

HOW IS THE CRIMINAL JUSTICE SYSTEM RACIST?

Although many feel that the United States has overcome its racist history, the legacies of colonialism, slavery and racism still affect our policies and practices today. Of the nearly 2.1 million adult men and women imprisoned in the United States, roughly 70% are persons of color.¹ Within the criminal justice system, people of color are imprisoned disproportionately due to racist laws, are denied access to the rehabilitative options given to Whites, and are harassed and mistreated by U.S. agencies. Although people of color commit most crimes at the same rate as Whites, the unequal targeting and treatment of people of color throughout the criminal justice system – from arrest to sentencing – results in the disproportionate imprisonment of people of color.

PEOPLE OF COLOR ARE DISPROPORTIONATELY REPRESENTED IN THE CRIMINAL JUSTICE SYSTEM.

- Although Black Americans make up only 12.7% of the U.S. population, they make up 48.2% of adults in federal, state, or local prisons and jails.² According to the 1998 federal National Household Survey on Drug Abuse (NHSDA), 72% of users were White and 15% were Blacks. Despite this, Black people were arrested for drug offenses at higher rates than White people.³
- Latinos represent just 11.1% of the U.S. population and only 10% of U.S. drug users, yet are 18.6% of the U.S. prison population and 22.5% of those convicted for drug offenses.⁴
- On average, 1 in 25 adult American Indians is under the jurisdiction of the nation's criminal justice system – more than twice the number of White adults in the system.⁵
- 42.5% of prisoners on Death Row are Black, more than three times the percentage of Black Americans in the national population.⁶
- In 2003, in the United States, White people were imprisoned at a rate of 376 per every 100,000 in the population, compared to 709 per 100,000 American Indians⁷, 997 per 100,000 Latinos and 2,526 per 100,000 Blacks. in the population.⁸
- Black males have a 32% chance of serving time in prison at some point in their lives; Hispanic males have a 17% chance; White males have a 6% chance.⁹ If current rates of incarceration continue, about 1 in 3 Black males, 1 in 6 Hispanic males and 1 in 17 White males are expected to go to prison at some point during their lives.¹⁰
- Women of color sentenced for drug crimes continue to be the highest growing segment of the U.S. prison population.¹¹

PEOPLE OF COLOR ARE DISPROPORTIONATELY TARGETED AS CRIMINAL SUSPECTS, SKEWING, FROM THE BEGINNING, THE RACIAL COMPOSITION OF THE POPULATION ULTIMATELY CHARGED, CONVICTED AND INCARCERATED.

People of color are disproportionately targeted by police.

- Among persons over age 24, Blacks (11.2%) were significantly more likely to be pulled over while driving than Whites (8.9%).¹²
- Among drivers stopped for speeding, Blacks (75.7%) and Hispanics (79.4%) were more likely than Whites (66.6%) to be ticketed.¹³

- Police were more likely to conduct a search of the vehicle and/or driver in traffic stops involving Black male drivers (15.9%) or Hispanic male drivers (14.2%), compared to White male drivers (7.9%).¹⁴

People of color are disproportionately arrested.

- Blacks (5.2%) and Hispanics (4.2%) stopped by police while driving are more likely than Whites (2.6%) to be arrested.¹⁵
- In other words, Blacks composed 11.6% of drivers stopped by police, but represented 19.9% of the drivers arrested. Hispanics were 8.4% of drivers stopped by police, but 11.7% of those arrested. Whites, on the other hand, are 77% of stopped drivers but only 66.3% of drivers arrested.¹⁶

People of color face harsher treatment in court.

- Native people are disproportionately imprisoned compared to their population size. This is most evident in the Plains. For example, in Montana, 16% of prisoners are American Indians, even though they constitute just 6% of the state's population. In North Dakota, American Indians are 5% of the state's total population, but are 19% of the prison population.¹⁷
- Blacks are more likely to be sentenced to prison for the same crime than Whites. One third of people of color sentenced to prison would have received a shorter or non-incarcerative sentence if they had been treated in court the same way as White defendants facing similar charges.¹⁸
- Hispanics and Blacks who have no prior criminal record are far more likely to be incarcerated than White defendants with no criminal record. Hispanics are twice as likely as Whites to face prison time instead of probation, a fine, or time in a county jail.¹⁹
- Black youth are more likely to be detained than White youth. Moreover, Black youth with no prior admissions were six times more likely to be incarcerated in a juvenile facility than a White youth with a similar history. Latino youth were three times more likely to be imprisoned.²⁰
- Blacks are disproportionately placed on death row. While Blacks constitute 12% of the total U.S. population, approximately 43% of the death row population is Black.²¹

DESPITE TREATIES AFFIRMING NATIVE SOVEREIGNTY, THOSE LIVING ON RESERVATIONS ARE CONSISTENTLY TARGETED BY THE CRIMINAL JUSTICE SYSTEM.

- ***The Federal Government has violated the sovereignty of Native tribes.*** Over the past two hundred years, the federal government has established a pattern of taking over the jurisdiction of an increasing number of crimes, removing them from tribal authority, and giving itself (rather than the tribe) the power to punish. This erosion of the sovereignty of Native tribes has occurred despite treaties through which tribes were to retain their own system of criminal justice.²²
- ***Public Law 280 has denied Native People the right to control law enforcement through the tribe and resulted in discriminatory sentencing for crimes committed against natives.*** 1953, Congress passed Public Law 280, which offered states the opportunity to assume jurisdiction over reservations within the state borders. P.L. 280 was passed without any tribal consent. In P.L. 280 states, law enforcement for Native reservations is typically handled by state police and county or state courts²³ rather than through the tribe. This law denies tribes the right to govern themselves, and has created concern that courts are treating Native people and Whites unequally.²⁴ Even after it was amended in 1968, P.L. 280 has caused tribes themselves have to say that sentences are “light and ineffective” for crimes committed against Native people, while sentences are “heavy and unjust” for crimes against non-natives.²⁵
- ***Tribes who cannot afford to have their own law enforcement often see the state take over control.*** As sovereign entities, Native tribes have the right to “organize and maintain their own laws and law enforcement agencies.”²⁶ However, not every tribe in the United States has the funding for their own tribal court or police system. In non-

P.L. 280 states without a tribal police or court system, law enforcement can fall instead to the state police or U.S. Marshals' office.

- ***Tribes may only have authority over misdemeanors, and do not have the ability to punish non-natives for violating laws on tribal land.*** Even tribes that have police forces may have jurisdiction only over crimes committed by and against Native people in the community. Native communities that have a tribal court system may only have jurisdiction over certain types of cases, such as misdemeanors, committed in the community while state and federal courts will have jurisdiction over other crimes.²⁷ In fact, because of a 1978 Supreme Court ruling in *Oliphant v. Suquamish*, non-Natives are immune from both criminal and civil tribal prosecution.²⁸ These examples illustrate the lack of sovereignty and control that Native people have over their own reservations under the Criminal Justice system.
- ***Since federal laws are generally harsher than state laws, and because Native reservations are considered federal jurisdiction, most face harsher sentences simply as a result of where they live.***²⁹

THE WAR ON DRUGS AND MANDATORY MINIMUM POLICIES HAVE FUELED THE RACIST AND UNEQUAL PUNISHMENTS FOR PEOPLE OF COLOR AND WHITES.

- ***Although crack and cocaine are virtually the same thing, Congress has assigned far harsher penalties to crimes involving crack, a drug primarily associated with people of color.*** In 1988, Congress passed a law that created a 100:1 quantity ratio between the amount of crack and powder cocaine needed to produce certain mandatory minimum sentences for trafficking and created mandatory minimum penalties for simple possession.³⁰ In order to receive a five-year sentence for possession with intent to distribute for powder cocaine, a person must possess 500 grams or more. To receive a five-year sentence with crack cocaine, a person need only have 5 grams in their possession.³¹
- ***Crack is the only drug with a mandatory prison sentence for a first offense simple possession.*** The maximum sentence someone can receive for simple possession of powder cocaine is one year.³²
- ***Stereotypes regarding who uses crack cocaine and who uses powder cocaine make mandatory minimums racist.*** Not only are crack and powder cocaine simply different forms of the same drug, but crack is primarily thought of as a drug used in Black, urban areas. Powder cocaine, on the other hand, is far more expensive than crack and is associated with wealthy White users.
- ***Even though the majority of crack users are White, most people imprisoned because of crack offenses are Black.*** Roughly two-thirds of crack cocaine users are White or Hispanic, but 84.5% of defendants convicted of crack possession in 1994 were Black, while 10.3% were White and 5.2% were Hispanic.³³ The majority of persons charged with crack trafficking offenses in the federal system have also been African American (88.3%).³⁴
- ***Because of this, a disproportionate number of Blacks are in jail.*** In 1998-1999, Black Americans consisted of only 15% of all U.S. drug users, yet they were 36.8% of those arrested for drug violations.³⁵ In 2000, Blacks were 53% of those convicted by state courts for drug offenses.³⁶

WHITES MAY BE OVERCOUNTED IN PRISON , THEREFORE

- ***The racial disparity of the prison population may currently be understated.*** A study by the National Center on Institutions and Alternatives (NCIA) which counted both the race and ethnicity of prisoners found that prison officials often counted Latino prisoners as White.³⁷ This is especially true for Latino youth in the juvenile justice system.³⁸ Overall, White prisoners have therefore been overcounted in a number of states.

For example, New Mexico reported its prison population as 83% White in 1997, when the actual percentage was 29%. Barry Holman, the director of public policy at the NCIA, says "Counting Hispanic/Latinos as whites hides the magnitude of incarceration of people of color. What has been rather antiseptically referred to as a 'racial

disparity' is really a gaping divide between whites and nonwhites that far outstrips minority levels in the population or in committing crime."³⁹

SOME IMPACTS OF RACISM IN THE CRIMINAL JUSTICE SYSTEM

- **People of color are disenfranchised.** One in seven Black American males is currently or permanently disenfranchised from voting because of a felony conviction.⁴⁰
- **Non-whites are routinely targeted by the Criminal Justice System.**
 - **Latinos are routinely and sometimes explicitly singled out for immigration enforcement.** 96.2% of illegal immigrants arrested by the Immigration and Naturalization Service are of Mexican origin; the INS itself estimates that just 54% of the illegal immigrant population is Mexican.⁴¹
 - **Post 9/11, the Bush Administration has made it possible for federal agencies and police departments to infringe on the civil liberties and civil rights of Arab, Muslim, and South Asian immigrants.**⁴² New policies include conducting questionable interrogations and arrests, secret detentions, and indiscriminate raids.
- **Stereotypes about Native people as criminals hide the fact that they are often victims of violent crimes.** American Indians are the victims of violent crime at a rate double that of the general population.⁴³
- **A prison record makes it difficult to survive economically.** A first-time arrest for being convicted of a property crime leads to a 7% decline in income.⁴⁴ People of color are more likely to be targets in the Criminal Justice System, and are more likely to be arrested and receive prison sentences. Consequently, this 7% decline in income disproportionately affects people of color.

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2 Prison Activist Resource Center (hereinafter PARC). No date. Racism Fact Sheets: "African-Americans and the Criminal Injustice System." See <<http://www.prisonactivist.org/factsheets/racism.pdf>> (July 3, 2003).

3 Human Rights Watch, referencing the Substance Abuse and Mental Health Services Administration. May 2000. "Punishment and Prejudice: Racial Disparities in the War on Drugs: Section VII, Racially Disproportionate Drug Arrests." See <<http://www.hrw.org/reports/2000/usa/>> (June 16, 2004).

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5 BJS. February 1999. "American Indians and Crime." See <<http://www.ojp.usdoj.gov/bjs/pub/press/aic.pr>> (July 3, 2003).

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8 Prison Policy Initiative. No date. "Incarceration is not an Equal Opportunity Punishment." See http://www.prisonpolicy.org/articles/not_equal_opportunity.pdf (May 18, 2005).

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- 19 Ibid.
- 20 Poe-Yamagata, Eileen and Jones, Michael. 2000. "And Justice for Some: National Council on Crime and Delinquency through the Building Blocks Initiative." See <<http://www.buildingblocksforyouth.org/justiceforsome/>> (June 16, 2004).
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- 22 Ross, Luana. 1998. *Inventing the Savage: The Social Construction of Native American Criminality*. Austin: University of Texas Press, pp. 16-19.
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- 24 Ross, op. cit., pp. 25-6.
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- 26 Community Policing Consortium, op. cit.
- 27 Ibid.
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