

RACIAL DISPARITIES IN THE ARKANSAS CRIMINAL JUSTICE SYSTEM
REPORT OF RESEARCH FINDINGS
August 28-29, 2015

EXECUTIVE SUMMARY

The Racial Disparities in the Arkansas Criminal Justice System Research Project is a project of the UALR William H. Bowen School of Law. It was developed in 2011 when Adjoa A. Aiyetoro, served as the Inaugural Director of the UALR Institute on Race and Ethnicity. Professor Aiyetoro and Professor David Montague, UALR Criminal Justice Department, conceived the project. The purpose of this research project is to examine the longstanding racial disparities in the Arkansas Criminal Justice System, and to utilize the findings from the research to develop policy, practice and community programming recommendations to minimize, if not eliminate, these disparities. The research includes review and analysis of data from records of prisoners who were convicted for murder and sentenced to life, life without parole or death. It also includes a study of prosecutor discretion for four Arkansas counties between 2010 and 2013. It was conducted by researchers from various departments of UALR, including the law school, and the departments of criminal justice, social work, economics and finance, and speech communications, as well as researchers from Philander Smith College and an attorney in private practice.

A statewide steering committee was formed in 2012 that is comprised of 65 people representative of every region in Arkansas. Legislators, judges, prosecutors, defense attorneys, attorneys with the Arkansas Attorney General's office, community activists, victims groups, prison reform groups, the Arkansas Department of Corrections and academics are members of the steering committee. The Steering Committee adopted a statement of purpose that provides a context for the work of this project.

Arkansans have confronted racial injustices throughout our State's history. Now we must confront the racial disparities in our criminal justice system. People of color make up less than a quarter of the population of Arkansas but constitute almost half of the incarcerated population. This inequity separates families, divides communities, and comes at a social and economic cost to our state that it cannot endure. To protect all Arkansans we must identify and correct the policies and practices that contribute to this racial disparity.

Research Modules

Overview

The prisoner record research module analyzed data from records of prisoners convicted of homicide and receiving a sentence of life, life without parole, or death. At the time the research began in 2013, 1033 prisoners fit this description. Eight hundred thirty-six (836) of these prisoners signed consents allowing the research team permission to review their institutional and mental health records. The research team collected data from 538 prisoner records out of the 836

who consented. This data was supplemented by public records and crime histories provided by the Arkansas Crime Information Center.

The prosecutor discretion research module analyzed data on homicides and robbery from four Arkansas counties (Crawford County, Faulkner County, Lee County and Pulaski County). The data was collected from the Administrative Office of the Courts and supplemented through the Arkansas Judiciary Administrative Office of the Court's "Court Connect" program.

Highlights of Key Findings

Both research modules found that blacks receive more severe charges with harsher sentences than whites through the phases of initial charge to conviction. One exception to this pattern was discovered. Specifically, when the record noted issues of mental health and/or substance use/abuse, whites received more severe convictions and harsher sentences than blacks with the same noted issues.

The following highlights just a few of the statistically significant findings from the prisoner record review research:

- For convictions, there was a statistically significant relationship ($p < .01$) between race and charge, with 55.1% black and 44% white convicted of capital murder and 44.2% black and 54% white convicted of first degree murder
- For length of sentence, there was a statistically significant relation ($p < .01$) between race and length of sentence, with 71% black and 29% white receiving death, 54% black and 45% white receiving life without parole, and 44% black and 61% white receiving life with parole
- Of all those convicted for capital murder, race continued to be a statistically significant factor ($p < .01$) in length of sentence such that percent receiving death was unchanged, even for same charge (71% black vs. 29% white)
- Of all those convicted for first degree murder, race continued to be a statistically significant factor ($p < .01$) in length of sentence such that percent receiving life without parole was greater for blacks (71%) than whites (29%)
- Of the 538 prisoner records reviewed, 63.9% of the inmates convicted of homicide were between the ages of 16-29 years old at the time of the offense.

Recommendations

It is essential that actors in the criminal justice system who charge, try and sentence persons be trained in recognizing and correcting policies and procedures that result in blacks being treated more harshly than similarly-situated whites. Specifically, judges and prosecutors across the state should participate in classes and programs that train them in understanding and recognizing unintended biases and developing procedures, including jury education, to minimize the effect of such bias. Judges and prosecutors should develop systems to regularly monitor the decisions being made such that racial disparities can be identified and corrected. Any indication that there is a disparity should lead to procedures being modified or developed to minimize the possibility of future disparities.

In addition to the need to develop a concerted, disciplined approach to eliminate race as a variable in charging and sentencing, this research suggests a need for a number of policy and practice changes in the Arkansas Criminal Justice System. Most of the recommended changes offered within this report comport with best practices. Significant research shows the relationship between crimes, age and likelihood of repetition, which also serves as additional support to the recommendations. Lastly, the overall recommendation concerning the use of life, life without parole and death, is based both on the evidence on the lack of effectiveness of these punishments on deterrence for future crimes by others, and, the fact that the lack of ability for redemption and/or rehabilitation conflicts with fundamental tenets of mainstream religions dominant among Arkansans.

Highlights of Specific Recommendations

- Sentencing people to death, life and life without parole who are under the age of 28 punishes them forever in part for impulsive actions while the current science indicates that the area of the brain that controls impulsivity is not fully developed until at least 28 years of age. Of course there should be some punishment attendant to the taking of a life; however, the punishments of life, life without parole and death do not take into consideration the important developmental factor that the impulse control portion of the brain is not fully developed until early to mid twenties (Beckman, 2004; Casey, Jones, & Hare, 2008; Casey, Jones, & Somerville, 2011; Ortiz, 2004).
- Sentencing people to life, life without parole or death contradicts the belief in redemption that most religious and spiritual practices embrace. It is a determination that these persons will never be able to rise above their worse act – that of murder – and are murderers, “identities that they cannot change regardless of the circumstances of their crimes or any improvements they might make in their lives.” (Stevenson, 2014, p. 91)
- The sentences of life and life without parole in actuality are virtually the same for those incarcerated. Prisoners who were sentenced to life and those sentenced to life without parole have very little chance of getting out of prison. For example, the researchers reviewed records of prisoners sentenced in the 1980’s. Prisoners sentenced to life and life without parole were still in prison despite evidence that many with life sentences were performing well in prison. These sentences are representative of a difference without a distinction. Legislators should consider making life a term of years.
- The sentence of life with parole should have more specific guidelines for the parole board in their review and for the governor to guide the decision to release the prisoner. There is so much discretion that it appeared as if the discretion was erring on the side, all too often, of just keeping the person incarcerated. Improving parole procedures after release, which has been suggested on numerous occasions by others, would decrease the likelihood that the person convicted of homicide and given a life with parole sentence, would reoffend. Also, research suggests that people convicted of homicide are less likely to reoffend since for many the crime was a crime of impulse and passion.

In addition to the above, the research leads to the following recommendations:

- Identification of Latino defendants should be made more consistently and based on the identification from the defendant.
- The data collection forms developed by the Administrative Office of the Courts should be thoroughly and accurately completed on each case for which the prosecutor has determined to charge.

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Research Project
UALR William H. Bowen School of Law
August 2015