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ILLINOIS
**Disproportionate Justice
Impact Study Commission**



Executive Summary

In October of 2008, Senate Bill 2476 became law in Illinois. Passed unanimously by the Illinois General Assembly and signed by the Governor, Public Act 095-0995 established the Illinois Disproportionate Justice Impact Study (DJIS) Commission, a non-partisan, multi-disciplinary group of policymakers, agency leaders, and justice professionals charged with examining the impact of Illinois drug laws on racial and ethnic groups and the resulting over-representation of racial and ethnic minority groups in the Illinois criminal justice system. The Commission was tasked with making recommendations to mitigate or eliminate that disproportionality. This report reflects the outcome of that effort in accordance with the law.

The legislation that became PA 095-0995 was premised on the observation that although rates of drug use among racial and ethnic groups are similar (Substance Abuse and Mental Health Services Administration, 2005; 2009), African Americans and Latinos are arrested, convicted, and incarcerated for drug crimes far more frequently than whites. National surveys consistently show that African Americans, whites, and Latinos are equally likely to use drugs relative to their representation in the general population, but the criminal justice consequences for drug involvement disproportionately affect minorities—particularly young, African-American men in poor, urban communities (The Sentencing Project, 1999). With both anecdotal and statistical evidence demonstrating that Illinois reflected these national trends, the General Assembly sought to better understand the scope and nature of disproportionality in Illinois, to identify potential causes of that disproportionality, and ultimately to offer solutions on opportunities to eliminate it.

Under the co-chairmanship of State Senator Mattie Hunter (D-Chicago) and State Representative Arthur L. Turner (D-Chicago), and with members named specifically by the law or appointed by State Senate and House leaders, the Illinois DJIS Commission pursued four primary courses of activity:

- Conducting a meta-review of the national and Illinois context for disproportionate minority contact with the justice system.

- Conducting independent research examining data on the arrest, prosecution, and sentencing of different racial and ethnic groups for drug law violations in Illinois.
- Convening a Research Advisory Group and a Policy Advisory Group to review the research and analysis and provide access to additional data and insight.
- Conducting three public hearings in the spring of 2010 in Chicago, Joliet, and East St. Louis, Illinois.

National and Illinois Context

Extensive reviews of national and state research reveal that mass incarceration has been driven largely by drug control policies that emphasize enforcement over substance abuse prevention and treatment strategies, and that overuse prison as punishment for drug-law violations. These policies have especially and adversely affected African Americans throughout the United States. The collateral consequences of imprisonment for drug crimes are varied and significant, harming individuals, families, and communities.

In Illinois, the rate of imprisonment for drug offenses is substantially higher for African Americans than for whites—a finding that has been replicated in several studies. Throughout the 1990s, African Americans represented an average of 80 percent of all persons admitted to Illinois prisons for drug offenses. The disproportionate incarceration of minorities for drug possession cannot be explained by differential drug use among people of different racial backgrounds; drug use rates among whites, African Americans, and Latinos are comparable.

Commission Findings from Independent Research

Beyond the large body of national and state literature reviewed, under the auspices of the Illinois DJJS Commission, independent research was conducted to examine data on the arrest, prosecution, and sentencing of different racial and ethnic groups for drug law violations. To identify the factors related to disproportionality, two large data sets were analyzed: the first consisted of statewide criminal history records from Illinois, and the second consisted of county-wide court records from Cook County, which encompasses Chicago. The data sets are from 2005, the most recent year for which this comprehensive information was available. Input from Policy and Research Advisory Groups of the Commission also was included in the findings.

The Commission's independent research revealed the following:

Racial Disparities in Enforcement

Nonwhites were arrested at a higher rate than whites relative to their representation in the general population throughout Illinois. Arrest data indicated that disproportionality in drug arrests occurred in 62 of the 102 counties in Illinois, including urban, suburban, and rural areas. Racial disparities for drug arrests varied widely by county but tended to be greater in jurisdictions with smaller populations of nonwhite residents.

In terms of the sheer number of people affected, most of the disproportionality in Illinois drug laws was related to drug possession charges, which accounted for nearly three-fourths of felony drug arrests across the state. Any attempt to address the disproportionate incarceration of minorities must first focus on how Class 4 possession laws (the least severe of felony charges) are enforced.

A smaller example of where disproportionality at arrest is apparent is in the enforcement of the Controlled Substances Act and the Cannabis Control Act, or drug-free zones law, which accounted for 3 percent of drug arrests in 2005. Nearly 70 percent of these arrests took place in Cook County, and 89 percent involved nonwhite arrestees.

Increased Racial Disparities with Accumulation of a Criminal Record

The majority of those arrested for the first time on felony drug charges in 2005 were white; however, for subsequent arrests, the opposite was true—that is, most subsequent arrestees were nonwhite. Whites and nonwhites without criminal records were arrested at rates that more closely correspond to their representation in the general population, while minorities with criminal records were more likely than whites to have subsequent arrests.

Overall, the proportion of nonwhites arrested for Class 4 drug possession (66 percent) was more than double their representation in Illinois' general population (27 percent) (United States Census Bureau, 2010). Therefore, racial disproportionality for arrests for low-level drug possession increases with the accumulation of a criminal record, suggesting that racial disparities are attributable, in part, to the lengthier criminal histories of nonwhite arrestees. Increased access to diversion programs or alternatives to incarceration, coupled with simple and timely processes for expungement and sealing, can mitigate future involvement in the criminal justice system. Without such access, criminal histories begin to accumulate.

Disproportionate Prosecution of African Americans

In Cook County in 2005, almost 80 percent of those entering the felony court system were African-American, followed by 13 percent Latino, and 8 percent white. As evidence that the Cook County criminal courts are inundated with low-level drug cases, 72 percent of the sample had a drug charge (sometimes among others), and 70 percent of them were charged with Class 4 possession. More than 60 percent of drug defendants in the Cook County sample were charged with Class 4 possession only and had no other charge(s).

An analysis of the decisions to either prosecute in felony court or to drop/dismiss charges showed that, after controlling for other variables, including criminal history, African Americans were approximately 1.8 times more likely than whites, and Latinos were approximately 1.4 times more likely than whites, to be prosecuted for any crime.

Disparate Sentences of Whites to Court Supervision or Probation

Most Class 4 drug possession cases were dismissed or charges were dropped in all racial/ethnic groups, and cases were dismissed or dropped among nonwhites (45 percent) more than among whites (41 percent). Of the cases that were continued, however, African-American defendants (39 percent) were more likely than white (31 percent) and Latino (23 percent) defendants to be transferred to criminal court. Among first-time arrestees for Class 4 possession, whites (36 percent) were more likely than nonwhites (19 percent) to be sentenced to court supervision or probation.

Disparate Sentences of African Americans to Prison

In Cook County, among defendants with a Class 4 possession charge, African Americans were sentenced to prison at a rate almost five times greater than whites: 19 percent of African-American defendants compared with 4 percent of white defendants. When the sample was restricted to defendants with fewer than two previous convictions (i.e., roughly equal criminal histories), African Americans entering the court system were sentenced to prison at a rate three times that of whites for a conviction for a Class 4 possession offense (10 percent versus 3 percent).

Class 4 possession arrestees constituted the majority of those arrested; however, relatively few were sentenced to prison for Class 4 possession only (i.e., without other charges). Nevertheless, the Cook County data showed that in 2005, African Americans who were arrested only for that charge were eight times more likely than whites to be sentenced to prison (16 percent versus 2 percent). For all criminal charges, African Americans in Cook County were nearly two times more likely to go to prison than whites.

Alternative Sentencing and Rehabilitation

Early contact with the criminal justice system provides an opportunity for rehabilitation programming and diversion from the justice system. The availability of substance abuse treatment services through the criminal justice system appeared to differ for white and nonwhite first-time arrestees. A limited analysis suggested that whites are more likely than nonwhites to participate in court diversion or probation programs. Racial differences in access to community-based programs might vary substantially by jurisdiction. Therefore, more research is needed to explore whether race/ethnicity affects access to diversionary options and, if so, the nature and extent of the effect. To address the disparity, the criminal justice system ought to take steps to intentionally and assertively direct minority populations into sentencing alternative programming for which they are eligible before resorting to prison sentences.

Limitations of the Data

The findings above were drawn from two large data sets that were limited in terms of the depth and breadth of information available on the processing and outcomes of the cases. For example, in some instances, no disposition data were available (e.g., sentences to probation). Most important, the data sets did not contain reliable information about the race/ethnicity of people of Latino origin. Without this information, conclusions cannot be drawn about the

effects of drug laws on Latinos and recommendations cannot be made about the appropriate policy and programmatic changes needed to reduce sentencing disparities within these groups. Notwithstanding these limitations, the study offers useful information to encourage evidence-based policy making in Illinois' criminal justice system.

Commission Findings from Public Hearings

In the spring of 2010, the Illinois DJIS Commission held public hearings where Commission members had the opportunity to hear the opinions and recommendations of citizens from across the state, including elected officials, researchers, service providers, national policy experts, and formerly incarcerated persons.

Researchers and policymakers testified about: drug laws and enforcement practices, which are potentially problematic in terms of their affect on disproportionate minority confinement; lessons learned from disparity-reduction efforts in Wisconsin; the cumulative and insidious effects of justice involvement on minorities; trends in national drug policy as well as current “hot button” issues, such as medical marijuana and the crack cocaine/powder cocaine sentencing disparity; and the shortcomings in current data collection mechanisms.

From a court perspective, speakers representing the judiciary and local probation services spoke of: the breadth of social, economic, medical and other factors contributing to recidivism; the need to address all these issues in attempting to respond to the problem of disproportionality; the need to invest a portion of drug forfeitures into developing community programs; and the gap between the need for social and behavioral healthcare services and the availability of such services.

Community members, including people with previous criminal justice system involvement and their family members, highlighted: both the challenges and the abilities of formerly incarcerated people to return successfully to their communities; the effectiveness of community treatment programs in restoring lives; the role of family as a support mechanism; higher education programs as a vehicle for teaching about addiction and criminal justice involvement; and the capacity of those with past criminal justice experiences to educate at-risk populations about the problems associated with justice involvement. Also representing the greater community, a local business owner recommended the creation of a special class of contracting provisions, similar to current minority- and women-owned business provisions, for employers who hire formerly incarcerated people.

Service providers testified about: disproportionality in different parts of the state, including its impact on Latino communities; the role of substance abuse in criminal behavior and the need to address holistically the problem of addiction and criminal involvement; the effectiveness of community treatment programs in restoring lives; the use of restorative justice models in repairing the social fabric damaged by criminal justice system involvement; steps being taking

by the juvenile justice community to mitigate the problems of disproportionality; and personal experiences as case managers and as people with past criminal justice involvement.

The testimony from the public hearings, together with the Commission's independent research findings and the state and national context, serve as the inputs shaping the Commission's recommendations to address disproportionality in the justice system.

Commission Recommendations

In response to the quantitative and qualitative analysis of the current state of disproportionate minority contact with the criminal justice system in Illinois, and in consideration of the expertise from practitioners and policymakers, the Commission developed the following ten recommendations to begin to mitigate the harmful effects of disproportionality and lay a foundation for ongoing analysis and progress.

STATE-LEVEL POLICY

Recommendation 1: As a matter of process, legislators should be able to request the attachment of a Racial & Ethnic Impact Statement to bills or appropriation measures that impact criminal offenses, penalties, sentencing, probation, or parole policies. The Racial & Ethnic Impact Statement should be drafted by the existing Sentencing Policy Advisory Council, which would also initiate the analysis necessary to understand the impact of the legislation, either through its own effort, or in collaboration with the Illinois Criminal Justice Information Authority, the Racial & Ethnic Impact Research Task Force (described below), or other research entities.

Recommendation 2: The State of Illinois should establish a Racial & Ethnic Impact Research Task Force to ensure the standardized collection and analysis of data on the racial and ethnic identity of arrestees. The charge of the Task Force would be to develop a framework for data collection at decision points along the criminal justice system continuum with a goal of standardized information management in the Illinois justice system and all of the state and local components of that system. This information would be used to meaningfully analyze and understand disproportionality that may occur across the justice process, as well as any other benefits such a standardized system would afford. The Task Force would operate under the guidance of, and potentially the auspices of, the Sentencing Policy Advisory Council or the Illinois Criminal Justice Information Authority.

STATUTORY AND PRACTICE CHANGES

Recommendation 3: The State of Illinois should establish a Task Force to review Section 407 of the Illinois Controlled Substances Act (720 ILCS 570/407), commonly referred to as the “drug-free zone laws.” The purpose of this Task Force would be to commission and analyze research evaluating: 1) the effectiveness of the laws at achieving their protective intent (e.g. shield-

ing children from drug sales); and 2) the potential unintended consequences of the laws beyond their protective intent. Based on this research, the Task Force would recommend amendments to the provisions 720 ILCS 570/407 to preserve their protective intent while mitigating their disproportionate impact on minority communities.

Recommendation 4: The State of Illinois and local governments should support jurisdictions in maximizing their use of diversionary programs and sentencing alternatives, including day reporting centers, drug schools, drug courts and other specialty courts, first offender probation, and designated program supervision. This recommendation encourages a multi-faceted approach, including:

- 1) Establishing local justice system planning commissions, included within or dovetailing with Adult Redeploy Illinois (730 ILCS 190/20).
- 2) Providing training opportunities for prosecuting attorneys, as well as public and private defense attorneys, on the scope of available alternatives. Such training opportunities could be accredited for continuing legal education credit by the Minimum Continuing Legal Education Board of the Supreme Court.
- 3) Clarifying the array of available alternatives by combining them into a single statute, consistent with the alignment and clarification goals of the CLEAR Commission.
- 4) Assuring appropriation of funding suitable for full utilization of the above-mentioned alternatives (see Recommendations 9 and 10).

Recommendation 5: Each local state’s attorney’s office, not local law enforcement, should conduct felony review for filing of charges in new cases. Recognizing the practical and logistical realities of this requirement, the General Assembly should establish a benchmark for population of a county above which this requirement is mandated. Additionally, each county should establish its own benchmark for disproportionality of its justice population compared to its general population that would trigger a mandate of felony review by the state’s attorney’s office.

MITIGATION OF LONG-TERM HARM

Recommendation 6: The State of Illinois should prohibit the inclusion of drug-related arrests that do not result in conviction in criminal histories collected for employment-related purposes. County clerk offices and third-party background search firms should be held liable for unauthorized release of such information through civil penalties.

Recommendation 7: The State of Illinois should establish automatic expungement and sealing procedures for Class 4 felony possession charges or convictions that result in one or more of the following:

- Successful participation in a drug court or other specialty court
- Successful completion of first offender probation
- Successful completion of probation under the supervision of the designated program

Recommendation 8: The State of Illinois should develop and promote a classification of business known as a “community enterprise,” making such businesses eligible to receive state, county, and local monies and tax incentives as a result of training and/or hiring individuals who were formerly criminally involved and/or incarcerated. Similar to current minority-owned and woman-owned business enterprise standards, the community enterprise status would establish standards for application and certification, which would allow designated organizations to compete for contracts with state, county, and local governments.

FUNDING

Recommendation 9: In support of Recommendation 4, jurisdictions should define a fixed portion, or criteria that would trigger the allocation of a portion, of existing drug asset forfeiture funds to support treatment and diversion programs in addition to enforcement and prosecution activities.

Recommendation 10: In support of Recommendation 4, the State of Illinois should establish budget policy and priorities to promote full utilization of existing diversion programs or alternatives to incarceration, as well as the accompanying planning processes and training as supported by Adult Redeploy Illinois.

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