



Eliminate Racial Disparities in Florida's Criminal Justice System

Racial disparities plague Florida's criminal justice system. People of color make up 59.4 percent of Florida's incarcerated population,¹ but only 42.5 percent of the state's general population.² The disparities are even greater when you consider just the state's black population. Black people make up only 16.9 of the general population, but comprise 47 percent of Florida's prison population. In contrast, the majority of people who were released from prison in FY 2017-18 were white.³

THE PROBLEM

Racial disparities stemming from historic inequities permeate Florida's criminal justice system.

Disparities start even before prison.

- The inequities in the criminal justice system begin well before people are sent to prison. In Florida's juvenile justice system, for example, black children made up 51 percent of youth arrests and accounted for 63 percent of young people who were transferred to adult court in FY 2017-18.⁴ By comparison, black children made up only 22 percent of Florida's public-school enrollment that same year.⁵

Disparities result in longer sentences for blacks who commit the same crimes as whites.

- In 2017, 34 percent of all arrests in Florida were of black people, about double their percentage in the general population.⁶ What's more, black people generally receive longer sentences than white people for the same offenses.⁷

Disparities result in the overrepresentation of black people in solitary confinement.

- The overrepresentation of black people in the criminal justice system is further magnified when you consider those who have been placed in solitary confinement, which is increasingly recognized as torture.⁸ Over 60 percent of people in solitary confinement on any given day in Florida prisons are black.⁹

Disparities undermine trust in the criminal justice system, which decreases public safety.

- Such extreme racial disparities in the criminal justice system erode confidence in the legitimacy of the system.¹⁰ Perceptions of racial bias in the system can make people less willing to cooperate with law enforcement officials to report crimes or provide tips, which makes everyone less safe.¹¹

Florida collects basic racial and ethnic information that demonstrates disparities, but there is no state mandate to analyze these disparities or to address their underlying causes.

- Each year, the Florida Legislature considers a number of bills that affect the state's criminal justice system. Unfortunately, there is no analysis of how changes in the law will impact communities of color, and whether or not these changes will improve or exacerbate racial disparities in the criminal justice system. Despite the best intentions of Florida policymakers, the failure of legislators to proactively collect and analyze this information before adopting policies can replicate and amplify existing disparities.

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- New Jersey, on the other hand, reduced its prison population by 28 percent between 2006 and 2016 through bail reform and drug courts. Nevertheless, there were still yawning racial disparities in the prisons.¹² Black people in New Jersey were still more than 12 times as likely to go to prison than white people in 2014.¹³ New Jersey has since passed a bipartisan bill which requires that criminal justice bills and rules be accompanied by racial impact statements.¹⁴

THE SOLUTION

Florida should learn from New Jersey's example as it seeks to enact criminal justice reform. The Florida Legislature should create a process for analyzing the racial impacts of its proposed legislation, constitutional amendments and administrative rules and regulations.

Like fiscal impact statements, racial impact statements could assist lawmakers in detecting unforeseen policy ramifications before adopting and implementing them. At least five states – Connecticut, Iowa, Minnesota, New Jersey and Oregon – are using racial impact statements to shape policy.¹⁵ While racial impact statements are a relatively new tool, they have shown positive results in Iowa. There, criminal justice bills that were projected to narrow racial disparities – or to have a neutral impact – were nearly twice as likely to pass as those that widened racial disparities.¹⁶

Racial impact statements can help lawmakers eliminate racial disparities, resulting in a fairer and more effective criminal justice system.

1 2017-18 Annual Report Florida Department of Corrections, at p. 17, http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf.

2 QuickFacts, Florida, United States Census Bureau (2018), <https://www.census.gov/quickfacts/fl>.

3 *Supra* n.1, at p.18.

4 Delinquency Profile 2018, Florida Dept. of Juvenile Justice, <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard>.

5 PK-12 Public School Data Publications and Reports, Enrollment, Florida Dept. of Education, <https://edstats.fldoe.org/SASWebReportStudio/gotoReportSection.do?sectionNumber=1>.

6 UCR Arrest Data, Florida Dept. of Law Enforcement, <http://www.fdle.state.fl.us/FSAC/Data-Statistics/UCR-Arrest-Data.aspx>.

7 Josh Salman, Emly Le Coz, & Elizabeth Johnson, *Florida's broken sentencing system*, Herald-Tribune (Dec. 12, 2016), <http://projects.tribune.com/bias/sentencing/>.

8 The United Nations considers solitary confinement that exceeds 15 consecutive days to be torture. *Solitary confinement should be banned in most cases*, UN expert says, UN News (Oct. 18, 2011) <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>. Solitary confinement in Florida prisons routinely exceeds this threshold.

9 Per the Florida Department of Corrections' response to a public records request, 60.1 percent of the 10,244 people in confinement on December 7, 2018 are black.

10 Rich Morin & Renee Stepler, *The Racial Confidence Gap in Police Performance*, Pew Research Center (Sept. 29, 2016),

<http://www.pewsocialtrends.org/2016/09/29/the-racial-confidence-gap-in-police-performance/>.

11 See, e.g., German Lopez, *Study: People call 911 less often after high-profile instances of police brutality*, Vox (Sept. 30, 2016),

<https://www.vox.com/2016/9/30/13110546/police-legitimacy-crime-911>.

12 Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, The Sentencing Project (June 14, 2016),

<https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

13 *Id.*

14 Leah Sakala, *Can racial and ethnic impact statements address inequity in criminal justice policy?*, Urban Wire: Crime and Justice, Urban Institute (Feb. 23, 2018), <https://www.urban.org/urban-wire/can-racial-and-ethnic-impact-statements-address-inequity-criminal-justice-policy>.

15 *Id.*; Nicole D. Porter, *Racial Impact Statements*, The Sentencing Project (Dec. 1, 2014), <https://www.sentencingproject.org/publications/racial-impact-statements/>.

16 Ryan J. Foley, *Racial-impact law has modest effect in Iowa* (Jan. 21, 2015),

<https://www.desmoinesregister.com/story/news/politics/2015/01/21/racial-impact-law-effect-iowa-legislature/22138465/>.