June 2012

Racial Disparities in Sentencing in the U.S. and Georgia

Kamal Rattray
Kennesaw State University, kattray@students.kennesaw.edu

Nicole Lee
Kennesaw State University, slee98@kennesaw.edu

Follow this and additional works at: https://digitalcommons.kennesaw.edu/gjpp

Part of the African Studies Commons, American Politics Commons, Civil Law Commons, Civil Procedure Commons, Civil Rights and Discrimination Commons, Constitutional Law Commons, Criminal Law Commons, Criminology and Criminal Justice Commons, Human Rights Law Commons, Law and Society Commons, Other Political Science Commons, Public Law and Legal Theory Commons, Public Policy Commons, Social Policy Commons, Social Welfare Commons, and the Social Welfare Law Commons

Recommended Citation
Available at: https://digitalcommons.kennesaw.edu/gjpp/vol2/iss1/5

This Article is brought to you for free and open access by DigitalCommons@Kennesaw State University. It has been accepted for inclusion in Georgia Journal of Public Policy by an authorized editor of DigitalCommons@Kennesaw State University. For more information, please contact digitalcommons@kennesaw.edu.
Incarceration represents the ultimate use of coercive power, and in the state of Georgia, that power is being disproportionately levied upon people of color, particularly African Americans. According to 2011 statistics from the Georgia Department of Corrections, the total prison population statewide was approximately 53,341 inmates. The majority of that number were Blacks (33,069 inmates), followed by Whites (17,752 inmates), Hispanics (2,306 inmates) and other ethnic groups.

These numbers reveal that blacks are being imprisoned at a much higher rate than other groups in Georgia. The right to be treated equitably regardless of race, gender, or nationality is enshrined within the 14th Amendment and other civil rights laws, and should therefore be upheld by Georgia’s legal system. Sadly, this does not appear to be the case.

In Georgia, taxpayers are hit with the annual price tag of more than $18,000 (approximately) to pay for each incarcerated inmate, and the overall budget for the Georgia Department of Corrections was nearly $1 billion dollars as of 2011. For these reasons, the need to eradicate unjust and unneeded incarceration is paramount.

In their examination of state-by-state incarceration rates in 2005, researchers Mauer and King found that more than 1% of African Americans in 49 states and the District of Columbia were imprisoned nationwide, but nowhere in the United States was there a rate of incarceration that high for whites. Their report was published by The Sentencing Project, a D.C.-based nonprofit that focuses on criminal justice policy issues. In 2005, The Sentencing Project reported that blacks in Georgia were incarcerated at a ratio of more than 3 to 1 compared to whites. The ratio decreases to less than 1 to 1 when comparing the incarceration rate between whites and Hispanics in Georgia.

The organization contends these stark discrepancies could decrease if legislation was changed to promote rehabilitation and treatment for drug users rather than solely punitive measures; if judges were granted more autonomy in imposing sentences that take into account the circumstances involving an offense and the defendant; and if lawmakers revisited some “race neutral policies,” such as mandatory sentencing laws for crack and cocaine possession, that have significantly contributed to harsher sentences given to blacks and Hispanics. National research also reveals that whites are more likely to be sent to jail rather than prison. And “[s]ince jail stays are relatively short compared to prison terms, the collateral consequences of incarceration – separation from family, reduced employment prospects – are generally less severe than for persons spending a year or more in state prison,” (Mauer and King, 2007).

1 All opinions are those of the author

Georgia Journal of Public Policy, Spring 2012
In their study, *Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing*, authors Bushway and Piehl (2001), write that a judge’s discretion plays a significant role in perpetuating racial discrimination during sentencing. This explains why black males, on average, receive sentences 20% longer than their white counterparts who commit the same crime. After examining federal sentencing data, the authors state that some disparities involved valid variables like criminal history, the type and/or severity of a crime. They also discuss “unwarranted” disparity that includes race, gender, and other factors that should not influence sentencing. Their analysis modeled an indirect racial bias through interactive systems (plea vs. jury trial), and concluded the quantitative results depended on the actors in the cases, specifically the judges. Thus, the longer sentences imposed on African-American males stemmed from the judge’s discretion. This holds true even after controlling for age, gender, and the severity of the offense.

Bias in the criminal justice system is also explored by Lynch and Haney (2011), who conclude white male jurors in capital cases are more willing to sentence black defendants to death rather than non-white or female jurors. However, the odds of white male jurors sentencing white males to the death penalty is significantly less than for black male defendants. The research used qualitative data collected from focus groups and a simulated murder trial. Lynch and Haney (2011) employed 539 participants and assigned them to one of 100 small groups, with four to seven jurors per jury. The jurors were paid, and each jury watched one of four versions of a mock capital murder trial. The trial evidence and presentation were exactly the same; the only change was the race of the victim on trial. Lynch and Haney discovered white male jurors were more likely to recommend black males receive the death penalty, and less likely to recommend the same penalty for a white male who committed the same crime.

Overall, criminal justice research suggests that our national and local justice systems produce biased outcomes. One way to reduce these disparities is to enforce proper juror selection methods, which means ensuring a diverse jury. A second way is to make sure judges are aware racial disparities can easily occur during sentencing and perhaps allow appeals in Georgia courts as the federal system does with sentences that appear to deviate from offender sentencing norms. A third way is to educate the public about racial stereotyping and its impact on how jurors perceive a defendant.
References


