

Governor Jim Doyle's

Spencer Coggs ◊ Noble Wray
Co-Chairs

**COMMISSION ON
REDUCING RACIAL
DISPARITIES
IN THE WISCONSIN JUSTICE
SYSTEM**



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Commission on Reducing Racial Disparities in the Wisconsin Justice System

Co-Chairs

Spencer Coggs, State Senator
Noble Wray, Madison Police Chief

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Andre Wright, Esq., Whyte Hirschboeck Dudek, SC

Staff

Lindsey Draper, Staff Director
Taqwanya Smith, Associate Staff Director
Joyce Gilmer, Associate Staff Director
Ryan Sugden, Public Affairs
Jim Yocum, Research Analyst

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Prologue

In an Executive Order signed March 21, 2007, Governor Doyle noted that people of color receive disparate treatment in the criminal justice system throughout the nation and that African-Americans and Hispanics constitute a disproportionate percentage of incarcerated populations in Wisconsin. In response to those factors as well as information gleaned from the deliberations of the Wisconsin Sentencing Commission; the Governor's Juvenile Justice Commission; and the Legislature's Black and Hispanic Caucus, the Commission on Reducing Racial Disparities in the Wisconsin Justice System was created and directed to

"determine whether discrimination is built into the criminal justice system at each stage of the criminal justice system continuum of arrest through parole" and

"recommend strategies and solutions to reduce the racial disparity in the Wisconsin criminal justice system."

Whether discrimination is built into the criminal and juvenile justice continuum is a question the Commission needed to address at the beginning of its deliberations. The question is one that is profoundly complicated. The Commission heard numerous citizens report events they believed reflected obvious discrimination. The Commission also heard from practitioners within the justice system who reported they were called upon to enforce and administer the law, responding to the facts and circumstances that appeared before them, and that they were not engaged in discrimination.

The Commission is aware that disparity is not discrimination. Some disparity is due to differences in the rates of crimes committed, and also to social and economic factors not arising directly from the operation of the criminal or juvenile justice system, such as gaps in the levels of education, employability, income, available health care, and many other areas.

It is important to recognize, however, that while the criminal justice system is not directly responsible for these "gaps," there is a very powerful feedback within families, neighborhoods, and communities at large: Disparity in imprisonment contributes to disparity in education, employment, income, health care, and other areas. Therefore, it is imperative to address disparity in imprisonment in any and all ways that are feasible and just. It is not an exaggeration to call racial disparity across these different areas, including incarceration rates, a genuine crisis for the country and the state of Wisconsin. It is not merely a problem of appearance; it is a calamity that builds on itself. The criminal justice system has to own its part of the problem, even though it cannot solve all aspects of the problem.

The evidence is that in some areas, particularly enforcement of the drug laws, some disparity results from policies and practices that have disparate impacts on people of color – most heavily on African-Americans – and these policies and practices should be carefully reviewed and could be improved by police, prosecutors and defense attorneys, judges, corrections officials, social workers, and others who work in and influence the operation of the juvenile justice and criminal justice systems.

There is a significant legal distinction between a disparity (a statistical pattern) and discrimination (a possibly illegal act). The Sentencing Commission study suggests, for example, that African-Americans are more likely than whites to be sentenced to prison for the same drug offense, particularly in the less serious cases. Some Commission members believe, however, that this study may not have adequately controlled for the role of criminal history as a sentencing factor and that this study should be taken further to address that issue. In addition, this Commission analyzed and found a high disparity in revocation of probation and post-prison parole that also requires further study.

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Statistical analysis can also be used to determine whether non-racial factors “explain” these differences or to provide more specific information about where and for what offenses or groups these patterns arise. But statistics will never prove whether racial patterns arise from intentional discrimination on the basis of race.

The Commission finds that the racial disparities within the criminal justice system are a serious problem that should be addressed regardless of whether they arise by chance or from intentional discrimination. The number of citizens who spoke at public hearings or wrote to the Commission offering personal examples of discrimination have raised significant concerns that discrimination exists.

The Commission has taken, as a starting point, that racial disparities and high minority involvement in the criminal justice system are serious patterns and that we should focus on understanding how these problems arise and what can be done about them.

The United States Census Bureau statistics reviewed by the Commission revealed that Wisconsin has a population that is 86% Caucasian. By comparison, the statistics of the Wisconsin Department of Corrections (DOC) reveal that 43% of the inmates in DOC adult facilities are Caucasian.

African-Americans comprise 6% of the overall population of Wisconsin, but also represent 45% of the population in the adult DOC facilities. Hispanics represent 4% of the state’s overall population, but 8% of the correctional population.

Despite these disparities, the question of the existence of discrimination in the criminal justice system remained. In the public hearing and meeting process, the Commission heard from witnesses who reported identical conduct resulting in different results, depending on the race of the actor. In this regard, specific references were made to diversions of some defendants from any criminal court contact through the issuance of citations. Concerns were raised that suburban residents were more frequently provided the option of a

civil resolution of a referral for the same conduct for which an inner city resident would be arrested and referred to criminal court.

In contrast to the positions stated by these witnesses, the Commission was confronted with questions as to whether the apparent statistical disparities resulted from reasons that are not related to racial or ethnic discrimination. On more than one occasion, the Commission heard from witnesses whose basic premises were that “if minorities do not want to be in prison, they shouldn’t do crimes.”

Some approaches to reducing racial disparities in the criminal justice system involve strategies for crime reduction. Members of the Commission have first-hand professional experience with the related problems of crime, low education, disrupted families, and lack of opportunity in poor communities. At public hearings and Commission meetings, the Commission heard numerous speakers address these issues.

There was no denial in the African-American and Latino communities that crime exacerbates community problems and there is the desire to address these issues. However, at the same time, serious concerns were expressed that enforcement strategies that target particular neighborhoods or that target open air drug trafficking are not productive in that many whose primary need is treatment end up confined in jail or prison and, unless having received treatment, are more likely to commit new crimes upon release.

Many speakers unfavorably contrasted the relatively blunt tools of the criminal justice system – prison, jail, probation supervision – with the needs of many defendants to help them to avoid crime, such as better educational programs, job opportunities, treatment programs, and social networks outside of the criminal justice system. The Commission recognizes that the “leverage” of the criminal justice system can be a good tool to give some criminal defendants incentive to seek treatment over incarceration, as for example using the Drug Court Treatment model.

Prologue

In response to these concerns, the Commission sought to identify successful approaches to crime reduction that carry less risk of over-incarceration of any segment of the population, particularly minorities, that are overrepresented in jails and prisons.

Perceived disparities in the availability of specialty treatment courts to minority-group members was another area examined in the effort to address the question of discrimination. Numerous comments were made regarding Drug Treatment Courts and the opportunities they provide defendants in non-violent offenses to avoid repercussions that attach to convictions being made available to Caucasians more frequently than to minority-group members despite the numbers of defendants eligible for the referrals. The lack of a Drug Treatment Court in Milwaukee County was an oft-cited concern.

Any examination of the issue of racial disparity and possible discrimination found within the criminal justice system must include consideration of drug arrests, prosecutions and sentences. It is in this area that the decisions made by all parties exercising discretion throughout the criminal justice system have had their greatest impact on the disparity rates in Wisconsin. It is in the area of drug arrests and sentences that the increase in the number of African-Americans in correctional facilities has shown the greatest increase.

In its examination of the impact of drugs on racial disparity in the criminal justice system, the Commission considered factors as divergent as:

- ◆ where law enforcement chooses to investigate and enforce adherence to drug laws, including the emphasis on “open air” markets and low-level drug dealers
- ◆ length of exposure to criminal penalties assigned to specific offenses by the legislature
- ◆ the loss of the driver’s license and other repercussions, tied to conviction for drug offenses

- ◆ the impact of adequate defense preparation, including presentation of sentencing alternatives at time of sentencing
- ◆ the availability of community-based treatment resources.

The Commission has held informational meetings; conducted public hearings in municipalities throughout the state; reviewed letters and other submissions from parties ranging from private citizens and politicians to law enforcement officers and prisoners; and studied the reports of similar commissions impaneled in other states. The Commission has further studied sentencing practices and utilization of alternative dispositions.

During these deliberations, the Commission has compared the incarceration rates and patterns of Wisconsin with states such as Minnesota, noting the differences in rates of incarceration and amounts spent on correctional budgets and community treatment options. The Commission has examined statistics that reflect the lengths of sentences given by courts throughout the state, analyzing them as to the original sentences ordered by race. Revocation rates were also examined as was the racial makeup of the staff at the facilities.

Just as it was important that questions of discrimination and disparity be addressed, it was also important that a part of the Commission’s deliberations and recommendations include considerations of community safety. The Commission recognized that overall respect for and faith in the fairness of the justice system requires that it not only treat all of its citizens fairly, but also that it provides protection for these citizens. One on-going form of discrimination in United States history has been the under-protection of minorities in the criminal justice system. The Commission notes that progress in avoiding over-incarceration of minorities should not be made at the expense of victims of crimes. Protection must also remain for those victims who live in challenged neighborhoods.

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The Commission also noted the impact of parental absence on the development of children of color, and the importance of fathers maintaining consistent, positive involvement in the lives of their children.

Education and treatment for jail and prison inmates should be made a significantly higher priority, from the beginning through successful reentry into the general population. The goals of confinement and supervision need to more clearly include rehabilitation and not merely punishment. Availability of needed programming both within the institution and upon release into the community are critical points of concern for both public safety and successful individual inmate rehabilitation.

The Commission examined the impact of the introduction of young people into the criminal justice system on the later stages of their lives. This includes both the children in our juvenile justice system (now those under 17) and also young adults (late teens), whose ability to control their emotions and impulses is less formed than for older citizens. Once young people get a criminal record, even for minor offenses, they are subject to greater scrutiny and attention from the criminal justice system, and opportunities for educational progress and gainful employment lessen.

High rates of incarceration remove young working-age people from the community during the college or career-beginning age and return them several years later with reduced prospects for education and employment. Further, the young people often return with greater ties to criminal networks. Since minority youth are disproportionately affected by the adult criminal system, the needed change in the age of adulthood in the criminal justice system from 17 to 18 would probably reduce disparity, so long as rules and practices involving waiver into adult court do not disproportionately disadvantage young people of color.

Meanwhile, the families left behind have fewer adults available to work or to assist in child care and supervision, resulting in higher rates of stress, family disruption, and residential mobility.

This report examines the progress of the Commission, tracing the meetings held and the nature of the presentations made at the Commission meetings. The report further highlights the public hearings held throughout the state and many of the recommendations made at the hearings.

The report concludes with recommendations to the Governor. The recommendations cover each of the points of contact at which racial disparity has been identified. There are recommendations for policymakers and other parties whose decisions and exercise of discretion impact racial disparity, and there are recommendations for monitoring the efforts to rectify the disparity found throughout the criminal justice system.



Recommendations

In making recommendations to address racial disparity in the criminal justice system, the Commission recognizes that there are serious offenses and behaviors that, for reasons of public safety, require that some offenders be removed from the community. The Commission also recognizes that most of the people who are incarcerated will one day be returned to the community. Addressing the issues that led to their incarceration and resulted from that incarceration is an essential step in ensuring the well-being of the entire community.

In its 2007 report *America's Cradle to Prison Pipeline*, the Children's Defense Fund identified a number of the institutions that determine the opportunities children have to lead successful lives and noted that:

Racial disparity runs through every major system impacting children's life chances: limited access to health care; lack of Head Start and quality preschool experiences; children waiting in foster care for permanent families; and failing schools with harsh discipline policies that suspend, expel and discourage children who drop out and don't graduate and push more children into juvenile detention and adult prisons.

The Commission has recognized that many of the issues that were addressed in the Pipeline report exist in Wisconsin and, as a result of their impact on youth, contribute to racial disparity in the criminal justice system. The Commission has formulated recommendations focused on youth that generally fall into the categories of data collection and analysis; mental health; education issues and system issues.

These recommendations, if implemented, will have broad effect; can be acted upon quickly; and will serve the dual purpose of reducing disparity in Wisconsin's justice system and enhancing public safety. Focusing attention on children and families using evidence based services can have a deep impact on the racial disparity

as evidenced by two programs in Rock and Milwaukee Counties that were developed with funding provided by the Governor's Juvenile Justice Commission¹.

In addition, the Commission recognizes that focusing attention on children and families is an investment that should bear fruit for a long period of time. Research shows that prevention and early intervention programs for youth and their families are the most cost effective means in the long run to impact troubled children and their families.

Discussions on racial disparity are best focused at the local level. Currently, there is a lack of data and/or lack of tracking data by race at all stages of the justice system, from initial law enforcement contact through probation, incarceration, and parole. Local jurisdictions need to have data so they have an understanding of what is happening in their communities and can begin the discussion locally.

Recommendations

- ◆ **Throughout the state, we must increase and improve the validity and reliability of data, e.g. collecting and making data available.**
- ◆ **Local jurisdictions must develop a tracking system to identify race and age at all stages of contact with the justice system.**
- ◆ **Information technology resources must be developed to pull together data from different databases to the extent possible. Consistent and reliable data must be developed across the systems and across jurisdictions.**
- ◆ **The barriers that prevent juvenile justice system and child welfare system workers from sharing information about youth in either system should be broken down.**

¹Rock County made a data-driven study of the points of contact of minority youth with the juvenile justice system and identified the placement in secure custody as the appropriate point to develop an Alternatives to Detention program. This program has been added to the Office of Juvenile Justice and Delinquency Prevention Model Programs site.

Recommendations

Many youth have mental health issues that directly lead to contact with the juvenile justice system. Too often children do not receive adequate screening for mental health needs nor do they receive mental health services until they reach the juvenile justice system. Using the juvenile justice system as the means to sort out which youth and families will receive services can have a long term deleterious effect on children as they accumulate delinquency labels that will follow them into adulthood. In addition, too often the type of service available to children and families is neither evidence-based nor cost effective.

Recommendations

- ◆ **Significantly more evidence-based resources should be devoted to addressing mental health issues of all youth involved in the juvenile justice system. Some local jurisdictions and service providers have implemented Best Practice models that have proved effective in addressing mental health issues.**
- ◆ **The State must increase its commitment to Wraparound and other coordinated service team models so that the mental health needs of all youth - and not just those in the juvenile justice system - can be addressed within the community.**

Truancy, “zero tolerance” policies, and school discipline responses often lead to a juvenile having unnecessary contact with the juvenile justice system and have been shown to disproportionately affect children of color. Providing support to school districts to develop alternate means of ensuring safety within the schools, engaging all youth in becoming part of a learning community, and developing creative alternatives to promote positive and responsible behavior will reduce the disproportionate impact of restrictive discipline codes and policies.

Recommendations

- ◆ **Education on cultural competency (not just cultural diversity) and support should be offered to law enforcement, school resource officers, human services personnel, mental health services providers, educators and the judiciary. This could include developing a mentoring program in which more experienced staff in this area mentor new personnel.**
- ◆ **School districts should be encouraged to examine their local data on the effects of “zero tolerance” and other discipline policies on youth of color. Schools should be encouraged to use school resource officers for prevention as well as intervention with students. Parents should be included in this examination so they will have a voice in this process and thereby better effectuate change.**

Progress in identifying solutions to problems relating to racial disparity is difficult and requires a consistent effort by many to resolve the conditions which create the disparity. A uniform method must exist whereby the results of these efforts can be evaluated and adherence to them enforced.

Recommendations

- ◆ **A statewide process or entity should be created to monitor and track progress in resolving issues relating to racial disparity.**
- ◆ **Training and resources should be provided to local organizations on racial disparity issues.**

Efforts that are designed to facilitate the return of inmates to their communities should include the recognition that juveniles released from state facilities are in need of many of the same re-entry aids as adults.

Recommendations

Recommendations

- ◆ **Public and private sector leaders should collaborate in community efforts that emphasize education, employment, and community mentoring.**
- ◆ **Programs such as the Milwaukee Boys and Girls Club collaboration with the Ethan Allen School should be supported and expanded.**

The deliberations of the Commission included review of each of the contact points a citizen would have with officials in the criminal justice system. Through the review of reports of previous commissions that have examined aspects of the justice system, the public hearings and Commission meetings, the submissions by citizens and each of the meetings the Commission conducted, the Commission has identified areas of the criminal justice system in which system changes or individual actions can help to reduce the racial disparity the Commission found to exist in the criminal justice system.

The initial point of contact identified involves law enforcement officers and the efforts of law enforcement agencies to ensure public safety and adherence to the law. It is the law enforcement officer who, in investigating the facts that have attracted law enforcement attention, initially determines if an actionable violation has occurred and whose exercise of discretion begins the track of the defendant either outside or through the criminal justice system.

The Commission recommendations relating to law enforcement include recommendations regarding prevention strategies that would reduce the number of the entire community, including minority-group members, entering the criminal justice system. The recommendations particularly note drug offenses and the impact drug laws and enforcement practices have had on racial disparity.

The Commission further noted that Governor Tommy Thompson, in November, 1999, created the Governor's Task Force on Racial Profiling and charged that task force with the responsibility of studying and making recommendations on the use of profiling when making traffic stops throughout the state. The Commission noted that many of the recommendations made by that task force addressed needs for data and data analysis that are similar to those this Commission has identified.

Recognizing that law enforcement agencies have to be concerned with the fiscal impact of and personnel commitment required in data collection, the Commission has sought to utilize existing data sources and tools to document whether disparities exist and whether efforts to address inappropriate disparities are successful.

Recommendations

- ◆ **An Executive Order should be issued accepting and enforcing the findings and recommendations of the Racial Profiling Task Force Report of 2000.**
- ◆ **Appropriate state agencies should be directed to conduct a county-by-county baseline study of racial disparity using existing traffic citation and arrest data to determine disparity levels in the state.**

The Commission specifically notes the availability of information that would allow the Department of Transportation Division of Motor Vehicles to conduct a study of traffic citation data by race and to compare that data to recent demographic information to determine if disparity exists in arrests.

Wisconsin's counties vary greatly in their ethnic/racial composition and their disparity patterns. Decisions about where to focus disparity-reduction efforts need to be based on data

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identifying where disparities exist and involving significant numbers of people. Readily-available citation, arrest, and corrections data can be used to calculate gross statistics to show in which counties and for which groups there is evidence of significant patterns of racial disparity. The data can provide a basis for flagging situations that require further investigation and for evidence-based decisions about allocating resources for disparity-reduction efforts.

The Commission examined the impact of drug offense arrests and prosecutions on racial disparity rates throughout the state. It heard anecdotal references to a tradition of suburban or rural residents receiving citations for marijuana possession under circumstances that would have resulted in minority residents of an urban setting being arrested and entering the criminal justice system.

The Commission reviewed national studies (including the 2003 National Survey on Drug Use and Health, Department of Health and Human Services) that indicate young Caucasians self-report use of illegal drugs more frequently than their African-American counterparts, yet African-Americans are imprisoned multiple times more than Caucasians for non-violent drug offenses.

The Commission noted that drug convictions have impact on more than just the liberty of the defendant. It heard testimony from citizens who argued that there were differences in the response to chemical abuse problems. Cited were instances in which some violators are referred to treatment facilities and have their legal difficulties resolved in light of the intervening substance abuse treatment while others are immediately referred to criminal court processes.

Concerns were also raised regarding perceptions that sentencing differences for crack cocaine, a drug perceived as being more frequently used by African-Americans, and for powder cocaine, which is self-reported more

frequently as the drug of choice of Caucasians were not based on any substantive difference. There were concerns also expressed that users of methamphetamine - who are typically Caucasian - were treated as needing treatment where users of crack cocaine were treated as needing imprisonment.

Bases for these reports included the Federal Bureau of Investigation and Substance Abuse and Mental Health Services Administration Summary of Findings from the 1998 National Household Survey on Drug Abuse (U.S. Department of Health and Human Services, 1999).

The Commission concluded that reducing demand for illegal drugs and providing access to treatment is a more effective strategy than using "zero tolerance" policies that often serve to remove low-level drug offenders from the community without providing the needed treatment. Such actions were seen to exacerbate addiction problems without necessarily addressing the underlying treatment need. The "offender" is often returned to the community with the same addiction, and the difficulties associated with a criminal record.

In addition, the incarceration itself may have exacerbated problems surrounding the family structure, educational pursuits, and employment efforts.

The Commission believes state and local leaders should engage in an intensive multi-system effort to reduce substance abuse and the demand for illegal drugs using evidence-based services. The concerns expressed by judges and others throughout the justice system reflect the lack of sufficient treatment alternatives for those convicted of substance abuse-related offenses highlight the need to identify and develop treatment resources.

Whether it is the state's high rank in the nation in binge-drinking and alcohol consumption, often reflected in multiple drunk-driving arrests and the danger to the community

Recommendations

those acts involve, or the state's national rank in the top half for cocaine use for all ages, the failure of Wisconsin's continued reliance on law enforcement and corrections instead of investing in treatment alternatives has had significant negative effect.²

In a number of instances, the Commission's attention was called to a comparison of incarceration practices in Wisconsin with those in Minnesota. Minnesota was seen as emphasizing community supervision and treatment programs more frequently than Wisconsin, particularly for non-violent, drug and alcohol-addicted offenders. The comparison of rates of incarceration in the two state indicate Wisconsin is approaching three times the number of its citizens in prisons and jails per 100,000 residents compared to Minnesota.³

Recommendations

- ◆ **Increased state and federal funds should be committed to substance abuse treatment and effective evidence-based programming to reduce drug use.**
- ◆ **Active efforts should be made to change prohibitions against financial aid for education and housing for convicted drug offenders.**
- ◆ **Using the example of High Point, NC and examining statistics and examples showing the impact of community sweeps, local law enforcement should engage in comprehensive responses to open air drug markets as opposed to zero-tolerance policies.**

In making its recommendations for law enforcement leaders to follow in identifying, hiring, and keeping the best candidates for long-term law enforcement careers, the International Association of Chiefs of Police noted that desirable officers were those who "possess not only the aptitudes and attributes to engage in traditional, action-oriented policing, but also those who will perform in increasingly multi-faceted policing environments. Law enforcement leaders must establish and then sustain a cadre of officers who are dedicated to ethical service-oriented policing that is respectful of the civil rights of all community members while maintaining safety and public order."⁴

A concern of the Commission was the notion that law enforcement officers are often thought to provide "help" for mentally ill subjects or those with substance abuse problems by making an arrest and starting them in "the system." It is extremely important that the effect of using arrests and the criminal or juvenile justice systems to obtain "help" be explored.

The Commission developed recommendations to assist law enforcement leadership in equipping its officers with the skills and training that will help the officers working with changing populations throughout Wisconsin. The state is experiencing demographic changes throughout, and cultural as well as ethnic varieties are being introduced into Wisconsin communities.

Recommendations

- ◆ **State leadership should collaborate with appropriate justice system and administrative officials to develop training and standards consistent with the recommendations of the Racial Profiling Task Force.**

²*Treatment Instead of Prisons: A Roadmap for Sentencing and Correctional Policy Reform in Wisconsin*, Drug Policy Alliance, January 2006.

³Bureau of Justice Statistics-Midyear 2005. Cited in *Uneven Justice: State Rates of Incarceration By Race and Ethnicity*, Marc Mauer and Ryan S. King, The Sentencing Project, July 2007.

⁴*Protecting Civil Rights: A Leadership Guide for State, Local, and Tribal Law Enforcement*, International Association of Chiefs of Police, September 2006.

Recommendations

- ◆ **The appropriate state agency should collect, promote and disseminate best law enforcement practices on traffic stop, treatment of mental health cases and use of force procedures to reduce the perception of unfairness and partiality of law enforcement towards minorities.**
- ◆ **A state-organized major conference shall be convened for law enforcement executives to highlight and discuss the issue of racial disparity in Wisconsin that includes elevation of risks associated with introduction into the criminal justice system.**

The success of efforts to address racial disparity and ensure community safety will be directly affected by the allocation of sufficient resources to support the agencies called upon to collect and analyze data; provide treatment alternatives; and provide appropriate law enforcement efforts. These efforts must be mindful of the role of community members as the greatest and most powerful resource that local law enforcement has to reduce crime.

Involvement of community members and agencies in justice councils will assist in the identification of “hot spots” in the community as well as create avenues of communication between neighborhood representatives and law enforcement.

Recommendations

- ◆ **County baseline study data should be used to determine the allocation of federal Justice funds over which the Governor has control towards community efforts addressing racial disparity within their criminal and juvenile justice systems. Programs should include, but not be limited to: youth diversion, drug court programs, community accountability boards, gang prevention efforts and community justice councils.**

- ◆ **Local law enforcement agencies should engage in community justice councils to develop community-based solutions to low-level offenses.**
- ◆ **Federal and state funds should be committed for reentry planning and programming focusing on housing, employment and education, specifically for young African-American men returning to the community from prisons.**

“The trial judge is the one actor in the system most experienced with exercising discretion in a transparent, open and reasoned way. When it costs so much more to incarcerate than to educate a child, we should take special care to ensure that we are not incarcerating too many persons for too long.”

U. S. Supreme Court Justice
Anthony Kennedy
American Bar Association
San Francisco, CA 8/9/03

In arriving at appropriate sentencing decisions, the court benefits from a balanced approach in which the court is provided not only the traditionally supplied information about the crime, the impact on any victims, and the background of the defendant, but also receives additional information that would allow it to fashion the most appropriate sentence. Currently, courts are left at the time of sentencing not knowing when treatment might be available, or what support for reentry from prison might look like two or three years later.

Courts consider numerous factors in deciding an appropriate sentence. Judges must rely on the information provided to them about the charges and the defendant. Public Defenders need resources to appropriately prepare cases and present necessary information, including sentencing alternatives, to the decision-maker.

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The Commission was informed that standards for eligibility for Public Defender services have remained the same for twenty years. In addition, the rate of compensation for attorneys accepting appointment for Public Defender cases has remained low. As a result, resources available to private attorneys to accept the appointments to represent indigent defendants discourage most except the newest, least experienced attorneys from accepting appointments.

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- ◆ **Judges should recommend and encourage the use of new adjudicative methods, including community-based sentencing alternatives.**
- ◆ **Pre-sentence reports provided for sentencing should inform the judge and the parties about the full range of sentencing alternatives available at the time of the sentencing, identifying both community-based and institutional resources, and providing a realistic plan for offender rehabilitation that addresses the actual availability of services in both the institutional and community settings.**
- ◆ **An online statewide database should be developed to collect and disseminate information on alternative justice programs.**
- ◆ **Eligibility standards for qualification for Public Defender services should be revised. Resources available to the defense for investigation and social work should reflect the need to make adequate sentencing information available to the court.**

The Commission believes there should be a comprehensive assessment of Wisconsin justice system programming to determine best practices and build state level support for al-

ternative programs. Judges are in a position to work with other criminal justice officials in designing and implementing useful and effective alternatives to incarceration, such as those implicated in the Treatment Alternatives and Diversion Program (TAD), deferred prosecution agreements and drug treatment courts.

Having alternative program information available online would allow judges and others in the criminal justice system to quickly identify programs that are suitable, available and proven to work. Posted information would include program format, availability, procedures, participants, and overall effectiveness.

Internal to the judiciary, judges should work with appropriate staff and/or community resources to find creative ways to unify adjudications of cases to better serve court users. Judges are in a unique position and should provide leadership in unification initiatives across division lines making courts more accessible and less duplicative in improving the processing of a single family's case.

Recommendation

- ◆ **Judges should take a leadership role in the development of a community criminal justice council for each of the ten judicial districts.**

Judges should provide leadership. The mission of the Council should be to efficiently and collaboratively coordinate services and to effectively allocate financial resources to ensure crime reduction, victim support, offender accountability and restorative community-based programs. Through strategic planning and research, the Council should identify, evaluate and develop strategies to improve the justice system to enhance public safety and the quality of life.

The Council should consist of an Executive Committee composed of various stakeholders, including, as it relates to the jurisdic-

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tion, the Mayor(s), County Executive(s), Sheriff(s), Chief Judge, Chair of the County Board, District Attorney(s), Police Chief(s), area head of the Public Defender's Office, the Department of Corrections, and a representative of community service providers.

The Council should be comprised of voting members from a variety of city, county, state justice agencies along with business, advocacy and other community groups. The Council should have standing subcommittees in community justice areas such as mental health, incarceration alternative programs, juvenile justice, public education and information gathering.

The Council will collect and review local racial disparity data within each county where applicable and develop targeted and collaborative efforts with other criminal justice system and community stakeholders to reduce racial disparity in their communities. In addition, they will develop programs to address the disparity and monitor progress over time. In order to qualify for full funding of this grant program, the District Attorney must be an active participant.

The Office of Justice Assistance should develop a grant program or provide seed money using Justice Assistance Grant money to implement the Community Justice Councils modeled after the Disproportionate Minority Contact (DMC) committees funded by the Governor's Juvenile Justice Commission.

"Racial stereotypes sometimes operate unconsciously and can influence perceptions of dangerousness even on the part of decision-makers who harbor no conscious prejudices...Minority offenders' personal circumstances may make them appear to some judges as unlikely prospects for rehabilitation. Those who can pay for private drug or mental health treatment, provide restitution in large amounts to victims and communities, or attend educational and vocational programs often unavailable to the poor are likely to receive milder punishments than others who have committed exactly the same crimes."⁵

Recommendation

- ◆ **Judges should report the appearance of any pattern and practice of disparate treatment by any actor involved in policing, charging decisions, sentencing recommendations, or any court proceeding, to the appropriate chief executive officer and/or agency head.**

Judges should send a clear message that our justice system will not tolerate discrimination in any form. Inappropriate conduct from staff, litigants, counsels or others including but not limited to off-color jokes, comments or other discriminatory behavior should be swiftly and forcefully rebuked and may be subject to appropriate sanctions.

Throughout its deliberations, the Commission has heard testimony and has noted the need for data and information on which to base recommendations for changes that will reduce disparity in the justice system. Whether it is as a result of the exercise of discretion by law enforcement officers, prosecutors, or judges, the need for accurate information on which to base systemic policies and changes has been a source of frequent testimony.

Recommendations

- ◆ **A statewide schema should be developed and utilized to collect data on race and ethnicity at all points in the criminal justice system process in the CCAP and PROTECT systems.**
- ◆ **Advanced technologies should be utilized to electronically codify contents of court transcripts.**
- ◆ **The judiciary should take the lead in ensuring that adequate and qualified interpreters are made available at every stage of the justice system process.**

⁵Unlocking America: Why and How to Reduce America's Prison Population, November 2007, The JFA Institute, Washington, DC 20002.

Recommendations

The need for the collection of data is particularly important regarding white and non-white Hispanics. Better data for Asian, Hmong, Native-American, and other ethnic groups with significant populations in Wisconsin should be obtained. Though numbers for these groups have historically remained low, a catch-all “other” category is of little use without more specific information about these groups.

Transcripts contain detailed information not collected nor documented anywhere else in the justice system. This information, if codified and entered into a database, could be used to ascertain the true breadth of factors considered by judges in their decision-making process. There are existing data bases in jurisdictions such as LaCrosse, Portage and Dane Counties.

Changing demographics and the increasingly diverse population appearing in the juvenile and criminal justice systems make the availability of qualified interpreters at all stages of the justice system process a critical issue. The court must be able to communicate effectively using court interpreters to explain all options and alternatives available in a particular case. Where decisions involving diversion from the formal court process are made prior to court contact – such as the intake decision in the juvenile justice system to enter into a deferred prosecution agreement – interpreters must be available to ensure all who are subject of the process have equal access to dispositional or diversion options.

Recommendations

- ◆ **The judiciary should continue to provide access and encourage the public to view how the court system works, and should educate the public and legislature about the role of courts and effective justice strategies, particularly as it relates to the lack of alternatives to prison for offenders suf-**

fering from mental health and drug treatment issues.

- ◆ **The judiciary should conduct broad research nationally and draw from the best programs and develop a statewide judicial education program addressing racial disparity in the criminal justice system and how to combat it**
- ◆ **Judges should educate the other branches of government on the fiscal impact of unfunded mandates on the judiciary’s capacity to meet its constitutional obligations.**

Judges have the opportunity to educate the community about the workings of the justice system by encouraging members of the public to observe judicial proceedings. Judges also have the ability to participate in educational programs at schools and community forums.

The provision of education to judges on the issues surrounding racial disparity should be an essential part of judicial education. It should be made a core component of judicial training at a plenary session of the Judicial College and incorporated into specialized training efforts such as the courses routinely offered to new judges and specialized sessions on criminal law and sentencing.

It is further important that the courts be fully funded and that the executive and legislative branches provide adequate resources to the courts and community stakeholders for alternatives to incarceration as a critical component of efforts to reduce prison and jail populations.

“The legislative branch has the obligation to determine whether a policy is wise. It is a grave mistake to retain a policy just because a court finds it constitutional...Few misconceptions about government are more mischievous than

⁶Kennedy, Speech at the American Bar Association Annual Meeting, August 9, 2003

Recommendations

the idea that a policy is sound simply because a court finds it permissible. A court decision does not excuse the political branches or the public from the responsibility for unjust laws.”⁶

Throughout the public hearing process, the Commission heard testimony reflecting a common theme relating to inmate reentry and reintegration into the community. Many witnesses testified that a critical element in successful reentry is access to employment that pays wages on which the inmate can adequately provide for family members. Frequently cited as obstacles in obtaining these jobs were the access to transportation to jobs that were located in areas to which public transportation was not available.

One program that has been successful but has only been limited on a limited basis is a partnership between the Department of Corrections and the Department of Transportation to ensure that eligible inmates have a valid state-issued driver’s license when they are paroled. Inmates who are not eligible for a driver’s license should have a valid state identification card.

The City of Milwaukee Municipal Court, through the work of Justice 2000’s Center for Driver’s License Recovery and Employability Program has completed work on a “comprehensive collaborative effort to reduce the numbers of unlicensed drivers in Milwaukee County” through the establishment and operation of a community-wide driver’s license recovery and employability resource center in Milwaukee.

Treatment Instead of Prisons (TIP) was included in the 2003 State Budget as a program that would be funded by grants to counties. The original grant was funded at \$750,000, an amount that would allow limited opportunity to begin pilot projects that would further prove the efficacy of this program.

Full implementation of this program would

reduce incarceration by treating substance abuse. The projected results would lower incarceration rates; lower recidivism rates by treating the underlying problem without jail; and supplement the already overburdened Department of Corrections substance abuse treatment programs.

Recommendations

- ◆ **Consistent with the results of the January, 2008 Legislative Audit report, legislation should be introduced to return jurisdiction of 17 year olds alleged to have violated state or federal criminal laws to juvenile courts. Current waiver provisions should be maintained.**
- ◆ **The State Department of Transportation and Department of Corrections program should be expanded to serve inmates at all Department of Corrections facilities and aid inmate reintegration by ensuring that inmates who request them have a valid identification card before they are released.**

Additional funds should be made available to allow for a pilot project that will provide treatment services instead of prison.

“Between the time a suspect is arrested and the time he or she is arraigned, a number of important activities take place where decisions are made that can have a dramatic effect on the racial composition of the criminal justice population. This critical stage in the processing of a criminal case is rendered more complicated because multiple players are involved, including: the police, the complainant, witnesses, the prosecutor, the suspect, the suspect’s family and friends, the pretrial officer, the defense, diversion and alternative sanctions programs, and the court.”⁷

⁷Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers, The Sentencing Project, October 2000

Recommendations

In the report of the Sentencing Commission, *Race and Sentencing*, the authors were able to determine by the objective data that, by in large, the sentencing schemes in Wisconsin are fairly meted out, particularly for egregious offenses. It also pinpointed, however, some areas of concern around drug sentences and sentences for less serious offenses. Given data suggesting that the greatest racial disparity exists at the lower end of the severity scale in drug cases, one area that appears to deserve especially careful review involves the range of charges issued for possession of small amounts of marijuana, since responses can vary from a mere civil ordinance violation all the way up to felonies, if the possession is for a second or subsequent offense.

The first step in addressing these issues is to collect data so that we know where we are and whether or not there are problems in the juvenile and criminal justice systems that can be addressed.

Recommendation

- ◆ **The Office of Justice Assistance should create a work group consisting of a representative of the Wisconsin District Attorney's Association, the Wisconsin State Prosecutor's Office, the Department of Justice, State Prosecutor Education and Training (SPET) Division, and three District Attorneys, one of whom shall be from either Milwaukee, Dane, Rock, Racine or Kenosha County.**⁸

The work group would initially determine which data from PROTECT and other data bases must be collected on an ongoing basis so that data, and in particular racial data, can be reported periodically to prosecutors regarding critical stages in the continuum such as charging and settlement offers. The group would work to determine which new data

should be included in the PROTECT system in order to increase the prosecutor's ability to understand what their respective numbers mean.⁹ The work group would also work with law enforcement, the courts and the Criminal Investigation Bureau to resolve data definitions of race in all systems.

The work group should develop a series of management reports from the PROTECT system that will report the racial data, along with other information that the work group may prescribe, to enhance the management function of individual District Attorney Offices.

The Office of Justice Assistance is strongly urged to consider consulting with the Vera Institute's Initiative on Prosecution and Racial Disparity to help with the question of data.

District Attorneys tend to agree that, along with the seriousness of the offense, the most important information they use in exercising discretion is the criminal history of an offender. Criminal history and the gravity of the offense drive each discretionary decision the prosecutor makes. While the Sentencing Commission's report, *Race and Sentencing*, was a useful analysis of the role of race in sentencing, the role of criminal history in the context of sentencing was not fully addressed.

Recommendation

- ◆ **The Office of Justice Assistance should commission a study similar to *Race and Sentencing* but in the context of prosecutorial discretion, giving particular attention to the role of criminal history in that exercise.**

Awareness is the driver of change. The first step in addressing perceptions that racial disparities reflect discrimination is understanding the disparities. The second step is determining which of those disparities are not con-

⁸ The work group could be something akin to the role the CCAP Oversight Committee plays for the courts.

⁹ The Commission recognizes that some of the data may not currently be electronically accessible. The work group could, however, address the data needs so that when the time comes that DA's are fully automated, the gathering of racial data for other decision points such as plea offers and sentencing requests can be tracked.

Recommendations

cretely tied to relevant factors for the prosecution of crimes and addressing community safety.

District Attorneys need to be aware of the numbers as regards racial disparity in the state and in each county. They also need to be aware that while they may be exercising discretion in a race neutral manner, they can take the opportunity to examine those decisions particularly in light of the cultural differences represented by people of color in Wisconsin and the longstanding dangers of unconscious bias.

Recommendation

- ◆ **The Office of Justice Assistance, the State Prosecutor's Office and the Department of Justice's SPET office should collaborate to develop and offer training on conscious or unconscious racism and the danger of institutional bias in the juvenile and criminal justice systems at all SPET conferences.**

The Commission recommends that all prosecutors attend at least one session of this training before the end of the second year of employment and that there also be developed and offered training on cultural differences to particular counties. An example would be the development of a training program on Hmong culture to be offered in Dane, Marathon, Eau Claire and other counties having a significant Hmong population.

One of the most effective ways to address the issue of racial disparity in a community is to bring the stakeholders together to address the problem. On the juvenile side, the Governor's Juvenile Justice Commission has been working with six pilot counties for almost six years to help them collect and analyze their data, and to develop and monitor programs and strategies to address identified problems in their respective systems.

Rock County used a number of different strategies, including creative prevention work and detention reform (that included risk assessments and electronic monitoring) to develop a program that recently led to Rock County being recognized by the MacArthur Foundation as one of its Models for Change sites. The MacArthur Foundation awarded Rock County a grant of \$300,000 over three years to continue the work it is doing.

The District Attorneys around the state do not have the resources to address the management issues that may become clear upon data collection. Having a resource to which they could turn for help in implementing new strategies to deal with racial disparity along with other management issues would help offices to increase efficiencies and use best practices.

Recommendation

- ◆ **The Office of Justice Assistance shall broker or develop a technical assistance arm to help the Justice Councils and District Attorney Offices implement new strategies such as pilot programs to revise charging or plea policies; community prosecution; Community Accountability Boards; alternatives to drug prosecution; and/or Drug Treatment Courts as alternatives to traditional case processing.**

This effort should include, as part of any diversion or deferral programs, evaluation of whether any group (defined by race, gender or other protected class) is being disfavored in referrals or offers made. One unintended consequence of a treatment court, for example, can be an inadvertent tendency toward diversion and treatment for more privileged defendants, and jail for the less privileged. Policies and practices should be reviewed to try to avoid this tendency, for example, by seeking "sliding scale" treatment payment plans, creating easy-to-use program brochures, and

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ensuring referrals are based on an objective, validated assessment process.

The Office of Justice Assistance's supervision of the work groups should include either employing a full-time staff person with analytical abilities or contract with an outside consultant through either DA/IT or the Office of Justice Assistance to create the management reports and to act as a management consultant to District Attorney Offices around the state to improve their efficiencies.

The Racial Disparity Commission has focused primarily on making recommendations to the Governor that he can implement or influence in addressing racial disparity, District Attorneys around the state can become partners in this effort by adopting model guidelines to address these issues.

Recommendation

- ◆ **A resolution should be offered to the Wisconsin District Attorney's Association using the following guidelines:¹⁰**

Guidelines for District Attorneys on Racial Disparity in the Wisconsin Juvenile Justice and Criminal Justice System

I. Prosecutorial Decision Making

- a. The District Attorney should be conscious of potential racially disparate impact when setting prosecution priorities and policies.
- b. The District Attorney should consider statistical evidence of community crime indicators and qualitative evidence of community concerns in setting prosecution priorities and initiatives.
- c. The District Attorney should be proactive in his/her leadership and partnership with law enforcement agencies to prevent racial and ethnic bias and ensure that similarly situated defendants receive

similar charges and sentences.

- d. The District Attorney should consider the racial effects of his/her charging and disposition policies and work with others in the community to address unfair disparate impacts.

II. Training

- a. Training of prosecutors about the role of racism in our history and criminal justice system should be offered to all prosecutors.
- b. The District Attorney should encourage all supervisors, attorneys, and other staff to attend the training related to race and suspicion and assessment of risks to be developed by SPET. (See Recommendation #3 Supra.)
- c. The District Attorney should advocate for racial disparity/profiling training for law enforcement agencies.

III. Management and Accountability

- a. The District Attorney should support office policies that ensure diversity among his/her professional and support staff, including the active recruitment, hiring, retention, and promotion of African-Americans, Native Americans, Hmong, Hispanics and other racial and ethnic minorities.
- b. Every prosecutor should review his/her own personal beliefs and biases, including use of racial and ethnic stereotypes or use of proxies for race and ethnicity (such as class/socio-economic status or geography).
- c. The District Attorney should charge all assistants and deputies district attorneys with the obligation to consciously review their rationales for prosecution in order to eliminate unfair racially disparate treatment and effects.
- d. The District Attorney should take affirmative steps to eliminate racial/ethnic bias

¹⁰ These guidelines are borrowed from "Prosecutorial Decision-Making and Racial/Ethnic Disparities in the Federal Criminal Justice System: Principles and Guidelines", A Project of the Brennan Center for Justice at NYU School of Law and the National Institute for Law and Equity, *Federal Sentencing Reporter*, Vol. 19, No. 3, February 2007.

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or stereotyping that may be within his/her control and supervision.

- e. As an internal management tool, the District Attorney should collect and analyze quantitative and qualitative data on the race and ethnicity of the defendant and victim at each stage of prosecution, including but not limited to: case intake, bail requests, declinations, selection of charges, diversion from prosecution or incarceration, plea offers, sentencing recommendations, fast-track sentencing and the use of alternative sanctions.

IV. Community

- a. The District Attorney should meet with community members, including members of the bar and criminal justice professionals, to obtain their input on crime problems and effective solutions.
- b. The District Attorney should seek out from lay community members their concerns about real or perceived disparate treatment in prosecutorial policies and disparities in their final results.
- c. The District Attorney should collaborate with members of the community and the local criminal and juvenile justice systems to develop problem solving solutions to disparate impacts of prosecutorial decision making.

V. Influencing Legislation and Policy

- a. Each District Attorney has the affirmative obligation to raise the racially disparate effects of legislation and policy with local and state legislative bodies.
- b. The District Attorney should advocate sentencing alternatives and reforms that lessen the impact on those adversely affected by racial disparities in the Wisconsin criminal justice system.

“The cost of housing, feeding, and caring for the inmate population in the United States is over 40 billion dollars per year...And despite the high expenditures in prison, there remain urgent, unmet needs in the prison system.”¹¹

Recommendations

- ◆ **When an inmate is received for custodial placement, available information including the presentence report and other social history including personal interviews with the inmate, shall be used to determine whether any children had been living with the inmate prior to incarceration. Contact should be initiated with and maintained with the appropriate County social services department.**
- ◆ **The Department of Corrections (DOC) should conduct a complete review of the availability of programs that are required for release from the custodial placement.**
- ◆ **The Legislature and DOC should determine the level of funding needed for the necessary programs and every effort should be made to provide such funding.**
- ◆ **DOC should develop a process to review the decisions of the Program Review Committees as they determine the program needs of inmates and whether a particular inmate will be admitted to a particular program.**
- ◆ **DOC should assess at what point programming is offered to achieve maximum effectiveness and take steps necessary to ensure that essential programming such as AODA treatment is made available to inmates in need at the earliest possible date.**

¹¹ Kennedy

Recommendations

- ◆ **DOC should conduct a complete review of the options available to improve and increase the vocational, educational, mental health and rehabilitation programs that can be offered to inmates during their period of incarceration to prepare them for life after reentry.**
- ◆ **DOC should establish a system of incentives for inmates who voluntarily enroll in and complete programs that assist in their rehabilitation.**
- ◆ **DOC should review and expand the use of options such as electronic monitoring, community group homes and others that do not include incarceration when such use is consistent with public safety concerns.**

In reports of the Council of Crime and Justice and the California Research Bureau, children of incarcerated parents were noted to often suffer from negative self-image; exhibit symptoms of emotional distress such as fear, anxiety, anger, sadness, and resentment; withdraw from family and friends; and show signs of mental illness such as depression, eating and sleeping disorders, anxiety and hyperarousal; and attention disorders. They often suffer from diminished academic performance. Classroom behavioral difficulties and truancy are frequently noted. They are more likely to exhibit physical aggression and disruptive behaviors in all the environments in which they interact.¹²

Causes of these reactions were identified as including the impact of the lack of financial support; social alienation; and the stigma attached to having an incarcerated parent. Children were noted to be keenly attuned to the status of their parents, and were often extremely troubled by concerns for the welfare of the incarcerated parent.

Once an inmate has been received by DOC and noted to have been the person with whom the child resided at the time of the incarceration, the appropriate DOC worker should identify the appropriate county social services department to which notice of the parent's status should be provided. In addition to remaining aware of county social services responses to the needs of the child, the DOC should be mindful of recommendations for visitation between the parent and child; note referrals for mentoring or other counseling services; and remain available to social services for recommendations regarding the appropriateness of the parent for visitation/ placement upon release.

DOC should develop a system for managing the admission to programs in a manner that would expedite the process of making the maximum number of inmates eligible for reentry at the earliest possible date that is consistent with the safety of the public.

This would likely have a positive impact on disparity and the level of minority incarceration and would provide inmates with an incentive to continue improving themselves. DOC should review the programs that it requires for release for reasonableness and to determine if there are alternatives such as independent study or completion of programming under community-supervision that can be used when space in programs is not available.

In cases where an inmate has otherwise satisfied requirements for reentry and the remaining needed programming is not available because of space limitations or the programming not being offered at the particular institution at which the inmate is placed, DOC should review whether the remaining, uncompleted program is essential; can be waived; or satisfied in some other manner consistent with community safety. If not, every effort should be made to enroll the oth-

¹² *Children of Incarcerated Parents*, California Research Bureau, Charlene Wear Simmons, March, 2000 and *Children of Incarcerated Parents*, Council of Crime and Justice, January, 2006.

Recommendations

erwise-prepared inmate into required placements in the place of inmates, if any, who either do not need that particular program for release, or are not presently eligible for release.

DOC should determine whether required programs can be more easily obtained after release while under supervision. If so, inmates should be released *when appropriate* and allowed to satisfy a required program that is not available to him or her in the institution.

A review should be conducted and data should be compiled going forward to allow DOC to determine whether decisions for requiring or allowing admission to programs necessary for release are being made upon inappropriate considerations such as the race of the person being considered.

The consideration of inmates for parole should be used as an incentive. Inmates who complete voluntary programs such as obtaining a GED or other education programs, should be granted a special review of their record. A chance to demonstrate progress and gain an earlier opportunity for release would provide significant incentive for inmates to complete programs that will prepare them for reentry into society, reduce their chances of recidivism, and therefore reduce both the disparity in incarceration and the high level of incarceration in Wisconsin.

Recommendations

- ◆ **DOC should review the prison discipline system to determine whether the data reflect any racial disparity in the consideration of and punishments imposed for violation of prison rules.**
- ◆ **DOC should review the use of the extension of inmates' mandatory release date as a sanction, whether it is an effective means of improving behavior, and to what degree it adds to the length of inmates' incarceration.**

- ◆ **A computerized system should be created to better maintain the records of the issuance and adjudication of major conduct reports.**

DOC should create a mechanism for the DOC Central Office to review the impact and fairness of the prison disciplinary system to determine whether it is unnecessarily contributing to the problem of racial disparity, and whether Conduct Reports or penalties are being issued based on inappropriate considerations.

In the study of racial disparity, a necessary component was revocation from community supervision. It is impossible to determine from available data why people were revoked. Revocation with a new sentence is obviously the result of a new or newly discovered offense. However, people who are revoked with no new sentence may have committed no new crime and may have been revoked solely for violating the technical conditions of probation, or may have been accused of a new crime that was not prosecuted because the person had been returned to prison.

Using DOC statistics, the Commission examined all people on community supervision from 2001-2006. Because some people are revoked multiple times and might inflate the statistics, we considered only each person's first period under community supervision. We have included the charts that reflect the results of the evaluation in the appendix.

Recommendations

- ◆ **A complete review of the parole process should be conducted.**
- ◆ **DOC should review the level of discretion that probation/parole officers have in initiating revocation proceedings, and establish a process for reviewing discretionary decisions related to revocations.**

Recommendations

The review of the parole process should include an assessment of the standards used to determine suitability for parole, whether the data demonstrate a racial disparity in the granting of parole or length of deferrals, and whether the current system is the most efficient for use in Wisconsin when compared to models used in other states of like size and demographics.

In the review of discretionary decisions, DOC should insist that discretion be exercised in a manner that is consistent across the state, reflects and advances legitimate policy objectives, and is not based upon any inappropriate considerations such as the race of the offender being considered for revocation.

DOC should prepare a report on at least an annual basis to monitor whether there is an ongoing racial disparity in revocations and whether there is any indication that such decisions are being made based upon any inappropriate considerations such as race or whether current practices are exacerbating racial disparity.

DOC should provide policy direction to probation/parole agents regarding appropriate exercise of discretion in conduct that justifies initiation of revocation proceedings. Providing clear policy goals related to public safety and offender rehabilitation would simplify the decision-making process for agents and would minimize the likelihood of decisions based on inappropriate considerations.

When safety considerations allow and when appropriate, DOC, working as frequently as feasible, with local officials, should develop policies that favor and promote rehabilitation over incarceration. The vast majority of inmates will eventually return to their communities. It is in the best interest of the overall population that the focus of correctional efforts be on the behavioral modification and skills development that will allow the successful reentry of the inmate into family and community life.

DOC should consider alternatives to long-term and or temporary incarceration in cases where some form of discipline or supervision is necessary for offenders. While there are certainly circumstances where public safety concerns will require incarceration, there are also times where house arrest or a period of being required to participate in electronic monitoring is adequate to satisfy safety and rehabilitation concerns.

The impact on a probationer's/parolee's employment status should be considered when appropriate. The primary concern expressed in the testimony was by inmates who, on being released after being "cleared", found that they had lost employment due to the unnoticed work absences. The Commission heard frequent examples in which probationers or parolees were held in custody over periods of time in which agents, having had the subject report to his or her office and from there ordering the subject held in custody, conducted "investigations" of reported violations.

Recommendation

- ◆ **The Parole Commission should conduct a systematic review of all inmates currently eligible for parole to determine appropriateness for parole.**

The Commission particularly recommends that inmates who are eligible for parole, but who have not received a review hearing within the last 48 months, be reviewed to assess their progress since the last review. Deferrals should be reviewed to determine whether they were of appropriate length, consistent between panels, and panels should include more than one person and allow inmate support and participation in hearings.

Recommendations

The DOC Central Office should review a random sampling of inmate complaints and prepare reports on an annual basis. A summary report of those complaints as a random sampling and a statistical analysis should be forwarded to the appropriate legislative committee for review.

DOC should continue monitoring and identifying effective systems for tracking officers with a pattern of disciplinary problems or who have otherwise demonstrated difficulty in interacting with inmates in a manner that is professional and consistent with DOC rules. Appropriate action should be taken.

Recommendation

- ◆ **DOC should work collaboratively with the faith communities to provide services that would assist in the rehabilitation of inmates and prepare them for release from prison. The networks built through this interaction will assist in the maintenance of strong ties and supervision once the inmate returns to his or her community.**



Public Hearings

As part of its information-gathering efforts, the Commission conducted a series of public hearings throughout the state. At these hearings, Commission members had the opportunity to hear the opinions and recommendations of citizens from around the state, ranging from local elected officials to family members of those who are incarcerated. Representatives of community organizations were often present at the hearings as were attorneys representing both prosecutorial and defense points of view.

Racine

The first of the public hearings took place in Racine on July 9, 2007. Members of both the public and private sector spoke at the meeting. The hearing opened with presentations by Racine County Executive William McReynolds; District Attorney Michael Nieskes; and Sheriff Robert Carlson. A member of the County Board of Supervisors addressed the Commission and a member of the judiciary attended as well. Citizens in the hearing commented that politicians often speak at public hearings but then leave without hearing from the public. Noteworthy was that two of the initial speakers remained throughout the entire hearing.

Community members urged public officials to examine racial disparity within the juvenile and criminal justice systems in Racine County and to cooperate with efforts to identify solutions. The Commission learned that the Racine County District Attorney's Office does not keep statistics on the racial identity of those it charges.

Citizens also highlighted the January 2006 publication *Treatment Instead of Prisons: A Roadmap for Sentencing and Correctional Policy Reform in Wisconsin* and the Racine County Citizen's Criminal Justice Advisory Task Force Report (6/27/03). In addition, citizens urged the Commission to compare Wisconsin's criminal justice practices with those

of Minnesota. Citizens expressed interest in Minnesota's emphasis on treatment instead of incarceration through community supervision and treatment programs for non-violent, drug and alcohol-addicted offenders.

Details regarding the Racine Police Department Community Re-Entry Program and its efforts to reduce recidivism among high-risk offenders who have been released from state prison were also presented to the Commission as were project goals of and criminal justice system recommendations from the local chapter of the National Association for the Advancement of Colored People (NAACP).

A number of individual citizens provided disturbing personal examples of troublesome interactions between minority-group members and law enforcement agencies or the judicial system in Racine County. On the other hand, one speaker opined that the reason that minorities are overrepresented in the criminal justice system is that they commit more crimes.

Beloit

On July 11, 2007, the Commission conducted its second public hearing at the Merrill Community Center in Beloit. Again, the Commission heard from a mixture of public officials and private citizens and recommendations for both systemic as well as community changes.

The Chief of Police Sam Lathrop emphasized his department's efforts to have a racially diverse department that closely reflects the racial make-up of the city of Beloit. He stressed the importance of training and recruitment of minority-group members in the police department.

Efforts of the Rock County District Attorney's Office to hire and retain minority-group members were outlined. The Commission was informed of difficulties the office has in attracting minority attorneys.

Public Hearings

Citizen speakers asked the Commission to note the impact of abuse on youth and the likely involvement of abused and neglected children in the juvenile and criminal justice system due to untreated problems arising from the abuse. The Commission was again referred to Treatment Instead of Prisons, as well as to The State of Black America 2007 prepared by the National Urban League.

One citizen suggested that the lack of effective leadership in the African-American community contributed to disparate incarceration rates, and questioned whether there were sufficient demands for adherence to community norms. Another speaker discussed “white-privilege” and recounted that she had observed behaviors by those in the criminal justice system that were resolved because she and other actors were Caucasian.

Speakers recommended a number of strategies particularly in responding to minority youth:

- ◆ renewing emphasis on education and “second-chance programs” for dropouts and offenders
- ◆ recognizing that communities lose a great deal by “giving up” on people because of early-life mistakes
- ◆ identifying treatment needs and acting on them while children are in school rather than waiting for the children to become subjects of court activity
- ◆ using mentors from local institutions of higher learning for children in their communities.

Other speakers recommended changes to the adult system:

- ◆ improving efforts to include minority-group members on juries
- ◆ instituting drug treatment courts
- ◆ tracking incarceration rates by agent and county to determine if there are any patterns requiring attention.

Wausau

The public hearing in Wausau was held on July 23, 2007 at the North Central Technical College. The Commission heard from representatives of the defense bar who noted the increased presence of citizens of color in the Wausau community and the cultural differences that some of them brought to the community. The Commission was also asked to consider the impact of language barriers as well as cultural differences on law enforcement and criminal justice system responses.

Madison

On July 24, 2007, the Commission held a hearing at the Mitby Theater on the campus of Madison Area Technical College. The Commissioners again heard from a mixture of public officials and private citizens, including the University of Wisconsin Chief of Police Sue Riseling who drew the Commission’s attention to reports prepared by the International Association of Chiefs of Police including *Protecting Civil Rights: A Leadership Guide for State, Local, and Tribal Law Enforcement and the Police Chiefs Guide to Immigration*.

Citizens again highlighted the Minnesota correctional system and its investment in local treatment options through a unique financing scheme in their adult system that is similar to the Youth Aids paradigm in Wisconsin. In that system, the state charges counties for the people the county sends to prison. In order to avoid the high cost of incarceration, Minnesota counties have developed a myriad of less-expensive, community-based programs.

Citizens questioned the manner in which inmates become eligible for parole and the long-term fiscal impact of truth-in-sentencing on the prison population.

The Commission was again provided a copy of the Urban League’s State of Black America report. Citizens noted that acceptance and

Public Hearings

development of personal responsibility within the minority community must be as important in Commission consideration as system reform. In addition, citizens testified that data collection was important to understanding and examining carefully the rates at which minority-group members are taken into custody.

One speaker noted different charging practices for similar conduct in the District Attorney's Office. He stated that the District Attorney will issue a felony identity theft charge against a minority group member who has presented the driver's license of a relative to a law enforcement officer. On the other hand, the prosecutor will issue a misdemeanor charge of obstructing or a citation against students when fake identification to purchase alcohol is presented at bars and liquor stores.

Some speakers noted the impact of the Circuit Court Automated Program's (CCAP) public accessibility on a minority's ability to find employment and other services. They recommended that CCAP records be removed from the system when there is a dismissal of a criminal charge or a "not guilty" finding. In addition, the speaker noted that court records often contain mistakes. He recommended frequent and liberal expungement of court records.

One speaker also noted that the eligibility threshold for representation by the Public Defender's Office was very low and needed significant revision.

Milwaukee

The Commission met in the auditorium at Milwaukee Area Technical College on August 13, 2007. Again, public officials, including members of the judiciary as well as private citizens, provided testimony.

Speakers focused on the role of law enforcement in the community. Comments included the testimony of a retired law enforcement

officer who reminded the Commissioners that most of the victims of African-American crime are African-American and that someone had to speak for the victims of the criminal acts. Speakers noted that many of the patrols and arrests in minority neighborhoods occur because the residents of the neighborhoods have called the police and asked for their assistance.

On the other hand, some speakers raised concerns about law enforcement practices in Milwaukee minority communities. There were specific references to the prosecution of members of the Milwaukee Police Department for beating African-American males with a question "Who can black folks call when crimes are being committed by the Milwaukee PD?"

Speakers highlighted the impact of the educational system on African-American males. They noted the disproportionate placement of African-American males in special education classes at an early age. Speakers also noted the need for improved access to public transportation for better paying employment in outlying areas.

One speaker challenged the Commission to consider whether the rates of commission of crimes is what is reflected by the rates of incarceration, citing armed robbery rates by race in Milwaukee County.

Other speakers were skeptical of the influence of the Commission's findings and recommendations. Young witnesses suggested that a Commission made up of youth would have been more appropriate in seeking to identify appropriate responses to the needs of the community, and other witnesses stated that community members were in a better position to make recommendations than Commission members.

Witnesses made positive comments about existing Restorative Justice Programs and recommended similar programs that sought al-

Public Hearings

ternatives to incarceration.

Green Bay

The final public hearing took place in Green Bay on August 29, 2007 at the University of Wisconsin - Green Bay. The Commission heard from several members of law enforcement, attorneys, and private citizens.

The initial speaker expressed a concern that the African-American community bore a great deal of the responsibility for crimes being committed by its youth. He said that the community had failed to take responsibility for the behaviors of young people over whom influence could be exerted.

Representatives of a local community-based agency challenged the African-American community to accelerate community responsibility, by asking "What other community would let you do a drive-by shooting or sell cocaine without calling the police?"

In contrast to this testimony, a former member of the Public Defender's Office staff for twenty years wanted to know why the Commission had chosen this time to address the issue instead of years ago. He characterized the "war on drugs" as a war on people of color and recommended that there be a "re-visitation" on the entire drug policy issue.

One of the members of the police department who testified expressed concern that there was no minority-community spokesperson to whom law enforcement and other community leaders could turn in their efforts to resolve issues. He indicated the Green Bay Police Department has specific policies against racial profiling and discussed the relationship between the University of Wisconsin -Green Bay Police Department and the Green Bay Police Department (GBPD).

The Commission also heard testimony from an Asian liaison to the GBPD as well as an African-American father who questioned the ability of Family Services, after having obtained funds for their work, to "tell us what to do without walking

in our shoes."

At the Green Bay hearing, Commissioner Bies shared e-mail messages he had received from constituents who questioned why there was a Commission studying why so many African-Americans were in prison, stating the reason is because they commit so many crimes.

A member of the State Public Defender's staff raised questions about the GBPD Impact program and the impact of drug arrests on incarceration rates. An officer of the police department explained that there is a team of officers sent into pre-determined areas based on citizen complaints, indicating that there was "zero-tolerance" for any violations. The Commission was informed the neighborhoods were all populated primarily by minority group members and indicated these were the areas in which crimes were committed. It was at this hearing that the Commissioners questioned whether efforts to enforce drunk-driving laws were made at local sporting events or other tailgating occasions.

The Commission heard testimony both pro and con for returning jurisdiction over 17 year olds accused of violating criminal laws to juvenile court. A member of the District Attorney's staff suggested the cost of this return would have negative impact on the availability of funds for younger children and their families who have come to the attention of the courts, either through a Child in Need of Protection and Services (CHIPS), Juvenile in Need of Protection (JIPS) or delinquency proceeding.

Witnesses also asked Commissioners to examine re-entry programs for inmates upon the



Meeting Summaries

Following the creation of this Commission by the Governor, a series of meetings took place in which Commissioners heard from representatives of groups whose work have direct impact on the criminal justice system and from individuals who are a part of that system. The following is a summary of the meetings in which presentations were made by non-members of the Commission. There were additional meetings in which the Commissioners discussed and determined the recommendations to be made to the Governor.

April 9, 2007 Milwaukee, WI

The initial meeting of the Commission was held in Milwaukee. The Commission members were addressed by Governor Jim Doyle who gave the charge to the Commission, reviewing the Executive Order that had created the Commission and indicating his desire that the Commission identify strategies the State of Wisconsin could take to address the racial disparities that exist in the criminal justice system.

Commission members introduced themselves; described their backgrounds and interests in the working of the Commission; and shared their perceptions of areas of the criminal justice system the Commission might explore.

William Feyerherm of Portland State University explained the Relative Rate Index that is used by the Office of Juvenile Justice and Delinquency Prevention in its projects throughout the nation addressing Disproportionate Minority Contact (DMC) pursuant to the Juvenile Justice and Delinquency Prevention Act. Commissioner Deirdre Garton, Chairperson of the Governor's Juvenile Justice Commission, and Lindsey Draper, Commission Staff Director and state DMC coordinator, discussed the current projects of the Juvenile Justice Commission to address juvenile DMC in Wisconsin.

May 22-23, 2007 Waukesha, WI

Bishop Eugene Johnson of the Madison Pentecostal Assembly challenged the Commission to recognize that, while the need for community order and protection will dictate that some who violate its rules will be removed from the community, the community must not lose sight of the value many of these citizens will have for their communities with appropriate rehabilitation and treatment. Using the example of "bent nails" that, if straightened and struck the right way, fit within the building project as well as those that had been perfect throughout the process.

Dr. Pamela Oliver offered a statistical presentation that showed the numbers of arrests and inmates in Wisconsin, comparing the racial breakdown of those numbers to the representation of the particular groups in the overall Wisconsin (and national) population.

The Hon. Joseph Wall, Milwaukee County Circuit Court Judge, challenged the Commission to consider not only the disparities that exist and are demonstrated by the numbers, but also the factors that contribute to those disparities. He noted the impact of poverty and lack of educational success on the paths that lead many into jails and prisons.

The Executive Director of the Latino Community Center, Ramon Candeleria, spoke of the importance of community residents taking responsibility for the quality of life in the community, and gave the example of efforts by community residents to identify and work with potential disrupters at South Division High School and within the surrounding community to restore a sense of order and pride to the school and neighborhood.

Teny Gross, Executive Director of the Institute for the Study and Practice of Nonviolence in Providence Rhode Island, emphasized the ability of community-based organizations to bridge distances between law enforcement and com-

Meeting Summaries

munity residents. He used examples of successes in both Boston and Providence in reducing homicide rates by supporting agencies that responded to acts of violence by working with the community residents and law enforcement to prevent retaliation and identify violent actors.

Wayne McKenzie (Project Director) and Don Steimen of the Vera Institute were joined by Milwaukee County District Attorney John Chisholm in describing the study the Institute has done of the Milwaukee County District Attorney's Office, its charging decisions, and the impact of those decisions on both attorney and court times. The presentation included demonstrating how the information provided by the studies helped the Office make policy decisions on allocation of attorney time and resources.

July 13, 2007 Madison, WI

Department of Corrections Secretary Matthew Frank described the Department of Corrections role in providing services to inmates confined in prison settings; offenders under community supervision; and youth in juvenile correctional facilities. He noted that the population receiving these services is frequently less-educated than the general population, and frequently suffering from chemical addictions and mental illnesses. Secretary Frank discussed the emphasis of the Department on prisoner reentry into the community, including the appointment of a Reentry Director, and the Department's goal of reducing recidivism. He discussed Department efforts in the areas of education; employment; treatment; and strengthening community corrections.

Secretary Frank made recommendations regarding use of pre-sentence reports; examination of revocations and any evident disparities; and availability of appropriate treatment resources.

Commissioner Terence Ray made a presentation on the impact of fathers in the lives of their children, emphasizing the importance of keeping fathers involved in family life. He presented a film in which children spoke of the impact of the pres-

ence of their fathers in/absence from their lives and pointed out the importance of parental responsibility - particularly that of the father - in shaping the future of children.

The facilitated discussion was led by Joyce Malory of the Non-Profit Center of Milwaukee and focused on the directions of the Commission and the issues the Commission felt needed additional attention.

August 13, 2007 Milwaukee, WI

State Representative Don Pridemore addressed the Commission on the importance of parental - and particularly paternal - responsibility in shaping the lives and actions of children. He made reference to programs in his home base that were supportive of fatherhood initiatives.

The Commission heard from a panel comprised of the Dane County Circuit Court Judge Sarah O'Brien; Tina Virgil of the Department of Justice Division of Criminal Investigation; Assistant District Attorney Kent Lovern; Assistant State Public Defender Craig Johnson; and Kit Murphy-McNally, Executive Director of the Benedict Center. The panel discussed drug courts and the impact of community-based prosecution and treatment facilities on successful efforts to address criminal behaviors in communities. The panel discussed strategies to enlist additional support and resources for treatment.

Among the topics covered in the presentation was the handling of some chemical-abuse related legal difficulties as treatment issues in which hospitalization or therapy is seen as the appropriate remedy for some members of the community, while others have similar difficulties treated as legal problems with prosecution and incarceration deemed to be the appropriate response.

Former Milwaukee County District Attorney E. Michael McCann appeared at the end of the morning and addressed the Commission regarding policies he had implemented during his tenure as District Attorney.

Meeting Summaries

The period between the panel presentation and Mr. McCann's presentation and the Milwaukee public hearing included an additional facilitated discussion in which the Commission members refined the previously identified goals and established its future work plan.

October 5, 2007 Waukesha, WI

Nicholas L. Chiarkas, Wisconsin State Public Defender, spoke of the benefits of cooperation with law enforcement and members of the community, as well as the importance of adequate legal representation. The qualification of citizens for Public Defender representation and the availability of resources to provide alternative recommendations were significant points in his presentation.

State Senator Lena Taylor made a report to the Commission on her visits to numerous correctional facilities throughout the state and her interviews with inmates at the facilities. She provided the Commissioners with written materials, including written comments by inmates and family members, as well as private citizens.

November 12, 2007 Madison, WI

The Commission focused on issues relating to law enforcement officers and the need of the officers to be sensitive to community order and safety. A panel presentation was made by Wauwatosa Police Chief Barry Weber; West Bend Police Chief Ken Meuler; and Milwaukee Police Officer Rudy Binder.

Areas discussed during the presentation included issues related to racial profiling; the selection of areas in which to concentrate police presence; law enforcement exercise of discretion in the issuance of citations as opposed to making an arrest; and relationships with community members.



Presenters

We wish to express sincere appreciation to the following who made presentations to the Commissioners at meetings during the deliberations of the Commission:

Governor Jim Doyle
Wisconsin Governor
Madison, WI

Rudy Binter
Milwaukee Police Department
Milwaukee, WI

Ramon Candeleria
Latino Community Center
Milwaukee, WI

Nick Chiarkas
State of Wisconsin Public Defender
Madison, WI

William Feyerherm
Portland State University
Portland, OR

Matthew Frank
Department of Corrections
Madison, WI

Deirdre Garton
Governor's Juvenile Justice Commission
Madison, WI

Teny Gross
Institute for the Study and Practice of Nonviolence
Providence, Rhode Island

Craig Johnson
State of Wisconsin – Public Defender's Office
Milwaukee, WI

Bishop Eugene Johnson
Madison Pentecostal Assembly
Madison, WI

Kent Lovern
Milwaukee County District Attorney's Office
Milwaukee, WI

Joyce Mallory
Nonprofit Center of Milwaukee
Milwaukee, WI

E. Michael McCann
Former District Attorney
Milwaukee, WI

Wayne McKenzie
Vera Institute
New York, NY

Kit McNally
Benedict Center
Milwaukee, WI

Kenneth Mueller
West Bend Police Chief
West Bend, WI

Honorable Sarah O'Brien
Dane County Circuit Chief
Madison, WI

Dr. Pam Oliver
University of Wisconsin
Department of Sociology
Madison, WI

Rep. Don Pridemore
Wisconsin State Legislature
Madison, WI

Terence Ray
Milwaukee Fatherhood Initiative
Milwaukee, WI

Don Stemen
Vera Institute
New York, NY

Sen. Lena Taylor
Wisconsin State Legislature
Madison, WI

Tina Virgil
Department of Justice
Division of Criminal Investigation
Madison, WI

Hon. Joseph Wall
Milwaukee County Circuit Court
Milwaukee, WI

Barry Weber
Wauwatosa Police Chief
Wauwatosa, WI