

Criminal Justice

Historical Overview

The Supreme Court's famous Dred Scott ruling in 1857, stating that African Americans "had no rights which the white man was bound to respect," demonstrates the inherently racist nature of the early American criminal justice system. We have yet to fully address the legacy of inequity that occurs throughout the criminal justice system—from arrest, to prosecution, to sentencing, and beyond.

In modern times, the two sets of policies that have served to increase inequity as well as create an overall surge in criminal justice involvement are the "war on drugs" and "tough on crime" approaches. First promoted by Richard Nixon in 1972 and strengthened in the 1980s, the war on drugs was intended to discourage the production, distribution, and consumption of targeted substances and to increase funding for enforcement. Implementation of the laws, however, resulted in a marked shift of focus; rather than targeting major traffickers, as advocates for harsher drug policies had argued, most persons incarcerated for drug offenses have been users, low-level dealers, couriers, and assistants.¹ Drug offenders in prisons and jails have increased 1,100% since 1980. Although these policies are generally race-neutral in language, their implementation demonstrates a bias toward targeting African Americans. Relative to other racial groups, African Americans have seen a much higher increase in prison admissions for drug offenses since the 1980s, even with roughly the same levels of drug use as Whites.

Increasingly punitive sentencing laws, such as California's three-strikes law, have also had a racially inequitable effect. The three-strikes law prescribes that a person who has a prior violent or serious offense and who commits a new felony can receive twice the normal prison sentence for the "second strike." A person who has committed 2 prior violent or serious offenses and then commits a new felony will automatically receive 25 years to life in prison. Analyses of the effects of California's three-strikes law find that 1) there has been an overwhelming impact on African Americans and Latinos; 2) nearly two-thirds of people imprisoned were sentenced for nonviolent offenses; and 3) the counties that used three strikes most frequently have shown no greater declines in crime than those that used the law more sparingly.² Collectively, these policies have served to worsen the criminal justice crisis that we face today.

What Research Tells Us

Crime and Fear of Crime Not the Whole Picture

Both crime and the criminal justice system affect health. Actual crime can directly affect health through physical bodily harm, economic hardship and emotional trauma. Fear of crime can indirectly affect health by increasing stress, promoting social isolation, preventing health-promoting behaviors such as walking for exercise, and preventing access to services for fear of moving about freely in the community. While violence and crime are health hazards, especially in poorer communities, the institutions and practices established to prevent and respond to crime play a crucial role in perpetuating unequal patterns of crime across neighborhoods. The discussion that follows focuses primarily on the ways that our criminal justice systems are exacerbating and deepening the social and economic disparities that led to acts of crime in the first place.

The prison, jail, probation, and parole populations have grown remarkably over the past 3 decades. The United States has the largest incarcerated population in the world, with over 2.3 million people in jails or prisons as of 2008.³ That is a rate of 750 per 100,000 people, or over 1% of the adult population. According to the Bureau of Justice Statistics, if recent incarceration rates continue, an estimated 1 out of every 15 persons will serve time in a prison during his or her lifetime.⁴ The consequences of this rapid growth are born more heavily by urban communities, especially low-income neighborhoods and communities of color. This criminal justice phenomenon has direct and indirect health impacts on individuals, families, communities, and the society as a whole. Incarceration correlates with health directly through higher incidence and prevalence of disease among the incarcerated and previously incarcerated. It also affects health indirectly through stigmatization, unemployment, strained social networks, neighborhood conditions, and its effects

on economic opportunity in specific populations and communities.

The Disproportionate Burden of Incarceration—To What End?

Although incarceration rates are high in the general population, different segments of our society bear a disproportionate burden of incarceration. Males and African Americans are more likely to be incarcerated than other groups. While 1 in 106 adult White males is currently incarcerated, 1 in 15 adult African American males is incarcerated. Based on current rates, an estimated 32% of African American males will enter state or federal prison during their lifetime, compared to 17% of Latino males and 5.9% of White males.⁴ Finally, criminal justice involvement is more common in urban areas, as compared to suburban and rural areas.



This inequity is not merely a consequence of individual behavior. Complex social factors are involved, including institutional racism, a legacy of segregation and discrimination, inequitable education systems, limited economic opportunity, and cycles of poverty. An illustration of this point is that Whites and African Americans use and sell drugs at similar rates, however the arrest and incarceration of African Americans for drug offenses happens at significantly higher rates.⁵ African Americans comprise 14% of regular drug users, but are 37% of those arrested for drug offenses and

56% of persons in state prison for drug offenses.¹ This inequity also extends to sentencing; African Americans serve almost as much time in federal prison for a drug offense (58.7 months) as Whites serve for a violent offense (61.7 months).¹ In an analysis of parolees to Alameda County, drug offenses were the leading reason for incarceration.⁶

While the United States saw decreases in crime in the 1990s, rising incarceration rates have not been found to be a deterrent of crime and thus a contributing factor in this decline. Research concluded that the decline in crime rates was due to a variety of social factors, including economic prosperity and the decline of the crack cocaine epidemic.^{7,8} There is also little evidence to suggest that high rates of incarceration significantly affect drug use rates or deter drug users, but rather money invested in treatment has been shown to have a greater effect on drug use and recidivism than relying solely on incarceration.⁹ Incarcerating individuals to address social ills such as substance use and violence has proven ineffective. High recidivism rates also suggest that our current approach to criminal justice does little to deter crime or address the underlying causes of crime.

The rising costs of the current tough-on-crime approach are reaching alarming levels. In California, the Department of Corrections and Rehabilitation operates on a budget of approximately \$9.7 billion annually.¹⁰ Local and state governments are feeling the financial burden of incarcerating so many individuals in addition to the rising enforcement and judicial costs of the current approach. States and localities that are finding themselves economically strained have been forced to rethink their approach to crime and punishment.

The Common Roots of Poor Health and Involvement in Crime

The relationship between involvement in the criminal justice system and health outcomes is complex. Patterns of health inequity and criminal justice involve-

ment may be mutually reinforcing. Some of the root causes of health inequities are the same factors that influence disproportionate crime and incarceration rates—poverty, income inequality, low levels of completed education, limited job prospects, and marginal housing.¹¹ The population involved in the criminal justice system, which disproportionately includes lower income people and African Americans and Latinos, has a higher incidence of substance abuse and communicable disease, a higher likelihood of suicide and history of mental illness.¹ This population that experiences poorer health to begin with is concentrated in prisons—places where previously existing conditions are exacerbated through further exposure to health risks and traumatic events. In addition, the incarcerated often receive inadequate health care.¹² Eventually, prisoners are likely to return to communities that are burdened with poverty and lacking the social supports they need.

The health and social consequences of incarceration are numerous. Rates of HIV, Hepatitis C, and tuberculosis are significantly higher among the incarcerated than in the general population.¹³ For those returning to the community, there are indirect impacts on health due to loss of social support, strained relationships, loss of health insurance, and lack of self-sufficiency. The formerly incarcerated face both formal and informal further punishment in the community as a result of their involvement in the criminal justice system. These may include losing the right to vote, restrictions on employment, exclusion from public housing, and limited financial support including lifetime bans on food stamps, TANF, and federal student loan programs for certain drug convictions.

These negative consequences extend to families of the incarcerated especially when they lose economic support. Incarceration can lead to an increase in single-parent households, which comes with its own set of stressors. Children of the incarcerated are at increased risk of entry into foster care and they have a 5-fold increase in chances of going to prison in their lifetime.¹

A history of incarceration may also precipitate homelessness.

Vicious Cycles of Concentrated Crime Punish Whole Communities

Areas of high arrest, crime, and probationer and parolee residence are distributed unevenly and tend to be concentrated in particular neighborhoods. These neighborhoods face the multiple burdens of high rates of communicable disease, mental health concerns, substance abuse, stigma as a result of crime and arrest patterns, loss of wage earners, and the possible spread of gang activity.^{11,14,15} The prospect of new crimes committed by returning prisoners can elevate fear of victimization among residents and perceptions that the neighborhood is unsafe. Many disenfranchised individuals concentrated in one area can decrease that community's political influence and ability to advocate for change through government channels.¹¹ Concentrated populations of formerly incarcerated persons may decrease levels of trust and social cohesion and increase social isolation¹ (see Social Relations and Community Capacity section).

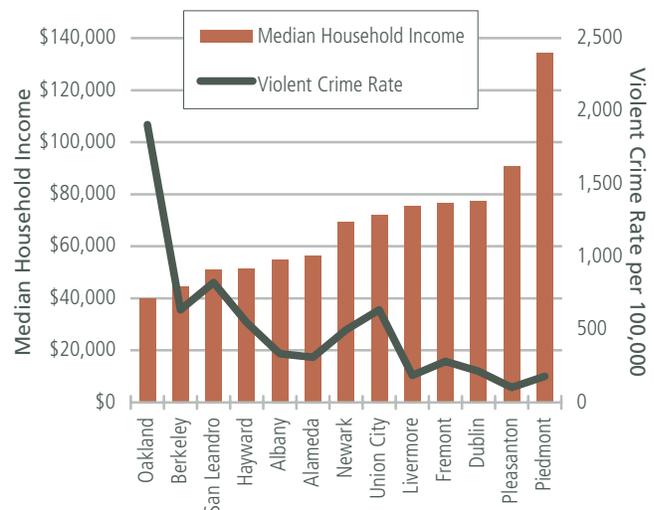
Cycles of community chaos and criminal activity, increased police activity, police misconduct, and community distrust of the police keep many communities stuck in a state of turmoil and instability.¹⁵ Increases in spending for the corrections system are seen as diverting resources from crucial social needs such as education and health. In addition, incarceration rates can skew the data that influence the distribution of needed social services. For example, most correctional facilities are located in rural and suburban areas, while most individuals housed in correctional facilities come from urban communities. Census data—used to allocate funding—count incarcerated individuals as part of the communities in which the correctional facility is located, not the jurisdictions where they are from and to which they will most likely return.

A Look at Alameda County

Crime and Income

Neighborhoods with higher income have lower violent crime rates, while areas with lower income show elevated violent crime rates. While these inequities are substantial at the neighborhood level, we have complete data only for cities (Figure 51). In Alameda County, violent crime is highly associated with median household income at the city level (correlation is 0.6). Oakland has the highest violent crime rate (1,905 crimes per 100,000 population) and the lowest median household income (just over \$40,000), while Piedmont and Pleasanton have the highest incomes and lowest violent crime rates.

Figure 51: Median Household Income and Violent Crime Rate, Cities in Alameda County



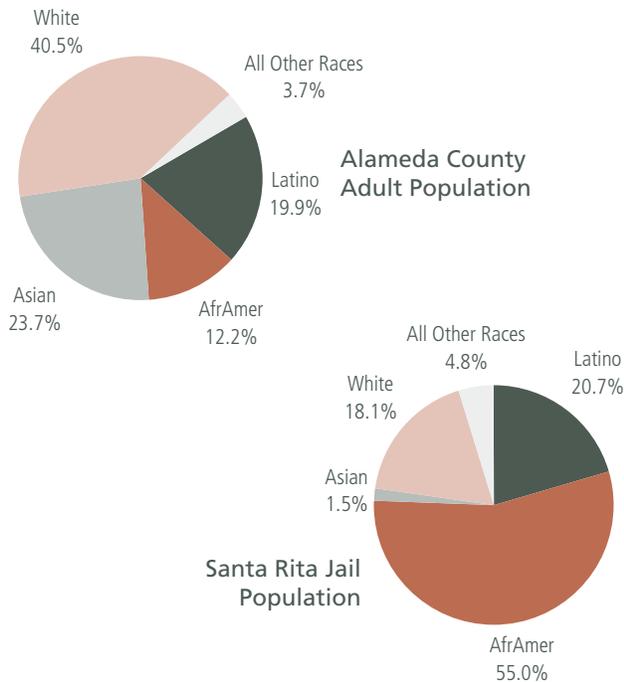
Note: Violent crime here includes forcible rape, homicide, assault, and robbery. Sources: Census 2000; FBI UCR 2006.

Racial/Ethnic Patterns of Incarceration

In Alameda County, the rapid growth in the criminal justice system and the racial/ethnic patterns of inequity follow the national trend. Alameda County had 4,546 persons in state prisons as of December 2006, and 3,783 people in the county jail at Santa Rita as of March 2008. In Santa Rita Jail, 55.0% of the inmates

were African American, while only 18.1% were White (Figure 52). In the county, 12.2% of adult residents are African American and 40.5% are White.

Figure 52: Alameda County and Santa Rita Jail Racial/Ethnic Breakdown. 2008



Sources: Alameda County Sherrifs Office 2008, DOF 2008.

As noted previously, Whites and African Americans use and sell drugs at similar rates; however, the arrest and incarceration of African Americans for drug offenses happen at rates that are dramatically higher.⁵ Of the 198 largest counties in the United States, Alameda County has the 10th highest rate of admission to state prison for drug offenses and the 18th highest ratio of African American to White drug admission rates.⁵ African Americans are admitted to state prisons for

Table 9: State Prison Drug Offense Admission Rate

	Admission Rate per 100,000			Ratio of African American to White
	County Overall	White	African American	
Alameda	154.9	23.1	797.5	34.5
Contra Costa	49.7	25.9	218.8	8.5
San Francisco	123.4	35.8	1,013.9	28.3

Source: Beatty P, Petteruti A, and Ziedenberg J, *The Vortex*, 2007.

drug offenses at a rate of 797.5 per 100,000 people, while Whites in the county have a rate of 23.1 drug admissions per 100,000 people (Table 9). Thus, African Americans are about 34.5 times more likely than Whites to be imprisoned for drug offenses.

California's three-strikes law has substantially contributed to an increase in the state's prison population, and nearly two-thirds of second or third strikers have been incarcerated for nonviolent crimes. Statewide, African Americans and Latinos have been imprisoned under three strikes at much higher rates than Whites. In Alameda County, the African American incarceration rate under three strikes has been 19 times higher than the White rate (Table 10). For Latinos, the incarceration rate has been nearly twice that of Whites.

Concentrations of Probationers and Parolees

There were over 11,000 persons on county probation in Alameda County at mid-year 2007. Areas of high arrest, crime, and probationer and parolee location are not equally distributed around the county and tend to

Table 10: Incarceration Rates Under Three-Strikes Law

		Incarceration Rate per 100,000				Black-to-White Ratio	Latino-to-White Ratio
		Total	White	Latino	Black		
California	All-strikers	21.9	11.8	17.2	150.0	12.7	1.5
	Third-strikers	126.1	69.4	126.2	721.3	10.4	1.8
Alameda County	All-strikers	42.2	11.6	19.3	220.2	19.0	1.7
	Third-strikers	7.5	1.8	2.5	42.0	22.7	1.4

Sources: Ehlers S, Schiraldi V, and Lotke E. *Racial Divide: An Examination of the Impact of California's Three Strikes Law on African-Americans and Latinos*. 2004.

be concentrated in a small number of neighborhoods. Map 11 illustrates probationer location rates in Alameda County by census tract. Areas with the highest concentration of individuals on probation are clustered in parts of Berkeley, East Oakland, West Oakland, and some of the unincorporated areas. This concentration of persons on probation is highly correlated with neighborhood poverty rates in these neighborhoods.

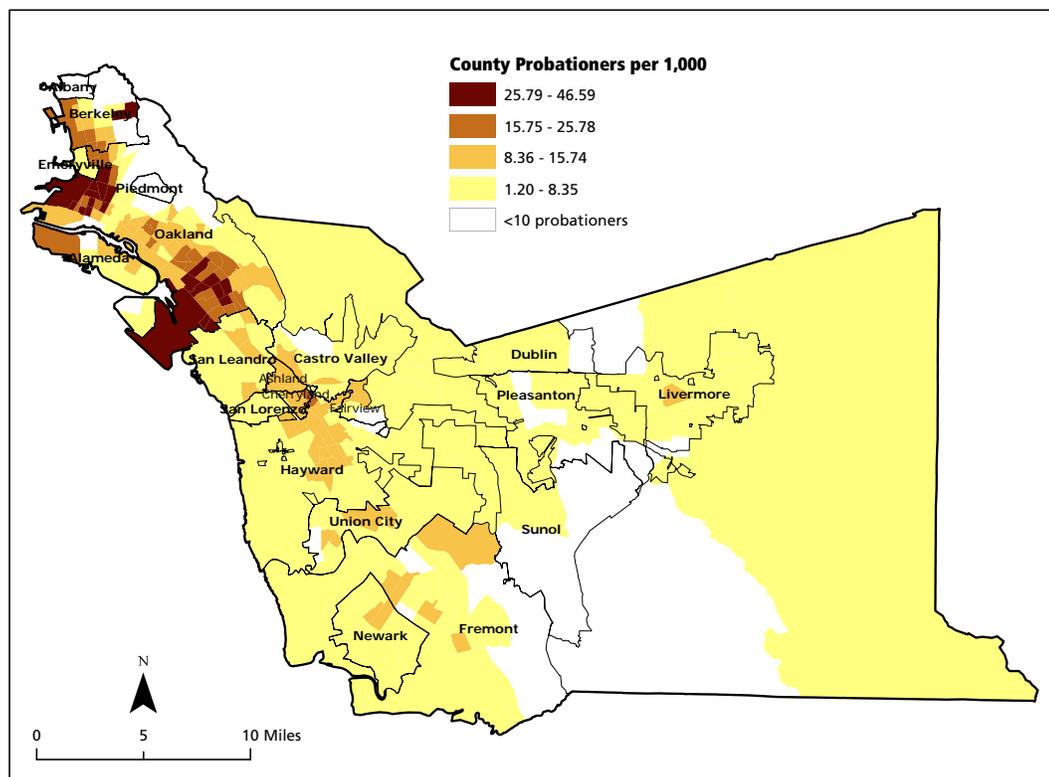
In addition to those on probation, 6,270 people from state prisons were paroled to Alameda County in 2006.¹⁶ A recent study conducted by the Urban Institute suggests that “returning prisoners are increasingly concentrated in communities that are often crime-ridden and lacking in services and support systems.”¹⁷ As explained earlier, this clustering of individuals who are still involved in the criminal justice system substantially affects their families and communities.

Data to Action: Policy Implications

In order to address inequities that the criminal justice system perpetuates, we must look at the causes of disproportionate criminal justice involvement for low-income persons and communities of color. Also, we must acknowledge that relying on punitive measures alone does little to reduce rates of crime, substance abuse and sales, or violence in our communities. Instead, we can look to alternatives to incarceration where plausible and minimize unnecessarily punitive measures that expand the already huge population behind bars. Some policy goals and strategies include the following.

- Decriminalize substance addictions and, in lieu of relying solely on incarceration, use evidence-based models to address drug use and abuse that have been shown to reduce recidivism. For example, en-

Map 11: County Probation Rate, Alameda County



Source: Alameda County Probation Department, FY2005-2006.

sure adequate funding for Prop 36, which diverts drug offenders from prison.

- Revisit and revoke laws that are unnecessarily punitive and contribute to the rapid growth of the incarcerated population. Revoke California's three-strikes law and review new legislation that increases punishments for certain types of gang activity.
- Review corrections and criminal justice system policies that disproportionately punish people of color, from the point of police contact through to incarceration.
- Review and revoke policies that punish individuals upon return to the community and inhibit their ability to reintegrate into society. For example, remove from application forms questions that ask if the individual is a felon, repeal the federal ban on student loans to the formerly incarcerated with drug convictions, and allow non-violent drug offenders the opportunity to expunge their records.
- Support programs that promote the successful re-entry of individuals back into their communities, such as the federal re-entry bill, the Second Chance Act.
- Integrate services to individuals on probation in order to provide access to needed support such as social, health, education, housing, and vocational services.
- Address revocation of parole for technical violations and re-institute halfway back programs for substance abuse lapses.

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