



## Overview of Racial Disparity in the Criminal Justice System

January 3, 2018

Racial disparity in the criminal justice system is a serious social concern and not simply a Mississippi problem. *Racial Disparity in U.S. Imprisonment across States and over Time*, Enders, Pecorino, and Souto, Department of Economics, Finance and Legal Studies, University of Alabama, October 2017. The problem in Mississippi begins in the juvenile justice system. *An Assessment of Disproportionate Minority Contact in Mississippi's Juvenile Justice System*, Sheena K. Gardner, Ph.D., Social Science Research Center, Mississippi State University, March 2016. The juvenile system disparities impact the criminal justice system by increasing later involvement for youth as well as through the disparities in transfer cases observed by Gardner.

The Office of the State Public Defender is endeavoring to determine why racial disparities are present and make recommendations to remedy the problem.

We looked at AOC disposition data and DOC inmate data to get a picture of the current problem. We compared FY 2010-14 (pre-585) with FY 15-17.

	Dispositions % Black	Sentenced to Prison % Black	In Prison % Black
2010-14	56	60	65
2015-17	53	56	62

Just as seen by Enders, the disparity in Mississippi's prison is lessening. While this is a positive development, the higher rate of sentencing to prison compared to dispositions and higher rate in prison compared to sentencing suggests Black defendants are more likely to go to prison and for longer time.

Other research indicates that pre-trial release decreases the likelihood of conviction and if convicted the likelihood of prison is lessened. For public defender clients the interplay of

retaining counsel and/or making bail is cyclical. Public defender clients are less likely to make bail and the inability to make bail increases the likely need of a public defender.

When you further consider that the majority of low-income Mississippians are Black and disproportionately do not own homes some causes of the racial disparity in the criminal justice system become apparent. Home ownership is significant because if a family of an arrestee owns a home the likelihood of making bail is compounded. Home ownership both shows “ties to community” and is itself a resource.

For these reasons we believe looking at the indigent defense systems is the place to start but there are several other criminal justice issues that should be reviewed in the context of Racial Justice. We also believe that we cannot look at the Criminal Justice System without also looking at the Juvenile Justice system.

#### PAROLE ELIGIBILITY FOR PEOPLE WITH ENHANCED SENTENCES IMPOSED PRIOR TO ENACTMENT OF HB 585

All people sentenced between July 1, 1995 and June 30, 2014, to a sentence with an enhancement are not parole eligible. (Miss. Code §47-7-3(1)(f)) This class of offender was found by the Corrections and Criminal Justice Task Force to not pose a risk to public safety. (See Report at 16) The 2014 Legislature adopted this recommendation in HB 585 thus people sentenced with an enhancement on or after July 1, 2014, are parole eligible. Those already sentenced were not granted eligibility.

Following the passage of HB 585 a public record request was made for all DOC inmates serving enhanced sentences and therefore not parole eligible. The list included about 600 people with over 1200 sentences.<sup>1</sup> Many of the people had more than one sentence but not all were enhanced and/or could otherwise earn time off of the total sentence leading to an early release.

The updated list accounting for releases over the past three and a half years has 189 people. The grand total of years to serve is over 4000. The average is over 20 years and median sentence is 16 years. Eighty percent (80%) are Black.

#### SIMPLE HOUSE BURGLARY (97-17-23(1))

Mississippi has two types of House Burglary. Miss. Code § 97-17-23(1) and (2). Paragraph (1) burglary can be of an occupied or unoccupied house with or without a weapon and with or without any intent to do violence. Paragraph (2) is “home invasion” burglary involving actual or threatened violence. Prior to HB 585 (2014) the parole statute treated burglary cases differently depending on whether or not the house was occupied. As a result people who broke into unoccupied homes were parole eligible after serving 25% of their sentence.

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<sup>1</sup> In a separate public records request by Senator Derrick Simmons in October 2014, DOC reported 678 people serving enhanced sentences. Seventy-nine percent (79%) of these people were Black. At that time sixty-five percent (65%) of the total custody population was Black.

HB 585 increased the time in custody for burglary of a dwelling conviction by making it a per se violent offense with 50% minimum rather than parole eligibility at 25%.

The general purpose of the 50% Rule was to create more certainty in sentencing and lead to judges imposing less time to serve.

That hasn't happened with burglary. Both sentence length and time to serve have increased. With the 50% Rule factored in the time these people will serve in custody may increase by 1.8 years. [5.35 x 25% = 1.34 years compared to 6.3 x 50% = 3.15 years]

burglary of dwelling 97-17-23				
	average FY 10- 14	FY 15	FY 16	FY 17
average sentence length	12.3	13.39	14.2	15
average time to serve	5.35	6.28	6.28	6.53
# Black	576	496	374	326
# White	333	259	297	308
average to serve Black	5.43	6.96	6.82	6.91
average to serve White	5.14	4.87	5.57	6.2
Trials	9	8	18	12
found guilty	6	6	13	11
average sentence length	18	23	22	22
average time to serve	14	20	19	14.5*

The "trial penalty" disparity is even greater at 5 years. [14 x .25 = 3.5 years compared to 17.5 x 50% = 8.75 years]

From a Racial Justice perspective: post-585 a white person will serve 1.5 years more than white person pre-585. [5.58x 50% = 2.79 compared to 5.14 x .25% = 1.28 years]; a black person post-585 will serve more than 2 additional years than a black person pre-585. [6.9% x 50% = 3.45 years compared to 5.43 x 25% = 1.36 years]. Pre-585 the average black person was sentenced to serve about 6% more than the average white person. Post-585 the average black person has been sentenced to serve almost 24% more than the average white person.

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<sup>2</sup> \*Average is for 8 sentenced to a term of years; 3 people were sentenced to life as habitual offenders

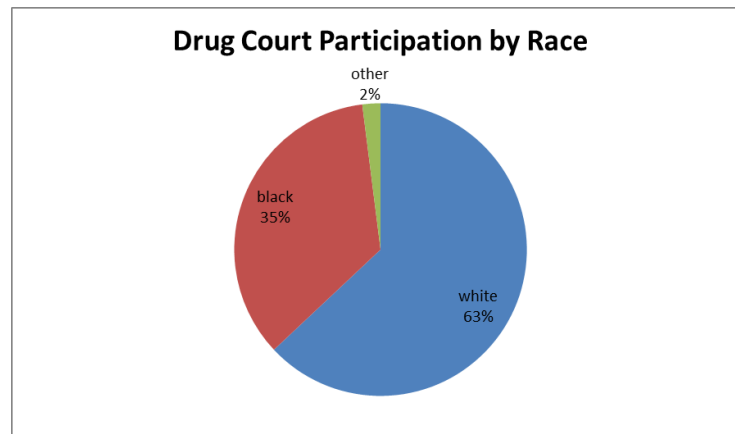
SOURCE: AOC Disposition Report

Making all house burglaries *per se* violent also disqualified these offenders from a host of diversion programs. AOC disposition data for the years 2010-14 indicates an annual average of over 900 house burglary convictions a year. Approximately 150 people a year were being diverted to Drug Court (25); ISP (45); Pretrial and/or non-adjudication (70); RID (10). This represents over 16% of all house burglary convictions.

This needs to be corrected by amending § 97-3-2 to limit the list of *per se* violent crimes to paragraph (2) – home invasion burglaries – and allow violence findings in paragraph (1) burglaries. This policy is supported by the analysis and recommendations of the United States Sentencing Commission. *Amendment to Sentencing Guidelines*, January 8, 2016.

### DRUG COURT REFORM

In a recent presentation to the HB 585 Oversight Taskforce Joey Craft, State Drug Court Coordinator at the Administrative Office of the Courts raised three areas of concern: 1. admission criteria may be too limited to reach all potential beneficiaries; 2. many who meet the current admission criteria do not have access because they are never screened; and 3. the racial demographics of the programs seem out of sync with the criminal justice involved population – 63% of Drug Court participants are white and 35% black. Drug Court eligibility should be expanded, for example by allowing simple house burglary defendants to participate, and financial barriers eliminated.



### JUVENILE JUSTICE

Research by the Social Science Research Center at Mississippi State documents the disproportionate minority contact with the Youth Courts in Mississippi. *An Assessment of Disproportionate Minority Contact in Mississippi's Juvenile Justice System*, Sheena K. Gardner, Ph.D., Social Science Research Center, Mississippi State University, March 2016. One area of particular concern is the disparity in the transfer process. And perhaps even more important here than in the adult system the guiding hand of legal counsel is essential but we fail to guarantee

kids have lawyers when they need them. *Access Denied: A National Snapshot of States' Failure to Protect Children's Right to Counsel*, National Juvenile Defender Center, May 2017.

In delinquency matters Mississippi should provide counsel to all juveniles regardless of family financial resources at intake; prohibit waiver of counsel unless and until the child has consulted with a qualified juvenile defender and prohibit interrogation without counsel present.

### OVERVIEW OF ISSUES TO CONSIDER

ISSUE	IMPACT	RECOMMENDATION
Indigent Defense oversight	Statewide 80% of felony defendants cannot afford to hire an attorney. Nineteen counties have indigence rates above 80%, nine of those counties (47%) have a majority Black population. Twenty-five of our 82 counties have majority Black populations (30%) and only 16 of the 63 counties (25%) with average or below average indigence rate are majority Black.	Create oversight at state level and local oversight capacity to ensure defendants Constitutional rights are protected in all corners of Mississippi; \$4M new dollars to establish "District Defender" position to be phased in over 3 years beginning in FY 2020.
Sentencing enhancements	In 2014 79% of offenders w/enhancement were Black but only 65% of total prison population	Change doubling of sentence to lesser of doubling or 5 years and provide parole eligibility for enhanced sentences imposed pre-HB 585.
House Burglary	House burglary defendants who are Black are more likely to go to prison and for a longer time than house burglary defendants who are White. This disparity is exacerbated by treating all house burglaries, regardless of the circumstances, as per se violent depriving the person of opportunities for Drug Court, parole eligibility and setting them up for a possible life without parole sentence for a subsequent non-violent offense	Remove paragraph (1) house burglary from list of violent crimes and lower sentence range for paragraph (1) house burglaries to 15 years.
Juvenile Parole Eligibility	When the US Supreme Court held that automatic life without parole sentences for juvenile offenders were unconstitutional Mississippi had 89 people serving such sentences. Seventy percent (70%) are Black and 62% of new life without parole sentences have been imposed on Black kids.	Parole eligibility for all juvenile offenses at 50% or 20 years, whichever is less, for violent offense or 25% for non-violent offense.
Youth Court	Research by the Social Science Research Center at Mississippi State documents the disproportionate minority contact with the Youth Courts in Mississippi. One area of particular concern is the disparity in the transfer process. And perhaps even more important here than in the adult system the guiding hand of legal counsel is essential but we fail to guarantee kids have lawyers when they need them.	In delinquency matters provide counsel to all juveniles regardless of family financial resources at intake; prohibit waiver of counsel unless and until child has consulted with qualified juvenile defender and prohibit interrogation without counsel present. Original jurisdiction should be expanded and limits placed on transfers and use of detention.
Innocence Protection	15 of 18 Mississippi exonorees (83%) listed in the National Exoneration Database are Black.	Allow people convicted based on evidence that is later refuted by the scientific community to have a court examine their claim of wrongful conviction.
Drug Court	only 35 % of Drug Court participants are Black compared to a prison population of 62% Black.	Expand eligibility and eliminate financial barriers to admission.
Private Prisons	72% of inmates at private prisons are Black but the total prison population is only 62% Black.	Require private facilities have lower recitivism rate rather than lower cost.