The individual and collective consequences of mass incarceration in the African American community

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The Individual and Collective Consequences of Mass Incarceration in the African American Community

by

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Dedication

To both of my beautiful daughters, Jordan and Jaden, everything I do is to make you proud to call me your father. No words can express how much I love you both. To Lindsey, thank you for putting up with me; without you nothing I have in my life would be possible. To my Grandfather, you have always been there to teach me the hard lessons in life and you are my hero. To my grandmother, where do I begin, you are my best friend and have always been there for me no matter what. To my mom, thank you for all your sacrifice! The things you gave up for me, I can only imagine. Everything I do is a testament to you and all your love and support. To the rest of my family and friends, I love you.
Abstract

While over time the terms of reference (e.g., Negro, Colored, Black, African American, Afrikan) have changed, the degraded cast status of Black people has been an immutable constant. For the purpose of this paper, *African American* and *Black* will be used interchangeably. No other minority ethnicity, has attempted to assimilate into White American culture more than African Americans. African Americans carry European names, speak the language (opposed to speaking native ancestors’ languages), and also share many of the same religious beliefs. Yet the stigmatization of blacks as an inferior race remains constant. Today the words *African American* and criminal are used synonymously.
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Chapter 1: Introduction and Background

Introduction

Incarceration has had a devastating impact on African American men and women. According to Mauer and King (2007a), since the early 1970s the prison and jail population in the United States has increased at an unprecedented rate. The more than 500 percent escalation in the number of people incarcerated in the nation’s prisons and jails has resulted in a total of 2.2 million people behind bars. This growth has been accompanied by a progressively disproportionate racial alignment, with predominantly high rates of incarceration for African Americans, who now constitute 900,000 of the total 2.2 million incarcerated population (Guerino, Harrison and Sabol, 2010). African American male prisoners accounted for 3,161 per 100,000 African American men. African American women have also been imprisoned at shocking rates as well; African American women prisoners accounted for 149 per 100,000 African American women. In contrast, white male prisoners accounted for 487 per 100,000 white males, and white female prisoners account for 50 per 100,000 (Brown, 2010).

The criminal justice system has historically served as a focal point for much of societal racism. A long legacy of practices that includes the convict leasing system, extra-judicial lynchings, and police brutality has shaped the history of African Americans and the criminal justice system. Figure 1 demonstrates the landscape of incarceration in America. In 2004, more than 2,531 per 100,000 African Americans were incarcerated. During that same time 957 per 100,000 Hispanics were incarcerated and whites represented 393 per 100,000. Blacks were incarcerated an astounding 7 times the rate of whites and three times the rate of Hispanics.
Over the past thirty years, significant change has occurred in some aspects of the criminal justice system. Huge racial disparities exist in imprisonment rates. Drug policies have had a disproportionate impact on African Americans and have exacerbated the racial disparities that already existed within the criminal justice system. From 1980 to 1995, drug arrests nationally nearly tripled from 581,000 to 1,476,000, thus bringing nearly a million additional drug cases to the court system each year. Over the course of this period, drug cases came to be treated much more harshly. Primarily as a result of mandatory sentencing policies, convicted drug offenders are now far more likely to be sentenced to prison than in the past (Mauer, 1999).

Figure 1. (Mauer and King, 2009)
The vast majority have been African American. In 1980 the black arrest rate for
drug possession or use was about twice the white arrest rate; by 1989 the disparity had
increased to 4 black arrests to 1 white arrest. Between 1980 and 1989, the white arrest
rate for drug possession or use increased 56%, while the increase in the African
American arrest rate was four times greater (up 219%). Both the white and black rates
decreased in 1990 and 1991; afterwards both generally increased. By 2009 the African
American rate had reached a level near that of 1989 and was 205% above its 1980 level.
In contrast, after 1991, the white arrest rate quickly surpassed its 1989 level and
continued to increase so that by 2009 it had reached a level 102% above its 1980 level. In
all, during the 30-year period from 1980 to 2009, the white arrest rate of drug possession
or use doubled and the black arrest rate tripled. The African American arrest rate ended
the period at 3 times the white arrest rate (Snyder, 2011).

The purpose of this thesis is to present evidence that the criminal justice system
and correctional policies over the last 30 years have damaged rather than protected
African American communities. Since African Americans were forcefully brought into
this country, governing authorities have victimized them. Available research illustrates
that African Americans are being incarcerated at historic rates. As a result, millions of
African Americans are currently disenfranchised. Understanding the problem is the most
important justification for this research.

It was estimated in 1997 that 9.0 percent of U.S. males would go to prison at
some time in their lives. Significant racial disparity underlies this overall risk. The
estimated lifetime risk of imprisonment for black men is 28.5 percent compared to 4.4
percent for white men (Bonczar and Beck, 1997). This thesis contributes to the discipline
by showing how racial disparities that exist today are consequences of criminal justice policies. In addition, the thesis will present evidence that the criminal justice system has replaced slavery and Jim Crow as the main force that perpetuates racial inequality and control over African Americans.

**Research Questions**

(1) Has the criminal justice system become an instrument to marginalize African Americans? (2) What are the similarities between antebellum slavery, Jim Crow and today’s criminal justice system? The thesis will address these questions through literature review and content analysis that reveals policies that generate racial disparity and discrimination in the criminal justice system. Information will be taken from the following sources: Urban Institute, Bureau of Statistics, Russell Sage Foundation, NCJRS, Pew Center for States, Sentencing Project, and numerous other articles from varying sources, peer reviewed journals, and by recognized scholars and researchers.

The thesis will examine many issues impacting the African American community as a result of the criminal justice system. Racial discrimination in the criminal justice system exists, and African Americans are disproportionately represented in the prison system due to unequal application of the law. This thesis will introduce many of the challenges caused by mass incarceration in African American communities. With the negative consequences of mass incarceration primarily affecting African American men, these communities deteriorate tremendously. Many of these communities will not recover from mass imprisonment and will experience generations of anguish.

For a theoretical perspective, conflict theory and racial threat theory both are relevant to this thesis. Although the thesis will focus primarily on criminal justice
policies' impacts on the African American community, these theories give some explanations to why these dire consequences exist. Conflict theory assumes that society is based primarily on conflict between competing interest groups. In many cases competing interest groups are not equal in power and resources. Consequently, one group is dominant and the other subordinate.

According to conflict theory, the criminal law is used by those in the dominant group to control those in the subordinate group. The authority and influence of the dominant group allows them to use their resources in the interest that best serves them at the expense of the powerful groups. As a result of this powerlessness, crime is the response to the subordinates’ groups’ social situation. The reason members from the subordinate groups appear in official criminal reports more frequently than members of the dominant groups is that the dominant groups have more control over the definition of criminality (Bohm and Haley, 2005).

Racial threat has three distinct perspectives: the political threat hypothesis, economic threat, and threat of black crime. Historically identified as the power threat hypothesis describes as the percentage of blacks in the population grows progressively larger, the state increasingly views blacks as a threat to the political authority of whites. State actors then respond to this threat by relying more heavily on social control mechanisms so as to maintain the dominant position of whites in society. With the economic threat posed by blacks, the hypothesis asserts that competition between whites and blacks for jobs and other finite economic resources results in an increase in the amount of social control imposed on blacks. Racial threat hypothesis questions whether the nature of the racial threat that influences the decision making of actors within the
criminal justice system is rooted in either political or economic threat. Rather it is the threat of black-on-white crime that is emphasized (Eitle, D’Alessio, and Stolzenburg, 2002). The United States has the highest imprisonment rate in the world (500 per 100,000 persons). In 2009, 53 percent of state prison inmates were serving time for violent offenses, 19 percent for property, 18 percent for drug, and 9 percent for public order offenses. About half (51 percent) of federal inmates in 2010 were serving time for drug offenses, 35 percent for public-order offenses (largely weapons and immigration), and less than 10 percent each for violent and property offenses (Guerino et al., 2010). The United States has 100,000 more prisoners incarcerated just for drug offenses than the European Union has imprisoned for all offenses (Walmsley, 2006; Ziedenberg and Schiraldi, 2000). Massive increases in the number of incarcerated persons have excessively involved African Americans. The racial disproportionality that has occurred in the growth of the prison population is most pronounced for drug offenses (Lynch and Sabol, 2000). Research has shown that the war on drugs has led to an overrepresentation of African Americans at every stage of the criminal justice system (Tonry, 1995)

Following this introduction, Chapter 2 will describe criminal justice law enforcement policies that generate racial disparity and discrimination against African Americans in the criminal justice system. No criminal justice policy has shown to be more unequal in its enforcement than current drug policies. Specifically the chapter focuses on the declaration of the war on drugs and crack laws. These policies have contributed to numerous African Americans being incarcerated and sanctioned more punitively. Mandatory sentencing is the next section of the chapter, which explains how
this policy has adversely affected blacks. Mandatory sentencing takes discretion away from judges and mandates sanctions for particular offenses. Acting in concert with drug policies, mandatory sentencing adds enhancements on to sanctions. The chapter concludes with an overview of three strikes laws, racial profiling, and how they both discriminatingly affect African Americans.

Chapter 3 begins with explaining the impacts of the criminal justice system and correctional policies on black men and women. The chapter then transitions from individual impacts to more collective consequences from these policy implications. First, family disruption is discussed. Second, consequences of incarceration on the community will be discussed, followed by detailing the problems associated with disenfranchisement. Next some of the issues that are posed by offender reentry and employment are discussed. The chapter concludes with health concerns stemming from incarceration and post-incarceration.

Chapter 4 describes the similarities between Slavery, Jim Crow, and the criminal justice system. This chapter explores possible linkages between each of these racial caste systems and how they are used to marginalize African Americans. A historical review is used to show many of these similarities that exist. The chapter concludes with detailed experiences of police brutality and consistent under-protection of African Americans by governing authorities. Chapter 5 is the conclusion of the thesis, summarizing many of the aforementioned policies, individual impacts, and collective consequences of incarceration on the African American community. Finally some solutions are offered to several of the practices that generate disparities and speak to more social equality and social justice for all. The impact of imprisonment on the African American community is the most crucial
consequence of concentrated mass incarceration.
Chapter 2: Correctional Policies and Racial Disparities

War on Drugs

Many of the laws that have been passed historically have been constructed with racist and discriminatory undertones. For example, mandatory minimums have shown to get tough on criminals, but also have shown to generate disparities in its application. Black men especially have fallen prey to this injustice. Call it popular opinion or not, but blacks have always received the short end of the stick in the legal system. This form of disciplinary justice seems to be like present day enslavement and constituting nothing more than a total dismantling of the African American family and community. The social stereotype of villain and outcast seems to be inescapable for black men at all levels, with the most disenfranchised embracing the role and the most affluent fighting against it, but all living in relation to it. Imprisonment policies and practices have greatly impacted black men and the African American community. “There is a substantial number of black males who lack the resiliency and personal and social resources that are necessary to cope effectively with the adverse structural conditions directed against them” (Oliver, 2006:920).

Disparities are unequal outcomes, but in the modern criminal justice system they are not by design, but more likely due to latent consequences of so-called race neutral policies and practices that have generated unequal outcomes. The unequal outcomes can be seen in terms of disenfranchisement, crack cocaine policies, Three Strike laws, Truth in Sentencing, and other policies. These policies have led to racial disparities and have led legislators to scale back many of these policies because of the associated over-harsh
negative effects. The institution of antebellum slavery and Jim Crow are clear illustrations of laws made with the intent to discriminate against African Americans and concentrate on keeping blacks subordinate and inferior. Discrimination is particularly relevant to racial caste systems of the past; they implied a conscious intent to generate unequal outcomes. The modern criminal justice systems laws are meant to be applied neutrally and without bias; there is a deficiency in intent.

Policies like crack cocaine laws, school zone laws, zero tolerance policies, racial profiling, Three Strike laws, truth in sentencing, mandatory sentencing, harsher sentencing, and life without parole have adversely affected the black population. The black community has suffered the most due to the sheer number of African Americans being incarcerated. The death penalty provides the most compelling evidence for the ongoing racial disparity that exists in the legal system. When white people are murdered, those defendants face 4.3 times greater chance of receiving death than those charged with killing blacks (Petrie and Coverdill, 2010).

No issue has had more impact on the criminal justice system in the past three decades than national drug policy. Almost half of all federal criminal defendants are prosecuted for narcotics offenses. The sentences they receive reflect the confluence a decade ago of two broad trends in public policy: a reduction of judicial discretion in sentencing and an increased concern about drug abuse. The first trend began in the 1970s and continues, more or less, to this day. Its clearest expression is the Sentencing Reform Act of 1984, which established the United States Sentencing Commission and charged it with developing and promulgating a comprehensive system of sentencing guidelines.
Despite their name, the guidelines are binding, and they drastically restrict the discretion of the sentencing judge. Second, during the 1980s, drug abuse was transformed in the public mind from a social problem of moderate importance to a national crisis of the first order or moral panic. Congress and the President responded in 1986 with a flurry of activity culminating in the Anti-Drug Abuse Act. Among the Act's provisions were stiff mandatory minimum sentences for narcotics trafficking, the stiffest in many respects in the history of American narcotics laws (Sklansky, 1995).

According to Tonry (2005), largely as a result of these laws, the chance of receiving a prison term in the penal system after being arrested for a drug offense has risen dramatically. The proportion of defendants convicted of a drug offense who were sentenced to prison increased from 79% to 93% between 1988 and 2004. Overall trends in the court system reflect an ever more punitive approach for drug offenders. The expansion of mandatory minimum sentencing and the abolition of parole have resulted in persons serving much longer sentences for drug offenses than in the past. For example, drug offenders released from prison in 1986 who were sentenced before the adoption of mandatory sentences and sentencing guidelines had served an average of 22 months in prison. Offenders sentenced in 2004, after the adoption of mandatory sentences and sentencing guidelines, were expected to serve almost three times that length, or 62 months in prison.

As a direct result of the punitive movement in drug law enforcement and sentencing policy, the number of drug offenders incarcerated has skyrocketed since 1980. As seen in Figure 2, in 1980 there were 19,000 offenders in state prisons for drug offenses and 4,900 in federal prisons, representing 6% and 25% of all inmates, respectively. By 2003, a more
than twelve-fold increase in drug offenders in state prisons resulted in a total of 250,900, constituting 20% of the inmate population. Dramatic increases occurred in the federal system as well, as the number of drug offenders rose to 87,000, representing 55% of all inmates. Local jails experienced a dramatic rise in the number of people being detained for serving a drug offense, increasing from an estimated 17,200 in 1980 to 155,900 – one in four persons in jail – by 2003. Overall, the number of drug offenders in prison or jail increased to nearly half a million, rising by 1100% from 41,100 in 1980 to 493,800 in 2003 (Tonry, 2005).

Figure 2. Drug Offenders in Prisons and Jails, 1980 and 2003 (Tonry, 2005)

This policy figures prominently in discussions about race relations and the
administration of the criminal law because its enforcement has greatly enlarged the numbers of blacks subjected to arrest, prosecution, and imprisonment. The war on drugs has accentuated the suspicion with which police authorities regard blacks. The war on drugs, moreover, largely explains why the incarceration rate among blacks has skyrocketed exponentially and supersedes the rate among whites.

The impact of greater emphasis on law enforcement and incarceration of drug offenders has had a dramatic impact on African American communities as a result of three overlapping policy decisions: first, the concentration of drug law enforcement in inner city areas; second, harsher sentencing policies, particularly for crack cocaine; and third, the drug war’s emphasis on law enforcement and punishment at the expense of prevention and treatment. Despite average rates of drug use among the general population, African Americans are significantly more likely than other racial groups to be arrested, prosecuted, convicted, and sentenced to prison for drug offenses. Those who use drugs are more likely to be arrested than other groups. This disparity extends throughout the criminal justice system. While African Americans constitute 14 percent of the nation’s monthly drug users, they represent 37 percent of those persons arrested for a drug offense and 56 percent of those in state prison for a drug conviction. Racial disparities related to drug arrests cannot be explained by racial differences in illicit drug use (Mauer and King, 2007b).
In 2000, Human Rights Watch (HRW) released a report that closely examined racial disparities in the proportion of persons admitted to state prisons for drug offenses in 1996 (HRW, 2000). According to HRW (2000), Illinois had the country’s highest African American-white disparity in prison admissions for drug offenses: 1,146 per 100,000 African American men, compared with 20 per 100,000 white men in the state. African American men were 57 times more likely than white men to be admitted into Illinois state prisons for drug offenses. Urged by HRW’s (2000) report, Loyola University Chicago formed a disproportionate minority confinement (DMC) working group to investigate the nature and extent of racial disparities in the enforcement of drug laws and the incarceration of drug offenders.

The DMC project involved initiatives intended to inspire a constructive discourse.
about the problem of racial disparities in drug law enforcement, prosecution strategies, and incarcerations for drugs. The goal of this group was to offer impartial information about racial disparities to recognize meaningful resolutions at various stages in the criminal justice process. The data that they collected demonstrated that African Americans are more likely than non-blacks to be sentenced for such crimes in Illinois and across the country. The number of African Americans admitted to Illinois prisons for drug offenses far outweighs that of whites and Hispanics.

From 1990 to 2000, the number of African Americans admitted to Illinois state prisons for drug offenses grew significantly from 1,421 to 9,088, a 450% increase. In contrast, the number of whites and Hispanics admitted to prison for drug offenses remained relatively stable. Throughout the 1990s, African Americans represented an average of 80% of all persons admitted to Illinois prisons for drug offenses and an average of 59% of all persons admitted to Illinois prisons for nondrug offenses. In 2000, half of all African Americans admitted to prison were sentenced for drug offenses, compared with 30% of Hispanics and 15% of Whites (Lurigio, Heaps and Whitney, 2003a).

These findings confirm the HRW findings regarding the disproportionate incarceration of African Americans in Illinois for drug offenses. The DMC project claimed that four major factors could possibly explain racial disparities in sentencing for drug offenses. The first two factors are related to the nature of drug sales in urban communities. The third factor is related to drug charges, and the fourth highlights drug treatment mandates and the extreme retributive nature of prison and probation. First, outdoor drug markets are more susceptible to police detection, increasing odds for
incarceration. Imprisonment stems from two features of drug sales in urban Chicago communities: outdoor sales and sentencing enhancements. Those who sell drugs in outdoor markets are more likely than those who do not to be arrested for and charged with felony crimes and more likely to be sentenced to prison for those crimes.

As presented in Lurigio, Heaps, and Whitney (2003b), Illinois Criminal Statute (ILCS) 570/407 prescribes a number of sentencing enhancements that result in mandatory prison terms for possession or delivery of any controlled substance within certain geographical boundaries of 1,000 feet. The statute also elevates to a felony offense crimes that would be misdemeanors without the 1,000-foot or safe-zone enhancements. The provisions affect drug sales within a 1,000-foot boundary of schools or school bus stops; public housing properties or property leased by public housing agencies, such as scattered-site public housing; hospitals; store front churches and other places of worship; nursing homes and other facilities for the care of the elderly; and truck stops and rest areas. These restrictions encompass virtually every residential area of Chicago and are most common in poor African American neighborhoods.

**Crack Laws**

Federal legislation has punished crack cocaine with historically punitive sanctions. A defendant convicted with five grams (10 to 50 doses) of crack cocaine will receive a five-year mandatory minimum sentence. To receive the same sentence for powder cocaine, a defendant would have to have been involved in an offense involving 500 grams (2,500 to 5,000 doses). This is commonly referred to as the “100-to-1 sentencing disparity.” In order to trigger a 10-year mandatory sentence, a defendant
would need to be charged with 50 grams of crack cocaine (100 to 500 doses) or 5,000 grams of powder cocaine (up to 50,000 doses). The quantity levels associated with the two drugs codify an equivalency of punishment for low-level crack cocaine sellers and high-level powder cocaine traffickers. From October 1991 through September 1992, more than 91 percent of all federal crack defendants were black; only 3 percent were white (Mauer, 2009).

The impact of crack cocaine policy on the African American community has been devastating. While two-thirds of regular crack cocaine users in the United States are either white or Latino (Mauer, 2009), according to Figure 4 more than 80 percent of those persons sentenced in federal court for crack cocaine offenses are African American. Conversely, whites and Hispanic combine for only 17 percent of those persons convicted of crack cocaine offenses. Thus, African Americans disproportionately face the most severe drug penalties in the criminal justice system.

![Pie chart showing race/ethnicity of crack cocaine defendants]

Figure 4. Race/Ethnicity of Crack Cocaine Defendants (Wehrman, 2010)

There are several reasons for this disproportionate impact. First, crack use is
strongly concentrated in inner city, black communities, in part because crack is cheap, and in part for the same reasons drug abuse in general is concentrated in economically marginalized areas. Second, crack dealing appears to be even more concentrated in the inner city, in part because that is where the customers are, and in part because inner city youth have fewer attractive alternatives for earning money. Third, criminal justice agents may pay a disproportionate amount of attention to crack dealing in inner city neighborhoods in part because it is more visible. Crack cocaine is the only drug for which there exists a mandatory minimum penalty for a first offense of simple possession (Sklansky, 1995).

Many see this dramatic difference in punishment in racial terms because of the confluence of two considerations. The first is the apparent similarity of the underlying offenses; all involve cocaine. Because crack cocaine is derived from powder cocaine, some observers maintain that trafficking one is essentially the same as trafficking the other. The second is the difference in the racial composition of the pools of people arrested, prosecuted, and imprisoned. Some argue that by punishing crack cocaine offenses much more harshly than powder cocaine offenses, federal and state governments violate the U.S. Constitution.

These issues question The Equal Protection clause of the U.S. Constitution and other legal protections (Lietman, 1994). The dramatic increase in drug convictions for African Americans mirrors the harsher sanctions attached to crack cocaine offenses. With the law equating 1 gram of crack cocaine with 100 grams of powder cocaine, even modest quantities of crack cocaine can lead to rather severe penalties. A serious user of crack cocaine, for instance, could require 5 or more grams of the substance for the
weekend. Yet this amount presently carries a mandatory minimum prison term of 5 years (Free, 1997).

Although federal crack cocaine laws were forged with the intent of targeting high-level traffickers engaged in international and interstate drug distribution, an enterprise ill-suited for state and local law enforcement, more than two decades of practice have clearly demonstrated that the laws are excessive and ineffective. A small quantity triggers sentences similar to those for interstate powder cocaine dealers. Those convicted with slightly higher quantities of crack cocaine, although still considered local sellers, receive average sentences longer than international powder cocaine traffickers. Table 1 illustrates many of the vast disparities and punishment.
In August 2010 President Barack Obama signed the Fair Sentencing Act, historic legislation that limits the stiff mandatory minimum sentences for low-level crack cocaine offenses that were found to be overly harsh. The new law significantly reduces the cocaine sentencing quantity disparity from 100 to 1 to 18 to 1 by raising the quantity of
crack cocaine necessary to trigger the five- and ten-year mandatory minimum sentences. The legislation also eliminates the mandatory minimum for simple possession of crack cocaine. The provisions of the act have not completely eliminated the sentencing disparity between crack and powder cocaine but its impact has been beneficial in reducing racial disparity and without the law growing federal incarceration rates would have been even more dramatic. The new law does not allow for retroactive application, so persons currently incarcerated or awaiting sentencing for crack cocaine offenses committed prior to the enactment will not benefit from the changes to the mandatory minimums (Porter, 2011).

**Mandatory Sentencing**

Mandatory sentencing provisions are designed to deter, sending the message to potential offenders that harsh consequences follow from their criminal conduct. The principal rationale for these sentences is longer prison terms for recidivists, drug dealers, and those who commit violent offenses. Mandatory sentencing makes prison more certain and imposes statutory minimums and maximums as well as enhancements depending on circumstances. They also restrict the discretion of administrators and delay or even eliminate parole eligibility. Prison populations have increased dramatically since the proliferation of mandatory punishment laws (Lowenthal, 1993).

The United States Sentencing Commission (1991 a) observed that African Americans were more likely than whites to be convicted under mandatory minimum sentencing provisions, even though they constituted a much smaller percentage of all federal defendants than their white counterparts. African Americans, who constituted
28.2% of all federal defendants, accounted for 38.5% of all federal defendants convicted under mandatory minimum provisions. Comparable figures for Whites were 46.9% and 34.8%, respectively. The study also found that African Americans were more likely than either Whites or Hispanics to be sentenced at or above the indicated mandatory minimum. More than two thirds (67.7%) of all Black federal defendants convicted under the mandatory minimum provisions received sentences that were at or above the mandatory minimum.

In contrast, only 54% of the White and 57.1% of the Hispanic federal defendants convicted under the mandatory minimum provisions received these sentences. Why are African Americans disproportionately convicted under the mandatory minimum provisions, and why are they more likely than Whites and Hispanics to receive severe sentences under the mandatory minimum provisions? Much of the disparity can be attributed to the emphasis on drug offenses. This is readily seen by analyzing data from pre- and post-guidelines periods, in that the guidelines reflected the increasingly severe penalties required under the mandatory minimum provision.

In 1986, the last full year prior to the implementation of the guidelines, only 19% of all African Americans convicted in federal court were convicted of drug trafficking. By the first half of 1990, this figure had risen to 46%. The comparable white rates were 26% in 1986 and 35% for the first 6 months of 1990 (McDonald and Carlson, 1993). Thus, prior to the implementation of mandatory minimum provisions for drug offenses, whites were more likely than blacks to be convicted of drug trafficking, whereas the reverse was true after these provisions went into effect. Heaney (1991) observed that under the guidelines, the average sentence increased most dramatically for African
Americans. Although the average sentence for African Americans under pre-guidelines law in 1989 was 27.8 months, this figure swelled to 68.5 months for cases sentenced the same year under the guidelines.

The negative impact of the guidelines on African Americans is apparently not confined to longer sentences: On average, African Americans are less likely than whites to be given a probation-only disposition in federal court cases prosecuted under the new system. The probability of receiving straight probation varies depending on the offense. For instance, whites are more than three times more likely than African Americans under the new standards to receive probation-only for offenses involving drugs and violence (Heaney, 1992). Research shows that blacks are more likely than whites to be convicted under mandatory minimum provisions and more likely than whites to be sentenced at or above the indicated mandatory minimum. Much of the disparity is apparently a consequence of the differential treatment accorded to crack cocaine offenders (Free, 1997).

**Three Strikes Laws**

Between 1993 and 1995, 24 states enacted “three strikes and you’re out” laws, which provide longer prison terms for some criminals with repeat felony convictions. The laws vary, but most call for life sentences without the possibility of release for at least 25 years upon a third conviction of a serious violent crime. The crimes include murder, rape, kidnapping, aggravated robbery, aggravated assault, and sexual abuse. A few states include additional crimes, most commonly firearm violations, burglary of occupied dwellings, and simple robbery. The basic assumption is that, everything else being equal,
a person will be less likely to commit a crime when the expected costs increase. The additional prison terms called for by Three Strikes Laws increase the expected costs for criminals subject to the laws and, at first glance, the expected result is less crime (Marvell and Moody, 2001).

Three Strike Laws impact African Americans more because they are more likely to have criminal histories. The provisions of Three Strike Laws are to reduce crime in two different ways: by incapacitating repeat offenders for lengthy periods and by deterring would-be criminals with prior records from re-offending. In 1994, Three Strikes laws were arguably at the pinnacle of public concern about crime and the pinnacle of the political response to that concern. Fueled by increasing media coverage, growing public fear, and a new emphasis on crime as a political issue, Three Strikes was positioned by politicians as the answer to the widespread fear of crime. Elected officials claimed that taking career criminals off the street for life when they had committed multiple crimes would incapacitate the most dangerous predators and deter would-be criminals (Schiradi, Colburn and Lotke, 2004).

According to Schiradi et al. (2004), California is the only state in which any felony offense can trigger a Three Strikes sentence. People sentenced under the Three Strike laws are more likely to be serving a sentence under the law for non-violent offenses than violent ones. For 57 percent of third strikers, the offense which triggered their 25-year-to-life prison sentence is for non-violent offenses. There were more third strikers serving 25-to-life for drug possession (672) than third strikers in prison for second- degree murder (62), assault with deadly weapon (379), and rape (119) combined. The number of persons serving a 25-year-to-life sentence for petty theft under the Three
Strike laws was 177 times higher in 2003 than 1994, increasing from 2 in 1994 to 354 in September 2003. In Figure 5, drug crimes, property crimes, and other crimes represent 65 percent of the people serving 25-years-to-life under California’s Three Strikes legislation and who are non-violent offenders. Crimes against other persons (presumed violent crimes) represent 35 percent of the offenders serving 25-to-life sentences under these guidelines.

![Figure 5. Third Strikers in the California Prison Population categorized by offense (Schiradi, Ziendenburg and Ethers, 2004).](image)

As with other criminal justice policies, Three Strikes have been shown to have a disproportionate impact on racial and ethnic communities. According to Table 2, in California, African American incarceration rates for third strikes are 143 per 100,000 per African American residents. This is twelve times higher than the third strike incarceration rate for whites, (12 per 100,000 white residents). For second and third strikes sentences combined, the African American incarceration rate 704.5 per 100,000 African American
residents is 10 times higher than the white incarceration rate 69.9.

Table 2.

*Third Strikers in the California Prison by Race and Ethnicity* (Schiradi, Ziendenburg and Ethers, 2004).

![Table 2](image)

Black people make up the smallest proportion of the population in California (2,269,400), but account for more than 36 percent of the second strikers and 44 percent of the third strikers. Hispanics, with a population more than triple that of blacks at 10,974,414, and they account for 33 percent of second strikers and 25 percent of third
strikers. Similarly, whites in California number more than six times the population of blacks (15,818,060), but account for only 26 percent of the second strikers and only 25 percent of third strikers.

Because Three Strike laws call for harsh prison terms for criminals with prior convictions, criminals who fear the laws because they have two strikes would be expected to take extra steps to avoid punishment. One such step might be to murder those who can aid in their capture and conviction. The benefit of removing opposition and eliminating potential witnesses, however, must be weighed against the heightened level of effort by the authorities to solve a homicide as opposed to a lesser crime (Polinsky and Shavell, 1999).

Three Strike laws are intended to restrict the amount of discretion, particularly leniency, in the sentencing of repeat offenders. How, then, is it conceivable for these regulations to be applied more forcefully against certain defendants? In the furtherance of justice, a prosecuting attorney may file a motion to dismiss one or more prior convictions that would otherwise count as strikes, thus sparing a defendant the mandatory third-strike sentence of 25 years to life if convicted (Legislative analyst’s Office, 2005). Discretion may also be exercised by prosecutors or judges to charge certain offenses as either felonies (which initiate Three Strikes) or misdemeanors (carrying a maximum sentence of one year in jail), or to charge multiple counts, including strikes, from a single incident (Ricciardulli, 2002).

According to Chen (2008), even with the application of a mandatory minimum sentencing policy in a determinate sentencing state, racial sentencing disparities appear to
persist. In California, the Three Strike Laws appear to be disproportionately applied against African American defendants. To the extent that disparities in sentencing outcomes result from decisions made, consciously or unintentionally, by participants and authorities in the criminal justice system, it may be possible to mitigate or prevent discriminatory applications of the law. Chen concludes that the largest disparities between black and white offenders are present in property and drug offenders, and found that African Americans have 1.85 times greater likelihood of receiving third strike sentences than whites.

**Racial Profiling**

African Americans, particularly black men, have been labeled with the stigma in society of being innately criminal and deviant. Too often, race is the determinative factor used by law enforcement officers to justify a stop and search. Even though the Constitution prohibits such conduct by law enforcement agencies, these practices have become the norm, not the exception. Unfortunately, racial profiling of African Americans appears to be ingrained in the minds of many law enforcement officers and has become a part of their standard operating procedures. This practice has been described as D.W.B. (driving while black) and racial profiling. Racial profiling involves the presumption that minorities are engaged in criminal activities, which results in minorities being stopped and searched without probable cause (Weatherspoon, 2003).

Lamberth (1996) found that the State Police in Gloucester County, New Jersey, stop investigate, and arrest black travelers at rates significantly disproportionate to the percentage of blacks in the traveling population, so as to suggest the existence of a policy
of de facto discrimination of targeting blacks for investigation and arrest. Furthermore, black and white drivers violated traffic laws at the same rate, yet 73.2 percent of those stopped and arrested were cars with black drivers or passengers.

On the other hand, these cars comprised only 13.5 percent of the vehicles on the road. Similarly, a study conducted by the Orlando Sentinel observed a drug interdiction program in 1992 along a stretch of Interstate 95 in Florida. Some of the deputies' cars involved in traffic-related stops were equipped with video cameras. The newspaper viewed videotapes from almost 1,100 stops. The tapes showed that about 70 percent of the drivers who were stopped on that stretch of highway were African American, whereas only 5 percent of the total drivers were black (Cole, 1999).

Many African American motorists complain they are routinely stopped and detained simply because law enforcement officers believe that blacks, on average, are more likely to have criminal records or be involved in criminal activity. Racial profiling has led to allegations of excessive force and, in some instances, unjustifiable fatal shootings. Racial profiling has led to several unarmed black men being murdered by police officers. This can be attributed to the assumption that black men are innately criminal, and the disgrace status leads to negative contact with police and other control agents.

Evidence also suggests that racial profiling exists in the sentencing of juvenile offenders (Ward, 2002). A study sponsored by a consortium of child advocacy and civil rights groups, titled "And Justice for Some," concluded that a black youth offender is six times more likely to be jailed than a youth offender who is white, even if the two commit
the same crimes and have the same criminal backgrounds. Data also showed that while prosecutors requested death penalties in 70 percent of the cases where the defendant was black and the victim was white, they sought the death penalty in only 15 percent of the cases where the defendant was black and the victim was black (Sullivan, 2001).

The use of race, particularly blackness, as a proxy for criminal involvement or dangerousness is certainly not new. It is something deeply familiar in the United States due to its history of racial violence and subjugation. The tendency to view black people as somehow predisposed to criminal behavior could be equated to an American tradition.

In this more punitive penology, racial profiling is used as a technique to identify, classify, and manage groupings sorted by dangerousness. Race becomes a marker, a shorthand evidentiary clue that police can read off the body. If racial profiling is disregarded, police won't need to have probable cause that justifies police encounters. Viable information assumed to have been acquired by a reliable informant will be nonexistent, in this instance; the "informants" are the bodies of the targeted population. That is, criminal suspicion, in such situations, is no longer linked to the internal psychological disposition of the individual suspect.

Nor is the State concerned with the potential of the normalization of those identified to be part of the dangerous subgroup. Rather, such a practice allows for the placement, in advance of any actual criminal activity, of certain populations on a continuum of dangerousness. This continuum becomes the measure by which police can make a determination whether and how to act. In a sense the victims of racial profiling become invisible; they are not seen as individuals, but only classified as a member of
particular subgroup. (Rose, 2002)
Mauer and King (2004) notes that African Americans comprise 12.3% of the United States general population and account for more than 45% of the inmate population. The number of women in the prison system increased by 418% from 1980 to 1995, compared to a rise of 236% for men. Black women are now incarcerated at a rate seven times that of white women. Nearly one in three (32%) black males in the age group 20-29 is under some form of criminal justice supervision on any given day (either in prison or jail, or on probation or parole). High incarceration rates have led researchers to claim that prison time has become a normal part of the early adulthood for black men in poor urban neighborhoods.

**African American Men**

Arriving to adulthood through conventional roles involves moving from school to work, then to marriage, to finally becoming a parent. This process influences success in fulfilling adult roles and responsibilities. Steady jobs and good marriages offer criminal offenders sources of informal control and positive networks that contribute to criminal desistance. Habitual offending is more likely for those who fail to secure the markers of adult life. For many young males, especially African Americans, the threat of imprisonment is no threat but rather a customary or accepted part of life. For young black males in urban communities, imprisonment has become a regular, anticipated part of the life course.

This trend of pervasive imprisonment has led Bonczar and Beck (1997) to conduct
a life course analysis of risk of imprisonment for the Bureau of Justice Statistics (BJS). It was estimated that 9.0 percent of U.S. males would go to prison at some time in their lives. Significant overall racial disparity underlies this overall risk. The estimated lifetime risk of imprisonment for black men is 28.5% compared to 4.4% for white men. Motivated by claims that the prison boom disproportionately impacted the economically disadvantaged as well as African Americans, they studied how the risk of imprisonment differs across levels of education (Pettit and Western, 2004).

The risk of each life event varies with race, but racial differences in imprisonment greatly overshadow any other inequality. Among all men, whites in their early thirties are more than twice as likely to hold a bachelor's degree than to black men. Blacks are about 50 percent more likely to have served in the military. However, black men are about 7 times more likely to have a prison record. Indeed, recent birth cohorts of black men are more likely to have prison records (22.4 percent) than military records (17.4 percent) or bachelor's degrees (12.5 percent). The share of the population with prison records is particularly striking among non-college men. Whereas few non-college white men have prison records, nearly a third of black men with less than a college education have been to prison. Non-college black men in their early thirties in 1999 were more than twice as likely to be ex-felons rather than veterans. This evidence suggests that by 1999 imprisonment had become a common life event for black men that sharply distinguished their transition to adulthood from that of white men (Pettit and Western, 2004).

First, imprisonment has become a common life event for recent black non-college educated men. In 1999 about 30 percent of such men had gone to prison by their mid-thirties. Among black male high school dropouts, the risk of imprisonment had increased
to 60 percent, establishing incarceration as a normal stopping point on the route to midlife. Second, race and class disparities in imprisonment are large and historically variable. In contrast to claims that racial disparity has grown, they found a pattern of stability in which incarceration rates and cumulative risks of incarceration are, on average, 6 to 8 times higher for young black men than to young whites. Class inequality increased, however, as a large gap in the prevalence of imprisonment opened between college-educated and non-college men in the 1980s and the 1990s. The lifetime risks of imprisonment roughly doubled from 1979 to 1999, but those with just a high school education experienced nearly all of this increased risk. Third, imprisonment now rivals or overshadows the frequency of military service and college graduation for recent cohorts of African American men.

For black men in their mid-thirties at the end of the 1990s, prison records were nearly twice as common as bachelor's degrees. In this same birth cohort of non-college black men, imprisonment was more than twice as common as military service. In sum, excepting the hypothesis of increased racial disparity, their main empirical expectations about the effects of prison boom on the life paths of young disadvantaged men are strongly supported. Because racial disparity in imprisonment is very high and risks of imprisonment are growing particularly quickly among non-college black men through the criminal justice system is diverging them from the usual trajectory followed by most young American adults (Western and Pettit, 2004).
African American Women

Black women have been the fastest growing inmate population in the United States for the past ten years. The number of women in the prison system increased by 418% from 1980 to 1995, compared to a rise of 236% for men (Mauer, 1999). Drug-related charges have been the primary factor attributing to the increase of incarceration among African American women (Richie, 1996). Law enforcement emphasis on low-level drug offenses has had a profound impact on women and children in particular. Women in prison are considerably more likely than men to have been convicted of a drug offense.

DiMascio (1995) reported, for example, that African American women make up more than 80 percent of imprisoned female crack cocaine offenders. As of 2005, 29 percent of women in prison had been convicted of a drug offense, compared to 19 percent of men, and two-thirds had children under 18. Several studies suggest that African American women's criminal participation arises from more complex social problems. These women were more likely to have used drugs at the time of their offense, been a victim of physical or sexual abuse prior to incarceration, or suffered from a mental health problem. All of these issues raise unique concerns and challenges for the criminal justice system, as women comprise a growing proportion of the correctional population.

Moreover, legislative developments have created barriers to reentry that further challenge women. For example, as a result of the federal welfare legislation of 1996, there is now a lifetime ban on the receipt of welfare benefits for anyone convicted of a drug felony, unless a state chooses to opt out of this provision. Thus, drug offenders will have an even more difficult transition back into the community than ex-offenders.
generally. This has a particularly pronounced impact for women and mothers, who, along with their children, are the primary recipients of this type of aid. (Mauer and King, 2007)

Prior to incarceration, many African American women are uneducated, unemployed with few marketable skills, and is more likely to be on welfare. Consequently the social conditions of black women prior to incarceration are marked by extreme powerlessness. Dougherty (1998), also, found prior that to their incarceration, many young black girls experienced sexual abuse, commonly associated with an increased risk of confinement. Conversely, these combined negative experiences and the desire to foster ideological family structures, led many of these women into destructive relationships. Richie (1996) noted that these women ended up in prison as a consequence of going along with their mates' drug activities. Many of these women believed participating in their partners' illegal actions would inevitably bring them closer emotionally and display their loyalty.

African American men's historic lack of economic power has placed African American women in the unenviable position of usurping their male counterparts as the expected provider. A consequence is that black men respond angrily and abuse these women in several different forms out of frustration. Black women face triple jeopardy; they must face negative consequences from their race, gender, and social status. Black women's imprisonment reflects their social position in the culture and economic constraints thwart many poor African American women's attempts at adhering to expected gender roles. This environment is conducive with creating criminal behavior amongst black women.
Family Disruption

Today the prison system acts as the institution that devastates African American families and breaks down the family structure. There are several consequences to concentrated incarceration of black people in their communities. The children of black men in prison are twice as likely to die in the first year of life, be born prematurely, live in substandard housing, and have no parent who is employed. There is also a high probability that these children during their teenage years will be incarcerated at some point (Jenkins, 2006). For African Americans living in low-income communities, imprisonment weakens or even eliminates the parental bond with their children, especially for black men.

Concentrations of reentry and removal in African American communities have created challenges for successful formation and stable family units. Not having the informal social control of the nuclear family available only increases the propensity for recidivism and crime in their communities. The concentration of coercive mobility into urban communities also almost makes it virtually impossible to establish and stabilize the family unit and impedes progress of developing new family structures. “Of the 15% who do stay together during the prison term, only an estimated 3 to 5% are still together 1 year after release” (Bonhomme, Stephens and Braithwaite, 2006: 225). Marriages that exist before incarceration are almost doomed to failure as a result of imprisonment and the strain it causes. While these individuals from the African American community are committing crimes, they also served other more conventional roles, such as parent, sibling, or employee, in their community and in their family.
Imprisonment diminishes the earnings of adult men, compromises their health, reduces familial resources, and contributes to family breakup. It also adds to the deficits of poor children, thus ensuring that the effects of imprisonment on inequality are transferred intergenerationally. Perversely, incarceration has its most corrosive effects on families whose fathers were involved in neither domestic violence nor violent crime before being imprisoned. Because having a parent go to prison is now so common for poor, minority children and so negatively affects them, the authors argue that mass imprisonment may increase future racial and class inequality and may even lead to more crime in the long term, thereby undoing any benefits of the prison boom. U.S. crime policy has thus, in the name of public safety, produced more vulnerable families and reduced the life chances of their children.

Many young blacks are isolated from the white economy and white job networks; they have little hope of acquiring meaningful employment sufficient to support a family. They are deprived, therefore, of the primary conduit by which adult men in mainstream society prove their worth. Instead they turn to male peers for support and assert their manhood by fostering a self-image based on violence. Those ghetto-specific practices, such as overt sexuality, gang membership, and open displays of aggression reflect the emergence of an alternative status system that legitimizes behaviors that would be held in contempt by the wider society.

A conduit to recognition and prestige among girls and young women in the ghetto appeared to be childbearing itself, regardless of the trappings of marriage or cohabitation and financial stability. This ideology is countercultural in that those women who have children have acquired adult status in the eyes of peers, while those without
children have not. Single-parent households are the norm; this weakens the formal and informal capacity of communities to exert social control over their members, which in turn leads to higher rates of offending. Black isolation further distances black residents from mainstream society by removing the stigma of economic and social failure, and weakens the capacity of major institutions to socialize and control their members (Shihadeh and Flynn, 1996).

The phenomenon of high incarceration rates of African American men has contributed to the declining number of marriageable men in the African American community. Along with high rates of homicide, this has created a substantial imbalance in the male-female ratio among adult African Americans. Whereas gender ratios for African Americans at birth are about 102-103 males for every 100 females, by the age range 40-44, this declines to 86 males per 100 females, whereas white rates are 100:100 for this group. Further, men who have been imprisoned or are likely to be so are hardly strong marriage prospects (Mauer, 1999).

Figure 6. Percentage of Men aged 22-30 who were Married and Percentage of Men aged 30-44 who were Fathers (Western, 2002)
In Figure 6, about 25 percent of African American men aged twenty-two to thirty who are not incarcerated are married; the marriage rate is only 11 percent among incarcerated men. Comparatively, 37 percent of non-incarcerated white men, and 14 percent of incarcerated white men were married. While incarcerated and not incarcerated black men were fathers an estimated 70 to 73 percent of the time, white men were fathers about 64 to 67 percent of the time.

According to Sampson (1987), the major hypothesis is that variations in rates of black family disruption in urban areas are positively related to rates of black criminal offending, independent of those factors (e.g., poverty) associated with families headed by females and frequently hypothesized as providing motivation for crime. The main hypothesis tested is that the effect of black adult male joblessness on black crime is mediated largely through its effects on family disruption. When linked to the above hypotheses about family structure and crime, the resulting prediction is that black male adult employment and economic status will have important negative effects on black criminality that are mediated by family disruption.

Sampson (1987) found that blacks fare much worse than whites with respect to mean income levels, employed men, and family disruption. Table 3 indicates there are 10 more employed white males per 100 white women than for their black female counterparts; white per-capita income is 69 percent higher than blacks' on average; and, of central interest to the present study, the rate of black families headed by females is some 185% higher than for whites. The percentage of families with children headed by females is 146 percent higher for blacks than for whites (44% vs. 18%). The results show that the scarcity of employed black men increases the prevalence of families headed by females in
black communities.

In turn, black family disruption substantially increases the rates of black murder and robbery, especially by juveniles. These effects are independent of income, region, race and age composition, density, city size, and welfare benefits and are similar to the effects of white family disruption on white violence. There is nothing inherent in black culture that is conducive to crime. Rather, persistently high rates of black crime appear to stem from the structural linkages among unemployment, economic deprivation, and family disruption in urban black communities.
Table 3.


<table>
<thead>
<tr>
<th>Variable</th>
<th>( \bar{x} )</th>
<th>SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employed men per 100 women:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>52.95</td>
<td>14.36</td>
</tr>
<tr>
<td>White</td>
<td>62.26</td>
<td>7.72</td>
</tr>
<tr>
<td>Mean public assistance income:</td>
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<tr>
<td>Black</td>
<td>2,565.44</td>
<td>666.29</td>
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<tr>
<td>White</td>
<td>2,418.41</td>
<td>367.13</td>
</tr>
<tr>
<td>Per-capita income:</td>
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<td></td>
</tr>
<tr>
<td>Black</td>
<td>3,767.84</td>
<td>708.79</td>
</tr>
<tr>
<td>White</td>
<td>6,356.41</td>
<td>998.88</td>
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<tr>
<td>Median age:</td>
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</tr>
<tr>
<td>Black</td>
<td>24.48</td>
<td>1.78</td>
</tr>
<tr>
<td>White</td>
<td>31.81</td>
<td>3.48</td>
</tr>
<tr>
<td>Percentage of households headed by females:</td>
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<td></td>
</tr>
<tr>
<td>Black</td>
<td>26.42</td>
<td>6.13</td>
</tr>
<tr>
<td>White</td>
<td>9.26</td>
<td>1.68</td>
</tr>
<tr>
<td>Percentage of households with children headed by females:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>43.58</td>
<td>9.52</td>
</tr>
<tr>
<td>White</td>
<td>17.69</td>
<td>3.70</td>
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<td>Percentage of families on welfare:</td>
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<tr>
<td>Black</td>
<td>22.10</td>
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</tr>
<tr>
<td>White</td>
<td>6.46</td>
<td>3.16</td>
</tr>
<tr>
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</tr>
<tr>
<td>North</td>
<td>.36</td>
<td>.48</td>
</tr>
<tr>
<td>West</td>
<td>.26</td>
<td>.44</td>
</tr>
<tr>
<td>Percentage black</td>
<td>19.21</td>
<td>16.63</td>
</tr>
<tr>
<td>Population size (ln)</td>
<td>12.31</td>
<td>.76</td>
</tr>
<tr>
<td>Structural density of rental housing (% units in 5+ unit structures):</td>
<td>48.42</td>
<td>11.42</td>
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<tr>
<td>Homicide offending:*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black juvenile</td>
<td>1.95 (16.25)</td>
<td>1.48</td>
</tr>
<tr>
<td>Black adult</td>
<td>4.32 (91.67)</td>
<td>.64</td>
</tr>
<tr>
<td>Robbery offending:</td>
<td></td>
<td></td>
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<tr>
<td>Black juvenile</td>
<td>6.99 (1,870.8)</td>
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<tr>
<td>White juvenile</td>
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<tr>
<td>Black adult</td>
<td>7.54 (2,371.8)</td>
<td>.67</td>
</tr>
<tr>
<td>White adult</td>
<td>5.46 (308.3)</td>
<td>.74</td>
</tr>
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</table>

Overall, the analysis supports the main hypothesis and shows that rates of black violent offending, especially by juveniles, are strongly influenced by variations in family structure. While male joblessness has little or no direct effect on crime, it has the strongest overall effect on family disruption, which in turn is the strongest predictor of
black violence. The data suggest that social policies be directed toward the structural forces of economic deprivation and labor-market marginality faced by black males and the resulting consequences for family disruption and community crime.

It seems that policies designed to retool unskilled workers, job supports, and a coherent family policy aimed at addressing the severe hardships faced by single women with children (especially those who work) are more likely to reduce family disruption and crime in the long run than are current policies aimed simply at reducing welfare and incarcerating an ever-increasing proportion of the black population. In fact, high rates of black male incarceration will probably only serve to exacerbate black family disruption through their effect on the black male marriage pool (Sampson, 1987).

**Coercive Mobility/ Informal Controls**

From a social disorganization theory perspective, coercive mobility (the dual process of incarceration and reentry) disrupts the social networks that are the basis of informal controls. Due to the concentration of incarceration and high rates of prisoner reentry in a community, involuntary movement is considered coercive mobility. High rates of concentrated residential mobility are thought to increase crime in those neighborhoods in three ways. First, mobility produces residential areas in which neighbors are isolated from one another, thus weakening social capital. Second, this creates a low degree of social integration among residents, contributing to the lack of heterogeneity or community cohesion. Third, isolation and lack of community cohesiveness leads to no collective efficacy among residents. By having these mitigating circumstances, these communities suffer from disorganization. When African American
offenders return to society they often have limited options and have to move back into the same or similar disadvantaged areas (these urban areas are normally overpopulated poor areas full of minorities and are overwhelmingly African American).

There are several barriers through which ex-offenders will have to navigate such as; inadequate access to health and social services, lack of planning before discharge, lack of job opportunities, negative perceptions, racism, discrimination, and prior criminal history stigmatization. These factors help to perpetuate a vicious cycle of marginalization status for ex-offenders. Ex-offenders face barriers that block legal means of acquiring necessities. These barriers to reintegration produce a criminogenic environment of procurement through illegal means. In these communities criminal activity is socially acceptable, since legal means are blocked. “White males have constructed a society in which they have empowered themselves in positions of wealth, decision making, and prestige. They exercise controlling vetoes over aspirations and choices in most of the political, economic and legal areas of American life. In empowering themselves, they have reduced the opportunities and choices of blacks” (Oliver, 2006:921).

Ex-offenders traditionally have limited funds after release from prison and often experience discrimination in the private housing sector. Additionally there are formal restrictions also that negate their ability to live with family in public housing. Public safety is another difficult issue that these disadvantaged communities must manage with the return of offenders. With the constant carousel of ex-offenders in and out of the community, many of the residents in these neighborhoods become isolated from everyone else. This is a result of coercive mobility, when offenders are forcefully taken out of the community and sent to prison, later to return to the community after completion of
sentence. The social characteristics of neighborhoods particularly littered with poverty, ethnic composition, and residential instability creates crime.

On the flip side of mass incarceration the intended purpose is to deter criminal activity when in retrospect it creates criminality in African American communities. Crime rates decrease due to offenders serving lengthier sentences. There will eventually be a return to communities, which will have the potential to increase crime. Ex-offenders will have a criminal record, once released, resulting in lower wages, less wage growth, and less likelihood of long term employment. The reduced ability to earn a living through legitimate means may lead ex-offenders to recidivate. Coercive mobility, in which large numbers of people are removed and sent back to communities, can disrupt established institutions that are important for social control, making crime more likely for both ex-offenders and non-ex-offenders (Defina and Hannon, 2010).

In 1997, an estimated 7.5 million people were removed from their communities to serve adjudicated time in prison or jail; an equivalent number returned to the community also (Hammet, 2000). Most of the impact of this growth has been concentrated in communities of color. Coercive mobility in these locations can play a destabilizing role in community for the people who remain in the community. Rose, Clear, and Ryder (2000) found that while residents benefited from the incarceration of family members and neighbors who were committing crimes, they suffered numerous losses as well. For example, family members absorbed financial burdens; residents suffered from problems associated social stigma of incarceration in the family and neighborhood in addition to problems with self-esteem and reduced social relationships. Many residents reported withdrawing from community life in the aftermath of a family member’s incarceration.
Their additional problems with coercive mobility included negatively affecting family members and friends and their attitudes toward the criminal justice system. They further stipulated that people who are exposed to incarceration have a low opinion of formal social controls and consequently also have a low opinion of informal social controls. Thus, high levels of incarceration undermine the social efficacy of the community and negate informal social control.

Rose, Clear, and Ryder's (2000) study was designed to test how high incarceration rates impact crime and test if it actually increases crime. Their analyses revealed that after a certain concentration of residents is removed from the community through incarceration, the effect of additional admissions would increase, not decrease, crime. This lends support to the findings of Rose and Clear that removing a high concentration of offenders from the community has a destabilizing effect on the community’s level of social disorganization. Their data is in accord with the contrasting body of research that shows that growing formal social control has a negative impact on the capacity for informal social control, especially when that growth is concentrated among certain groups. For example, Sampson and Bartusch (1999) found that blacks were more likely than whites to view legal norms as not legally binding and to be dissatisfied with police.

This research shows that both removal and return rates are hazards for these communities. According to Rose Clear, and Ryder, those in reentry need to be reintegrated somehow into the community, but the strains they pose for resources of informal social control constitute a force that tends to increase social disorganization. This data is consistent with the growing literature that has found that an overuse of incarceration can pose problems for those neighborhoods and leave deficits that are
experienced by those who remain in them. High rates of reentry, constitutes a challenge to the community’s capacity for self-regulation (Clear, Rose and Waring, 2003).

**Felon Disenfranchisement**

Disenfranchisement laws stem historically from "civil death" laws that date back as far as Greek and Roman times. Under such laws, individuals convicted of serious crimes were deemed civilly dead and thus lacking in all civil rights, much as if their natural deaths had taken place at the time of their convictions. With social contract arguments, those who agree to enter civil society authorize the state to make laws for the public good and, in addition, pledge their help in executing these laws. Violations of these laws are then held to deprive citizens of the right to further participation in their own governance (Lippke, 2001).

As of 2000, an estimated 4.7 million Americans were disenfranchised due to a current or past felony conviction; as the size of the correctional population continues to grow, this number will increase as well. The racially disparate impact of criminal justice policies results in exceptionally severe consequences for minority communities, including high rates of disenfranchisement. With nearly 40% of adult African Americans in the correctional system, the potential ramifications for political voice are obvious. Moreover, felony disenfranchisement has its primary impact on the individual; it also exerts a vote dilution impact on particular communities (Uggen and Manza, 2002).

Given the concentration of felony disenfranchisement in primarily African American communities, persons who have not been convicted of a felony are affected through the diminished strength of their political voice. Communities with more residents
disenfranchised have fewer eligible voters. This disenfranchisement effect contributes to a vicious cycle within public policy development that further disadvantages low-income communities of color. The first means by which this occurs is through decisions on resource allocation. In citywide decision-making regarding spending for schools or social services, residents of certain neighborhoods will have considerably more political influence than others, solely because “one person, one vote” is distorted through the loss of voting rights.

Disenfranchisement contributes to the disincentives for candidates for political office to devote time and attention to low-income communities of color while campaigning. Along with the fact that politicians do not receive significant campaign donations from these neighborhoods, disenfranchisement results in fewer potential supporters. In the calculated economics of electoral campaigning, candidates spend time in areas perceived to have the highest concentration of potential voters. This fact has significant consequences for democracy if, during a period in which politicians are likely to be at their most responsive, they are neglecting low income communities and communities of color.

Once in office, lawmakers will not be any more likely to be responsive. Felony disenfranchisement threatens to exacerbate this problem; as the correctional system grows and more persons are prohibited from voting, the seriousness with which policymakers listen to demands from communities of color is likely to continue to diminish. Disenfranchisement becomes a proxy for otherness, making a person an alien in his own country and, worse, indicates that former offenders are impure (Uggen and Manza, 2002).
By marginalizing one’s status in society through policies that hinder employment prospects, housing availability, education, and voting, state institutions are used to a counterproductive end: making re-entry more difficult and increasing the likelihood of recidivism. Recent research by sociologists Christopher Uggen and Jeff Manza indicate that disenfranchisement has a tangible impact on the likelihood of future crime commission. Uggen and Manza “find consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior.” For example, between 1997 and 2000, 16% of non-voters were arrested, compared to 5% of voters. Voting is both a highly symbolic as well as instrumental action in a participatory democracy. Voting, or being permitted to vote, is an acknowledgement that one is an accepted member of society (Uggen and Manza, 2004).

**Reintegration and Employment**

After nearly 50 years of stability, the rate of incarceration increased dramatically from 110 per 100,000 in the early 1970s to 470 per 100,000 in 2000. As seen in Figure 7, in 2001, America posted a new record of 1.3 million people held in prison. With rare exception, people who are sent to prison come home. Thus, the prison boom has resulted in many more people returning to various communities.
In 2002, more than 600,000 individuals were released from prisons, 4 times as many than to 25 years ago. As seen in Figure 6, prison admissions have steadily increased; as a result of more people serving time in prison, releases have also increased at a comparable rate. A disproportionate number of those being released from prison are African American. Unfortunately, after these ex-offenders have served their adjudicated sentence, many times they are denied access to well-paid jobs and the right to vote (Marbley and Ferguson, 2005). A precursor to keeping people out of jails and prisons is finding people jobs. The exclusion of people of color in the job market is a significant, contributing factor in the number of men and women being incarcerated. The unemployment rate for black men ages 20 to 24 was 18.0 %, compared to 6.7 % average for white men, 15.7 % for black women, and 6.3 % for white women. Therefore, those groups’ problems are further magnified and compounded by the scarcity of employment opportunities (Mauer and King, 2004).
Bruce Western (2006) used the National Longitudinal Survey of Youth 1979 (NLSY79) to estimate the effect of incarceration on wage levels and wage growth among men during the period covering 1983–1998. Imprisonment significantly depressed wages, creating a wage gap of about 16 percent. Western also found that incarceration deflected individuals onto a flatter wage trajectory, slowing wage growth by 31 percent relative to high-risk men who were never incarcerated. Prior to incarceration, the federal offenders in Joel Waldfogel’s (1994) sample experienced an overall decline of 9 percent in their employment likelihood and a 16 percent penalty in their monthly earnings. It is a fact that post-release wages are often lower than during the period before offenders were incarcerated. A criminal history that results in a spell of incarceration will incapacitate individuals from opportunities to commit street crime during their confinement, but also opportunities to gain sustained work experience. (Robert and Sweeten, 2010).

Health

There is ample evidence to suggest a connection between incarceration and health status at both the individual and the community levels. For instance, one study reported that 15 percent of all individuals infected with HIV and approximately 40 percent of all individuals infected with hepatitis C passed through correctional institutions (Travis, Solomon and Waul 2001). Incarceration rates among black men are the highest in the country and so are the rates of sexually transmitted diseases. “The national rates of syphilis and gonorrhea among African American men in 1999 were 30 and 47 times, respectively, the rates among white men” (Thomas and Sampson, 2005a: 55). The majority of prisoners are men and, their absence from the community lowers the ratio of men to women. Where men are rare in communities they may have more power in their
relationships with women. This empowerment (by threat of leaving) enables men with ability to influence women into unprotected sex even though the woman may be unwilling. This contributes to the spread of sexually transmitted diseases in those communities.

Men in these communities are also able to have multiple sexual partners due to the lack of men in these communities with concentrated incarceration. Newly released inmates will seek women soon after release for the purpose of companionship and sexual intercourse. Being so anxious to engage in intercourse they may engage in unprotected sexual intercourse and either transmit or contract diseases. Mental health and physical health are just more problems that black men who are offenders face due to the lifestyle that often includes overcrowding or nomadic living conditions, intravenous drug use, poverty, and high rates of substance abuse. While in prison these black inmates have access to health care, but after release they are unable to obtain health care and have the potential for spreading disease and presenting serious public health problems.

Taking into account that incarceration rates are the highest for black men and so are the rates of sexually transmitted. The Whitehall Studies, which investigate the relationship between social status and health, are among the most influential works on the life course determinants of health. Based on British social servants, the Whitehall Studies show that health is related to individual's abilities (or perceived abilities) to control their life and participate fully in society. According to this research, incarceration may impact your health in more than just a physical manner. Incarcerated inmates, by not having the ability to have control over their life while incarcerated and post-incarceration, could have negative health outcomes (Massoglia, 2004).
HIV also has a huge impact on inmates who are incarcerated. For prisoners who become HIV infected or who die of AIDS in prison, the epidemic becomes an aspect of their punishment. This fact should be understood in terms of the wider social and cultural context that has linked them to this health emergency. Socioeconomic status increases the risk of contracting the disease. Poor people's risk of HIV infection is intensified, first by the conditions they face on the street and, second by those they face in prison. Of those who had been tested in state prisons, 2.2% of men and 3.4% of women were infected. Those convicted on drug offenses had the highest HIV-positive rate (2.9%); of all state inmates, 2.8% of blacks, 2.5% of Hispanics, and 1.4% of whites reported that they were HIV positive (Maruschak, 1999).

The high rates of HIV infection in prisons and in the neighborhoods that prisons predominantly draw from must be related not only to wider social conditions, but also to conditions within prisons. There is a predisposition to ignore HIV-related risk in prison and a history to this predisposition. Gambling on the efficacy of rehabilitation went out with the 1960s. Victory went to the forces within the prison system that favored the custody model of management. Since then, prison administrators reach ever more greedily for the bottom line. They build computerized human warehouses, train armed patrols to control the perimeter, and offer the bare legal minimum of education, counseling, and medical care inside, i.e., they aim just a technical hair above cruel and unusual punishment.

Although the commissioners on high might outlaw sex, they cannot deny sexuality and, therefore, should not deny the necessity of meeting health standards. This requires the distribution of condoms via a mechanism that is anonymous and easy to tap into. But
they do forbid condom distribution, even in New York state prisons, which are epicenters of the epidemic. Forget needle or bleach distribution. At the same time, there is no doubt that in prison sex is commonplace, both consensual and coerced. Shooting drugs is more rare than out on the street, but if people shoot drugs, they are more likely to use infected needles. Imprisonment itself could be considered an HIV risk factor.

If an inmate engages in drug or sex-related risk behaviors in prison, the likelihood of infection increases because of the lack of prevention tools (condoms, needles, bleach) in prison. In other words, all things being equal, imprisonment increases the level of risk associated with any instance of risk behavior. In this case, it is officials who must engage in risk reduction behavior and integrate some flexibility into the custody model. Of course, meeting health standards theoretically requires that prison administrators also implement effective and confidential treatment programs for those who are HIV infected and who have AIDS. The drug war has led to the incarceration of numerous offenders who are low criminal risks but represent major public health risks on release. Criminal justice policies penalizing drug users may be contributing factors to the spread of HIV infection in the wider society (Kane, Mason, 2001).

Rosen, Wohl, and Victor's study compared mortality rates among state prisoners and other state residents to identify prisoners’ health care needs. To collect data they linked North Carolina prison records with state death records from 1995-2005 to estimate all-cause and cause-specific death rates among black and white prisoners ages 20-79 years and used standardized mortality rates to compare these observed deaths with the expected number on the basis of death rates among state residents. Compared with the general population, prison populations have high rates of morbidity, particularly from
infectious diseases, mental health conditions, and substance abuse. In addition, with the aging prison population, prisons are increasingly confronted with the need to provide care for other chronic diseases.

Beyond the provision of healthcare, prisons may influence inmates’ health by providing food and shelter as well as opportunities for exercise and health education. For instance, prison can be a refuge from the substance use and violence endemic in their communities; for others, these threats continue and in some instances are intensified.

From January 1, 1995, to December 31, 2005, 120,959 prisoners 20-79 years were incarcerated in the NC prison system at least once. Death rates among black and white prisoners were not statistically different, with estimates among black prisoners generally lower than those of white prisoners. Black male residents had greater rates of death than white male residents across all age groups. When mortality rates within race were compared, they found that black prisoners had lower death rates than black residents across all age groups, whereas white prisoners had lower death rates for lowest age groups and greater for age ranges 50-79.

They found the number of deaths among black male prisoners was 48% less than expected. In contrast, the number of deaths among white male prisoners was only modestly greater than expected. These results are in stark contrast to mortality rates in the general population, both the US and NC in which mortality is approximately 40% greater among the black than white population. These findings suggest that incarceration may play a role in equalizing the mortality experience across race. There are several mechanisms by which incarceration may be protective against or contribute to mortality. Rigid food provision, shelter, security, and medical and ancillary services may affect
Among black male prisoners, causes of death with a large relative and absolute difference in the number of expected and actual deaths included accident, homicides, and alcohol and drugs. Given these mechanisms of types of deaths, it’s likely that their prevention was largely attributable to the environment controls in prison. Because these causes are among the leading causes of death among young men in the community, it follows that the relatively low number of prisoner deaths from these causes helped to drive down the all-cause mortality rates among the youngest age group of both black and white prisoners. Mass incarceration creates social disorganization and fosters an environment more dangerous for black men than prison (Rosen, Wohl and Victor, 2011).

The long term health effects of incarceration are not monolithic, or caused by a single variable. Yet a single effect like incarceration can lead to subsequent stressful events while simultaneously undermining one's ability to cope which can lead to more traumatic events (e.g., violence, divorce, job loss) and more chronic strains (e.g., persistent poverty). Recent research suggests that suicide rates among recently released prisoners are exceptionally high (Pratt et al., 2006).

Another study on the negative long term health consequence associated with incarceration was conducted by Thomas and Sampson (2005). They found that a higher rate of incarceration for a given county was connected with a higher rate of gonorrhea and chlamydial infection. The strength of the correlations between rate of incarceration and age-adjusted rates of gonorrhea and chlamydial infection in North Carolina can be categorized as moderately strong. This intuitive relationship between incarceration and
infections in the community is consistent with the nationwide decrease in rates of
gonorrhea and syphilis that coincided with the increase in rates of incarceration in the
1990s. Their analysis showed that rates of gonorrhea were higher in counties with a high
rate of incarceration.
Chapter 4: Similarities between Slavery Jim Crow and Criminal Justice System

Racial threat views relationships between races as a function of their competitive positions in political, economic, and social arenas. This competition is conceptualized as contextually conditioned. In contexts where the threat posed by a minority group is high, the dominant group's response is predicted to be more hostile than in contexts where that threat is low. The operation of such a dynamic in American race relations has been supported by research linking the level of black concentration in an area to the level of various forms of white hostility, such as lynching and resistance to school desegregation. To ensure racial hierarchy, the dominant class imposed laws that would enforce social control among blacks, as a result of racial threat. For example, Fugitive Slave Acts, Negro Seamen Acts, Black Codes, Enticement Laws and Jim Crow Laws were all used to arbitrarily control and keep blacks an inferior class. Today, the criminal justice system is used as a proxy of the old racist institutions to meet this end (Giles and Hertz, 1994).

Jim Crow Laws

Whites feared that a New Negro, born in freedom, undisciplined by slavery, and unschooled in racial etiquette, could not be trusted to stay in its place without legal force. In response to this fear, the white South constructed an imposing and extensive system of legal and extra-legal mechanisms between 1890 and 1915 designed to institutionalize the already familiar and customary subordination of black men and women. State after State denied blacks a political voice through disfranchisement and imposed rigid patterns of racial segregation nicknamed Jim Crow.

Jim Crow created a system of sustained oppression by institutionalizing the
subjugation of blacks. The criminal justice system operated with ruthless efficiency in perpetuating the absolute power of whites to command the labor and subordination of blacks. This was accomplished mainly through disenfranchisement; states used constitutional amendments to disrupt any social equality advances. Custom, habit, and etiquette defined the social relations between the races and enforced separation in many areas of southern life. Segregation, even more than disfranchisement, came to be linked to white fears of black aggression and social equality. The goal of segregation was to separate African Americans from the rest of society and force them to accept second-class citizenship. Although blacks had previously experienced segregation in various forms, the thoroughness of Jim Crow made it strikingly different. Whites successfully segregated the races by law and enforced custom in practically every conceivable situation in which whites and blacks might come into social contact (Litwack, 2004).

According to Alexander (2010), for all African Americans, Jim Crow was a daily affront, a reminder of the distinctive place and confirmation of their inferiority and baseness in the eyes of the dominant population. The laws made no exception based on class or education; indeed, the laws functioned on one level to remind African Americans that no matter how educated, wealthy, or respectable they might be, it did nothing to entitle them to equal treatment with the poorest and most degraded whites. What the white south insisted upon was not so much separation of the races as subordination, a caste system of controls in which whites prescribed the rules of racial conduct and contact and meted out the punishments.

Before emancipation, lynching was primarily a frontier phenomenon that occurred when sheriffs, judges, juries, and jails were far removed by space and time from
wrongdoing and a demand for swift retribution. Slaves were rarely lynched, for slaveholders protected them as a valuable investment, just as they did their livestock. Between 1880 and 1968, nearly five thousand blacks met their deaths at the hands of white terrorists, better known as lynch mobs. As many if not more were quietly murdered in isolated counties and dumped into rivers and creeks. Between 1890 and 1917, some two to three black men and women were hanged, burned at the stake, or quietly murdered each week. The offenses that precipitated lynching related less to sex-related crimes than to questions of racial etiquette and economic competition. There was just an assumption that you had to have a lynching every now and then to preserve equitable race relations (Levine, 1977).

Many current scholars presume that Jim Crow courts eschewed the rule of law, openly treating black people as unworthy of legal protection. Between 1890 and 1907, Mississippi, South Carolina, Louisiana, North Carolina, Alabama, Oklahoma, and Georgia all amended their constitutions to disenfranchise virtually all black people. Florida, Arkansas, Tennessee, and Texas employed statutory devices such as poll taxes to accomplish the same ends. While the Supreme Court decided some cases that limited some modes of black disenfranchisement, blacks were not truly enfranchised again in the South until the enactment of the Voting Rights Act of 1965. In addition to constitutionally and statutorily disenfranchising blacks, the southern and border states were also enacting segregation laws beginning with education and moving toward transportation, public accommodations, cemeteries, hospitals, prisons, and, infamously, drinking fountains (Godsil, 2006).
Slavery

Slavery was an extremely effective institution for controlling the black population. Not only did it curtail black individual freedom and mobility, but it also restricted the black ability to compete openly with whites for the scarce resources in society. Denied the right to vote, lacking access to the marketplace, and assigned an inferior position in the status hierarchy, slaves posed little threat to the average white. Prior to the Civil War, many jurisdictions made slaves into criminals by prohibiting them from pursuing a wide variety of activities normally legal for whites to pursue. Authorities enacted statutes barring slaves from learning to read, leaving their masters’ property without documentation, engaging in unbecoming conduct in the presence of a white female, assembling to worship outside the supervisory presence of a white person, smoking in public, walking with a cane, making loud noises, or defending themselves from assaults. Governed by a separate law and crimes, slaves were also subjected to a separate brand of punishment. Slaves, for example, were subjected to capital punishment for a broader assortment of crimes.

White masters recognized that blacks reacted to enslavement with the same impulse to revolt as other humans, and imposed harsher codes of punishment to ensure control. Whites also enforced more punitive penalties out of a sense that blacks were more primitive, wild, inferior beings and were fundamentally different from whites, thus needing more coercive methods for social control. The laws of slavery imposed differences not only in degrees of punishment but also in the character of punishment. Long after heinous acts such as maiming, branding, ear cropping, whipping, castration, and other physical injurious had declined as an approved technique of reprimanding
whites, they remained available for the correction of slaves. Whippings were the most consistently used punishment for slaves. This continually reminded slaves of their inferior position, to keep them in proper degree of subjugation to the authority of free white citizens (Kennedy, 1997).

Slavery transformed all society, culture, and politics in its image, fostering the concentration of economic and state power in the hands of the slaveholder class tied to lower-class whites by patronage relations and their slaves by a paternalistic code and elaborate rituals of submission that reinforced the lack of cultural autonomy and sense of inferiority. Slavery generated an elaborate ideology justifying the subhuman condition imposed upon blacks by their inferior biological makeup, exemplified by the animalistic traits, in turn childish and bestial, attributed to the prototypical figure of Sambo (Wacquant, 2001).

Currently, it is legal to discriminate against ex-offenders in the same ways that were once legal to discriminate against African Americans. The criminal justice system is used to associate people of color with criminality and then engage in prejudiced practices. Once labeled a felon, the old forms of discrimination-employment and housing, voting, jury service-are suddenly legal. As a criminal, you have scarcely more rights and arguably less respect than a black man in the South during the height of Jim Crow.

According to Alexander, racial caste system in America has not ended; it’s merely been redesigned. African Americans were locked into a second-class status during slavery and Jim Crow, and these earlier systems of racial control created long legacies of political, social, and economic inequality that this nation still struggles to overcome. The
new system of control, mass incarceration, has also had a devastating impact on African American families and communities. Ex-offenders are routinely stripped of essential rights. Current felon disenfranchisement laws bar 13 percent of African American men from casting a vote. Hence, resulting in, making mass imprisonment a very effective tool for voter suppression—reminiscent, of the poll tax and literacy tests of the Jim Crow era.

During slavery it was illegal for blacks to get an education, Jim Crow schools were segregated, with the black schools being grossly under funded and improperly maintained. Today, segregation is illegal and African Americans are afforded an education. Progress has been made but many of the predominately African American schools today are exceedingly segregated and extremely under-funded and poorly maintained. Black communities are eroded with poverty and segregation. Institutional violence is still an option and acceptable means of punishment for blacks, lynching has been replaced with police brutality. Families are torn apart and black men especially are portrayed in the media as violent, aggressive, and African Americans are stereotyped as lazy, uneducated and biologically inferior. There has been a lot of progress made yet the circumstances have not greatly improved from the past caste systems of old.

**Police Brutality**

During slavery, blacks were beat with whips and even killed for trivial reasons deemed by white slave owners. The Jim Crow era was no less brutal than its predecessor; lynchings were a spectacle when thousands of white spectators gathered to see blacks tortured, mutilated and burned alive. In both of these instances whether they were white mobs, KKK, slave owners, or just an ordinary citizen, African Americans were tortured
and murdered. In many situations blacks merely needed to be accused of an infractions and retribution would follow swiftly by whites acting as judge, jury and executioner. This type of social control achieved through violence has evolved from the strategies of old into present day police brutality, in order to accomplish the same goal of social control of blacks.

Abner Louima, a Haitian immigrant, was arrested outside a Brooklyn nightclub in 1997. On the way to the police station, he was severely beaten by officers in the patrol car and sodomized with a toilet plunger handle in the police station. Amadou Diallo, while being questioned about a rape in his New York City neighborhood, died after being shot 41 times while reaching for his wallet in 1999. Nathaniel Jones in 2003 after being clubbed repeatedly by Cincinnati officers later died due to his injuries. While each of these incidents was unrelated, they all have a few things in common. Each had an unarmed black man being tortured or even killed by white police officers. (Hurwitz and Peffley, 2005)

On March 3, 1991, a bystander videotaped Rodney King, an African American resident of Los Angeles, being beaten by four white officers of the Las Angeles Police Department, who used a stun gun on King and repeatedly kicked him and hit him with batons. Approximately fourteen months later, the trial of the four officers ended in verdicts of not guilty. (Sigleman, Welch, Bledsoe and Combs, 1997) These incidents of police brutality are not new to African American communities. During slavery police and any white civilian imposed laws on slaves to keep them in their place (inferior status). They also killed slaves for any reason they deemed fit, acting as judge jury and executioner. During the Jim Crow era police enforced arbitrary laws on blacks in a very
aggressive nature to accomplish the same ends as the prior caste system. White lynch mobs acted as vigilantes with lack of impunity, and ultimately very few participants would face any legal repercussions.

**Death Penalty**

African Americans being executed are not merely a recent aberrant phenomenon. Rather, racial discrimination in capital sentencing has deep historical roots. Death rows are populated with African Americans in numbers far in excess of their proportions in the broader population. While these statistics do not, by themselves, prove the system to be racially discriminatory they do lead to the all-important perception of discrimination on the part of many individuals, particularly those within the African American community the death penalty is racially unfair. Blacks are about 12% of the US population, but they are almost half, 43% of those currently on death row.

Of the 3,859 persons executed for all crimes since 1930, 54.6% have been black. Of the 455 executed for rape alone, 89.5% have been nonwhite. As census data clearly reveal, blacks in American society have consistently represented approximately 10% of the United States population. What is at issue is whether, among persons who have been convicted of capital crimes, a statistically significantly higher proportion of blacks than of whites, all other things being relatively equal, are differentially sentenced to death (Peffley and Hurwitz, 2007).

In a series of decisions beginning more than a quarter century ago, the U.S. Supreme Court has focused unprecedented attention on the capital jury decision-making process. In the first of these decisions, Furman v. Georgia (1972), a plurality of the Court concluded that the death penalty was being imposed through a process that was arbitrary
in nature. A substantial body of research on the death penalty has focused on racial
disparities in sentencing. Most studies document that the racial characteristics of victims,
and to a lesser extent offenders, influence who receives a death sentence for capital
crimes.

The practice of racial discrimination in the criminal justice system gives African
Americans sufficient justification for believing that they face higher probable costs
(death) from murder than do other individuals, and for little reason other than their race.
African Americans who murder are persistently more likely to be executed than are other
murderers, a fact best explained by racial discrimination. For African American
defendants, to be victimized by racial discriminatory system and specifically sentenced to
die is to suffer a second injustice. Blacks are not only potential initiators of crime; they
also potential victims, and one of the more striking findings of the studies conducted on
the effect of race on capital sentencing is that the race of the murder victims has at least
as much impact on capital sentencing as does the race of defendants.

In a landmark study of capital sentencing, it found, that African American
defendants were 1.1 times as likely as defendants of other races to be sentenced to death
for murder, while defendants of all races are 4.3 times more likely to be sentenced to
death when the victim is white than when the victim is of another race. The obvious
corollary of the finding that murderers are much more likely to be executed for killing
whites is that murderers of blacks are much less likely to be executed. According to these
findings, the cost of murdering an African American life is often significantly less than
the cost of murdering anyone else. Implicitly, then, lives of African Americans are treated
as less valuable than the lives of others. Moreover, reminiscent of slavery and Jim Crow
eras, the killings of African Americans are unimportant (Cholbi, 2006).
CHAPTER 5: Conclusion

Equality

The past of which includes slavery to the transition to Jim Crow laws and the shift toward the decades of lynching of black men, to present day police brutality, racial application of the law, and the mass imprisonment of African Americans. After years of oppression and degradation, African Americans status and conditions have yet changed much. The purpose of this thesis was to inform readers of how the criminal justice system historically and currently marginalizes African Americans’. A more punitive approach of law and order is enforced against blacks. As a result of this racial disparity, African American women and men are grossly overrepresented in correctional facilities. The effect being more than 2,500 per 100,000 blacks are being incarcerated, more than three times the amount of Latinas and more than six times the rate of whites (Wagner, 2005).

Mass imprisonment along with practices and policies in the modern criminal justice system have had negative impacts on all racial and ethnic groups, including whites and Hispanics driving up involvement in the criminal justice system for all groups. The nature of concentration effects of mass incarceration and modern criminal justice policies and practices result in a disproportionate impact on low income, urban African American communities. More punitive polices, such as drug laws, mandatory sentencing, TIS, three strikes laws, racial profiling, police brutality and capital punishment have led to dire conditions for African Americans. Each of these policies has contributed to the marginalization and destruction of blacks and the African American community. For black men in America, prison has been normalized as part of their transition to adulthood. The traditional path from adolescence to adulthood progressing from grammar school, to
either college or military then becoming a parent has been interrupted with serving time in prison. Black women’s’ circumstances have not fared much better over the past decade; they have had the largest increase in the incarceration rate.

Blacks have been the recipients of discriminatory policing practices and policies that target African Americans. No policy has impacted the incarceration rate of blacks like the war on drugs. The crack cocaine mandatory sentencing penalties are among the harshest of the punitive punishments. First crack cocaine carries a first offense mandatory sentence. There is no other drug that carries a first offense mandatory sentence. Second, the 100 to 1 in sentencing disparity has racist undertones. There are several studies that suggest crack is mainly found in poor inner city neighborhoods occupied by minorities (especially black). Third, harsh sentencing was meant for distributors of large quantities not for low-level street handlers. Forth, blacks have been shown to use illegal drugs at the same rate as other races, yet they account for more than half of the people incarcerated for drugs. It really makes no sense for a person-using crack for personal use, should serve the same amount of time as a cocaine trafficker. Recently, reforms have taken place and the 100 to 1 law has been reduced to 18 to 1 in most states (Mauer, 2009).

Mandatory sentencing, TIS, three strikes laws were meant for repeat offenders. These offenders were recidivists that were deemed incorrigible and a threat to society, but they are not the offenders being prosecuted. Mandatory sentencing was designed to deter crime and give longer sentences for drug traffickers as well as violent offenders. But, many of the offenders sentenced with these punitive sanctions were overwhelmingly black and non-violent. Three strike laws show just as much racial bias; blacks represent more than 50% of those serving a life sentence for violating three strike laws.
Racial profiling has become routine instead of an exception to the rule, and has been characterized as good policing. With such a long history of racial profiling and selective enforcement many well known prominent African Americans have criminal records such as; Martin Luther King Jr., Robert Moses, Fannie Lou Harper, Rosa Parks, and John Lewis. Crime is constructed in terms of race and race in terms of crime, and thereby creating a racial ideology of crime that sustains continued white domination of blacks in the appearance of crime control.

Slavery was an institution that destroyed the black family unit. During slavery African American families were torn apart through the trade or forced to separate for breeding purposes. Today the prison system acts as the institution that devastates African American families and disruptions the family structure, just as its predecessors. There are several consequences of the concentrated incarceration of black people in their communities. According to Jenkins (2006), the children of black men in prison are twice as likely to die in the first year of life, be born prematurely, live in substandard housing, or have any parent that is employed. There is also a high probability that these children during their teenage years will be incarcerated at some point. For African Americans living in low-income communities’ imprisonment weakens or even eliminates the parental bond with their children, especially for black men.

Incarceration causes hardships for the children and ultimately family disruption. As incarceration rates have soared, poor women and children have been left to deal with the separation, visitation, and return of their progeny, partners, and parents. A burgeoning research literature shows that incarceration, on average, impairs health and diminishes the earnings of adult men, many of whom are fathers. Incarceration also elevates the risk of
divorce and separation, diminishes the financial resources and well-being of wives and girlfriends left behind, and is linked to increases in children's aggression, behavioral problems, and social marginalization (Wildeman and Western, 2010).

A striking feature of the decline in U.S. marriage rates over the last 40 years is the low level of marriage among African Americans with little schooling. Marriage rates among low education black women shrunk by 50% in the 30 years after 1965. By 2000, fewer than 30% of black women were in the bottom third of the education distribution and were married compared to more than 60% of their white counterparts. Incarceration has the immediate effect of removing people from their community, separating unmarried men from the pool of possible partners, and straining relationships among those already married (Lopoo and Western, 2005).

Concentrations of reentry and removal in African American communities have created challenges for successful formation and stable family units. Not having the informal social control of the nuclear family available only increases the propensity for recidivism and crime in these communities. The concentration of coercive mobility in urban communities similarly makes it virtually impossible to establish and stabilize family unit and inhibits progress of developing new family structures. “Of the 15% who do stay together during the prison term, only an estimated 3 to 5% are still together 1 year after release” (Bonhomme, Stephens, and Braithwaite, 2006: 225). Marriages that exist before incarceration are almost doomed to failure as a result of imprisonment, and the strain it causes.

Although these individuals from the African American community are committing
crimes, conversely they served other more conventional roles, such as parent, sibling, or employee, in their community and in their family. With high rates of resident turnover in these disadvantaged communities, residents become isolated and segregated from one another. A consequence to residential segregation and concentrated imprisonment is a subculture that structurally oppositional to a culture of work, schooling and marriage. With the social pressures of procuring the “American Dream,” (material success) attaining this generates an environment conducive of criminality in urban communities. This contributes to and creates norms that are criminalized environment and contrary to mainstream society (Wehrman, 2010).

Concentrated incarceration furthermore diminishes community solidarity, homogeneity and social efficacy, which reduces the African American community’s ability to achieve cohesiveness. Today, young black men who dropped out of high school have an incarceration rate almost 50 times the national average. For low educated black men, incarceration, not college, or a full time job, or even military service, is a modal experience in young adulthood (Bonczar and Beck, 1997). Large segments of black communities have inadequate educational systems. Attributing to the failing educational system is a shortage of black men graduating from high school and instead are being incarcerated. The growth of the prison system has disguised how millions of people with little education are ending up in prison. The effect on black men without an education has been the most affected demographic by lack of education and failing districts (Visher and Travis, 2003).

Mass imprisonment disrupts social norms and disorganized communities cannot enforce social norms, nor reach consensus on common values, or reach avenues for
solving common problems. Since informal social controls play a greater role in public safety than do formal state controls, this breakdown can seriously jeopardize community safety. Todd Clear found that while low levels of incarceration increase neighborhoods' public safety, "when incarceration reaches a certain level in an area that already struggles for assets, the effects of imprisonment undermine the building blocks of social order. Neighborhoods where incarceration is concentrated are cut off from civic life, both internally and externally. Mass imprisonment promotes a negative view of the justice system that reinforces communities' civic isolation. This alienation from political institutions is relevant to residents' sense of social citizenship as well as their ability to maintain social order (Roberts, 2004).

Upon release many ex-offenders are faced with the crude reality of reentering communities ill prepared for their arrival and further exiled from main stream society by being disenfranchised. In some cases, the disenfranchisement of felons is permanent. Fifteen states deny felons the right to vote for life. Most all states deny felons the right to vote while they are incarcerated, and many of them disqualify parolees and probationers. Surprisingly, the Supreme Court of the United States has upheld the constitutionality of the disenfranchisement of ex-felons. While the majority in the case admitted that there may be good reasons to not disenfranchise ex-felons, it ruled that disenfranchisement did not violate the equal protection clause of the Fourteenth Amendment. It is estimated that disenfranchisement laws affect four million felons and ex-felons in the United States. Given their disproportionate representation in the criminal justice system, many of those disenfranchised are African-American or Hispanic. It is estimated that one in seven black men in the United States cannot legally vote because of disenfranchisement laws (Lippke,
Unfortunately, more often than not, when offenders have served their adjudication they are denied access to well-paid jobs and in some states forfeit their right to vote. Having served their debt to society and after release from prison they are greeted by losing their second amendment rights (possess a fire arm) as well as their fifteenth amendment rights (voting rights) in some instances. By losing these constitutional rights African Americans are further disenfranchised. These constitutional rights were granted to all citizens of the United States of America. The only other time when blacks were not allowed to own firearms and not permitted to vote legally was during slavery and Jim Crow. There are presently some striking parallels between the effects the criminal justice system has on African Americans and the impacts that slavery, and Jim Crow had previously. Incarceration like slavery definitely silences the voices and strips away rights of many African Americans that find themselves incarcerated.

Associated with the phenomenon of disenfranchisement combined with mass incarceration in urban communities, there is the abundance of concentrated unemployment and poverty. For African Americans in these concentrated areas whether offender or not there are not many opportunities for legitimate work. When such communities are clustered with poverty, ties to mainstream norms, values, social and economic institutions are more destabilized. The community resources are additionally depleted by mass incarceration and the connections to formal employment networks are further eroded. African Americans also have fewer opportunities in the labor market because of their residency surroundings. More often than not, to find employment African Americans have to leave their communities to find reliable employment.
opportunities. African Americans collectively experience greater employment instability, which leads to substantial accumulated deficits in their work experience (Wagmiller, 2007).

Unless residents of low-income black areas work outside the neighborhood, they are unlikely to have sustained contact with anyone else who is not black and who has steady employment. The effects of this structural constraint loom large when one considers that in central cities 54% of black men aged 18–29 are either out of the labor force, unemployed, or underemployed. The residents of these neighborhoods 'necessarily live within a very circumscribed and limited social world. They rarely travel outside of the black enclave, and most have few friends outside of the ghetto. Because blacks have weak links to white society, they are not connected to the jobs that white society provides. The inevitable result is a weakened labor force attachment among large segments of inner-city blacks that raises the likelihood that they (blacks) will turn to illegal or deviant activities for income, thereby further weakening their attachment to the legitimate labor market (Shihadeh and Flynn, 1996).

Once legal means have been negated, illegal alternatives are reached. Several of these options lead to incarceration. Coupled with incarceration these urban communities political and economic power are adversely impacted by incarceration. Generally, people are counted in the Census Bureau at their homes, normally where they sleep most of the time, vote, and work. However, when this policy is applied to prisoners who spend a generally short time behind bars in prisons located far from their true homes, distortion arises. Prisoners are counted as residents of the prison in which they eat and sleep during their period of incarceration. However, in most states the prisoners legally reside in the
community in which they were arrested. The prisoners’ pre-incarceration community is normally the community in which they would use the services of their political representatives and where they would vote.

Prior to 1970, the U.S. prison population was not significant problem, as the number of people behind bars was generally stable and not as significant as it is today. However, since 1970, the U.S. prison population had grown more than 600%, and continues its torrid growth pattern. Most of the growth in prison facilities has been in rural areas, while the majority of inmates come from urban areas. Thus, an increasing number of people are counted by the Census Bureau as residents of communities that do not reflect their true, legal homes. As a result, a smaller permanent resident population in the rural, prison-hosting communities elects representatives than in those urban communities that tend to export prisoners. This means that prisoner-exporting communities experience a dilution of their relative voting power, while prisoner-importing communities experience a corresponding strengthening of their relative voting power (Hamsher, 2005).

Black isolation from whites may also lead to political and economic disenfranchisement of black neighborhoods. The geographic isolation of blacks, however, undermines the power of pluralist politics and means that whites have less to gain when public funds and resources are channeled to all black areas and away from multiethnic communities. Black isolation further contributes to the disinvestment and decline in many urban black areas by making them vulnerable to cutbacks in public funds and services. Rather than risk antagonizing white voters, white politicians are more apt to target black neighborhoods for spending cuts because of the minimal political fallout (Shihadeh and
Flynn, 1996).

Mass incarceration also has a negative impact on African American communities, from a health perspective; prisons disproportionately house those with disadvantaged health profiles across a number of social and economic indicators. While incarcerated, individuals are exposed to high levels of infectious disease. This exposure provides a relatively clear link between incarceration and later health outcomes. In prison, the experience of incarceration likely acts as a primary stressor, while characteristics of life after release stigma, decreased earnings and employment prospects, and family problems are a series of secondary stressors. Taken together, these primary and secondary stressors negatively impact the health of the offender (Massoglia, 2008).

The overall rate of confirmed AIDS cases was more than five times the rate in the U.S. population as a whole; between 1991 and 1996, one in three inmates died of AIDS-related causes. Although the commissioners on high might outlaw sex, they cannot deny sexuality and, therefore, should not deny the necessity of meeting health standards. This requires the distribution of condoms via a mechanism that is anonymous and easy to tap into. But they do forbid condom distribution, even in New York state prisons, which are epicenters of the epidemic. Forget needle or bleach distribution. At the same time, there is no doubt that in prison sex is commonplace, both consensual and coerced. Shooting drugs is more-rare than out on the street, but if people shoot drugs, they are more likely to use infected needles. Imprisonment increases the level of risk associated with any instance of risk behavior (Kane and Mason, 2001).

Mass incarceration has inhibited blacks individually and collectively as a
community, similarly to other oppressive caste systems. Slavery is a cultural marker, primal scene and a site of memory in the formation of African American identity. After emancipation blacks who thought they would be fully-fledged Americans were forced to rethink themselves as marginalized group; in the process, among several alternatives, the notion of African American emerged. During and after slavery African Americans suffered from cultural trauma. Cultural trauma is when members of a collective feel they have been subjected to horrendous events that leave permanent wounds upon their group consciousness, marking their memories forever, and changing their future identity in fundamental and irrevocable ways. Cultural trauma refers to a dramatic loss of identity and meaning, a tear in the social fabric, affecting a group of people who have achieved some degree of cohesion (Eyerman, 2004). While overt Jim Crow racism had waning public acceptance in this post-Civil Rights era integrationist policies, criminalization provided a new camouflaged of racist language in which code words such as criminal, drug dealer and welfare queen could be used to refer obliquely to the radicalized enemy within. Criminalization therefore became the weapon of choice in dealing with the social problems caused by the globalization of capital and the protest it engendered (Sudbury, 2002).

The black community has been encapsulated and reduced to communities lacking social efficacy, ravaged by poverty and criminal activity. Many young black men in the community with no real prospects or chance for employment, their life chances limited by their class position and racial discrimination, this group of young people have been deeply alienated from white society. Their response was to form a means of survival, which included street criminality and entering the arena of illegal drugs. This has lead to
subcultural resistance to law and order. No matter how harsh and punitive the laws become they will not deter African Americans from innovating to survive. Ultimately fighting back against racism and oppression has created a black subculture that is hostile toward white American society. Until equality is reached and opportunities are abundant for all Americans nothing will change in the black community.

While African Americans are incarcerated at astronomical rates, there are several negative consequences. Families are torn apart, communities turn chaotic, and black offenders are disenfranchised and ostracized from mainstream society. W.E.B. Dubois pointed out that African Americans lived their lives through a dual consciousness: as an American and as black people. By contrast white Americans seldom reflect on being white. If you are American, white is simply assumed. If you are not white, you are seen and feel like the exception (Litwack, 2004).

**Recommendations for Change**

Incarceration and warehousing millions of African Americans is not the panacea to crime and crime control. Presently incarceration is used as nothing more than a political tool used to subjugate and keep African Americans in an inferior class. Justice is supposed to be blind, but clearly justice is seen through a racial lens to determine who or what is criminal. The criminal justice system was not created to serve society or the people, but to serve some parts of society and some people at the expense of others. There is a long legacy of oppression of blacks in this country. Instead of being labeled a slave or derogatory racial slur, African Americans today are labeled as criminals and inmates.
Currently the answer to "the crime problem in America," has been incarceration. There are several alternatives to incarceration which could reduce the unintended consequences of mass incarceration in African American communities. Expansion of diversion programs is the first alternative to incarceration which could be a viable avenue to explore. These programs utilize community based supervision and/or treatment, focusing on offenders special needs (e.g., substance abuse problems, mental health issues, juvenile delinquents, etc.), emphasizing structure treatment interventions as the main avenue to generate change.

Diversion programs can be useful mechanisms to minimize social stigma, reduce prison overcrowding, save taxpayer money, rehabilitate amenable offenders, and enhance public safety (Clark, 2007; Feeley, 1983). These enormous social benefits can be achieved, it is believed, because jails and prisons, known for their brutality, criminal subcultures, and unhealthy conditions, destructive influences on family and community life, and high maintenance costs are abandoned as a self-defeating tool for changing incarcerated offenders. Instead, motivated offenders will receive appropriate services and be supervised in the community.

The practice of offender reentry into the community, progresses from the offender being a convicted inmate under custodial punishment to becoming an autonomous and productive member of the community. This only demonstrates how naïve and idealistic our current penal system is. Prisons and jails around the country release these offenders without the skills needed to be successful which result in high recidivism rates. Diversion programs benefit the offender and community because it gives the offender a chance for development and gain more acceptable social management (Sung, 2011).
Another alternative to incarceration is the home incarceration program. Under the home incarceration program, offenders will be restricted to their homes at all times, except for authorized activities such as work, school, and attending treatment activities. If an offender breaks the biding sanctioned agreements then the offender will be arrested and sent to prison. This type of alternative is beneficial to the community and the offender, because the family unit can still function tolerably. The community also benefits because members of the community can implement informal sanctions, which negates crime and recidivism (Stanz and Tewksbury, 2000).

An additional effective method rather than incarceration could be increased interest in promoting high school graduation. As described in chapter 3, the risk of imprisonment increased 60% for black male high school drop-outs. Therefore, more attentiveness on high school completion could be an invaluable alternative and have significant impact toward reducing disproportionate rates of imprisonment among black men. There are also additional actions that can be implemented, for example, having states adopt racial impact statements. Racial impact statements require consideration of any undue racial effects of sentencing or other criminal justice legislation prior to adoption (Mauer, 2011).

There are several responsible alternatives other than incarceration. Many of these alternatives will have more long term positive impacts on African American communities and promote positive social change. Positive social change is needed in majority of the predominately black communities in the U.S. To rebuild the social efficacy of these communities devastated by mass incarceration, informal social controls need to be reestablished and enacted. Incarceration has not protected the African American community. Incarceration has been the key ingredient in destroying the black community.
Without an overhaul the black family and community will not survive the concentrated mass incarceration.
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