

**Commission on Racial and Ethnic Disparity
in the Criminal Justice System**

**Annual Report and Recommendations
2001 – 2002**

Acknowledgments

As Chair of the Commission on Racial and Ethnic Disparity in the Criminal Justice System for the State of Connecticut, I applaud the hard work and dedication of the Commission's official and unofficial members. This report would not have been possible without them. I would like particularly to recognize the leadership provided by the subcommittee chairs throughout this process.

The Commission extends its deep appreciation to The Justice Education Center, Inc., its executive director, Sherry Haller, and program manager, Robert Price, for staffing the Commission and preparing this report. In particular, the Commission extends its gratitude to Janet Shute, The Center's writer and editor, whose contributions to this final report were invaluable.

The Commission also wishes to extend its gratitude to those who helped to direct the research efforts with care and commitment: Ivan Kuzyk, Director of the Cities Data Center of Trinity College; Eleanor Lyon, Ph.D. of Lyon & Associates; Steve Cox, Ph.D., Chair of the Department of Criminology and Criminal Justice of Central Connecticut State University; and Al DiChiara, Ph.D., Director of the Criminal Justice Program, Department of Sociology, University of Hartford. In addition, sincere appreciation is extended to Margaret O'Keefe of The Village for Families and Children, Inc. for her tireless efforts in data entry.

The Commission acknowledges with great thanks the many Judicial Branch staff who have contributed their expertise to the Commission's work, as well as to the Division of Criminal Justice, Department of Public Safety, Public Defender Services Commission, Department of Correction, Department of Children and Families, Department of Mental Health and Addiction Services, Board of Parole, Office of the Child Advocate, Latino and Puerto Rican Affairs Commission, African American Affairs Commission, Office of the Victim Advocate and Office of Policy and Management. We would also like to thank those representatives from the private bar and community services communities who provided their time, perspectives and wisdom on the important issue of racial and ethnic disparity in the justice system.

The cooperation of these individuals and agencies has helped to assure that this report will provide the General Assembly with an extensive body of information which will be an important resource for its members as they make policy decisions affecting our state's criminal and juvenile justice systems.

The Honorable Aaron Ment
Chairperson

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Introduction

Section 1

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1.A. The Legislative Charge

Public Act 00-154: *An Act Concerning Racial Disparity in the Criminal Justice System*

The Commission on Racial and Ethnic Disparity in the Criminal Justice System was created by Public Act 00-154, which became effective on October 1, 2000. The Commission's charge includes the following:

Adult Criminal Justice System

- A. Develop and recommend policies for reducing the number of African-Americans and Latinos comprising the pretrial and sentenced population of correctional facilities and reducing the number of African-Americans and Latinos who are victimized by crime.
- B. Examine the impact of statutory provisions and current administrative policies on racial and ethnic disparity in the criminal justice system and recommend legislation to the Governor and the General Assembly to reduce such disparity.
- C. Research and gather relevant statistical data and other information concerning the impact of disparate treatment of African-Americans and Latinos in the criminal justice system.
- D. Develop and recommend a training program for personnel in agencies involved in the criminal justice system concerning the impact of disparate treatment of African-Americans and Latinos.
- E. Research and examine the issue of the use of guidelines by courts when sentencing criminal defendants and recommendations regarding whether the General Assembly should create a sentencing guidelines commission to establish sentencing guidelines for state courts.
- F. Examine the implementation of policies and procedures that are consistent with policies of the American Bar Association intended to ensure that death penalty cases are administered fairly and impartially in accordance with due process, to minimize the risk that innocent persons may be executed and to eliminate discrimination in capital sentencing on the basis of the race of either the victim or the defendant.
- G. Annually prepare and distribute a comprehensive plan to reduce racial and ethnic disparity in the criminal justice system without affecting public safety.

Juvenile Justice System

- P Develop and recommend policies and interventions to reduce the number of African-Americans and Latinos in the juvenile justice system.
- P Analyze the key stages in the juvenile justice system to determine if any stage disproportionately affects racial or ethnic minorities including the decision to arrest a juvenile, the decision to turn a juvenile over to a detention center, the decision to

nonjudicially dispose of the case or to file a petition of delinquency, and the decision to resolve the case by placement on probation, placement in a residential facility or placement at Long Lane School or the Connecticut Juvenile Training School.

- P Annually prepare and distribute a juvenile justice plan having as its goal the reduction of the number of African-Americans and Latinos in the juvenile justice system, which plan shall include the development of standard risk assessment policies and a system of impartial review, culturally appropriate diversion programs for minority juveniles accused of nonviolent felonies, intensive in-home services to families of pretrial delinquents and youth on probation, school programs for juveniles being transferred from detention centers, Long Lane School or the Connecticut Juvenile Training School, the recruitment of minority employees to serve at all levels of the juvenile justice system, the utilization of minority juvenile specialists to guide minority juvenile offenders and their families through the juvenile justice system, and community service options in lieu of detention for juveniles arrested for non-serious offenses.

- P Develop a curriculum for training of all employees at all levels of the juvenile justice system on issues of cultural competency and strategies to address disproportionate minority confinement.

Annual Report

Submit an annual report to the Governor and the General Assembly concerning:

- H. The number of African-Americans and Latinos comprising the pretrial and sentenced population of correctional facilities;
- I. The progress being made toward reducing the number of African-Americans and Latinos comprising the pretrial and sentenced population of correctional facilities;
- J. The adequacy of legal representation for indigent defendants;
- K. The adequacy of the number of residential and nonresidential treatment slots available for African-Americans and Latinos;
- L. The adequacy of the number of court interpreters;
- M. Such other information as the commission deems appropriate.

1.B. Definitions and Distinctions
What Does “Racial and Ethnic Disparity” Mean?

It is critical at the outset of this report to clarify the definitions and distinctions that the terms “disparity,” “overrepresentation,” “underrepresentation,” and “discrimination” have within the context of the criminal justice system. Too often these terms are used interchangeably and are misunderstood. Misuse of these terms can fuel emotionally and politically charged dialogue – in negative ways.

- P **Disparity** means the difference between the ratio of a cognizable group in one population when compared to the ratio of that same group in another population. For example, if African-Americans are arrested 10% of the time but account for 40% of those people taken into custody, that is a disparity. Disparity can be in the form of either an overrepresentation or underrepresentation of the cognizable group being measured.
- P **Overrepresentation** refers to a situation in which a larger proportion of a cognizable group is present at various stages within the justice system (such as intake, detention, adjudication, and disposition) than would be expected as a result of equally fair treatment of that same group based on their proportion in the population that is being used as a basis of comparison.
- P **Underrepresentation** is the antithesis of overrepresentation. This means that a smaller proportion of a cognizable group is present at various stages within the justice system (such as intake, detention, adjudication, and disposition) than would be expected as a result of equally fair treatment of that same group based on their proportion in the population that is being used as a basis of comparison.
- P **Discrimination** is the result of disparate treatment – that is, if and when one cognizable group is treated differently than others for invalid reasons such as gender, racial, and/or ethnic status.

Neither overrepresentation, underrepresentation nor disparity necessarily imply discrimination. A goal of the Commission is to identify disparities and understand them in order to recommend changes needed when disparity appears to be caused by discrimination in the criminal justice system – *e.g.* if minority clients face higher probabilities of being arrested by the police, referred to court intake, held in short-term detention, petitioned for formal processing, adjudicated, and/or confined in a secure facility.

1.C. Context

1.C.1 Framework

The Commission on Racial and Ethnic Disparity in the Criminal Justice System has been given the task of conducting a comprehensive and coordinated study of all the components of the state's criminal and juvenile justice system to determine whether racial and ethnic minorities experience differential experiences, treatment and outcomes. National and state statistics on the racial and ethnic makeup of court-involved men, women and young people – from arrest through court processing, confinement, and community supervision – paint a picture that raises fundamental and difficult questions for those who administer, design and implement state justice systems.

It is critical that these issues be addressed in order to track disparities (if and where they exist), inform policy making, and ensure the continued credibility of the justice system. Even the American Sociological Association, an association of some 13,000 U.S. and international sociologists, issued a statement on August 9, 2002 on the *Importance of Collecting Data and Doing Social Scientific Research on Race*:

“Sociological scholarship on “race” provides scientific evidence in the current scientific and civic debate over the social consequences of the existing categorizations and perceptions of race; allows scholars to document how race shapes social ranking, access to resources, and life experiences; and advances understanding of this important dimension of social life, which in turn advances social justice.”

Many studies have been conducted, and many theories about the causes and effects of disproportionate minority involvement and confinement have been postulated. An excerpt from the 1996 *Connecticut Judicial Branch Task Force on Minority Fairness Report* captures the issue well. Though this was written about the juvenile justice system, the issues are parallel for adults:

“While racial/ethnic bias may play a role in minority overrepresentation in the juvenile justice system, racial discrimination is too simple an answer. The types of communities in which juveniles live appear to have a stronger effect on the likelihood of their becoming involved in delinquency than racial characteristics. Language barriers, poverty, dysfunctional families and communities – even lack of transportation that prevents court appearances – all contribute profoundly to the overrepresentation of minorities in the juvenile justice system. These social issues, coupled with concerns about possible racial/ethnic bias in cumulative system processing decisions (beginning with the decision made by the police to apprehend and refer to court) have profound implications for minority overrepresentation in the system.”

The State's 1992 *Court Disposition Study* reinforces this:

“...differences [in treatment and case disposition] may be explained by such other non-racial or ethnic factors as economic, educational, and language differences, or employment, family support in court, the defendant's demeanor, victims' attitudes, and other considerations...”

Although the Commission's charge is specific to the criminal and juvenile justice system, recognition of these external factors is of paramount importance and must be kept in the forefront when considering the ramifications of potential disparity in the system.

1.C.2. Connecticut Demographic Studies

The Commission understood the importance of looking at a broader picture than just the profile of the justice system, and commissioned several studies which looked at the population of Connecticut and the forces that are impacting the crime rate as they relate to race/ethnicity. Two studies are of particular importance to review at this stage in the Commission's work:

- P A recent study of the Criminal Records Motor Vehicle System (CRMVS) data discovered significant errors in the reliability of the race field, which has in turn cast doubt on the reliability of the race field in all of the state's justice system databases. Large numbers of Hispanics appear to be misreported as Caucasians in the data. The most important implication of these findings is that the state's Hispanics appear to be significantly undercounted in justice systems data, while the numbers of Caucasians and, to a much lesser degree, African-Americans are slightly exaggerated.

- P A second study, *Year 2000 Census Data on Race and Ethnicity in Connecticut*, reveals that Connecticut's population has become more diverse in the past 10 years, and Hispanics are now the largest minority group in Connecticut. Given the projected growth in the state's Hispanic population, the above concern must be addressed as soon as possible.

Underrepresentation of Hispanics in state criminal justice systems data

The Commission developed a plan to link various data sets used by the Judicial Branch to determine the degree to which minorities in the state were represented in the criminal justice system with respect to the majority population. Over the spring and summer, the subcommittee received several sets of data from various branches of the state's criminal justice system, and engaged in preliminary analysis. One data set in particular, the Criminal Records Motor Vehicle System (CRMVS) data, was a likely centerpiece of the analysis since it contained a record of all cases disposed during 2000. It became clear from this analysis that the reliability of the race field in the state data is highly suspect. Large numbers of Hispanics appeared to be misreported as Caucasians. A cursory inspection of the Bail data and the Department of Correction (DOC) data indicated that these errors are carried through the Judicial Branch's various data sets.

Specifically, data from a preliminary analysis of CRMVS data indicates that Hispanics are significantly underreported in state criminal justice databases. The underreporting of Hispanics – by this estimate as high as 50% – results in an overreporting of other races in the system. Caucasians are overreported by 14.4%; Blacks by 3.6%; and Asians by 5.6%. The majority of misreported Hispanics are reported as Caucasians in the data. Analysis by charge (as opposed to defendant) indicates that the rate of misreporting varies by town across the state. The Commission will pay particular attention to this discrepancy, as it affects all parts of the system and will influence the ongoing analysis and evaluation of their work.

Population shifts that will affect the justice system over the next several years

A commissioned report, *Year 2000 Census Data on Race and Ethnicity in Connecticut*, has yielded important information for the Commission as it reviews and assesses patterns of race and ethnicity. These population shifts, summarized in the following pages, will affect the criminal and juvenile justice system over the next several years, and are particularly important in light of the discrepancies in the reporting of the Hispanic population.

CURRENT WORK OF THE COMMISSION

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2.A. Statutory Requirements for the Commission Annual Report

Public Act #00-154 mandates that a report by the Commission on Racial and Ethnic Disparity in the Criminal Justice System be submitted to the Governor and the General Assembly annually. The defined topics to be addressed include:

- P **Racial make-up of Connecticut's incarcerated population**
The number of African-Americans and Latinos comprising the pretrial and sentenced population of correctional facilities.
- P **Progress toward eliminating disparity in Connecticut's criminal and juvenile justice systems**
The progress being made toward reducing the number of African-Americans and Latinos comprising the pretrial and sentenced population of correctional facilities.
- P **Adequacy of current resources**
The adequacy of: i) legal representation for indigent defendants; ii) the number of residential and nonresidential treatment slots available for African-Americans and Latinos; and iii) the number of court interpreters. Other areas of concern to the Commission are the adequacy of Alternative Incarceration Programs and Special Session Courts.
- P **Annual work of the Commission**
Such other information as the Commission deems appropriate; and additional resources that the Commission feels should be made available to reduce racial and ethnic disparity in the criminal justice system without affecting public safety.

2.B. Primary Commission Activities in 2001

In order to fulfill the statutory requirements for the Annual Report, two things became apparent early on:

- P **Need for common knowledge base**
It was important first for Commission members to come to this large task with a common foundation of knowledge, and to achieve a broad and communal perspective about the criminal justice system that would enable members to address the specifics requested in the legislative charge over the long term.
- P **Need for consulting resources**
In order to accomplish this mandate responsibly and in a timely fashion, the Commission determined that it required the assistance of outside administrative and research staff to provide: a) organizational and strategic planning support; and b) sophisticated data research and analysis activities. As Harry Weller, Chair of the Post-Trial subcommittee, observed: "One thing that has become increasingly clear is that we will approach a point when we have captured so much data with so many variables that it will be beyond our

professional ken to manage and analyze it without the help of a professional. It is also certain that the information we are collecting will overlap the results produced by other subcommittees. Thus, it will ultimately be necessary to blend our information with the work done by other subcommittees so that any final report presents a consistent and accurate picture of how the entire system operates from start to finish.”

2.B.1. Full Commission

The full Commission met monthly in 2001 and accomplished two primary tasks:

P **Identification of priorities**

The Commission grappled with how best to address and organize the complex and intertwined tasks it had been statutorily assigned and determined that the best method would be to establish subcommittees covering each of the stages of the criminal justice process, as well as a separate subcommittee for juvenile matters.

P **Definition of the requirements for a consultant to the Commission’s work**

The Commission advocated for funding for a consultant to help them with their efforts, issued an RFP, reviewed applications, and awarded a contract to The Justice Education Center, Inc. to provide research, analysis and support services for their efforts in 2002.

2.B.2. Subcommittee Meetings

In addition to full Commission meetings, the six subcommittees have met actively since the Commission’s inception to begin to address the challenges of the legislative charge. Although the legislative charge was in many ways quite specific, the subcommittees decided it was important first to research a broader range of issues in order to respond responsibly to the spirit, scope and long-term nature of the charge. During 2001, each subcommittee engaged in fact finding and data collection efforts to the best of its abilities, absent the resources of an outside consultant. In addition, each subcommittee determined two to three areas that members felt were especially critical to investigate further in 2002.

2.B.3. Establishment of Funding and Contract Award for Consultant

The Commission chose the Justice Education Center, Inc. to serve as consultant. The Center was chosen based on its 27-year record of local, state and national activities that have impacted public policy and public opinion in the administration of criminal justice in the areas of: 1) research, evaluation and strategic planning; 2) statewide education and training activities; 3) publications, documentaries, exhibitions and curricula development; 4) program and fundraising development; and 5) national consulting activities.

2.C. Activities In Coordination With the Consultant in 2002

Beginning January 2002, The Justice Education Center staff has worked with the Commission to: i) expand its data collection and analysis activities; ii) reframe and hone some of its research questions and efforts; and iii) identify, target, refine and help organize the tasks that has shaped the Commission’s work in 2002. This work has enabled the Commission to further clarify its mission and to set goals for the future.

2.C.1. Research, Data Collection and Analysis Activities

Literature Review

National

The Center has prepared a national literature review, a synopsis of which is included within each of the subcommittee reports that follow, on racial and ethnic disparity in the adult criminal and juvenile justice systems, and will continue to use the literature found through this search to compile a resource guide for Commission members and other interested parties. The Commission is well aware that an extensive amount of research has already been conducted in this field and wishes to avoid duplicating work. The literature search will not end after this first report. On an ongoing basis, the Center will summarize new findings from literature reviews and data from research and will analyze implications of those findings for Connecticut. In addition, the Center will continually respond to the subcommittees' needs for information.

Connecticut

The Center has performed a literature review of work that has been done on racial and ethnic disparity in Connecticut's adult criminal and juvenile justice systems and will, on an ongoing basis, relate information about Connecticut's adult criminal and juvenile justice systems to national data. Summary literature about Connecticut's systems has also been added to each subcommittee report. In addition, the Center will review relevant research and recommendations from pertinent past studies, especially the 1996 Judicial Branch *Minority Fairness Task Force Report*, and will assess the progress that has emanated from the recommendations outlined in those reports.

Data Analysis

The Center is in the process of reviewing, analyzing, and summarizing existing current data from the Judicial Branch, the Department of Correction, the Department of Public Safety, the Division of Criminal Justice, the Office of the Chief Public Defender, the Office of Policy and Management, the Department of Children and Families, state and municipal police departments, and the Department of Motor Vehicles. As part of the data summary, the Center is documenting types of data which are currently unavailable through existing sources.

Research/Information Gathering.

After reviewing the national and Connecticut literature on racial and ethnic disparity in the criminal and juvenile justice systems and performing analyses of existing data, the Center will identify areas in which additional data collection and analysis is needed and will recommend to the Commission the level and type of information needed and the appropriate format for data collection and analysis. The Center is conducting an analysis of the current level of minority representation in the criminal justice system and comparing this to minority representation in Connecticut's general population for use as a benchmark. In addition, the Center is providing racial/ethnic and census data that will serve as a context for the criminal justice data that is being collected.

Studies

Five studies that have specific relevance to the Commission's work have been presented to the membership (three were commissioned by the consulting team for this initiative):

- P *Overview of CT Criminal Justice Studies.* Eleanor Lyon, Ph.D. For The Justice Education Center. March 11, 2002.
- P *Year 2000 Census Data on Race and Ethnicity in Connecticut.* Ivan Kuzyk. Cities Data Center at Trinity College. For The Justice Education Center. May 2002.
- P *An Overview of Jury Selection Questions and Issues.* Ivan Kuzyk. Cities Data Center at Trinity College. For The Justice Education Center. May 2002.
- P *Court Involved Girls in Connecticut.* The State of Connecticut Judicial Branch. Court Support Services Division. The University of Connecticut School of Social Work. May 2002.
- P *Recidivism in Connecticut.* Legislative Program Review & Investigations Committee. Connecticut General Assembly. December 17, 2001.

2.C.2. Organizational and Strategic Planning Support

Meeting and Agenda Coordination

Under direction from the Honorable Aaron Ment, the Justice Education Center, Inc., is preparing the agenda for each full Commission meeting, sending meeting notification and the agenda to members before each meeting, coordinating sub-committee reports and other presentations for each meeting, and making all meeting arrangements.

Speakers

The Center has invited experts in the field to address the Commission and/or its subcommittees about specific areas of interest so that its members will be as fully informed as possible.

Public Hearings

If deemed necessary and helpful, the Commission will hold public hearings during the next year at various locations throughout the state to solicit input from members of the public. With direction from Commission members, the Center will be responsible for setting up those hearings, coordinating the site and agenda, providing notification to public and local officials, and writing a summary of each hearing for the next Commission meeting.

Annual Conference

The Commission may host a conference next year and in future years to facilitate the exchange of ideas and information between the Commission's members and participants, including invited guests from other states. Using national and Connecticut data and input from the public hearings to guide the development of an agenda, the Center will work with a subcommittee of Commission members to plan and coordinate the first conference.

Strategic Planning

Once all of the research analyses and subcommittee recommendations are completed, The Justice Education Center will develop and adopt a long-range strategic plan for meeting its legislative mandate.

SUBCOMMITTEE REPORTS

Section 3

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3.A. Summary of Subcommittee Activities and Report Format

In addition to the monthly full Commission meetings, six subcommittees have met on an ongoing basis:

- P Investigation and Arrest
- P Pretrial
- P Trial
- P Post-Trial
- P Juvenile Justice
- P Face of the System.

These subcommittees have been charged to provide research and to develop and recommend policies and interventions that ensure fair and equitable treatment of all racial and ethnic groups in Connecticut's criminal and juvenile justice systems

Format of Subcommittee Reports

The subcommittee reports include the following sections, at minimum:

- P **Context**
This describes the priority areas of focus that members feel are important and realistic to pursue in 2002 and 2003.
- P **Principal Research Questions and Activities**
This outlines the research questions the subcommittee intends to and is able to answer, coupled with a summary of relevant data collection and research activities to date. These findings will serve as a benchmark for reviewing and assessing future progress in research, data collection and refinement of goals. Research areas by subcommittees have been carefully coordinated to provide an overview of the whole system, so that further study can be designed to assess the impact and inter-relatedness of system dynamics. At each stage, the information gathered has caused subcommittee members to ask more informed and precise questions for further investigation.
- P **National and Connecticut Literature Review**
A summary literature review is included that has informed subcommittee deliberations of both national and Connecticut research and initiatives. In addition, a more thorough literature review of issues of major concern to the Commission is included in Appendix A.
- P **Recommendations To Date**
Recommendations as they have been considered to date are reported at this point. Concerns and recommendations from other state and national reports that are relevant to racial/ethnic issues in Connecticut's criminal justice system will be reviewed on an ongoing basis.

3.B. Individual Subcommittee Reports

The individual subcommittee reports follow.

INVESTIGATION AND ARREST SUBCOMMITTEE

Investigation and Arrest Subcommittee Report

Priority Areas of Focus

In the first of a series of efforts to examine arrest patterns in order to determine if disparity exists, the subcommittee has examined in detail data about traffic stops, searches and arrests. The subcommittee also is paying particular attention to ways to more responsibly record the ethnicity of the arrestee on the Uniform Arrest Report form, so that more accurate numbers of ethnic groups, especially Hispanics, will be reported. In the months ahead, the subcommittee will be addressing the following issues:

- P Police as gatekeepers
- P Who are the police?
- P Continuing education for police
- P Community involvement of police
- P Sensitivity issues
- P City versus small town issues and disparities
- P Alternatives to arrest
- P Perceptions of community cooperation

Principal Research Questions and Activities

Research questions

In order to understand the complexities of the police and race and ethnicity questions that are often raised, the following research questions have been identified to assist the subcommittee in developing a foundation for the areas of emphasis identified above. With data currently available from diverse sources, the questions that are being addressed are:

- P **From a sample of police incident reports:** What proportion of incidents result in arrest, and what are their attributes? How does this differ by size of municipality (comparing selected large cities with mid-sized cities and small towns, and comparing within type of incident – especially misdemeanor level offenses, with drug, property, and violent behaviors examined separately)?
- P **From municipal data:** What is the racial and ethnic make-up of the police force compared to the population and to the population most likely being arrested? Areas to be explored also include police officer applicant criteria (including such factors as residency requirements and education levels), recruitment and retention. Two years of recruitment data from a sample of municipalities will be drawn for comparison purposes.

- P **From Criminal Records Motor Vehicle System (CRMVS) data:** What is the racial and ethnic distribution of people who are arrested?

- P **From CRMVS data:** What do comparative profiles of arrestees show? For example, for selected municipalities (comparing large cities with mid-sized cities and small towns), a profile should be constructed of Caucasian, African-American/Black, and Latino/Hispanic arrestees: age (at least adult vs. juvenile), gender, and the 25 most common charges.

- P **From CRMVS data:** What is the racial and ethnic distribution of arrestees within severity of offense: for the state as a whole, for selected municipalities, and for selected offenses of interest within each crime category (violent, drug, property, and public order)?

Traffic stops

The most recent Connecticut traffic stops study, *2000-2001 Report of Traffic Stops Statistics*, (Cox et al., 2001) looked at traffic stops from July 1, 2000 to June 30, 2001 and concluded that there did not appear to be widespread disparities as a function of race or ethnicity. The differences observed in stopping minority drivers, the nature of the traffic stops, and dispositions were generally small. The most notable disparities were found in the issuance of misdemeanor summonses and motor vehicle searches.

These findings must be interpreted with care because the presence of any differences cannot solely be explained by police decisions without knowing the proportion of minority drivers or the proportion of drivers violating traffic laws. One important finding was that police departments may be stopping a higher percentage of minority drivers in jurisdictions that bordered towns or cities having a high percentage of minority residents. This finding suggests that outside factors may explain disparities in the traffic stops statistics rather than systematic differences across law enforcement agencies. One additional report is in the process of being completed and will be available in December 2002.

The most recent Connecticut traffic stops study, 2000-2001 Report of Traffic Stops Statistics, looked at traffic stops from July 1, 2000 to June 30, 2001 and concluded that there did not appear to be widespread disparities as a function of race or ethnicity. The differences observed in stopping minority drivers, the nature of the traffic stops, and dispositions were generally small.

Cox recommended that a more focused examination of misdemeanor summonses and searches be undertaken on a local level. The limited data collected from the traffic stops forms do not allow for an in-depth analysis of misdemeanor summonses and searches. Of particular interest would be the types of misdemeanor summons and searches. Specific to searches, it would be helpful to look at the time of day of the search, the time needed to conduct the search, if the search was incident to arrest, and whether the search yielded criminal evidence recovered as a result of the search. Other research (U.S. Customs Service, 2000; Langan et. al., 2001) has consistently found that searches of minorities do not uncover more criminal evidence than searches of whites. The numbers presented in this report do not definitively confirm or disprove the existence of racial profiling among individual departments or individual police officers. The decision to stop a motor vehicle and how to dispose of this traffic stop is ultimately made on an individual basis.

Ideally, information for this subcommittee would be obtained from a variety of sources – including systematic observation of responses to incident reports and traffic and street stops, and comparative analysis of police reports of incidents – in order to investigate differential outcomes by race and ethnicity (*i.e.* arrest or other non-arrest response, as well as charges and warrant *vs.* custodial process in the case of arrest) , while controlling for the type and severity of suspicious behavior involved. However, much of this data is not systematically available. Ways will be explored to collect more data that depict systematically the initial reasons for traffic stops and the characteristics of the interaction between the motorist and police officers in order to investigate the possible existence of racial disparities in responding to these situations.

Underrepresentation of Hispanics in Criminal Records Motor Vehicle System (CRMVS) data

The Commission developed a plan to link various data sets used by the Judicial Branch to determine the degree to which minorities in the state were represented in the criminal justice system with respect to the majority population. Over the spring and summer, the subcommittee received several sets of data from various branches of the state’s criminal justice system, and engaged in preliminary analysis. One data set in particular, the CRMVS data, was a likely centerpiece of the analysis since it contained a record of all cases disposed during 2000. It became clear from this analysis that the reliability of the race field in the state data is highly suspect. Large numbers of Hispanics appeared to be misreported as Caucasians. A cursory inspection of the Bail data and the DOC data indicated that these errors are carried through the Judicial Branch’s various data sets.

Specifically, data from the preliminary analysis of CRMVS data indicates that Hispanics are significantly underreported in state criminal justice databases. The underreporting of Hispanics – by this estimate as high as 50% – results in an overreporting of other races in the system.

New analysis indicates that Hispanics may be underreported in state criminal justice system databases by as much as 50%. This underrepresentation has significant policy and programming implications.

Caucasians are overreported by 14.4%; Blacks by 3.6%; and Asians by 5.6%. Analysis by charge (as opposed to defendant) indicates that the rate of misreporting varies by town across the state.

The subcommittee is paying particular attention to ways to more responsibly and accurately record the ethnicity of the arrestee in the uniform arrest report. The subcommittee – sensitive to the fact that asking people for their race or ethnicity can be perceived as intimidation, harassment, or an invasion of privacy – will encourage police officers to request self-reported information on race and ethnicity as part of the paperwork documentation for reporting accuracy once an arrest decision has been made.

Cultural sensitivity training for police

The subcommittee has reviewed the extensive cultural sensitivity training currently offered throughout the initial orientation and cadet training at POST (Police Officer Standards and Training Council, Connecticut Police Academy). It is now focusing on learning more about the ongoing training and retraining for cultural sensitivity for officers.

Summary of Literature

National Literature

Research on racial and ethnic disparity regarding the police has typically focused on citizens' perceptions of the police, arrest decisions, use of force, and more recently, racial profiling by the police during traffic stops. Differences in citizens' attitudes toward the police have commonly been found in minority communities, with African-Americans more likely to distrust the police than white citizens (Bureau of Justice Statistics, 1997). This finding is especially pronounced in cities/towns where the majority of the residents are African-American and the majority of police officers are white (Frank, Brandl, Cullen, Stichman, 1996). These same types of differences have also been found in police arrests. That is, arrest rates for African-Americans have been consistently higher than the percentage of African-Americans in the population, whereas, the arrest rates for whites have been consistently lower than the population percentages of whites (Walker, Spohn, and DeLone, 2000). The differences in arrest rates between African-Americans and whites have often been attributed to differential offending rates and offenders' demeanor even though it is difficult to determine if police officers' demeanor is the cause of the offenders' poor demeanor (Worden and Shepard, 1996; Black, 1980; Lundman, 1994).

Police use of deadly force occurs most often with African-Americans. Studies from the 1970s found a seven-to-one ratio of African-American to white victims and more recent studies find a three-to-one ratio (Walker, Spohn, and DeLone, 2000). Researchers are optimistic that the decrease in this disproportion is due to changes in the police subculture, improved police screening and training, less departmental acceptance of the use of police violence, more departmental accountability for any firearm use by police officers, and more public scrutiny – all of which have led to less police use of deadly force (Blumberg, 1997).

Several studies in the past decade have attempted to determine the existence of racial profiling in traffic stops. Early studies of racial profiling were largely based on anecdotal evidence and less rigorous research methods. These early studies widely concluded that police unfairly targeted minority motorists (mostly African-Americans) in traffic stops, arrests during traffic stops, and motor vehicle searches (Harris, 1999; Lamberth, 1996). However, more recent studies have found some disparities in traffic stops but have been unable to attribute these disparities to systematic racist practices by the police (Cox, Pease, Miller, and Tyson, 2001; Cordner, Williams, and Zuniga, 2000). The one consistent finding across all traffic stops studies is that minority motorists are searched more often than whites (Cox et al., 2001; Cordner et al., 2000; Nixon, 2000) even though searches of minority drivers produce less illegal contraband and weapons than searches of white drivers (Washington State Patrol and Criminal Justice Training Commission, 2001; Verniero and Zoubeck, 1999; Langan, Greenfield, Smith, Durose, and Levin, 2001).

Connecticut Literature

As was noted above, the most recent Connecticut traffic stops study, *2000-2001 Report of Traffic Stops Statistics*, looked at traffic stops from July 1, 2000 to June 30, 2001 and concluded that there did not appear to be widespread disparities as a function of race or ethnicity (Cox et al., 2001). The differences observed in stopping minority drivers, the nature of the traffic stops, and dispositions were generally small. The most notable disparities were found in the issuance of misdemeanor summonses and motor vehicle searches.

Recommendations to Date

- P Undertake a more focused examination of misdemeanor summonses and searches on a local level (data collected from traffic stops did not allow for in-depth analyses of these); specifically, this would include: types of misdemeanor summonses and searches and, specific to searches, examination of the day of the search, time needed to conduct the search if the search was incident to arrest, and whether the search yielded criminal evidence.
- P Endorse the recommended revision to the Uniform Arrest Report form being recommended by the Connecticut Justice Information System (CJIS) governing board to include one additional field of yes/no for Hispanics, ensuring that the designation of Hispanic is an ethnic designation not a racial one.
- P Once an arrest decision has been made, encourage police officers to request self-reported information on race and ethnicity for reporting accuracy as part of the paperwork documentation. Examine whether additional training is needed for new recruits and retraining for officers to this end.
- P Conduct a statewide survey of police departments to determine the impact that strategies such as juvenile/police review boards have on diverting people from the justice system.
- P Examine the level of ongoing retraining on cultural sensitivity for officers in the field that would supplement the significant amount of cultural sensitivity training currently offered throughout the initial orientation and cadet training at POST (Police Officer Standards and Training Council, Connecticut Police Academy).

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PRETRIAL SUBCOMMITTEE

Pretrial Subcommittee Report

Priority Areas of Focus

The subcommittee has identified the following pretrial issues as priorities for its work:

- P Bail and release determinations in Geographical Area (G.A.) courts throughout the state as they relate to race and ethnicity.
- P The relationship between race and arrest for drug offenders.

The subcommittee has obtained data from the Judicial Branch on the racial/ethnic breakdown in bail/bond determinations for specific crimes throughout the state, and is examining both the bail recommendations by the Bail Commissioner's Office and the bail orders as imposed by the courts. The subcommittee is presently evaluating the use of weighted release criteria used in the interviews conducted by bail commissioners to determine whether they need to be modified to be more sensitive to economic and cultural differences.

As the subcommittee progresses in its work, it anticipates considering bail determinations for crimes where violence and victims are factors. Over time, the subcommittee also hopes to: i) collect and analyze racial and ethnic data on pretrial alternative sanctions programs: referrals to the programs, minority participation in the programs, and evaluation of their success; ii) design and recommend new data collection projects where necessary; and iii) assess the jail reinterview program

Principal Research Questions and Activities

Bail determinations

Pretrial release conditions are established for arrestees by police officers following arrest. If defendants are unable to comply with police conditions, they are seen by bail commissioners who are employees of the Judicial Branch. Defendants may be released several ways: on a "promise to appear" (sometimes including conditions); under the supervision of the bail commissioner; to a community-based alternative to incarceration program under the auspices of the Judicial Branch's Court Support Services Division; or after paying monetary bond. If defendants are unable to post bond when it is ordered, or if they have committed other violations which require their confinement, defendants will remain incarcerated until their cases are disposed.

A *Court Disposition Study* by the Connecticut Judicial Branch (1992) showed that minorities had less favorable outcomes in pretrial release/bail decisions. For example, even holding certain factors constant (seriousness of charge, prior felony convictions, number of arrests), Hispanics were more likely to have to post a monetary bond. The subcommittee is examining whether these issues remain within the Geographical Area Courts throughout the state and, if so, to what degree.

Electronic data is available only for those arrestees who go through the bail system. Given that only one-third of those arrested in fact go through the bail system, it is difficult to engage in any kind of comprehensive comparative analysis on

Electronic data is available only for those arrestees who go through the bail system. Given that only one-third of those arrested in fact go through the bail system, it is difficult to engage in any kind of comprehensive comparative analysis on pretrial handling.

pretrial handling. Fortunately, the existing bail data system provides significant information that does permit useful analysis. The subcommittee has received bail data and Criminal Records Motor Vehicle System (CRMVS) records and is in the process of examining those data so that the answers to the following questions can be analyzed:

- P Holding multiple factors constant, are there differences across race and ethnicity in defendants' involvement in the bail system? Are there differences when defendants charged with the same offenses are compared?
- P Holding multiple factors constant, are there differences across race and ethnicity in amount of bond set by police? By Bail Commissioners? In Bail Commissioners' recommendations to the court? In court determination of bond? (Again, comparing for the same number and severity of charges.)
- P Holding multiple factors constant, are there differences across race and ethnicity in total scores on the bail risk assessment instrument? Are there significant differences by race/ethnicity in any individual scoring factor on the bail form? Are there any significant differences on items that measure non-criminal factors, in particular?
- P Holding multiple factors constant, are there differences across race and ethnicity in pretrial conditions ordered by the court, holding number and severity of charges constant?
- P Holding multiple factors constant, are there differences across race and ethnicity in bond amount, bond scores, or pretrial conditions for defendants charged with drug offenses, in particular?
- P Holding multiple factors constant, if there are differences, are they more or less common in courts that serve large urban areas? Mid-sized cities? Rural towns?

The subcommittee will focus its research about the racial and ethnic composition within the criminal justice system – staff, defendant and victim -- on the cities of Bridgeport, Hartford, New Britain, New Haven, Stamford and Waterbury, supplemented by smaller towns such as Meriden for sampling purposes. This is because 57% of the incarcerated population is from these six cities. Special attention will be given to the Latino population, as researchers have uncovered significant instances of underrepresentation in the data heretofore collected (see full discussion in Section 1.C.2).

Drug offenders

The subcommittee is investigating bail orders for specific drug offenses. While drug offenses may involve social, economic and racial issues, they are usually nonviolent and there are often no immediately identifiable victim issues (although the drug user and the community are certainly affected). For this reason, these cases are easier to analyze in comparison to those cases where violence and victimization are strong factors in bail determinations.

The subcommittee is in the process of analyzing data for the drug charges from the calendar year 1999 on approximately 100 informational factors that have been identified on the Bail Interview Record. Data for Burglary 3rd cases are also being collected, because that charge is particularly common throughout the state.

Summary of Literature

State and national studies have indicated that defendants incarcerated pretrial are more likely to be sentenced to incarceration after conviction than defendants with similar charges and criminal histories who were out on pretrial release.

National Literature

A small amount of research has looked at racial and ethnic differences in the pretrial stages of the criminal justice system, particularly court-appointed counsel and bail decisions. Racial differences have been found in the court appointment of legal counsel; African-Americans are more likely to receive a court appointed attorney than whites (Spohn and DeLone, 2001). However, these differences are likely the result of social class and economic issues rather than race (Walker, Spohn, and DeLone, 2000). These studies also found that African-Americans with court appointed attorneys are not at a disadvantage when compared to whites with court appointed attorneys, nor do minority or non-minority defendants with court appointed attorneys fare worse than those with private counsel (Williams, 1995).

Bail studies are also limited and have produced mixed conclusions. Most bail studies have found race effects in bail decisions but are hesitant to attribute these disparities to discriminatory practices by judges and bail commissioners (Maxwell and Davis, 1999). Two consistent findings have been that: 1) African-Americans and Hispanics are treated more severely due to having more serious charges and more extensive criminal records (as well as being unemployed and having less income); and 2) race effects vary greatly by region, state, and jurisdiction.

Connecticut Literature

In the 1992 *Court Disposition Study*, defendants who were incarcerated pretrial were found to be more likely to be sentenced to prison than defendants who remained in the community pretrial: 62% compared to 18%. However, it was the combination of the following factors that were closely associated with likelihood of an incarcerative sentence: severity and type of charge at disposition, total arrests on record, the number of days in pretrial incarceration, the number of recent felony convictions, and race/ethnicity. These factors in combination were able to identify whether defendants would be sentenced to prison or not 75% of the time.

In this 1992 study, a defendant's race/ethnicity had the third strongest relationship to pretrial incarceration. Although 56% of Latinos, 50% of African-Americans, and 27% of Caucasians were incarcerated for some part of the pretrial period, much of this difference disappeared when the number of arrests and felony convictions, the seriousness and type of the present charge, and sex were controlled. However a statistically small difference remained which could not be explained by these factors. This means that holding the other criminal justice factors constant, a Latino charged with a violent crime had a 58% likelihood of being incarcerated for some period pretrial, compared to 51% for African-Americans and 44 % for Caucasians. These remaining differences might have been explained by such other non-racial or ethnic factors as: economic, educational, residential stability and language differences; employment, family support and other considerations; or unequal treatment by court staff based on racial or ethnic differences. It is also important to note that total arrests were the single greatest predictor of pretrial incarceration. Police practice could have contributed to disparities outside of court that might have added to unequal treatment even though court personnel were applying criminal history and other factors

fairly. The additional data being analyzed presently will serve as an important comparison to the extensive report of 1992.

Recommendations to Date

Bail and release determinations

- P Examine whether the weighted release criteria used in the interviews conducted by bail commissioners need to be modified to be more sensitive to economic and cultural differences. For example, less weight might be attributed to residential stability and employment or more “credit” might be given for very short employment if there were compensating family support or other characteristics.

- P Conduct a profile study of the incarcerated pretrial male and female populations to determine the numbers, if any, who are charged with substance abuse charges, D felonies or less serious charges and have no history of failure to appear, no pending charges and no violent felony charges, to determine whether there is racial/ethnic disparity in those who are incarcerated pretrial.

Pretrial alternative sanctions programs

- P Conduct a profile study of the pretrial population within the alternative sanctions system to determine the number of minorities participating and their success rates.

- P Conduct a comparison between the incarcerated pretrial population and pretrial releasees in alternative sanctions programs to determine to what degree the target population is being served by the alternative sanctions network.

- P Analyze current pretrial conditions of release and consider potential expansion of alternatives, *e.g.*, voluntary drug treatment and educational programming.

- P Examine the effectiveness of community-based monitoring and substance abuse services for Latinos, such as Project APOYO, a bilingual culturally sensitive program.

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TRIAL SUBCOMMITTEE

Trial Subcommittee Report

Priority Areas of Focus

While Connecticut has one of the highest rates in the nation for the percentage of its population tapped for jury duty and one of the lowest rates of jury delinquency, the subcommittee has been looking at how even more can be done. To that end, the subcommittee identified the following issues as current priorities for their work:

- P Jury selection process
- P Jury outreach

The subcommittee is cognizant that there are broader socio-economic and cultural forces that have a disparate impact on jury participation, selection and delinquency, but which do not necessarily reflect racial or ethnic discrimination on the part of the jury system. The subcommittee will continue to be mindful of these issues during its ongoing deliberations.

The subcommittee will also be reviewing such key issues as: i) the level of diligence in the treatment of incarcerated minority defendants when they come to court and the care that is taken to conceal from the jury the fact that these individuals are incarcerated; and ii) the issue of language barriers and whether such barriers could be addressed through the use of technology.

Principal Research Questions and Activities

In order to begin to address these issues, the subcommittee has engaged in an extensive series of research activities and methodologies. Among them:

Research reports

The subcommittee and consulting team have produced two reports for the Commission to date, both conducted by Ivan Kuzyk, Director of the Cities Data Center at Trinity College: 1) *Year 2000 Census Data on Race and Ethnicity in Connecticut*, an analysis of the most recent census data on race and ethnicity of the state's population; and 2) *An Overview of Jury Selection Questions and Issues*, which provided an overview of jury selection questions, issues and data. These studies have helped the subcommittee understand race and ethnicity of responders and non-responders relative to the census figures for people of eligible age in major urban areas, mid-size cities, and smaller rural areas. The analyses showed that although there are some distinctions that exist among courts, race and ethnicity could not be proven to be the root cause of these distinctions. Factors such as the size of the court, the urban-suburban-rural nature of the towns served by the court, social and economic disparities, and the individual culture of each court are all potential causes for the differences.

Jury array/selection

As the 1996 *Task Force on Minority Fairness Report* pointed out, Connecticut has one of the highest rates in the nation for the percentage of its population tapped for jury duty, compared with the census. In 1993-94, Connecticut reached 94% of its eligible population. Connecticut was

recognized as one of only four states which utilize jury procedures consistent with the American Bar Association (ABA) standard relating to juror use and management – including the ABA standard that the jury list should contain 85% of a state’s general population.

The Judicial Branch does not collect data on the racial and ethnic composition of prospective jurors at any point in the jury selection process and lacks the statutory authority to do so. In order to ensure that minority communities are proportionally included in jury arrays, and pursuant to Connecticut General Statute 51-222A, the State’s Jury Administrator uses several electronic source lists from which jurors are summoned to cast a broad net in its search for prospective jurors. These include: the latest updated file of motor vehicle operators for the state; most recent updated list of residents of the state who have permanent place of abode in the state and who filed a return on personal income under Chapter 229 in the last tax year; most recent updated list of residents of the state who are recipients of unemployment compensation under Chapter 567; and the list of all electors from each of the state’s 169 towns.

Array was reviewed extensively during the State of Connecticut v. David Gibbs case in 2000. The defendant’s attorneys argued that their client had been denied a fair trial based on a systemic denial of Hispanic persons being selected for jury service based on the exclusion of them in the jury arrays. Upon review of the findings of an analysis of the Hartford-New Britain Judicial District’s process, the Supreme Court found that this was not the case. Other social factors such as mobility, age, home ownership and economics were more likely predictors of excusal than ethnicity.

More specifically, in State v. Ferguson, 260 Conn. 339(2002), the Supreme Court rejected constitutional challenges to an alleged underrepresentation of Hispanics in the jury array, and to the statute requiring disqualification of individuals who do not speak English from serving on a jury. The Court relied on its previous holding in State v. Gibbs, 254 Conn. 578(2000), which also rejected claims of Hispanic underrepresentation in the jury array and a challenge to the English proficiency requirement for jury service. The Court noted that the juror source lists at the time of the Ferguson trial were comprised of motor vehicle license holders, registered voters, personal income tax payers and recipients of unemployment income, and stated: “The procedure for summoning persons to serve on juries in Connecticut is the same throughout the state . . . We will not engage in a piecemeal evaluation of jury array procedures for each of the state’s judicial districts when the process for creating jury arrays is based on a general, statewide procedure.”

Jury selection process

There are a number of potential jurors who are excused between the time of jury duty summons and the voir dire process. One of the primary difficulties with the available jury data, is that, by statute, race/ethnicity is not captured in data collection. Therefore, in order to develop a qualitative understanding of the factors that may impact reasons for excusal and jury compositions throughout the state in different courts, the consulting team initiated a series of interviews with administrative judges and court staff around the state. The consistent messages that surfaced regarding the potential difficulties around minority participation in the jury process

Analyses have shown that although there are some distinctions that exist among courts in race and ethnicity of responders and non-responders, race and ethnicity could not be proven to be the root cause of these distinctions. Factors such as the size of the court, the urban-suburban-rural nature of the towns served by the court, social and economic disparities, and the individual culture of each court are all potential causes for the differences.

were similar throughout the state. Circumstances which preclude participation include: full-time care for children or the elderly; the costs to day laborers, part-time and per diem workers of workdays lost because of jury duty (although there is a reimbursement of \$50/day); employer compliance, or lack thereof, with existing statutes for jury duty; and the impact of these issues on minority communities, particularly Latino populations, due to such factors as the transience of the population and language barriers.

The subcommittee has also identified points in the jury selection process where jurors are excluded pursuant to CT General Statute Section 51-217. To determine whether race and ethnicity are related to disqualification (since the collection of race data relating to juries is precluded by law), more research was conducted. An analysis of the rates of excusal and confirmation of jurors prior to court appearance was conducted. Based on U.S. census data, a sample of courts was analyzed to determine whether the jury confirmation process operated uniformly between courts that serve towns with significant minority populations and those that do not. The sample included two courts serving towns with large minority populations, two that had small minority populations, and one that fell in the median range with respect to minority residents. This survey revealed that the two courts serving the largest minority populations (Hartford and Bridgeport) had significantly higher disqualification rates and lower confirmation rates, and a higher rate of undeliverable mail than courts in Litchfield, Derby, and New London (Kuzyk, 2002). Court appearance rates were not significantly different in Hartford and Bridgeport courts than the other courts.

Peremptory challenges

Connecticut is exemplary in its use of peremptory challenges, as is reflected by the Batson v. Holloway case. An equal protection challenge to the use of peremptory strikes requires a showing of purposeful discrimination. In a criminal case, Batson requires a party asserting an equal protection violation to make a *prima facie* showing that the other party has impermissibly exercised peremptory challenges on the basis of race. If this threshold is satisfied, the proponent of the strike must articulate a race neutral justification, if any, for the strike. The opponent of the strike then has the burden to demonstrate that the proponent's reason is pretextual. In applying Batson, the Connecticut Supreme Court in State v. Holloway has dispensed with the threshold requirement that a criminal defendant establish a *prima facie* showing that the state has exercised peremptory strikes based on race. Instead, upon the defendant's showing that he and the struck venireperson are of the same racial or ethnic minority, the prosecutor is required to state for the record the race neutral reasons, if any, for exercising a strike against a minority venireperson. The state's reasons must be related to the case being tried. The defendant may then attempt to show that the state's reasons are not race neutral, but are in fact pretextual. Under the Holloway test, the burden of persuasion never shifts. The party challenging the strike always bears the ultimate burden to prove that the other party has purposefully exercised its strikes in a racially discriminatory manner.

Jury delinquency

While Connecticut has one of the lowest jury delinquency rates in the country, there have been some disturbing spikes in these rates that must be tracked, especially tracked geographically. Statewide delinquency rates have been increasing over the past three years. The following page outlines the numbers and issues around Connecticut's juror delinquency rates.

Total Number of Jurors Summoned in Connecticut

| Court Year 1999 | Court Year 2000 | Court Year 2001 |
|-----------------|-----------------|-----------------|
| 509,341 | 523,152 | 550,707 |

- P About one-fifth of the individuals summoned for jury duty each year will serve at least one day in court.

Total Number of Jurors Who Served At Least One Day in Court

| Court Year 1999 | Court Year 2000 | Court Year 2001 |
|-----------------|-----------------|-----------------|
| 109,024 | 112,004 | 117,817 |

- P To not be considered delinquent, prospective jurors *who do not serve at least one day* must be disqualified pursuant to C.G.S. 51-217, or cancelled or excused by the court.
- P Jurors are delinquent when they fail to serve within one year of their original appearance date and they have not provided proof that they should be disqualified and they have not been cancelled or excused by the court.
- P The number of delinquent jurors has increased over the past three years.

Delinquent Jurors

| Court Year 1999 | Court Year 2000 | Court Year 2001 |
|-----------------|-----------------|-----------------|
| 14,958 | 25,832 | 27,495 |

- P Statewide delinquency rates have been increasing over the past three years.

Statewide Delinquency Rates
(As a percentage of total jurors summoned)

| Court Year 1999 | Court Year 2000 | Court Year 2001 |
|-----------------|-----------------|-----------------|
| 2.93% | 4.93% | 4.99% |

- P The above totals and rates for Court Year 2001 were taken after the names of deceased persons were removed from the list.
- P The delinquency rate still increased when the names of the deceased were removed.

Jury outreach

The Connecticut Judicial Branch hired an independent consulting firm, the Center for Research and Public Policy (CRPP), to conduct a study on citizen perspectives on the courts. The CRPP report, entitled *Statewide Public Trust and Confidence Study* (October 1998), found that the jurors' familiarity and experience with the courts in Connecticut actually correlates with higher positive opinions of the judicial system. On five separate measures, jurors had significantly higher positive ratings of court operations than the composite of all survey respondents (a random sampling of Connecticut heads of households eighteen years of age or older). These measures included ratings of "trust" (38.3 % for jurors as compared with a composite rating of 32.3%); "confidence" (46.9% v. 37.7%); and, "favorable rating of the job the courts are doing" on a composite scale of 13 characteristics (38.1% v. 31.7%).

Marketing/educational outreach

The Connecticut Judicial Branch Jury Administration has developed an education module for junior and senior high schools about the importance of serving as a juror that will be piloted in Bridgeport. Also, public service announcements (PSAs) have been prepared and distributed by the Judicial Branch and sent to radio stations in nine cities. Their effectiveness in reducing the "no-show" rates will be tracked by the Judicial Branch Jury Administrator. In addition, cable television and Spanish-speaking radio spots are being explored.

Summary of Literature

National Literature

One area that has been found to have significant racial bias is the jury selection process (Fukurai, 1996). Despite U.S. Supreme Court decisions regarding the selection of jury pools, little reform has been made to the prosecutorial use of peremptory challenges nationwide (Walker et al., 2000). In some cases, prosecutors have openly acknowledged using race as a criterion for jury selection. Research, in general, has found that African-American jurors tend to be excluded more often from trials involving African-American defendants than for trials involving white defendants.

Connecticut Literature

A review of jury selection issues in Connecticut was conducted, *An Overview of Jury Selection Questions and Issues* (Kuzyk, 2002). The sample included two courts serving towns with large minority populations, two that had small minority populations, and one that fell in the median range with respect to minority residents. This survey revealed that the two courts serving the largest minority populations (Hartford and Bridgeport) had significantly higher disqualification rates and lower confirmation rates, and a higher rate of undeliverable mail than courts in Litchfield, Derby, and New London (Kuzyk, 2002). Court appearance rates were not significantly different in Hartford and Bridgeport courts than the other courts.

Recommendations to Date

Jury selection

- P Examine the use of public assistance lists, which are currently used in New York, and the use of newly naturalized citizen lists presently being attempted in Washington, D.C. to determine their impact.
- P Endorse the civil penalty procedure proposed by the Judicial Branch for non-compliance.
- P Endorse the proposal by the Judicial Branch to clarify that wages paid by an employer to a juror for jury service are subject to state wage enforcement statutes and to determine any additional efforts which should be undertaken to ensure that permanent part-time employees are compensated by their employers for jury service.

Jury outreach

- P Examine the impact of the Judicial Branch's outreach program being initiated in Bridgeport and Hartford, and the impacts of other juror appreciation efforts in jurisdictions nationwide.
- P Based on the CRPP study findings, focus significantly on increasing citizen awareness of the Connecticut court system through a statewide educational effort.
- P Continue and expand distribution of public service announcements (PSAs).
- P Examine the jurisdictions currently providing child care to determine costs and impact on the numbers of jurors who serve.
- P Analyze the potential costs and impact of providing transportation services from court houses in select jurisdictions where travel may be an impediment (for example Hartford to Enfield).

Student outreach and education

- P Examine the impact of outreach programs such as the Council for Court Excellence's "You Decide" class, with its teachers' guide targeted to secondary school students which enables them to witness a trial videotape and empanels them as jurors to determine a verdict.
- P Continue and potentially expand the pilot Judicial Branch Jury Administration's Bridgeport education module for junior and senior high school students.

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POST-TRIAL SUBCOMMITTEE

Post-Trial Subcommittee Report

Priority Areas of Focus

The central approach of this subcommittee has been three-fold:

First, to determine the key decision points at which the system acts on a defendant or prisoner. The subcommittee has concluded that measuring disparity at these points will determine whether further investigation is necessary. It is also studying the assessment policies at these points to determine whether there are any steps in the process where members are confident that objective criteria are used in making decisions. Certainly, if theoretically objective criteria produce disparate results, studies should reveal the same and permit further investigation.

Second, to determine what data are available to try to measure what occurs at various decision points so the subcommittee can test for disparity and, where discovered, try to understand its causes and possible remedies.

Third, to try to control for any factors that might explain any disparity or lack thereof.

Any analysis performed by this subcommittee is controlled by what has already happened in the system. If minorities are facing disparate treatment elsewhere in the system, this subcommittee will be dealing with data about a population that already has an overrepresentation of minorities. Therefore, the subcommittee decided to evaluate whether there is disparate treatment of those who enter the system at the first step relevant to its subject -- sentencing -- and test the process from that point forward.

After the subcommittee better understands the dynamics of sentencing and who is coming into the system, and after considering the following other key issues, it will be possible to begin to determine where disparity, if any, occurs and why:

- P Factors leading to incarceration versus alternatives to incarceration
- P Opportunities for different programs in prison and what criteria exist for those programs
- P Rehabilitation and/or transitional supervision programs
- P Factors contributing to reincarceration
- P Differential treatment by geographical area courts (if any)
- P Post-trial legal proceedings, including appeals
- P Factors contributing to prison and jail overcrowding
- P Measurement and evaluation of parole and parole revocation process.

Principal Research Questions and Activities

In order to begin to address these issues and to better understand sentencing and the level of incarceration, the subcommittee has engaged in an extensive series of research activities and research methodologies. Among them:

Research questions given data available

Ideally, a complete data set for analysis would include criminal history information, risk assessment information (including education, employment, history of substance or mental health treatment, family status and other factors), pretrial status or release conditions, and present charges and court information. In fact, data available presently is limited. While data does include present criminal charges for all criminal cases, only the approximately one-third of criminal cases that involve bail assessments yield more information, which includes: some measures of criminal history, along with education, employment, income, treatment history.

Within these constraints, the subcommittee has obtained data from all the relevant sources to begin addressing the following questions. Some preliminary evaluations have occurred that are already shedding light on the issues that need to be addressed:

Sentencing patterns

- P What are the relationships among race/ethnicity, gender, education, income (or length of employment), charge severity, age, pretrial status, type of jurisdiction (large urban area, mid-sized city, rural area) and disposition? When the other factors are held constant, is there sentencing disparity associated with race and ethnicity?

- P Is there a relationship between arrest on statutes that involve mandatory minimum prison sentences and race/ethnicity? Between race/ethnicity and conviction on those statutes?

- P Are there any differences in likelihood of receiving a sentence that includes incarceration by race & ethnicity, when gender, education, income (or length of employment), charge severity, age, type of jurisdiction (large urban area, mid-sized city, rural area), and pretrial status are held constant? Are there differences in length of incarceration associated with race/ethnicity?

- P What trends are revealed over the past X¹ years in the racial/ethnic distribution of Department of Correction (DOC) inmates, with those incarcerated pretrial, sentenced to less than two years, and sentenced to two years or more examined separately? (The subcommittee will attempt to have at least one snapshot/year for at least five years.)

- P Are there any differences across race/ethnicity in dispositions of misdemeanor cases of particular types – *e.g.*, marijuana possession, Assault 3, and others of interest to the subcommittee?

¹The number of years to be determined.

- P Are there differences across race and ethnicity in probation revocation and subsequent reincarceration, when types of violations are held constant?
- P Are there any differences across race and ethnicity in types of conditions ordered at sentencing or use of Alternative Incarceration Centers or Day Incarceration Centers?

Program population issues

- P Are there any differences across race and ethnicity in types of program participation in prison? (The subcommittee will be exploring with DOC the availability of data on program involvement from DOC)
- P Are there differences across race and ethnicity in the violence ratings of offenders sentenced to DOC ?
- P What are the eligibility criteria for placement on parole and parole revocation?
- P What are the eligibility criteria for placement into halfway houses and/or transitional supervision?

Access to Judicial data files

In April 2001, the Judicial Branch provided the subcommittee with four data files – all of which were broken down by race and ethnicity: i) the original charges in each class of crime, and the substituted charge that resulted in a disposition, tracked by G.A. and J.D.; ii) the sentences imposed for each class of crime, broken down further by G.A., J.D., and location of offense; iii) referrals to special diversionary programs, and the ultimate disposition of those referrals; and iv.) data on those who applied for parole and ultimately were either granted or denied parole. The subcommittee also received information about the location of the crime and the address of the defendant.

Inmate classification

In February 2001, the Department of Correction (DOC) shared the first stages of a survey to ascertain what factors contribute to the determination of an inmate's classification while incarcerated. This first venture into DOC's database had a three-fold purpose: i.) to obtain a snapshot of each category in the department's objective classification system; ii.) to determine whether the classification system was valid, in that intake officers were complying with DOC policies and accurately and objectively applying the classification guidelines to incoming prisoners; and iii.) to determine the distribution of inmates by race and ethnicity. The subcommittee reviewed this data and proposed additional factors for investigation.

Racial disparity at key decision points

The subcommittee reviewed data to make a determination whether there was any indication of racial disparity at key decision points, in particular the placement of inmates in either transitional supervision or community supervision (e.g., a halfway house). Using an overall risk score for inmates who qualify for these programs as determined by objective

It was encouraging to find, at the first key decision point studied by the subcommittee, that there was no indication of racial disparity in the placement of inmates in either transitional or community supervision.

risk factors, there did not appear to be any racial disparity at this decision point. Therefore, the subcommittee concluded with some degree of confidence that the criteria used to classify inmates for transitional and community supervision were applied objectively.

Besides providing a conclusion regarding a particular decision point, the subcommittee concluded that it can use these objective risk factors to look back at the entire process. Once the subcommittee identifies an inmate whose risk factors are known, it can look back at the process to determine how s/he was treated at various decision points – all the way to sentencing. Other subcommittees may be able to use the data acquired to go back even farther in the process. In essence, to some extent, the subcommittee's results will be a snapshot of the system over a set period of time. This comparison of inmates will enable the subcommittee to compare inmates at various decision points and examine issues of race and ethnicity.

Parole and parole revocation

The subcommittee reviewed the following Board of Parole charts concerning parole applications and parole applications granted over the past five years. While neither snapshot controlled for key factors – e.g., where inmates were in their sentence; what they were sentenced for; or criminal history – the charts serve as a preliminary indicator that there is no apparent evidence of racial disparity.

Summary of Literature

(Note: While the following references provided by the Commission's consultant may serve as possible sources for future guidance, the subcommittee has not reviewed or endorsed the following national material, and has not relied on it for its recommendations.)

National Literature

Reforms in court processes and legal protections over the past several decades have significantly reduced systematic racial discrimination in the courts. Even so, researchers now characterize the court system as promoting contextual discrimination (Walker, Spohn, and DeLone, 2000; Crawford, Chiricos, and Kleck, 1998). That is, African-American and Hispanic offenders who have a prior criminal record, who are detained prior to trial, and are unemployed are more likely to be sentenced to prison and receive longer prison sentences than white offenders (Mustard, D.B., 2001; Spohn, 2000). In reviewing forty sentencing studies, Spohn (2000) found direct race effects in the initial decision to incarcerate. African-American and Hispanic offenders were more likely to be incarcerated than white offenders but did not tend to receive longer sentences (this finding supports an earlier study by Chiricos and Crawford, 1995). Spohn (2000) also found contextual differences, in that minorities who are convicted of drug offenses, have a record of serious offenses, have victims who are white, do not plead guilty, or are not given a pretrial release are also treated more harshly by courts than whites.

There have not been consistent findings of race differences in terms of convictions, plea bargains, and sentencing for violent and weapons-related offenses (Walker et al., 2000). However, racial disparities have been found in convictions, plea bargains, and sentencing for minor offenses. African-American and Hispanic offenders tend to receive harsher sentences for borderline offenses, where judges have the most sentencing discretion.

Much of the literature supports the belief that more African-Americans are being supervised by the criminal justice system (jail, probation, prison, parole) than are in college (African-Americans make up approximately 15% of the nation's population and college populations, yet over 50% of prison inmates). Studies have generally found that incarceration rates are substantially higher for African-Americans and Hispanics – as much as five to seven times higher (Beck and Harrison, 2001; Walker, Spohn, and DeLone, 2000; Gillard, 1999; Beck and Mumola, 1999, Bureau of Justice Statistics, 1999). The overrepresentation of African-Americans and Hispanics in correctional facilities is attributed to differential offending rates, pretrial biases, and sentencing biases, primarily with drug offenses (Walker et al., 2000). There is little or no literature on disparities in prison programming and use of alternatives to incarceration.

The racial make-up of parole populations has been remarkably similar to the racial make-up of prison populations, suggesting little or no bias in the granting of parole for minorities. There are few studies on parole revocation and race, but these studies find that African-Americans have lower parole completion rates than whites. While there are several explanations for this finding (e.g., higher re-offending rate, parole officer bias, fewer post-incarceration services available), there is no empirical evidence to support any of these (Walker et al., 2000).

Connecticut Literature

Research on post-trial racial disparities in Connecticut is limited, but one study does shed light on post-trial success (Lyon, 1996). This longitudinal study of alternatives to incarceration found that white probationers were more likely to satisfactorily complete probation than African-Americans and Hispanics (78% for whites, 42% for Hispanics, and 27% for African-Americans). This finding was consistent across sample groups (Alternative Incarceration Center clients, Day Incarceration Center clients, and Intensive Supervision Drug Unit clients). In addition, African-American and Hispanic clients were more likely to be rearrested than white clients (across all samples).

Recommendations to Date

- P** The subcommittee should continue to focus on a study of sentencing, the dynamics of sentencing, and where disparity occurs and why.

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JUVENILE JUSTICE SUBCOMMITTEE

Juvenile Justice Subcommittee Report

Priority Areas of Focus

Because of the importance of early interventions and appropriate support services and sanctions for young people, and because the point of entry to the justice system is where racial/ethnic disparity escalates, the juvenile subcommittee chose to direct its resources and first research efforts to two areas: i) aggressive prevention efforts; and ii) exploration of diversions from court that encourage retaining juveniles in their communities whenever appropriate and possible.

An effective juvenile justice system that meets the twin goals of public safety and providing youth with opportunities to lead a crime-free life must necessarily focus on prevention and early intervention activities and on minimizing inappropriate detention of youth. Because detention is a key entry point from which youth further penetrate the juvenile justice system – then the adult system – decisions made at detention can have a profound impact on disproportionality, for better or for worse.

Because community diversion plays an important role in avoidance of the “net-widening” concerns increasingly found in the formal juvenile justice system, the subcommittee is also paying close attention to two related elements: i) the proportion of children (in particular, Caucasian children) who have counseling and diversion options that keep them out of the system; and ii) the proportion of children (in particular, of color and economically disadvantaged) who look to the juvenile justice system as a safety net – a place to receive social and mental health services.

The subcommittee has focused on four areas where it feels the most important initial prevention and diversionary steps must be taken if the overall intent of the legislative charge to reduce racial/ethnic disparity is to be addressed expeditiously. These include:

- P Points of entry and assessment tools
- P Expanded diversion services, especially for young people with behavioral/mental health needs
- P Development of alternative program interventions for FWSNs (Families With Service Needs)
- P School interventions

The subcommittee has already engaged in a comprehensive review of both national and Connecticut research studies as background for identification of issues and data collection needs related to minority overrepresentation in Connecticut’s juvenile justice system.

National: The subcommittee is learning from programs in other states which have successfully developed an effective array of community-based programs that meet the needs of troubled youth while maintaining the safety of their communities. In particular,

the subcommittee is looking carefully at two programs that have been highly successful in reducing disproportionate minority confinement of young people: 1) the Santa Cruz County (California) model for creating and tracking outcome indicators for detention alternatives and dispositional programs as effective ways to monitor issues of equal access and program effectiveness; and 2) the Multnomah County (Portland, Oregon) detention reform program that has reduced the number of minority youth detained pre-trial; reduced racial disparities in detention by the use of alternatives to detention; developed a sanctions grid for probation violators; developed data-driven and objective criteria for decision-making and risk assessment; and increased diversity training and public awareness programs. The subcommittee is also interested in understanding the degree to which programs and services that include parent and/or family involvement in both judicial proceedings and probationary programs have a positive impact on reducing disproportionate minority confinement.

Connecticut: The subcommittee is interested in monitoring the effectiveness of existing Connecticut programs – in terms of service provision, outcomes that measure program efficiency, and tracking of program response to racial/ethnic needs.

Principal Research Questions and Activities

Points of entry and assessment tools

The subcommittee believes that research needs to be done to identify juveniles at different points of entry into the system, and to examine the decision-making process at time of arrest to develop a clear understanding of who is getting arrested and for what reasons. The subcommittee acknowledges current efforts that have been undertaken in Connecticut. In addition, the subcommittee will look at all key decision points in the juvenile justice process: arrest, booking, detention, release and placement. This includes exploration of improved risk assessment tools, especially those which should be available at the police intake point. The subcommittee is very aware that objective criteria for decisions made at each point must be developed and monitored. Moreover, assignments to and removals from intensive supervision caseloads must be based on clearly stated risk-based criteria. The subcommittee wishes to ensure that youth with non-violent and minor offense histories are not placed in high-intensity service plans that are not needed to ensure community service.

Data collection efforts are necessary for decision-point mapping and data review of race/ethnicity at each decision point. Objective criteria for the decisions made at each entry point must be developed and monitored. This is critical to the whole process.

At the moment, every young person who comes into the juvenile system is screened by the JAG (Juvenile Assessment Generic) and the SUS (a self-administered Substance Abuse Survey) and, for young people on probation, the MAYSI (Massachusetts Youth Survey Inventory, designed to identify mental health concerns). These tests are used to assess the individual's risk of reoffending and to prioritize service needs. Case supervision plans are developed from these assessment tools. The subcommittee will continue to monitor these tools and to study risk assessment programs of other states.

Expanded diversion services, especially for young people with behavioral/mental health needs

Data from the 2000 Judicial Branch *Juvenile Sanctions Longitudinal Study* showed that community-based alternative sentencing programming for court-involved juveniles could be expanded with confidence – especially for pre-adjudicated youth who might otherwise be incarcerated in a detention center, and for a significant proportion of the most high-risk youth who might otherwise be sentenced to Long Lane School or the Connecticut Juvenile Training School. Juveniles who participated in these programs did as well as, if not better than, youth who had been incarcerated as measured by subsequent recidivism. Moreover, a number of young people with behavioral and mental health issues are in residential programs who, if the right kinds of mental health services were provided, would probably not be in the correctional system at all. The racial/ethnic implications of these programs in terms of program admissions and the potential benefits/effectiveness of these programs for minority populations must be explored further. The subcommittee believes that it is necessary to create and track outcome indicators for detention alternatives and dispositional programs in order to monitor issues of equal access and program effectiveness, as well as court processing and residential placement time. If racial/ethnic disparities are discovered, a more detailed inquiry into causal factors needs to be undertaken.

The subcommittee thinks it is necessary to examine in particular the nature of the disposition process and the precipitating factors that result in one child being referred to the mental health system and another into the juvenile justice system. It is important to explore systems for identifying and flagging children who are entering the juvenile justice system who have a history of mental health problems in order that these young people can be cared for therapeutically rather than punitively. In addition, the committee is examining ways to: i) divert children who are identified as having behavioral needs from the juvenile justice system to programs that provide appropriate treatment, including specialized treatment for children with a history of trauma; and ii) coordinate efforts with the Department of Children and Families' (DCF) KidCare program and other proven initiatives. The committee will try to ascertain if there is a disparity in terms of which children are serviced by the mental health system compared to the juvenile justice system.

Development of alternative program interventions for FWSNs (Families With Service Needs)

At the moment, many juveniles are referred to detention because of a lack of space in current Judicial/ DCF options. This is particularly true for Family With Service Needs (FWSN) violators. FWSNs are young people (up to sixteen years old) who have not committed any crime as identified by the criminal justice code, but who are under the jurisdiction of the Juvenile Court because they are out of control within their communities, are chronic runaways, or have been truant from school. In order to keep these high-risk young people out of the court system, the subcommittee will explore the development of culturally competent alternative interventions for FWSNs, including expansion of emergency shelters, priority access to specialized residential beds, therapeutic and emergency foster care placements, and supportive housing. The racial/ethnic composition of this population will also be studied.

School interventions

The subcommittee is researching two facets of this issue: i) the importance of prevention, early intervention and screening (given evidence that poor early childhood school performance and truancy issues are strong indicators of delinquent behavior); and ii) the growing number of incidents of kindergarten suspensions/expulsions. National studies have shown that school

suspension, expulsion and overall performance are closely correlated with future truancy and ongoing criminal activity. Last year, 511 children were suspended or expelled from kindergarten in Connecticut. It behooves Connecticut to design programs early on that track and intervene with this high risk population, and/or to support initiatives that currently exist in this area. The subcommittee will look at the

Last year, 511 children were suspended or expelled from kindergarten in Connecticut. Given evidence that poor early childhood school performance and truancy issues are strong indicators of delinquent behavior, it behooves Connecticut to design programs early on that track and intervene with this high risk population.

racial, ethnic and income composition of this group. It will also evaluate existing school re-entry programs to determine which enhance school success rates, which are most culturally competent, and which are most likely to provide interventions that may prevent future judicial involvement.

Summary of Literature

National Literature

Minority youth are over-represented in every stage of the juvenile justice system (Joseph, 2000; Bishop and Frazier, 1996; Office of Juvenile Justice and Delinquency Prevention, 2000; DeComo, 1998; Puzzanchera, 2002; Pope and Feyerherm, 1990a; Pope and Feyerherm, 1990b). While early studies attributed this to higher offending rates, recent studies have found an “amplification effect” where differential treatment of minority youth increases as they progress through the juvenile justice system: the least amount of overrepresentation often occurs at the police officers’ decision to arrest and the most occurring in detention (Wordes, Bynum, and Corley, 1994). The amplification effect is caused by white juveniles being referred out of the juvenile justice system at earlier points, thus, leaving minority youth to fill detention centers (Bishop and Frazier, 1988; Zatz, 1987).

Several researchers point out that the overrepresentation of minority youth is a complex issue and that it should not be reduced to the simple question of whether minority youth are sanctioned differently. Race appears to greatly interact with other social (*e.g.*, socio-economic status, education, residence, and gender) and legal factors (*e.g.*, offense seriousness, prior offenses) that produce patterns of court decisions that, on the surface, appear to be biased and discriminatory (Wordes and Bynum, 1994; Pope and Feyerherm, 1990b).

Connecticut Literature

A recent report assessing the disproportionate representation of minority youth in Connecticut’s juvenile justice system found that African-American and Hispanic youth were overrepresented at each decision point, but that the amount of overrepresentation had decreased from 1991 to 1998 (Heartstone and Richetelli, 2001). The decreases primarily occurred in the length of stay at the police station, use of secure holding at the police station, use of detention centers, time at Long Lane School and residential placement (for DCF commitments), and use of the secure area at Long Lane School. The report presented recommendations made by the Juvenile Justice Advisory Committee regarding changes in the overall accountability of juvenile justice system agencies, police accountability, detention accountability, and residential services accountability. Most of the recommendations consisted of establishing clear decision-making guidelines and improving documentation of discretionary decisions.

An earlier report found small racial differences in juvenile court dispositions and charge severity (The Justice Education Center, 1996). African-American youth were more likely to be committed to Long Lane School and white youth were more likely to receive a commitment to a direct placement program.

One concern of the subcommittee has been the treatment of girls in the Connecticut juvenile justice system. Lyon and Spath (2002) found that girls are referred more often than boys for less serious offenses and are more likely to have histories of FWSN referrals. They also found that African-American and Latina girls were more likely to be referred at younger ages than white girls. Latina girls, in particular, appeared to have social and personal difficulties that increased their likelihood of being referred to juvenile court (referred to court for the first time for FWSN, truancy, and beyond control). The report's recommendations consisted of programming, improved assessment instruments, gender specific training for juvenile court and program staff, future research centering on gender specific programs and procedures for girls, and increased evaluation and data collection.

Recommendations to Date

Points of entry

- P Key decision points in the juvenile justice process – arrest, booking, detention, release, and placement – should be tracked by race/ethnicity on a quarterly basis in order to track trends for each decision point and to mark progress or identify problems.
- P Police agencies should attempt to release all juveniles to a parent, guardian or other responsible party, and document the reasons why this cannot happen, before deciding to transport any juvenile to detention.
- P Discussion needs to take place as to whether FWSN-type situations, as well as nonviolent juvenile offenders (misdemeanor, drug related, and Serious Juvenile Offenses (SJOs) not involving weapons or safety concerns), should be referred to community-based programs before being sent directly to the court.
- P There should be an ongoing and regular system of impartial review to assess whether there is a continuing need for detention.
- P The General Assembly should revise state law to mandate written findings by the judge at every 15-day detention hearing with no right of waiver of this mandate by juveniles or their attorneys. The written findings should include reasons why juveniles cannot be placed at home or in less restrictive environments.

Assessment tools

- P The Judicial Branch should work with the police and advocates to develop pre-admission risk assessment tools that expand options for early interventions.
- P Community-based intermediate behavioral health assessments that are more comprehensive than the court support services evaluation, but less intensive than a 30-day in-patient evaluation, are being done to assess the child and his/her family's needs. This kind of professional assessment at the entry point could follow the juvenile and inform future interventions, if continuing involvement with the system is indicated. Such confidential assessments would be used only to provide services to the child and could be presented to a court only after plea or disposition.
- P Behavioral mental health screening assessments which could serve as a baseline from which to measure educational and emotional development should be conducted as part of the required examination/inoculation process before the child enters kindergarten. The subcommittee will examine whether there are brief evaluative questions that might be asked which could provide both the pediatrician and the school system with the information necessary to plan the most effective strategies in case of need.

Expanded diversion services, especially for young people with behavioral/mental health needs

- P A graduated sanctions program should be in place that has a full continuum of services available statewide that probation officers could access prior to seeking Take into Custody (TIC) and Violation of Probation (VOP) orders. This grid of services should include mental health and education screenings and assessments.
- P Wraparound case management and services that address multiple family needs should be expanded. Open-ended terms of probation and parole should be allowed in order to link court-involved clients who have finished their mandated supervision with DCF services.
- P A system for tracking how many children are eligible for a diversion program, but for whom no program is available, should be established.
- P Use of programs should be tracked by race/ethnicity.
- P An evaluation system of programs to measure effectiveness on an ongoing basis should be designed.
- P A system should be set into place to identify and flag children who are entering the juvenile justice system who have a history of mental health problems in order that these young people can be cared for therapeutically rather than punitively.

Development of alternative program interventions for FWSNs (Families With Service Needs)

- P Alternatives to detention for FWSN violators should be expanded, including more emergency shelters, priority access to specialized residential beds, and more therapeutic and emergency foster care placements.
- P A continuum of alternatives for FWSN violators should be provided which are separate from a continuum for other juvenile justice offenders, and they should have access to intensive community-based services.

Information gathering and accountability

- P A data tracking system involving each agency responsible for providing juvenile justice services should be established to avoid duplication of services and to provide coordination of effective and cost effective delivery of services.
- P Information should be collected at each critical juncture of the juvenile justice system by individuals who understand and who are trained in the importance of this data. One agency should be charged with coordination of data collection and analysis for annual submission to the Governor and the Legislature.
- P The definition of race and ethnicity, the collection of information and the methods of analysis should be standardized for all state agencies and encouraged for use by private organizations.
- P Public and private residential programs serving juvenile offenders should clarify their incident reporting processes to ensure consistent application of rewards and sanctions for all juveniles.

Legislative initiatives

- P A racial disparity impact analysis should be required before passage of juvenile justice statutes, regulations, policies and procedures.
- P Agencies that serve juveniles in the juvenile justice system should be required to prepare an annual report that will:
 - i. Identify plans where they have disparity
 - ii. Develop a plan to reduce or eliminate disparity
 - iii. Identify what resources are available and what they need to execute the plan
 - iv. Disaggregate all decisions made in the juvenile justice system by race to identify and eliminate racial bias in decision making.

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FACE OF THE SYSTEM SUBCOMMITTEE

Face of the System Subcommittee Report

Priority Areas of Focus

The subcommittee is monitoring and evaluating the progress that has and is currently being made toward addressing racial and ethnic disparity within the workplace, and is utilizing the Judicial Branch's *Minority Fairness Task Force Report* of 1996 as its roadmap for identifying the most critical areas requiring attention. The Minority Fairness Task Force had as its charge "to reinforce the Judicial Branch's goal to promote nondiscriminatory treatment of all persons who are employed by, served by or interact with the Judicial Branch." The subcommittee believes that that charge serves as an excellent framework for an examination of all state agencies and/or commissions involved in the criminal justice system, with affirmative action and training as key issues within the workplace. The intent of the Commission is to assess and make recommendations for continued improvement in these priority areas:

- P Affirmative action
- P Training
- P Expansion of services for non-English speaking individuals
- P Perception of system fairness

In particular, the subcommittee will focus on ensuring that follow-up training is in place that will encourage staff to embrace concepts and issues around diversity. The subcommittee will also extend its data research to private, nonprofit organizations that are providing a significant number of services in the criminal justice arena, and will work with the private sector to expand dialogue and discuss issues that might warrant attention in the Commission's work. In particular, it will initiate conversations with the Connecticut Bar Association, the Connecticut Hispanic Bar Association, and the George W. Crawford Association, which promotes the interests of African-American lawyers and issues pertinent to the African-American legal community in Connecticut.

The subcommittee is examining the ongoing affirmative action, training and outreach programs of all of the agencies that comprise Connecticut's criminal justice system, as well the work of cooperating private, nonprofit agencies who serve the criminal justice arena. Critical to this effort is the identification of outcome measures from each agency that define their internal measures of success.

Principal Research Questions and Activities

Affirmative action and training

The subcommittee is in the process of continuing to review, report on and make recommendations regarding the ongoing affirmative action, training and outreach programs of all of the agencies that comprise Connecticut's criminal justice system. Critical to this effort is the identification of outcome measures from each agency that define their internal measures of success. Thus far, the subcommittee has obtained detailed information from the Affirmative Action Officer of Connecticut's Division of Criminal Justice and is in the process of obtaining

similar information from the Public Defender Services Commission, Department of Correction, and Judicial Branch.

Staff composition

The subcommittee will collect statistics and information on staff composition in the following areas: Department of Correction; Division of Criminal Justice; Public Defender Services Commission; Department of Children and Families, specifically those units or divisions involved in juvenile justice; Department of Public Safety; and Judicial Branch, to include all divisions that are criminal and juvenile justice related. All data will also include those private not-for-profit programs under contract for services to either victims or offenders through any of these above-mentioned agencies. The subcommittee will gather this information over a specific time period, from 1996 through 2002.

The *Minority Fairness Task Force Report* found that Connecticut's criminal and juvenile justice system was viewed as a "white" system by most clients of the court. Courtroom staff and judges were predominantly Caucasian, while defendants in criminal court were predominantly minority. In a 1998 *Minority Fairness Implementation Report* the Judicial Branch reported great strides in increasing its minority representation at all levels of staffing, and in hiring more employees (particularly Hispanic) who were Spanish-speaking. The number of minority judges had also increased. The subcommittee encourages these advances and will explore whether it is prudent or feasible to recommend that the justice system workforce strive to be at parity to the racial/ethnic makeup of the population it serves, rather than just to the population of the state.

Geographic research area

The subcommittee will focus its research about the racial and ethnic composition within the criminal justice system – staff, offender and victim -- on the cities of Bridgeport, Hartford, New Britain, New Haven, Stamford and Waterbury, supplemented by smaller towns, such as Meriden for sampling purposes. This is because 57% of the incarcerated population is from these six cities. Special attention will be given to the Latino population, as researchers have uncovered significant instances of underrepresentation in the data heretofore collected (see full discussion in Section 1.C.2).

Recommendations to Date

Affirmative Action

- P Examine the numbers of minorities visible at all levels of the criminal justice system in order to determine whether expansion is necessary.
- P Examine the multi-lingual/cultural recruitment, hiring and promotional efforts to ensure a diverse workforce and to include more opportunities for skills enhancement in order to encourage promotions of current minority employees.
- P Study the number of minority judges appointed and the number of minority members serving on the Judicial Selection Commission.

Training

- P Mandate comprehensive, cultural sensitivity education and training initiatives for personnel at all levels of the system, with specialized diversity training for management staff. Create and/or modify existing curricula to measure outcomes.
- P Expand opportunities for education for current employees to encourage career ladder promotions and to enable a gradual, supervised transition for clerical workers in particular to move to professional categories.
- P Emphasize cross training to enable employees to take advantage of promotional opportunities in other divisions.
- P Encourage the broadest range of participation for training by providing sessions on site as well as bringing staff to centralized training sites.

Expansion of services for non-English speaking individuals

- P Expand services for non-English speaking individuals – defendants, litigants, witnesses, jurors or victims – at all levels of the system, expansion of interpreter services being one of the highest priorities.
- P Prepare and distribute within all criminal justice state agencies multi-lingual pamphlets that outline the process for pursuing complaints and for the confidential reporting and investigation of incidents of unfair treatment to minorities.
- P Create ongoing cultural sensitivity and language barrier training to address minority concerns.

Perception of system fairness

- P Create education initiatives, measurements for success, and evaluation mechanisms that address the gaps between perception and reality about racial and ethnic disparity about the system.

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Appendix A

**NATIONAL LITERATURE REVIEW
Race and the Criminal Justice System**

A REVIEW OF THE NATIONAL LITERATURE

Race and the Criminal Justice System

Introduction

Over the past three decades a substantial amount of research has examined racial and ethnic disparities throughout the criminal justice system. This body of research has utilized a variety of data sources and research methods to determine whether: a) racial and ethnic minorities are over represented in the criminal justice system; b) this overrepresentation has resulted in widespread disparities; and c) these disparities are caused by discriminatory practices. This document is organized around the key decision points in the criminal justice process, from initial police contact to court processing to the correctional system. Basic descriptive statistics on arrests, convictions, sentencing, and corrections show evidence of overrepresentation of minorities in nearly all elements of the criminal justice process. It is important to point out, however, that overrepresentation is not necessarily evidence of discrimination.

Definition of Terms

It is critical at the outset of this report to clarify the definitions and distinctions that the terms “disparity,” “overrepresentation,” “underrepresentation,” and “discrimination” have within the context of the criminal justice system. Too often these terms are used interchangeably and are misunderstood. Misuse of these terms can fuel emotionally and politically charged dialogue – in negative ways.

- P **Disparity** means the difference between the ratio of a cognizable group in one population when compared to the ratio of that same group in another population. For example, if African-Americans are arrested 10% of the time but account for 40% of those people taken into custody, that is a disparity. Disparity can be in the form of either an overrepresentation or underrepresentation of the cognizable group being measured.
- P **Overrepresentation** refers to a situation in which a larger proportion of a cognizable group is present at various stages within the justice system (such as intake, detention, adjudication, and disposition) than would be expected as a result of equally fair treatment of that same group based on their proportion in the population that is being used as a basis of comparison.
- P **Underrepresentation** is the antithesis of overrepresentation. This means that a smaller proportion of a cognizable group is present at various stages within the justice system (such as intake, detention, adjudication, and disposition) than would be expected as a result of equally fair treatment of that same group based on their proportion in the population that is being used as a basis of comparison.
- P **Discrimination** is the result of disparate treatment – that is, if and when one cognizable group is treated differently than others for invalid reasons such as gender, racial, and/or ethnic status.

Neither overrepresentation, underrepresentation nor disparity necessarily imply discrimination. A goal of the Commission is to identify disparities and understand them in order to recommend changes needed when disparity appears to be caused by discrimination in the criminal justice system – *e.g.* if minority clients face higher probabilities of being arrested by the police, referred to court intake, held in short-term detention, petitioned for formal processing, adjudicated, and confined in a secure facility.

Issues in Race and Disparity Research

Research on racial and ethnic disparities in criminal justice has not been equally distributed across all decision points. Much of the research has emphasized the racial disparity in sentencing decisions. While research on other key decision points (*e.g.*, arrest, filing charges, bail decisions, plea bargain decisions, the use of force) has taken place, it is not as robust. In addition to sentencing, another major focus of research has been on the disproportionate confinement of minorities.

There is also a need for clarity in this literature over basic issues related to key concepts used in research on racial and ethnic overrepresentation in the criminal justice system. Most important among these is the problem of determining and coding of race and ethnic status. Data used for studies of racial and ethnic bias rely on information that may be incomplete and/or inaccurate. One example is that the coding of race can be problematic if only a dichotomous white/nonwhite categorization is used. Given the differences in treatment of African-Americans and Hispanics by criminal justice agents, such simplistic categorization can lead to invalid conclusions. Similarly, changes in the racial and ethnic make-up of American society caused by the arrival of new immigrants and multi-racial individuals makes proper categorization and coding essential for accurate measures of overrepresentation. This problem is compounded by a lack of research racial and ethnic discrimination on Hispanics and Asians (see Munoz, et al., 1998).

Methodological Drawbacks in Disparity Research

Zatz (2001) identified five common methodological pitfalls in research on crime and race. These are: (1) sample selection bias (researchers select a small number of cases of known disparities and overgeneralize their conclusions of discrimination); (2) improper model specification (researchers who do not assess the presence of indirect and interaction effects or who inaccurately attribute any findings of disparities to direct discrimination); (3) jurisdictional differences in data collection and race identification strategies as well as regional variation and city-suburban-rural variation; (4) level of aggregation (that is, researchers tend to lump city, suburb, and rural data together which tends to wash out disparities in suburbs and rural areas); and (5) inappropriate use of cross-sectional and longitudinal data. Zatz also notes that researchers must supplement statistical data with detailed qualitative studies of peoples' experiences and perceptions of the police, the courts, prisons, and other criminal justice agencies (See Fleisher, 1995).

Zatz suggests that data commonly used in this research are limited and often present problems in terms of clarity. More definitive concepts and consistent coding of race and ethnicity across jurisdictions are essential. For example, the Uniform Crime Reports (UCR) does not include indicators of class, and race and gender cannot be controlled simultaneously. The national youth and victimization surveys also present problems concerning race, ethnicity, and class. She suggests that sampling strategies should be redesigned so that the homeless, undocumented immigrants, and people living on Indian reservations have a greater chance of inclusion in household and individual surveys.

Measuring race and ethnicity is fraught with difficulties, both conceptually and practically. More attention should be given to measuring race and ethnicity. The majority of studies from previous decades were limited to black-white differences without consideration of Hispanics, Native Americans, or Asian-Americans. The way minorities are counted has also caused concern, especially in cases of individuals who are multi-racial/multi-cultural. Zatz (1987) mentioned that within one dataset, she saw the same person identified as Chicano, Mexican, white, and American Indian.

Another criticism of research on race and ethnicity is the counting of Hispanics. Kuzyk (2002) uncovered a high percentage of ambiguous records of Hispanic offenders when looking at court records in Connecticut. In one dataset he found that 11% of 24,757 records contained significant errors with regards to race (Hispanics appeared to be greatly undercounted). In another dataset, he found that 14% of the defendants who were counted as white had a Spanish surname. While it is not possible to know how many of these individuals consider themselves to be white or Hispanic, this finding suggests that Hispanics are being undercounted in court data.

Minority Involvement in Crime

One common explanation for the disproportionate representation of racial and ethnic minorities in the criminal justice system centers on the belief that minorities simply commit more crime. Wilbanks (1985) and Kleck (1981) are the leading proponents of the view that the disparity in racial and ethnic involvement in the criminal justice system is due to greater and more serious criminal activity by certain ethnic groups. Both researchers argue that minorities commit more serious and more violent crimes, which are punished more severely. For instance, several researchers (namely, Blumstein (1982), Langan (1999), and Petersilia and Turner (1988)) found that the overrepresentation of minorities in detention and prison was due to crime seriousness and the effects of the offender's prior criminal record. Males and MacAllair (2000) pointed out that disparities that were found that in Los Angeles County were a result of minority youth being almost three times more likely to be arrested for a violent crime than white youth. Hispanic youth were 6 times more likely, black youth were 12 times more likely, and Asian and other youth were 3 times more likely than white youth to be transferred to adult court. Minority youth were 6.2 times as likely to wind up in adult court, and 7 times as likely to be sent to prison by adult courts. Rather than finding racial discrimination, minority youth had higher arrest rates for felony violent crimes than white youth so that the pool of violent arrestees, those most likely to be transferred to adult court, was disproportionately minority.

Critics of these findings say that official statistics often ignore the informal practice of criminal justice by police officers in the streets, which contributes to arrests for minor technical violations, disorderly conduct arrests, and other means of widening the net (see Miller, 1996). For example, street sweeps for weapons or to disrupt drug markets in the inner city may increase the number of those arrested for other crimes (both serious and minor), as well as those charged with violations of probation and parole. The focus of such sweeps in areas with a high percentage of minorities will increase the disparity in arrests of minorities, when a similar sweep for drugs at a college might find more affluent whites being arrested.

Drug Crimes

There are clear race differences in police arrests for drug-related crimes, although there is little evidence to suggest that minorities use drugs more than whites. In 1996, 58% of all adult arrestees for cocaine and heroin dealing and 45% of arrestees for cocaine and heroin possession were African-American. By

comparison, African-Americans account for only 35% of marijuana dealing arrestees and 28% of marijuana possession arrestees (Federal Bureau of Investigation, 1998). The reasons for this are unclear; however, the nature of cocaine and heroin markets and arrests, as opposed to marijuana markets and arrests may account for some of the differences. Cocaine and heroin markets are often public places that are targeted by police in stings. The effects of the drugs significantly increase the chances of being arrests for possession.

Laws targeting crack cocaine have an especially heavy impact on African-Americans. In 1993, African-Americans accounted for 88% of federal crack cocaine convictions but only 34% of federal drug convictions overall (United States Sentencing Commission, 1995). This difference in minorities incarcerated for drug offenses is the result of a variety of factors. Brownsberger (2000) suggests five ways to explain this overrepresentation. These are: (1) underlying offending; (2) police targeting of minority neighborhoods; (3) police arresting minorities at a higher rate than whites; (4) differential prosecutorial and judicial decision making favoring whites; and (5) restricted sentencing options.

The results for sentencing for drug offenses have been inconsistent. In Minnesota, Kramer and Steffensmeier (1993) found race effects for both felony and misdemeanor drug offenses. In Georgia, Myers (1989) found that race was associated with the moral panics over drugs in the 1980s. In the context of wide media coverage of the crack cocaine crisis and election rhetoric, there was a significant race effect for dealers, especially big dealers (Peterson and Hagan, 1984). The race effect was strongest when prior record and seriousness of crime were taken into consideration and when the defendant was convicted for minor possession offenses, but was employed. There were few differences when the defendant was unemployed and with prior convictions for drug sales offenses (Hembroff, 1982).

Key Issues of Racial and Ethnic Minority Overrepresentation in Criminal Justice

There has been a significant amount of research and discussion around the overrepresentation of minorities in the criminal justice system. These discussions have focused on several aspects of criminal justice. The following section summarizes much of this research and is organized into key issues. These issues are:

- X Citizens' perceptions of the police and police arrests
- X Police use of deadly force
- X Police practice of racial profiling
- X Court-appointed counsel
- X Bail decisions
- X Sentencing decisions
- X Corrections and jails
- X Death penalty decisions
- X Juvenile justice decisions

Citizens' Perceptions of the Police and Police Arrests

The police exercise great discretion in arrest, and the decision is based on a variety of situational factors such as quality of evidence, seriousness of the crime, social status and request of the victim, the relationship between offender and victim, and the demeanor of the offender (Black, 1980). Differences in citizens' attitudes toward the police have commonly been found in minority communities, with African-Americans more likely to distrust the police than white

citizens (Bureau of Justice Statistics, 1997). This finding is especially pronounced in cities/towns where the majority of the residents are African-American and the majority of police officers are white (Frank, Brandl, Cullen, Stichman, 1996). These same types of differences have also been found in police arrests. That is, arrest rates for African-Americans have been consistently higher than the percentage of African-Americans in the population, whereas, the arrest rates for whites have been consistently lower than the population percentages of whites (Walker, Spohn, and DeLone, 2000). The differences in arrest rates between African-Americans and whites have often been attributed to differential offending rates and offenders' demeanor even though it is difficult to determine if police officers' demeanor is the cause of the offenders' poor demeanor (Worden and Shepard, 1996; Black, 1980; Lundman, 1994).

Klingler (1994) criticized studies on blaming the offender's demeanor on getting arrested by saying that these types of studies were seen as proof that criminal behavior was secondary to demeanor in police decisions to arrest. He found that these studies failed to control adequately for criminal behavior, which makes their conclusions suspect. The argument of the effect on an offender's demeanor was extended by Lundman (1996), who demonstrated that when controlling for crime, demeanor remained a major factor in the decision to arrest.

Police Use of Deadly Force

Police use of deadly force occurs most often with African-Americans. Studies from the 1970s found a 7-to-1 ratio of African-American to white victims; more recent studies find a 3-to-1 ratio (Walker, Spohn, and DeLone, 2000). Researchers are optimistic that the decrease in this disproportion is due to changes in the police subculture, improved police screening and training, less departmental acceptance of the use of police violence, more departmental accountability for any firearm use by police officers, and more public scrutiny – all of which have led to less police use of deadly force (Blumberg, 1997).

The following four studies describe the changes in police use of deadly force.

- Geller and Kareles (1981) and Geller and Scott (1986) found in studies of Chicago, and later in New York and Los Angeles that African-Americans were more likely to be shot and killed than were whites, and that Hispanics were twice as likely to be shot and killed by the police as were whites and half as likely to be shot and killed as were African-Americans.
- Fyfe (1982) found that in Memphis, Tennessee the fleeing felon rule was implicated in a large disparity in police killings. Fyfe shows that before this rule was determined to be unconstitutional (*Garner v. Tenn.*) in 1985 Memphis police shot and killed 13 African-Americans, but only one within a five year period.
- Sparger and Giacomassi (1992) found that abandoning the fleeing felon rule led to a dramatic reduction in police killings overall (34 from 1969-1974 to 19 from 1985-1989) and a decrease in the racial disparity in such shootings. In 1969-74, for all categories of citizen conduct (Armed and Assaultive, Unarmed and Assaultive, Unarmed and Not Assaultive) the police killed 26 African-Americans and eight whites. From 1985-89, the police killed 12 African-Americans and seven whites. The most significant change was in the category Unarmed and Not Assaultive. In this category in 1969-74, 13 African-Americans and one white were killed, but for the 1985-89 period neither an African-American nor a white person was shot. However, for the Unarmed and Assaultive

category the disparity remained as the police killed five African-Americans and one white (the figures for 1969-74 were six and two, respectively).

It is important to point out that Geller and Kareles (1981) controlled for at risk behavior of those killed by the Chicago police to try to answer the question of whether the racial differences were the result of racial discrimination by the police. At risk behavior was defined as being arrested for a forcible felony, such as murder, or armed robbery. When this category of crimes was controlled, the racial disparity in shootings disappeared. So here there seems to be clear evidence that it is the behavior of the offender that accounts for the disparity in police shootings, not the attitudes or discrimination of the police.

Police Practice of Racial Profiling

The term “racial profiling” as defined by Ramirez, McDevitt, & Farrell (2000, p. 3) “is any police-initiated action that relies on the race, ethnicity, or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity.” Early studies of racial disparities in traffic stops found that black and Hispanic drivers were searched significantly more often than whites (Harris, 1997; Lamberth 1996). Results from recent national research outside of Connecticut has generally found that African-Americans and Hispanics are disproportionately stopped more often than whites; African-Americans and Hispanics are disproportionately subjected to searches of their vehicles or person; and, African-Americans and Hispanics are either as likely as whites or less likely than whites to be in possession of drugs or other contraband following a search.

Connecticut’s analysis of racially based profiling (Cox, et al., 2001) used two methods to determine whether there was evidence of racial discrimination in traffic stops. Connecticut's analysis of racially based profiling found no widespread disparities in traffic stops based on race or ethnicity. The report concluded that it is not possible definitively to confirm or disprove the existence of racial profiling among individual departments or individual police officers. The authors did find that a higher percentage of minorities were stopped in cities and towns bordering other cities and towns with a high percentage of minorities in the general population. The authors caution that a complete explanation of racial discrimination in traffic stops is a challenge because the decision to stop a car is based on both individual and contextual basis, and they urge continual data collection and analysis on this issue.

The one consistent finding across all traffic stops studies is that minority motorists are searched more often than whites (Cox et al., 2001; Cordner et al., 2000; Nixon, 2000) even though searches of minority drivers produce less illegal contraband and weapons than searches of white drivers (Washington State Patrol and Criminal Justice Training Commission, 2001; Verniero and Zoubeck, 1999; Langan, Greenfield, Smith, Durose, and Levin, 2001, U.S. Customs Service, 2000).

Court-Appointed Counsel

Racial differences have been found in the court appointment of legal counsel (African-Americans are more likely to receive a court appointed attorney than whites)(Spohn and DeLone, 2001). However, these differences are likely the result of social class rather than race (Walker, Spohn, and DeLone, 2000). These studies also found that African-Americans with court appointed attorneys are not at a disadvantage when compared to whites with court appointed attorneys, nor do minority or non-minority defendants with court appointed attorneys fare worse than those with private counsel (Williams, 1995).

Bail Decisions

Bail studies are also limited and have produced mixed conclusions. Most bail studies have found race effects in bail decisions but are hesitant to attribute these disparities to discriminatory practices by judges and bail commissioners (Maxwell and Davis, 1999). Two consistent findings have been: (1) that African-Americans and Hispanics are treated more severely due to having more serious charges and more extensive criminal records (as well as being unemployed and having less income); and (2) race effects vary greatly by region, state, and jurisdiction. Maxwell and Davis (1999) studied racial and gender differences on pretrial decisions to release defendants on their own recognizance or to set bail using data collected from more than 13,000 felony cases across the 75 largest counties in the United States. They found that when controlling for crime seriousness, African-Americans were less likely to be given pretrial release than were whites or Hispanics.

Jury selection

One area that has been found to have significant racial bias is the jury selection process (Fukurai, 1996). Despite U.S. Supreme Court decisions regarding the selection of jury pools, little reform has been made to the prosecutorial use of peremptory challenges nationwide (Walker et al., 2000). In some cases, prosecutors have openly acknowledged using race as a criterion for jury selection. Research, in general, has found that African-American jurors tend to be excluded more often from trials involving African-American defendants than for trials involving white defendants.

Sentencing

Reforms in court processes and legal protections over the past several decades have significantly reduced systematic racial discrimination in the courts. Even so, researchers now characterize the court system as promoting contextual discrimination (Walker, Spohn, and DeLone, 2000; Crawford, Chiricos, and Kleck, 1998). That is, African-American and Hispanic offenders who have a prior criminal record, are detained prior to trial, and are unemployed are more likely to be sentenced to prison and receive longer prison sentences than white offenders (Mustard, D.B., 2001; Spohn, 2000). In reviewing 40 sentencing studies, Spohn (2000) found direct race effects in the initial decision to incarcerate. African-American and Hispanic offenders were more likely to be incarcerated than white offenders but did not tend to receive longer sentences (this finding supports an earlier study by Chiricos and Crawford (1995)). Spohn (2000) also found contextual differences, in that minorities who are convicted of drug offenses, have a record of serious offenses, have white victims, do not plead guilty, or are not given a pretrial release are also treated more harshly by courts than whites. In addition, Steffensmeier and Demuth (2000) examined racial/ethnic differences (white vs. black, Hispanic vs. white, and Hispanic vs. black) in sentencing outcomes and criteria under the federal sentencing guidelines. They found that ethnicity has a small to moderate effect on sentencing outcomes – favoring white defendants and penalizing Hispanic defendants; black defendants are in an intermediate position.

Crime seriousness and sentencing

Measuring and testing crime seriousness has been a difficult challenge. Crime seriousness has typically been poorly defined (Kramer and Steffensmeier, 1993), with many studies relying on basis crime categories (e.g., robbery, larceny and burglary) rather than felonies and misdemeanors or violent and nonviolent. To measure crime seriousness, Kramer and Steffensmeier (1993) proposed using a ten-point scale of seriousness, as was used in some state sentencing guidelines, while Spohn and Cederblom (1991) used a five-measure scale of seriousness. When using this scale, Spohn and Cederblom found consistent racial disparities in sentencing for the least

serious crimes, most commonly for assault. They concluded that judges feel less constrained in such cases and therefore use extra-legal factors in sentencing. Kramer and Steffensmeier (1993) later found that there were statistically significant racial disparities across all offense types.

Blumstein (1982) attempted to control for crime seriousness by developing a formula that compared the expected black-white disparity in state prison populations based on recorded black-white disparity in arrest rates over observed black-white disparity in incarceration rates. The calculation resulted in a figure that reflects the amount of actual racial disproportionality in incarceration. He found that 20% of the racial disparity in incarceration is left unexplained by overrepresentation of African-Americans at the arrest stage. This figure is then directly related to the discretion permitted in handling each of the offenses, which tends to be related to offense seriousness -- the less serious the offense (and the greater discretion), the greater the amount of the disproportionality in prison that must be accounted for on the grounds other than differences in arrest (1982). Blumstein's updated analysis using 1990s prison data confirmed his initial findings, and showed evidence that the war on drugs had impacted minorities negatively in terms of incarceration (1993).

Social characteristics of place

Social characteristics of place refer to region of the country, level of urbanization, racial composition of the jurisdiction, level of racial income inequality, and crime rate. The theoretical underpinning of this categorization hypothesizes that racial disparities in the criminal justice system will be greatest when crime is associated with minorities, especially in the South, poor communities, and high crime areas. Research on this thesis has not produced consistent findings. Chiricos and Crawford (1995) did find racial differences in the South. However, Myers and Talarico (1986, 1987) found no race effect linked to the social characteristics of place.

Habitual offender status

Sentencing guidelines appear to have an indirect effect on racial disparities in sentencing. The implementation of sentencing guidelines is the reason why those convicted of violent crimes or repeat offenders are far more likely to be imprisoned and to serve longer prison terms under sentencing guidelines. Those persons convicted of drug crimes (both possession and sale) are more likely to be imprisoned and to serve lengthy prison terms. This trend has increased the rate of imprisonment for African-American and Hispanic offenders (BJS, 1996).

Only one study has examined the role of race in predicting or explaining a court determination of habitual offender status. A report commissioned by the Florida Joint Legislative Management Committee Economic and Demographic Research Division, (1991) found that the less serious the offense, the more important race was in predicting the designation of an individual as a habitual offender. African-Americans were more likely than whites or Hispanics to be given habitual offender status (however, this finding varied by region in the state). These findings were consistent across all offense and seriousness levels and when controlling for prior record and crime seriousness.

Sentencing guidelines

Sentencing guidelines have been noted as a major factor in reducing the amount of overt racial discrimination in sentencing. However, when considering minor crimes where the guidelines do not apply, race can be a factor in sentencing. Constrained from the requirements of law, judges can use extra-legal factors, such as race to mete out sentences, Crawford et al., (1998) found that race was more important in explaining differences in sentences among the races especially for less serious crimes. While racial disparities were present in drug possession and purchase/dealing cases, burglary and larceny; they were absent for battery, crimes involving weapons, robbery, and auto theft. Furthermore, while finding some evidence of differential treatment of minorities in the decisions of prosecutors in King County, Washington, the research discovered no evidence of either direct or indirect racial discrimination by prosecutors (Crutchfield, Weis, Engen and Gainey, 1995). The report concluded that racial and ethnic differences in the criminal justice system are more likely the result of laws and policies that differentially affect segments of the population, such as mandatory sentences for drug offenses.

Confinement of minorities

Several literature reviews conducted in the 1970s and 1980s evaluated the extent of disproportionate minority confinement in adult courts. Zatz (2000) identified four waves of research in this area. Waves 1 and 2 were characterized by poor research design, which accounts for Hagan's (1974) conclusion that for studies of racial bias for non-capital offenses published between 1935-1974, evidence of racial bias is not statistically significant, except for some capital cases in the South. The third and fourth waves revealed small disparities in some social contexts, but observed that sentencing guidelines and determinate sentencing had reduced overt bias in sentencing. In short, disproportionate minority confinement is related to a variety of contextual factors such as crime seriousness, type of crime, and the social characteristics of place.

Corrections And Jails

Studies have generally found that incarceration rates are substantially higher for African-Americans and Hispanics – as much as five to seven times higher (Beck and Harrison, 2001; Walker, Spohn, and DeLone, 2000; Gillard, 1999, Beck and Mumola, 1999, Bureau of Justice Statistics, 1999). In 1998 whites comprised 41.3% of jail inmates, African-Americans 41.2% and Hispanics 15.5%. In prisons, whites comprised 58.7% of federal prisoners and 43.4% of state prisoners; African-Americans comprised 37.9% of federal prisoners and 54.7% of state prisoners; Hispanics comprised 28.4% of federal prisoners and 16.5% of state prisoners; Native Americans comprised 7.6% of federal prisoners and 1.0% of state prisoners; and Asians 1.6% and 0.6% respectively.

Minority disproportionality in jails may be the result of pretrial detention decisions and an inability to make bail. Therefore, the problem may be more the result of poverty and inequality in the overall social system rather than in the operation of the criminal justice system. The injustices in society, generally, are often magnified in the criminal justice system, but such injustice is beyond the ability of criminal justice practitioners to control and they cannot be made to take the blame for larger issues of politics, the economy and social change that negatively impact minorities.

The racial make-up of parole populations has been remarkably similar to the racial make-up of prison populations, suggesting little or no bias in the granting of parole for minorities. There are few studies on parole revocation and race, with these studies finding that African-Americans have lower parole completion rate than whites. While there are several explanations for this finding (*e.g.*, higher re-offending rate, parole officer bias, fewer post-incarceration services available), there is no empirical evidence to support any of these (Walker et al., 2000).

Death Penalty Decisions

There is clear evidence of racial disparity in the application of the death penalty. In 2000, 43% of those sentenced to death were African-American, more over represented than any other racial/ethnic minority (Fins, D., 2000). Studies seeking to determine whether this disparity is due to discrimination vary from very simplistic correlation of the race of the offender and the victim to more sophisticated analyses using multivariate statistics.

Kleck's (1981) literature review of 50 years of research on racial discrimination in the use of capital punishment found that the findings of these studies were time and region bound. In other words, the findings were limited to an era when overt racial discrimination plagued the criminal justice system and the findings were not generalizable outside the South. His analysis of all death penalty cases from 1929 to 1978 shows that the death penalty has not generally been used in a discriminatory fashion against African-Americans, except for in the South, and that there are some jurisdictions and judges who are overtly racist, but on the whole, overt racism in application of the death penalty is a thing of the past. He suggests that low income may be the key intervening factor in the relationship. Further, he found that when the offender is African-American and the victim white, punishment is more severe, but this is due to legally relevant factors, such as aggravating factors or heinousness of the crime. Finally, there appears to be a pattern of less severe punishment for crimes with African-American victims, especially in terms of capital crimes. However, the intraracial nature of homicide may be grounds for criticism of his general findings. The African-American victim of homicide may not be valued enough in the criminal justice system for prosecutors, judges and juries to impose a death sentence (Walker, et al., 2000).

The Government Accounting Office review of death penalty discrimination studies found significant racial disparities in application of the death penalty (GAO, 1990). The GAO reviewed 28 studies published after 1976 and found that the race of the victim was statistically significant in 23 of the studies that found a race effect in application of the death penalty. The review determined that the race of the victim affected decisions at all stages of the criminal justice process, even when controlling for prior record and heinousness of the crime. Despite this, the GAO report concluded that the evidence of racial discrimination was, at best, equivocal and somewhat unclear.

The most common strategy used to study the alleged race effect in application of the death penalty is to examine the race of the offender and the victim. A number of studies have used this strategy in the recent past and all except one have found evidence of the racial disparities (Thomson, 1997; Keil and Vito, 1995, 1990, Radelet and Pierce, 1991). Schaefer, et al, (1999) did not find evidence of a race effect in their study of all executions, death sentences and removals from the sentence of death for the years 1976-1995. Only one study used a sophisticated modeling strategy to account for decisions at various stages of the capital sentencing process (Keil and Vito, 1995). Their results show that, controlling for crime seriousness, prior record, and the victim-offender relationship, African-Americans who kill

whites have a higher than average probability of being charged with a capital offense, and of being sentenced by a jury to a death sentence than did other homicide offenders.

Juvenile Justice Decisions

Minority youth are over represented in every stage of the juvenile justice system (Joseph, 2000; Bishop and Frazier, 1996; Office of Juvenile Justice and Delinquency Prevention, 2000; DeComo, 1998; Puzzanchera, 2002; Pope and Feyerherm, 1990a; Pope and Feyerherm, 1990b). Between 1987 and 1996, the number of delinquency cases processed by juvenile courts involving white youth increased 39%, the number of cases involving black youth increased 68%, and the number involving youth of other races rose 103%. In 1996, the number of delinquency cases involving white youth exceeded the number involving black youth by a margin of 2.2 to 1, compared with a ratio of 2.6 to 1 in 1987 (Office of Juvenile Justice and Delinquency Prevention, 1999).

Caseloads of black juveniles contained a greater proportion of crimes against persons than did caseloads of white juveniles and those of other races. Property crimes cases accounted for the largest proportion of cases for all racial groups, although among black juveniles, property crimes accounted for fewer than half of the cases processed in 1997. For all races, drug offenses cases accounted for the smallest proportion of the 1997 caseload. Regardless of race, the proportion of cases involving crimes against persons was greater in 1997 than in 1988. Among black juveniles, crimes against persons increased by 3%. Among white juveniles, crime against persons increased by 6% (Puzzanchera, et al., 2000).

While early studies attributed this to higher offending rates, recent studies have found an “amplification effect” where differential treatment of minority youth increases as they progress through the juvenile justice system – the least amount of overrepresentation often occurs at the police officers’ decision to arrest, and the most occurs in detention (Wordes, Bynum, and Corley, 1994). The amplification effect is caused by white juveniles being referred out of the juvenile justice system at earlier points, thus, leaving minority youth to fill detention centers (Bishop and Frazier, 1988; Zatz, 2000).

Several researchers point out that the overrepresentation of minority youth is a complex issue and that it should not be reduced to the simple question of whether minority youth are sanctioned differently. Race appears to interact significantly with other social (*e.g.*, socio-economic status, education, residence, and gender) and legal factors (*e.g.*, offense seriousness, prior offenses) that produce patterns of court decisions which, on the surface, appear to be biased and discriminatory (Wordes and Bynum, 1994; Pope and Feyerherm, 1990b).

Intake Decision.

Delinquency cases involving African-American juveniles were more likely to be handled formally than were cases involving white youth or youth of other races. In 1997, formal handling was used in 62% of cases involving black juveniles, 54% of cases involving white juveniles, and 55% of cases involving juveniles of other races. Racial differences in the likelihood of formal handling were greatest for drug law violation cases: 78% of drug cases involving black juveniles were handled by formal petition, compared with 56% for white juveniles and 55% for juveniles of other races. Between 1988 and 1997, the likelihood of formal petitioning increased across all four offense categories for all racial groups (Office of Juvenile Justice and Delinquency Prevention, 2000).

Detention

Status Offenses: In 1997, detention was used at some point between referral and disposition in 6% of all petitioned status offense cases involving white youth, 8% of those involving black youth, and 4% of those involving youth of other races (Office of Juvenile Justice and Delinquency Prevention, 2000). African-American youth were more likely than white youth or youth of other races to be detained in cases involving liquor law violations. Between 1988 and 1997, the overall use of detention for petitioned status offense cases declined among all racial groups.

Youth in Detention: DeComo (1998) examined the disproportionate representation of minority youth in detention across 16 states and found that African-American youth were over represented in 15 of the 16 states, and were much more likely to be incarcerated before age 18 than were whites (for African-Americans the chance of being incarcerated was 1 in 7, for whites it was 1 in 125). While minority youth comprised 32% of the youth population in the United States, they represented 68% of those in secure detention. This reflects a significant increase since 1983. Subsequent research shows that minority youth are over represented at each major decision point in the juvenile justice system (Office of Juvenile Justice and Delinquency Prevention, 1997).

A large number of studies of racial bias in the juvenile justice system have been published since the 1970s. Pope and Feyerherm's literature review (1990a, 1990b) is the most widely cited in this field, and they conclude that the literature shows racial disparities in the juvenile justice system. The studies reviewed by Pope and Feyerherm have examined intake, decision to detain, and disposition. A small number of studies have found no evidence of minority overrepresentation (Bortner and Reed, 1985; Cohen and Kleugel, 1979; Sheldon and Horvath, 1987), but these studies have been criticized for overly simplistic modeling and lack of controls (DeJong and Jackson, 1998).

Even those studies that have found racial differences have also been criticized as they often fail to take into account the effect of decisions at earlier stages in the juvenile justice process that may lead to selection bias (Zatz, 2000). If white juveniles are more likely to be referred out of the system at earlier points, the remaining population of minorities will represent a more serious subset of offenders, thereby creating the appearance of racism when legal factors are more important in explaining the differences in court outcomes.

The Office of Juvenile Justice and Delinquency Prevention examined the problem of minority youth in detention and was critical of the data available to explain the evident disparity. Their report reported crimes are broadly categorized so that felony and misdemeanor offenses often are conjoined. Similarly, the disparity in transfers to adult courts for which African-American youth are over represented cannot be fully explicated since national level data do not control for seriousness of crime adequately; nor does the data allow for comparisons using prior criminal record (Office of Juvenile Justice and Delinquency Prevention, 1999).

Out-of-home placement

The number of out-of-home placements between 1988 and 1997 increased across all racial groups (Puzzanchera et al., 2000). Of the estimated 163,200 adjudicated cases that resulted in out-of-home placement in 1997, 97,900 (60%) involved white youth, 59,200 (36%) involved black youth, and 6,000 (4%) involved youth of other races. That same year, 26% of adjudicated cases involving white youth resulted in out-of-home placement, compared with 32% of cases involving black youth and 29% of cases involving youth of other races. Between 1988 and 1997, the number of adjudicated cases resulting in out-of-home placement increased less for white youth (52%) than for black youth (60%) or youth of other races (69%). It is important to point out that these data do not control for the severity of the offense or the court histories of the youth (Puzzanchera et al., 2000)

Summary and Conclusions

Prior studies of racial disparity within the criminal justice system paint a bleak picture (Walker, Spohn, and DeLone, 2000). Minorities, especially African-Americans, are over represented in almost every facet of the criminal justice and juvenile justice systems. These disparities are complex and cannot be addressed by the simple conclusion that the criminal justice system is racist and discriminatory. A troubling consistency across the literature on racial disparities in the criminal and juvenile justice systems is that, in cases of disparities, minorities receive worse treatment than whites, in some cases they are treated the same as whites, and in no cases are they treated better than whites.

Common approaches to addressing racial disparity in criminal justice (*e.g.*, blaming minorities for committing a disproportionate amount of crime, having high poverty rates, having high school drop out rates, and living in high crime areas) have been sharply criticized as being too simple and superficial. Many encourage grassroots movements – programs aimed at improving the lives of minorities living in these high crime areas and providing them with the resources and tools to change their neighborhoods. David Cole (1999) presents five broad recommendations for changing biased practices in the criminal justice system. These are: (1) acknowledging the problem that minorities are treated differently by the criminal justice system than whites; (2) restoring legitimacy to the criminal justice system by reducing double standards in the enforcement and execution of justice with regards to race; (3) restoring community by reallocating resources away from the criminal justice system and back into minority communities and community-based initiatives (it costs the state more to send a person to prison than to college); (4) involving the community in punishment by creating appropriate ways to sanction criminal offenders without taking them away from their communities; and, (5) overcoming obstacles to community-based criminal justice by convincing politicians and policymakers that punitive sanctions have little preventative or deterrent effects.

Appendix B

**BIBLIOGRAPHY
National and Connecticut**

BIBLIOGRAPHY

National and Connecticut

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