

Minority Overrepresentation: Initiatives in Other Jurisdictions

**Wisconsin
Illinois
Virginia
North Carolina
Kentucky**

**Iowa
Connecticut
Oregon
State Patrol Agencies**

and

**An approach recommended by
The Sentencing Project**

Presented for discussion and direction to Task Forces
Colorado Commission on Criminal and Juvenile Justice
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Minority Overrepresentation in the Criminal Justice System

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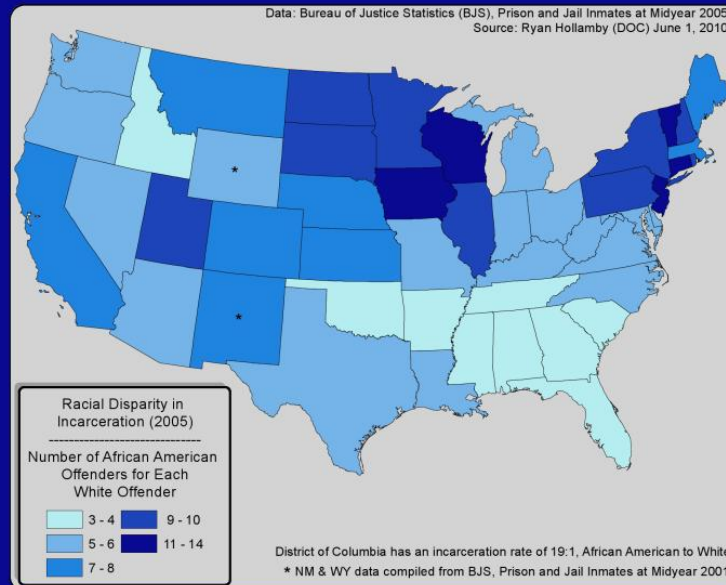
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Minority Overrepresentation in Colorado's Criminal Justice System:

An Interagency Report to the Colorado Commission
on Criminal & Juvenile Justice



Heather Wells
Maureen O'Keefe
June 2010

Wisconsin

Commission on Reducing Racial Disparities

- The following summarizes the points in the Governor's Executive Order derived from the commission's 57 recommendations:
 - All agencies are directed to **track racial differences** for their populations.
 - The state should develop curricula for **professional training** regarding racial disparity.
 - The Department of Corrections (DOC) should maintain and expand reentry programs to **ensure valid ID or driver's licenses** are provided.
 - DOC should also develop a **mentoring program** that no longer prohibits inmates who mentor during incarceration from continuing to do so once released.
 - The **prison discipline system** should be reviewed. A better computer system for tracking issuance and adjudication of major conduct reports should be developed.

Wisconsin

Commission on Reducing Racial Disparities

- **Review and report** (continual process) on probation and parole officer discretion when giving **revocations**.
 - PO's should review and consider intermediate sanctions and alternatives to revocations or incarceration.
 - Discipline may be needed, but public interest and safety is often best addressed by sentences served in the community.
- Conduct a study to **examine prosecutorial discretion**, paying special attention to criminal history.
- **Create a commission** to oversee programs meant to reduce disparity. Members of the commission should be appointed by the governor.

Illinois

- A **commission** was created to study and report on the following:
 1. Violation and sentencing provisions of the state criminal codes.
 2. The criminal code of 1961.
 3. The Cannabis Control Act.
 4. The Illinois Controlled Substances Act.
 5. The Methamphetamine Control and Community Protection Act.
 6. The unified code of corrections.

Illinois: State level policy

Recommendations

1. Legislators should be able to **request** that a **Racial & Ethnic Impact statement** be attached to bills or appropriation measures that impact criminal offenses, penalties, sentencing, probation, or parole policies.
2. A **Racial & Ethnic Impact Research task force** should be created to ensure the standardized collection and analysis of data on the racial and ethnic identity of arrestees.

Illinois: Statutory and Practice Recommendations

3. Establish a task force to **review drug laws**.
 - Review the effectiveness of laws and the potential for unintended consequences.
4. Support jurisdictions in maximizing their **use of diversionary programs and sentencing alternatives**.
5. Each local district attorney's office should conduct **felony review** for filing of charges in new cases.

Illinois: Mitigation of Long-Term Harm

Recommendations

6. The state should **prohibit** the inclusion of **drug-related arrests that do not result in conviction** in criminal histories collected for employment related purposes.
 - County clerk offices and third-party background check firms should be held liable for the unauthorized release of such information.
7. Establish **automatic sealing procedures** for F4 possession charges or convictions that result in one or more of the following:
 - Successful participation in specialty court (e.g., drug court).
 - Successful completion of first offender probation.
 - Successful completion supervised probation within a designated program.
8. Develop and promote a business classification to make such businesses eligible for state, county and local tax incentives as a result of **training and/or hiring former offenders**.

Illinois: Funding Recommendations

9. Jurisdictions should define criteria that would trigger a portion of the drug asset forfeiture funds to **support treatment and diversion programs**.
10. The state should establish budget policy and priorities to promote the **full use of existing diversion programs or alternate sentences**.

Virginia

Virginia's juvenile justice system has also taken action to reduce minority overrepresentation.

- A **demographics web page** was created to enable interested parties to learn about minority overrepresentation in the justice system as well as the national requirements for monitoring disproportionate minority confinement. This data should be readily available.
- **Training of and assistance to local officials** and detention staff is provided to ensure that they are aware of the need to address disproportionate minority confinement.

Virginia

- Cultural awareness **training** for local police departments is provided throughout the state.
- A **race-neutral risk assessment** was created within the Department of Juvenile Justice for use at intake. The intent of the instrument is to reduce the total number of juvenile placements in detention, including minority placements.

North Carolina and Kentucky

- In 2009 **North Carolina** passed the **Racial Justice Act** in an effort to prohibit seeking or imposing the **death penalty** because of race.
 - This law establishes a process by which relevant evidence can be presented to show that race was a significant factor when the death penalty was pursued.
 - The burden of proof lies with the defendant who may raise this claim at pre-trial conferences or during post-conviction proceedings.
 - If race is proven to have been a factor in the death penalty process the sentence will be vacated and changed to life without parole.
- **Kentucky** passed a similar law in 1998.

North Carolina (2009). SL2009-464. See <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2009&BillID=S461>

SB 171/FN/LM/CI (BR 1096) See <http://www.lrc.ky.gov/recarch/98RS/SB171.htm>

State Patrol Agencies

- As of October 2004, **29 of the U.S. State patrol agencies** required their traffic officers to record the race or ethnicity of the drivers for officer initiated stops. However, there was some difference in scenarios requiring such data collection:
 - 22 states required that **race/ethnicity data be collected for all** traffic stops.
 - 18 states recorded **race/ethnicity when a traffic citation** was issued.
 - 17 states recorded **race/ethnicity when an arrest** occurs from the traffic stop.
 - 14 states recorded **race/ethnicity when the vehicle or occupant was searched**.
 - 13 states recorded **race/ethnicity when force was used** during the stop.
 - 8 states recorded **race/ethnicity for reactive traffic stops** (e.g., response to an accident or DUI check point).

State Patrol Agencies

- 15 agencies depended exclusively on the **officer's observation to determine the race/ethnicity of the driver** while 9 others also **used information from the State Bureau of Motor Vehicle** (2 others used the latter method exclusively).
- When the 2004 BJS study was conducted the Colorado State Patrol did not collect race/ethnicity information for any officer initiation stop.
 - However, as of **2010 the Colorado State Patrol is required to collect race and ethnicity information for all traffic contacts, citations, arrests and searches** (According to Chief Wolfinbarger).
 - This information is **based on officer observation**.

Racial Impact Statements



<http://www.progressivestates.org/node/22559>



http://www.sentencingproject.org/doc/rd_abaarticle.pdf

- Racial impact should be examined whenever criminal justice policies are considered.

Racial Impact Statements

- **Estimate the disparate racial impacts of criminal justice policies** in the same way that fiscal or environmental impact statements describe the budgetary and ecological effects of other policies.
 - This allows legislators to make an informed consideration of the racial impacts when crafting solutions to crime and delinquency, and helps ensure that racial justice costs are included in the dialogue regarding criminal justice choices.
- Those states that have formally incorporated racial impact statements into their criminal justice policy development process have focused their use on **sentencing and corrections policy**.

Racial Impact Statements

Iowa and Connecticut

- Prior to any debate on the floor of the **Iowa** legislature a correctional impact statement must be written for all bills, joint resolutions, or amendments.
 - This statement must include a minority impact statement and should estimate immediate and long term effects whenever possible.
- **Connecticut** passed a similar law in June of 2008.
 - This statement is not mandatory, instead, a majority of members on relevant committees can request a statement.

Racial Impact Statements

Oregon

- A racial and ethnic impact statement is **mandated for all criminal justice legislation** that may, if enacted, affect the race and ethnic composition of the offender population.
 - This includes everyone who is convicted of a crime or adjudicated for an act that would be considered a crime if they were 18 years of age or older.
- If a **state referendum measure** will affect the racial and ethnic composition of the criminal offender population an impartial and simple impact statement will be created by the Oregon Criminal Justice Commission to be **included in the voters' pamphlet** and on the ballot.
- A **standard protocol** for this impact statement will be developed by the **Oregon Criminal Justice Commission**, and will include an estimate of the racial/ethnic profile within the state's offender population affected by the new law.
 - The method used and assumptions made to calculate this estimate must be stated. However, this is only required if the necessary data are available.

Recommendations for Addressing the Issue

Addressing Minority Overrepresentation

CCJJ 3 / 11 / 11

- **Acknowledge the cumulative nature of racial disparities.** Racial disparity builds on itself at each stage of the criminal justice system and is not a likely result of actions at any one stage. Study WHY it occurs at each stage.
- **Encourage communication across players at all decision points of the system.** The problem must be addressed at every stage of the system. Without an organized and systematic approach, any benefit that is gained at one stage may be offset another stage.
- **Recognize that what works at one decision point may not work at others.** Each decision point requires a unique strategy to address the problem depending on the degree of disparity at that specific point.
- **Work toward systemic change.** A system-wide change is impossible without educated leaders who are willing to commit the resources of their agency to measure and address racial disparity at every stage of the criminal justice system as well as the system as a whole.

Develop a Plan

The Sentencing Project along with the **Virginia Juvenile Justice Services** suggest developing a plan to address any disproportionate minority representation that has been found to exist at any stage of the criminal justice system or within any specific jurisdiction.

- **Examine local and state data** to determine if overrepresentation of minorities exists at each of the steps in the justice system.
- Determine **at which decision points racial and ethnic disparities occur.**
- **Identify possible reasons** for the occurrence of these disparities.
- **Develop a coordinated plan** to address overrepresentation including stakeholders from every step in the system.
- **Implement this plan in stages.**
- **Evaluate effect and progress** as each stage of this plan is implemented.
- **Finalize the details of the plan based on findings** from each progressive evaluation.
- Monitor the effectiveness of these strategies and **report annual evaluations and its outcomes.**