **Measures of Crime and Race**

When studying the phenomenon of racial disparity in criminal offending, it is critical to first examine the data sources that provide the conclusion that there is disproportionate criminal offending along racial lines. In the section that follows, the author examines the three principle data sources used to evaluate the relationship between race and crime. Although each has its strengths, each also “contains methodological biases making any evaluation of minority crime a precarious undertaking” (Free, 1996).

#### **Official Arrest Data**

Official arrest statistics, and most prominently the FBI’s Uniform Crime Reports (UCR), have been widely criticized when they are used to draw conclusions about black criminal offending patterns (Free, 1996). The most commonly cited weakness of official crime statistics is that arrest data is subject to biased law enforcement practices, which could distort the true rate of involvement of blacks in crime. In methodological terms, the biased police decisions to arrest lead to a selection bias which could unfairly lead to the conclusion that blacks are disproportionately involved in criminal activity.

A second methodological drawback of UCR data is that the statistics reflect only those crimes that are known to the police and for which an arrest was made. Furthermore, as the UCR statistics only reflect the most serious crime for any one criminal incident, much criminal activity information is lost through the UCR classification system. Another weakness of the UCR statistics as stated by Free (1996) is

that many jurisdictions, especially in rural areas, do not submit criminal activity reports to the FBI for inclusion into the UCR compilation. A final criticism of the UCR is that it does not measure white-collar crimes which is primarily a “white” crime.

Despite these criticisms of official arrest data, it is widely used by social scientists in the evaluation of race and crime. The reason for this, which is the central strength of this data, is that it is readily available to be analyzed. And despite the flaws of the UCR, it provides evidence, albeit probably inflated, that the phenomenon of disproportionate black criminal offending exists. For example, in 1993, UCR data indicated that although blacks constitute roughly 12% of the U.S. population, blacks accounted for 31% of total index arrests (Sampson & Lauritsen, 1997). Further supporting the conclusion of disparate black offending is the findings of Blumstein and Graddy (1981). In their study, these researchers found that in the 56 cities with populations larger than 250,000, blacks were more than three times more likely than whites to be arrested for an index offense. However, an interesting caveat to the Blumstein and Graddy study was that once arrested, the probability for rearrest for whites and blacks was virtually identical (near 90%).

Another interesting finding of disproportionate black criminal offending was discovered by Sommers and Baskin (1992) in their analysis of 1987-1990 New York City arrest data. By disaggregating arrest statistics by race and sex, Sommers and Baskin found that black males had significantly higher violent crime rates than white males. Furthermore, although males demonstrated significantly higher violent crime rates than females, when disaggregated by race and sex, the violent crime rate of black females was very similar to the violent crime rate of white males.

## Victimization Data

Due to the many methodological weaknesses of official statistics, many propose the use of victimization surveys to bolster conclusions drawn from official statistics. The greatest strength of victimization surveys is that it should eliminate the selection bias created by the decision to arrest. However, victimization surveys are not without their shortcomings or critics. For purposes of this paper, the author will examine the methodological weaknesses of the most widely used victimization survey, the National Crime Victimization Survey (NCVS) which was first conducted by the Census Bureau in 1972 (Inciardi, 1990).

The first and most obvious limitation of the NCVS is that it is subject to the recall and honesty of the respondents. Furthermore, incidence reported by the respondents are often difficult to put into crime categories (Free, 1996). Another weakness is that the NCVS only includes data from respondents 13 years of age or older that reside in a home. This excludes crimes against young children, transient populations, prisoners and institutionalized individuals. Finally, the NCVS relies exclusively on victim account and determination of racial identity of the offender. As stated by Georges-Abeyie (1984), the question of "who is black?" for classification purposes leads to "major inaccuracies" in typing offenders and these inaccuracies "probably" affect crime data.

However, despite the limitations of NCVS data, this victimization survey provides the benefit of validating official arrest data. For example, in 1992 the NCVS estimated black involvement in robbery to be 56%, whereas UCR data for that same year indicated that blacks accounted for 61% of robbery arrests (Sampson & Lauritsen, 1997). Although this represents a discrepancy of 5 percentage points, Sampson and Lauritsen

(1997) conclude that this difference is “not necessarily” indicative of a selection bias in police decision to arrest.

### **Self-Report Data**

An alternative to both official statistics and victimization surveys in the study of race and crime is self-report data. However, this data also has numerous methodological deficiencies and critics.

First of all, like victimization surveys, self-report data relies on the recall and honesty of the respondents. Furthermore, self-report data tends to over-rely “on high school populations and small numbers of African-Americans” (Free, 1996). Finally, as self-report data is most commonly used in the study of juvenile delinquency, most crimes are trivial in nature or difficult to categorize (Free, 1996).

However, when self-report data is used, the disparity in criminal offending between whites and blacks is not as pronounced as when official statistics or victimization surveys are used. In fact, many of the studies of the 1960’s and 1970’s “found little or no difference in self-reported criminal offending among juveniles of different racial or ethnic groups” (Sampson & Lauritsen, 1997).

In the end, regardless of which data source is used in the analysis of disparate racial offending, there are methodological strengths and weakness that the researcher must be aware of. Probably the best practice when drawing conclusions of disproportionate black offending is to use more than one data source to validate each other.

## **Structural Theories**

In this section, the author will review the most prominent structural theories that attempt to explain disproportionate black criminal offending. Although there are numerous structural theories that could be posited to explain disparity in racial offending patterns, for organizational purposes of this section, the author has divided structural theories into three broad categories. The first category includes those structural theories that focus on economic disadvantage. The second category includes those structural theories that focus on socio-political deprivation. Included in this category are theories focusing on segregation, social isolation, inequality and institutional racism. The final category of structural theories included in this paper is those theories grounded in the ecological perspective.

### **Economic Disadvantage**

Theories focused on the role of economic disadvantage in criminal offending are grounded in the belief that some individuals “aspire to cultural goals, such as wealth, but lack access to the legitimate means” to achieve wealth (Sampson & Lauritsen, 1997). In the absence of these legitimate means, some individuals will achieve these ends through illegitimate means.

However, economic strain theories have proven ineffective in explicating disproportionate black criminal offending. For example, Harer and Steffenmeier (1992) used Standard Metropolitan Statistical Area-level data for the 1980 Uniform Crime Reports (UCR) and 1980 Census to study the effect of income inequality on both black and white rates of index offenses. Unlike previous studies, the authors used three distinct measures of income inequality: (1) total inequality (overall societal measure of family

income distribution), (2) between-race inequality (white to black income differences), and (3) within-race inequality (white to white inequality and black to black inequality). The Harer and Steffenmeier found that total inequality and with-race inequality has positive and significant effects on white violent crime rates. However, none of the three measures of income inequality had a significant effect on black violent crime rates.

Furthermore, Kornhauser (1978) found that disproportionate offending along racial lines remains constant even after one controls for socio-economic status. However, this finding is convoluted by the conclusion of Hawkins et al. (1998) that poor blacks live in far worst conditions than poor whites. This conclusion points to the importance of an ecological perspective when studying crime.

However, as the findings above indicate, economic disadvantage does not, at least alone, explicate black offending patterns. This position is amplified by Tonry (1997) who argues that economic disadvantage alone can not explain the phenomenon of disproportionate black criminal offending. Tonry draws this conclusion by citing the fact that not every economically disadvantaged minority group disproportionately offends.

### **Socio-Political Disadvantage**

There are numerous structural theories based on social and/or political deprivation. For organizational purposes of this paper, they are examined together here. The theories under this category are those theories that focus on the role that segregation, social isolation, inequality and institutional racism play in disparate black criminal offending.

### *Theories of Segregation and Social Isolation*

Theories of segregation and social dislocation are grounded in the belief that suburbanization of middle-class whites leaves in its wake a concentration of poverty in urban black communities. In essence, poor urban blacks become socially isolated from larger society and with it the opportunity to succeed through legitimate means.

To test the theory of segregation, Shihadeh and Flynn (1996) used 1990 Census data and Uniform Crime Reports data to examine the effect of black social isolation on homicide and robbery rates in U.S. cities. The author criticized previous research on the effect of segregation on crime rates for the improper conceptualization of phenomenon of segregation. The author identifies five types of segregation (1) unevenness, (2) isolation, (3) centralization, (4) concentration and (5) clustering, and argues each are different forms. By using black social isolation, measured by the probability of contact of blacks and whites, the author found that black social isolation has profound influence on the crime rates of homicide and robbery. Shihadeh and Flynn conclude that black social isolation leads to a convergence of multiple social disadvantages for black communities that can not be explained by any singular factor such as economic disadvantage.

In another evaluation, Shihadeh and Ousey (1996) used Standard Metropolitan Statistical Areas (SMSA's)-level data for 1980 Uniform Crime Reports (UCR) to examine the effect of suburbanization on black and white center-city crime rates. The authors hypothesized that suburbanization increases center-city black crime by isolating black communities and "engendering a variety of social problems". The authors analyzed the 136 United States SMSA's center-cities in 1980 that had at least 100,000 residents and at least 1,000 blacks. Shihadeh and Ousey found that the total rate of

suburbanization for SMSA's is strongly related to center-city, serious crime rates for blacks but not for whites. This supports the theory that suburbanization leads to the isolation of black communities and subsequent social problems.

### ***Theory of Inequality***

Austin (1987) tested the relationship of black progress toward racial equality and black violent crime. His theory posited that increases in racial equality in America leads to a reduction in violent crime. Austin's analysis compares trends on inequality during the 1960's and 1970's to the corresponding trends in violence. The study was particularly concerned with the structural and cultural factors associated with a reduction in black violence. The author found that structural progress during the 1960's and 1970's (politically, educationally, and economically) is closely associated with violence rate reduction. However, the author does acknowledge the importance of cultural change by citing the lack of violence reduction during the first years of black economic gain. This would indicate, as previously mentioned, that economic disadvantage alone does not explain disparate offending patterns of blacks.

### ***Theories of Institutional Racism***

Another theory of socio-political deprivation is espoused by King (1997). In his analysis of disproportionate black male violence, King emphasizes the role of slavery, institutional racism, as well as economic deprivation. Through a historical perspective, King argues that black violence is rooted in the 225 years of violent black enslavement in America and the 325 years of deprivation of economic, social and basic human rights. The author further argues that there are three "specific historical, economic and social factors" that lead to this disproportionate black violence: (1) black males continue to be

victims of institutional racism and black violence, (2) the black community has lost its ability to protect its children from guns, drugs and the stagnant economy and (3) blacks grow up in a society that glorifies violence. King also describes five “self-destructive” attitudes of young black males that exacerbated this violence: (1) violent behavior symptomatic of low “self-knowledge” and lack of nurturing”, (2) lack of positive direction, (3) deficits in social, educational, and vocational competency, (4) lack of “connectedness” with self and African American community, and (5) lack of “world view” and “culturally specific ethos” to interact with other black males.

### **Ecological Perspective**

The last and perhaps most promising of the structural theories to be examined in this paper are the ecological theories of disproportionate black criminal offending. The ecological perspective was spawned by the groundbreaking work of Shaw and McKay (1969) on juvenile delinquency in Chicago. As cited by Sampson and Lauritsen (1997), Shaw and McKay identified three structural factors that accounted for most of the variation in juvenile delinquency rates. These factors are: (1) low economic status, (2) racial or ethnic heterogeneity, and (3) residential mobility. However, the most critical finding of Shaw and McKay was that high rates of delinquency in certain areas persisted over the years, regardless of what population inhabited the area.

As previously mentioned, blacks live in different ecological conditions than their white socio-economic counterpart. More importantly, the most profound difference is found among poor blacks and equally poor whites. Specifically, poor blacks live in neighborhoods that are characterized by greater levels of family disruption than do poor whites. An example of this is that in 1990, 65% of black babies were born to unwed

mother, while only 20% of white babies were born to unwed mothers (Tonry, 1995). Furthermore, poor blacks live in areas of significantly greater concentrated poverty than do poor whites (Hawkins et al., 1998). This is exacerbated by the fact that in 1992, the unemployment rate of black males was 15.2%, while the unemployment rate for white males was 6.9% (Tonry, 1995).

Given these differences in ecological conditions between poor blacks and poor whites, attempts to explicate disparity in criminal offending patterns along racial lines may be futile. As described by Russell (1998), the concept of "disproportionate" is convoluted by the fact that whites and blacks in this nation are not on equal social footing and therefore, comparisons of offending rates across races is disingenuous.

One of the most important contemporary tests of the ecological explanation of disproportionate black offending was conducted by Peeples and Loeber (1994). The authors studied 509 urban, Pittsburgh boys (270 black & 219 white) in 1987 and 1988 to determine the effect of neighborhood context on juvenile delinquency (measured by total, seriousness and frequency of offending). The authors used three sources of information on delinquency: (1) self-report, (2) care-taker report, and (3) teacher report. The authors found that without considering neighborhood context, black juveniles were involved in significantly more total delinquent acts, committed significantly more serious delinquent acts, and committed delinquent acts significantly more frequently than did white juveniles. However, when comparing black juveniles in non-underclass neighborhoods to white juveniles in non-underclass neighborhoods, Peeples and Loeber found that there were no significant differences in serious or frequency of delinquent acts, although black juveniles still committed significantly more total delinquent acts. This finding indicates

that if one controls for neighborhood context, racial differences in offending rates all but disappear.

### **Process Theories**

In this section, the author will review three of the most prominent categories of process theories that attempt to explicate the phenomenon of disproportionate black criminal offending. The first category of process theories to be explored are those theories that posit black criminal offending rates to be the result of a deviant subculture. Next, the author will examine how theories of differential association attempt to explain racial differences in offending rates. The author will conclude this section with a brief overview of labeling theory in explaining disproportionate black criminal offending.

### **Deviant Subculture Theories**

In this category of process theories, blacks are proposed to offend at a higher rate than whites because blacks exist in a subculture within the dominant white culture. The theory hypothesizes that blacks are “socialized into a culture in which crime, aggressive behaviors, and illegitimate activities are not strongly condemned” (Sampson & Lauritsen, 1997). Furthermore, the failure of subculture members to display aggressive behavior may lead to rejection from the peer group (Free, 1996).

The most prominent of the deviant subculture theories is Wolfgang and Ferracuti’s (1967) Subculture of Violence thesis. Wolfgang and Ferracuti argue that in a subculture of violence, there is a “potent theme of violence current in the culture that makes up the life-style, the socialization process, and the interpersonal relationships of individuals living in similar conditions”. The authors further promulgate that in a subculture of violence, members are encouraged, through norms and values, to exhibit

violent behaviors. Finally, Wolfgang and Ferracuti conclude that members of a subculture of violence do not view their behavior as illicit and therefore feel no remorse for their actions.

Cao and Jensen (1997) used data from the General Social Survey (1983 to 1991, 1985 excluded) to test the “subculture of violence thesis” developed by Wolfgang and Ferracuti (1967). The analysis used 3,218 black and white males under the age of 65 to test the hypothesis that “violent values are wide spread among African Americans”. However, contrary to the violent subculture thesis, the authors found that whites are significantly more likely than blacks to condone the use of violence in “defensive situations”. The authors further found no significant racial difference in attitudes of approval in the use of violence in “offensive situations”. Cao and Jensen acknowledged that there could exist a subculture of violence in specific communities, as the authors did not control for specific neighborhoods.

### **Differential Association**

Another process theory that attempts to explain racial disparity in criminal offending is differential association theory. The theory of differential association was developed by Edwin Sutherland in 1939 (Free, 1996). Sutherland proposed that all behavior, licit and illicit, is learned. Sutherland further proposed that behavior is learned through interaction with “intimate personal groups” (Free, 1996). Therefore, if individuals encounter more interactions favorable to illicit behavior than licit behavior, then that individual is more likely to accept illicit behavior as appropriate.

However, differential association theory is not without its critics. Although this theory may explain why individuals engage in criminal behavior, it can not explain why

individuals with similar criminal associations do not engage in criminal activity. For example, why do some blacks in high crime areas (hence favorable to criminal interactions) engage in criminal activity, while other blacks in these same areas do not. Furthermore, as Vold and Benard (1986) point out, the theory of differential association does not explain why individuals not exposed to criminal interactions engage in criminal behavior. A final criticism of this theory is that it “understates the importance of individual factors” such as personality differences in determining why some people engage in crime, and others do not (Free, 1996).

### **Labeling Theory**

The final process theory to be examined in this paper is the theory of labeling. Labeling theory proposes that no act is deviant. An act becomes deviant only when society defines it as such (Free, 1996). Labeling theory also draws a distinction between “primary deviance” and “secondary deviance”. Primary deviance refers to the violation of societal norm. Furthermore, many people violate the norms of society, but do not see themselves as deviants. Labeling theory posits that once an individual is officially labeled by society as a deviant, that individual begins to perceive themselves as deviant and will engage in more illegitimate behavior. This type of deviance is referred to as secondary deviance.

Free (1996) argues that power is central determination in who gets labeled. Those without power are more likely to be labeled by larger society. In other words, blacks with little social, political and economic power are more likely to be labeled by the larger white society. The statistics would bear this out. As described by Lotke (1998), blacks

offend at a rate three times that of whites, but blacks are incarcerated, and hence labeled, at a rate seven times that of whites.

However, there are many criticisms of labeling theory. First, the theory is “excessively deterministic” and does not allow for the possibility that the person being labeled can reject that label (Free, 1996). Second, many contest the premise of labeling theory that known criminal see themselves as deviant. Finally, many dispute the underlying assumption that no act is deviant until defined as such. They argue that this may be true for minor offenses but not major offenses.

### **Findings**

The first and perhaps most pervasive finding in the author’s review of existing literature is that the disparity in black criminal offending is real and it is not due to overt racism in the criminal justice system. Furthermore, the author concludes that no one theory of disproportionate black criminal offending is adequately explanatory. For instance, most research on structural disadvantage focuses on one factor (e.g. economic disadvantage), when in reality, an examination of the cumulative effect of multiple economic, social and political disadvantages may be more instructive. It is to this end that the author finds the works of Sampson and Lauritsen (1997) and Hawkins, Laub and Lauritsen (1998) most compelling. Both pieces discuss the ecological and structural differences in examining/comparing black and white criminal offending patterns. These ecological differences convolute the process of examining black and white criminal offending because whites live in different conditions than blacks. As previously mentioned, the living conditions of poor whites are significantly better than the living conditions of poor blacks (Hawkins et.al.,1998).

## **PART II: HARMFUL CRIMINAL JUSTICE SYSTEM POLICY**

In Part I of this paper, the author reviewed what we know about disproportionate black criminal offending. In Part II of this paper, the author will examine the detrimental effects that criminal justice system policies since the 1980's have had on blacks given the phenomenon of disproportionate black offending patterns. Although one might contest that many contemporary criminal justice system policies have adversely effected blacks, this section is limited to the examination of the War on Drugs and "tough-on-crime" policies.

### **The War on Drugs**

Arguably the most pernicious contemporary criminal justice system policies that have adversely affected blacks in America are the drug enforcement policies pursuant to the War on Drugs.

#### ***Why was the War on Drugs Launched?***

"The response to drug use and abuse in the United States has been massive punishment aimed particularly at low-level sellers" (MacCoun & Reuter, 1998). The use of strict and severe enforcement in drug control is a response to "America's proclivity to be tough on drug crimes" (Weiner, 1998). Drug historian, David Musto describes the public's attitude towards drug use as a thirty year cycle of tolerance and intolerance (Tonry, 1996). Furthermore, Musto argues that "policy-makers overreact in formulating and executing anti-drug policies at times when social mores are becoming less accepting of drug use and their use is falling" (Tonry, 1996).

### *What was the Strategy of the Drug War?*

“The most striking characteristic of the U.S. response to illicit drugs in the last decade have been its scale and its punitiveness” (Reuter, 1992). Buttressing this notion is the fact that in 1994, almost 400,000 people were in jails and prisons for selling or using drugs (Reuter, 1992). Furthermore, in 1992, “50,000 were sentenced to state prison for non-distribution offenses, mostly simple possession” (Reuter, 1992).

Traditionally, the American criminal justice system has used deterrence as the cornerstone of their drug enforcement policy. “The response to drug use and abuse in the United States has been massive punishment aimed particularly at low-level sellers” (MacCoun & Reuter, 1998). Deterrence is premised on the belief that if sentences are severe enough, would-be lawbreakers will determine “the price of the crime is prohibitive” (Nagin, 1998).

However, the effectiveness of a deterrent policy in drug control has scarcely been examined. In fact, more is known about the effectiveness of treatment and prevention policies than the effects of law enforcement policies (MacCoun & Reuter, 1998). The irony of this finding is that treatment and prevention strategies account for no more than 20% of this nation’s drug control expenditures (MacCoun & Reuter, 1998).

One problem with determining the effectiveness of deterrence as a drug enforcement policy is finding an appropriate measure. Typically, price and purity of illicit drugs have been used to gauge effectiveness. If a drug control policy is effective, prices should go up and purity should go down. However, using this measure, America’s deterrent drug policies have failed. Although sentences have become more and more harsh for drug offenses, the price and purity of cocaine have remained stable (Tonry,

1996). Another measure of the effectiveness of deterrence is whether it changes the behavior of drug users. Again, using this criterion, deterrence proves ineffective. In a study of crack house raids, Sherman and Rogan (1995) found that the deterrent effects were “quite small and decayed in two weeks”.

The classic example of the criminal justice system’s reliance on deterrence as the central drug control policy occurred in New York City in the 1980’s. In response to the emergence of crack cocaine, Police Commissioner, Ben Ward, launched *Operation Pressure Point*. The mission of this particular operation was to find crack and make massive arrests (Press, 1987). Although at face value the operation was deemed an enormous success, it carried with it some serious negative side effects.

The first consequence of *Operation Pressure Point* was the effect it had on the rest of the criminal justice system. Massive crack arrests led to overcrowded prisons in New York and nearly paralyzed the city’s court system. Aric Press described New York City’s criminal justice system as bulimic. Over fed with arrests, the “rest of the system spent its days in an endless purge” attempting to dispose of drug cases as rapidly as possible before getting hit with another wave of arrests (Press, 1987).

A second and more contentious result of the *Operation Pressure Point* was the racial disparity in arrest and incarceration. The tactic of “street sweep” drug arrests, unintentionally or otherwise, targeted minorities. In particular, “urban black youth have borne the brunt of the War on Drugs” (Tonry, 1996). Black youth have been arrested, prosecuted and incarcerated at a rate far greater than their numbers reflect in the general population or among drug users (Tonry, 1996).

### ***Who were the Targets of the War on Drugs?***

It is obvious that the targets of the War on Drugs were black urban youth. The ultimate support for this claim is federal Anti-Drug Abuse Act of 1986. This act set mandatory minimum sentences for drug offenses depending on the quantity and type of drug. The notorious “100 to 1” law drew a distinction between crack and powder cocaine despite the fact that the two drugs are pharmacologically indistinguishable. Dealers caught with 5 grams of crack would receive a mandatory minimum sentence of at least five years. Conversely, traffickers of powdered cocaine would need to be caught with 500 grams to receive the same sentence (Burnham, 1996). The end result was that the legislation created a racial bias in sentencing because crack dealers are generally inner-city minorities, while powder cocaine dealers are more likely to be white.

The targeting of blacks through drug enforcement policies is further supported by a Bureau of Justice Statistics study (1995). Using three years of data (1991-1993), this report summarizes the statistics on racial disparity in drug arrests. The statistics determined that blacks constituted 40% of drug violation arrests, but only 13% of admitted drug users. The disparity of 27 percentage points was “analytically refined” to 23 percentage points, of which only 10 percentage points were explainable through race-neutral factors.

### ***What has the War on Drugs Accomplished?***

A deterrent drug policy should have raised the price of illicit drugs. Yet, in the years of heightened enforcement practices (since 1981), prices of cocaine and heroin fell steadily (MacCoun & Reuter, 1998). The policy should have reduced the availability of

illicit drugs. However, surveys of high school seniors indicate that a tough enforcement policy failed in this regard as well (MacCoun & Reuter, 1998).

So, what has tough drug enforcement accomplished? For one, strict drug enforcement has achieved divisiveness (Reuter, 1992). Although, blacks constitute only 12% of the population, they accounted for two-thirds of those admitted to state prisons for drug offenses in 1992 (MacCoun & Reuter, 1998). Strict drug enforcement has also played a central role in the U.S. garnering the highest rate of incarceration of any nation in the world. In 1998, the incarceration rate for the United States was 700 per 100,000 general population (Tonry, 1998). The effect on the incarceration rate for black males has been even more pronounced. From 1985 to 1995, the incarceration rate of African-American males rose from 3,544 per 100,000 to 6,926 per 100,000. And although the incarceration rate of white males increased during this same period, the increase in incarceration rate for black males was 7.5 times greater (Tonry, 1998).

Reuter (1992) also proposes that the War on Drugs has accomplished intrusiveness. In the effort to combat drugs through tough enforcement, the police have engaged in questionable practices aimed mostly at black youth. As Russell (1998) points out many blacks have had to endure the harassment of D.W.B. (Driving While Black). In 1995, the Maryland Special Traffic Interdiction Force (STIF) made 533 traffic stops on I-95. And although blacks constitute roughly 12% of the population, they accounted for just under 77% of these traffic stops (Russell, 1998). However, no study has indicated that blacks are responsible for over half of all interstate crime or trafficking (Russell, 1998). In fact, a 1996 American Civil Liberty Union (ACLU) study demonstrated that blacks account for approximately 17.5% of traffic violators (Russell, 1998). Finally, in

his study of the Rapid Deployment Unit of the Washington D.C. Police, Chambliss (1994) concluded that intense surveillance of poor black neighborhoods serves to institutionalize racism by identifying crime as a problem of young black males.

### **Tough-on-Crime Laws**

The second category of criminal justice policies that have adversely and disparately effected blacks are tough-on-crime initiatives. These initiatives include a wide variety of draconian laws and criminal justice system policies. The most prominent of these law-and-order crime control policies are three-strike laws, mandatory minimum sentences, and truth-in-sentencing laws.

As stated by Tonry (1998), “the principle problem is not biased decision-making by criminal justice officials, but adoption of policies that are known to disproportionately affect minority offenders disproportionately harshly”. For example, policy-makers must have had the knowledge that in 1992 blacks constituted 43.1% of violent crimes arrests in the U.S. (Tonry,1998). Therefore, policy-makers must have also known that initiatives such as truth-in-sentencing, which eliminates parole and creates longer sentences, would have a disparate effect on blacks.

What is so appalling and unforgivable about tough-on-crime laws since the 1980’s was the fact that researchers have known for years that tougher crime control policies would not reduce crime rates in this nation. As pointed out by Tonry (1994), reports by the National Academy of Sciences Panels commissioned by the Ford, Bush and Reagan administration concur that harsher penalties would not reduce crime rates. Therefore, current excessively punitive crime control strategies are indefensible.

### **PART III: RECOMMENDATIONS AND CONCLUSION**

In this final section, the author will explore several measures that may prove effective in minimizing the harmful effects that criminal justice system policies have on blacks.

#### **The Drug Problem**

The first and most important change to current criminal justice system policies is drug enforcement. There is the tendency in this nation to see the drug problem as a law enforcement issue as opposed to a public health issue. To remedy this, the U.S. must eliminate its prohibitionist posture towards drugs and adopt a harm-reduction posture. Although this recommendation may seem politically naïve and infeasible, there are several reasons why it is desirable.

First, treatment may prove to be a more practical and inexpensive solution. A RAND study estimated that by “investing \$34 million in additional treatment funds”, the United States could reduce cocaine consumption by 1 percent (Rydell & Everingham, 1994). Treatment was considerably cheaper than law enforcement, which would require an additional \$246 million. This finding is buttressed by the assertion that “drug treatment programs are so cost-effective that the money saved on crimes not committed just while in treatment is sufficient to offset the cost of treatment” (Taxman, 1998).

By moving resources from enforcement options to treatment options, the U.S. incurs an ideological change in our attitudes towards substance abuse in America. We essentially declare that drug abuse in America is a medical problem and not a criminal justice problem.

One way to move drug abusers to the medical system is through diversion programs following arrest. In a NIDA-funded five-year study, Stephen Baleko (1998) examined the effectiveness of a diversion program for drug sellers in Brooklyn, New York. In the experimental group, drug dealers received up to six months of drug abuse treatment in lieu of incarceration. Drug dealers in the comparison group were incarcerated and received no treatment. Drug sellers in both groups received a six-month follow-up interview (after incarceration or treatment) to determine outcomes.

An important feature of the treatment was the legal coercion. Drug dealers who dropped-out of treatment were prosecuted on original charges in 95% of the cases. This legal coercion led to a treatment retention rate of 60-65%. Furthermore, the study found that drug dealers that received treatment had lower re-arrest rates than drug dealers in the comparison group. The treatment group also reported less drug use and drug selling, as well as higher employment rates (Baleko, 1998).

Another simple adjustment to enforcement practices can be achieved through police department arrest policy. For example, police could use discretion and not arrest heroin addicts found in possession of "works" (Kleiman, 1992). This practice would encourage addicts not to share needles. By doing this, enforcement would be serving the public's best interest by slowing the spread of HIV among intravenous drug users.

The gains of the aforementioned enforcement adjustments are numerous. First, such practices would ease the burden on the criminal justice system. Prison populations should become manageable. Police resources could be reallocated toward other, more serious crimes. And as mentioned before, public health would be maximized.

The expected losses of these recommended changes to enforcement practices are more dubious. The central loss from the perspective of the prohibitionist is the ideological shift. Prohibitionist would argue that "being soft" on drug crimes sends the wrong message. According to prohibitionist, anything other than strict and severe enforcement of drug offenses sends the message of tolerance toward drug use.

### **Eliminating Tough-on-Crime Legislation**

Changing draconian drug enforcement policies is not enough. For the first time in this nation's history, state and municipal governments are spending more on the criminal justice system than education (Chambliss, 1994). Along with drug enforcement, tough-on-crime legislation is largely responsible.

Lotke (1998) recommends four common-sense changes to current criminal justice policies that are harmful to blacks: (1) reserve prison for serious and/or violent offenders, (2) expand intermediate sanctions and supervision in the community, (3) use non-criminal justice system solutions to social problems, and (4) demand a racial impact statement for every proposed change to the criminal justice system.

### **Conclusion**

Disproportionate black criminal offending appears to be a real phenomenon in this nation. So given this information, criminal justice must not exacerbate this problem with draconian crime control policies. Much damage has already been done to the black community as a result of criminal justice system policies since the 1980's. For example, Lotke (1998) found that there are more black males in jails and prisons in this nation than institutions of higher education. He further found that nearly 50% of black males in Washington D.C. were under the control of the criminal justice system. Chambliss

(1994) argues that current crime control policies are largely responsible for the prevalence of black single-family homes.

The bottom line is that policy-makers must stop creating crime control policy that disparately effects blacks. It already will take many years and perhaps decades for the blacks in this nation to recover from the damage that has already been done. However, the author is not politically naïve enough to think that policy-makers will, on there own, bring racial equity to the criminal justice system. The responsibility resides with the black community themselves. As stated by Loury (1994), blacks in this nation must mobilize to demand change.

Furthermore, much must be done to improve ecological conditions of urban ghettos. This point is echoed by DiIulio (1994) who argues that “America does not have a crime problem; inner-city America does”, and this is where most blacks live. DiIulio concludes that because 84% of violent crime is interracial, blacks not only disproportionately violently offend, they are disproportionately affected by violent crime. Furthermore, as it is the conclusion of the author that much of the phenomenon of disproportionate black offending can be explained by intolerable living conditions, policy-makers must turn their attention to ameliorating these structural conditions (Hawkins et al., 1998). Such remedial measures such as securing inner-city neighborhoods may prove invaluable in achieving decreases in racial disparity in offending (DiIulio, 1994).

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