Commission on Racial and Ethnic Disparity in the Criminal Justice System

Executive Summary

Annual Report and Recommendations 2003-2004

September, 2004

Dear Reader:

I am pleased to present the executive summary of the 2003-2004 report and recommendation of the Commission on Racial and Ethnic Disparity in the Criminal Justice System. The Commission was legislatively created by Public Act 00-154 to examine and make recommendations addressing racial and ethnic disparity in Connecticut's criminal justice and juvenile justice systems. Since its creation, the Commission has undertaken extensive research into the phenomenon of disparity. This report, the second since the Commission's inception, highlights the Commission's studies into police use of alternatives to arrest, pretrial decision making, jury composition, sentencing, and the interplay of statewide demographics with the defendant population. These studies, though by no means exhaustive, provide direction for initial recommendations and light the way for further inquiry.

This report, and the hard work and honest discussion that it memorializes, could not have occurred without the commitment and effort of the individual Commission members and the Judicial Branch. The Commission wishes to thank the General Assembly. Their foresight and support has made this work possible. In addition, the Commission appreciates the diligent and thoughtful efforts of the staff of The Justice Education Center who prepared the following report and provided the Commission's research and administrative support throughout the year.

We are grateful for the opportunity to work on this challenging problem. We believe that the findings, recommendations, and next steps outlined in this report advance the fair and equitable administration of justice in Connecticut. We look forward to continuing this effort in the year to come.

Sincerely,

Aaron Ment Chair

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In 2000, through the enactment of Public Act 00-154, the Commission on Racial and Ethnic Disparity in the Criminal Justice System was charged to compile research about and make recommendations addressing racial and ethnic disparity in Connecticut's adult criminal justice and juvenile justice systems. Research and recommendations in this report are responsive to the Commission's charge and build on the research findings and recommendations of the Commission's first report, published in 2002.

Section 1

OVERVIEW OF CONNECTICUT CRIMINAL JUSTICE DATA

Data from the U.S. Department of Justice, the U.S. Census Bureau, and the Connecticut Department of Correction (DOC) paint a picture of disparity in Connecticut's criminal justice system.

- One in eleven African American men in the state between the ages of 18 and 64 was in prison or in jail in 2000. 1
- In 2000, the incarceration rate for African American men (9 percent) was 18 times higher than the incarceration rate for non-Hispanic white men.²
- Caucasians have a lower rate of incarceration in Connecticut than African Americans or Latinos/Hispanics. Only 190 Caucasians per 100,000 of the population are in prison. This rate is also significantly below the national average of 366 Caucasians in prison per 100,000 of the population.³
- African Americans have an incarceration rate in Connecticut that is above the national average. Connecticut incarcerates 2,427 per 100,000 African American compared to the national average of 2,209 per 100,000 of the population.⁴
- Latinos/Hispanics have an incarceration rate in Connecticut that is above the national average.
 Connecticut incarcerates 1,439 per 100,000 Latinos/Hispanics compared to the national average of 759 per 100,000 of the population.⁵
- Connecticut ranks the highest in the United States in its level of disparity in the rates of incarceration of Whites, Blacks, and Hispanics.⁶
- Almost 50 percent of Connecticut's total male prison population in 2000 came from the state's three largest cities Hartford, New Haven, and Bridgeport.

¹ United States Census 2000.

² Id.

³ Bureau of Justice Statistics, <u>Prison and Jail Inmates at Midyear 2001</u>, (May 2002) p. 13, table 16.

^{4 &}lt;u>Id</u>.

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⁶ Blacks here are non-Hispanic Blacks.

⁷ Department of Correction data.

Section 2 RESEARCH ANALYSIS

With this general data as background, in 2003 the Commission undertook four studies to garner further knowledge regarding how actions taken in the pre-arrest, pre-trial, trial and sentencing phases contribute to the proportion of African Americans and Latinos/Hispanics comprising the pretrial and sentenced population of correctional facilities. These four studies -- 1) a survey of police departments regarding use of alternatives to arrest; 2) an analysis of pretrial data; 3) an analysis of juries; and 4) an analysis of sentencing data -- provide insight into points in the system where disparity can occur.

2.A POLICE SURVEY

Overview of Findings

The results of the survey, to which 78 of 102 state jurisdictions responded, showed that, while a majority of departments utilized alternatives to arrest for juveniles, there was varying departmental acceptance of alternatives for adults.

- Officers and troopers often used alternative options when they were available in cases involving juveniles and minor offenses.
- Over 60 percent said that alternative programs for first time juvenile offenders would be used "often" or "very often" if they were available.
- Survey respondents were substantially less willing to entertain alternatives to arrest when they had probable cause in cases involving adults. Less than 20 percent of the officers thought alternative programs for adults would be used "often" or "very often" by their staff.
- Several departments receptive to adult alternatives reported using alternatives for cases with criteria similar to the types of cases handled by community courts ("quality of life crimes"). For these departments, the criteria for deferring adults and juveniles to alternatives were similar.
- Victim preference was the most important consideration in determining whether to use an alternative to arrest for adults. The majority of departments also cited the nature of the offense and criminal history as factors in using alternatives to arrest.

2.B PRE-TRIAL

Using Criminal Motor Vehicle System (CRMVS) records and data collected and entered from interviews conducted by bail commissioners and recorded on the bail risk instrument, the Commission, with researches from The Justice Education Center, analyzed data for all cases disposed in 2001 for defendants arrested in 2000 or 2001.8

The findings in this section must be read with the understanding that:

- 1. In 2003, the Judicial Department modified the bail risk instrument, so that some of the non-criminal factors on the bail instrument that formed the bases of this study are no longer relevant to determining an offender's score. It is the Commission's intention to undertake a similar study of bail decision making with the current instrument in the future;
- 2. The Commission did not have access to complete prior criminal history information. The reoccurrence of the variable 'number of cases disposed in 2001' as a statistically significant factor in the majority of the analyses in this chapter indicates the importance of criminal history for bail commissioner recommendations; and
- 3. Because data entry in several fields was not mandatory for bail commissioners, the Commission's analysis was severely hampered. When there was insufficient or inconsistently entered data on specific variables, such as total bail score or certain individual factors, these variables were not included in analyses.

Overview of Findings

Overall

- Nearly 25 percent of defendants were interviewed by a bail commissioner before arraignment.
- Seriousness of charge (A felony, B felony, etc.) was the single most powerful predictor of bail commissioner involvement. It was <u>six</u> times more powerful than the next significant indicator, which was number of cases.
- Race/ethnicity was the third most powerful predictor of bail commissioner involvement out of the six available predictors for analysis. Bail commissioners were more likely to see African Americans and Latino/Hispanic defendants, even when charge severity, number of cases, gender, age, and number of charges were held constant.
- When all charges (felonies and misdemeanors) were considered, Caucasians were approximately twice as likely as African Americans or Latinos/Hispanics to be released with a written or conditional promise to appear (WPTA or CPTA). When severity of charge was considered, the difference was less apparent.

Bail instrument

• The severity of the most serious charge at arrest (A felony, B felony, etc.) was the most powerful predictor of a promise to appear (as opposed to financial release order). Multivariate analysis

⁸ All analyses reported here are based on the reclassification of Hispanics described in the Full Report, Section 2.D.2.

showed, however, that race/ethnicity was also a statistically significant predictor, ⁹ and was the fifth strongest predictor of the eight variables available for analysis of release decisions.

Drug offenses

- Analyses restricted to all unclassified felony drug offenses (both possession and sale) found that bail commissioners were significantly more likely to recommend, and courts to order, financial release for African Americans and Latinos/Hispanics than for Caucasians. Since analysis of a common specific felony drug possession charge found little difference in bail commissioners' recommendations across race and ethnicity, more individual analyses of other most common felony drug charges need to be conducted to fully understand the issues involved with responses to drug charges.
- Caucasians were more likely than African Americans or Latinos/Hispanics to have conditions
 attached to their release in drug cases. Their conditions were more likely to involve drug
 treatment (both inpatient and outpatient), drug evaluation, and court supervision.

Four major urban courts

- Comparisons between the four major urban courts (Bridgeport, Hartford, New Haven and Waterbury) and the others in the state found greater likelihood of court orders for financial forms of pre-trial release in the urban courts.
- Differences in court orders across race/ethnicity were greater in the four urban courts than in the
 other courts. Caucasians were granted non-financial release at nearly twice the rate of African
 Americans and Latinos/Hispanics for all cases, both felonies and misdemeanors.

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⁹ For an explanation of "statistical significance" see Full Report, Section 2.B, Methodology, *supra*.

Overview of Findings

Five courts (Bridgeport, Hartford, Derby, New London and Litchfield) were selected for a small study to assess whether outcomes in the jury selection process varied by court. The courts were selected based on the minority populations that reside in each jurisdiction. Hartford and Bridgeport are the jurisdictions in the state with the largest minority populations. The Litchfield and Derby court have small minority populations, under 10 percent. New London falls near the center of the range for minority residents at about 18 percent. The statistics from each court were compared to determine the outcome rates at which prospective jurors were confirmed, disqualified, unreachable, excused, or completed jury service.

- There are clear distinctions between the Bridgeport and Hartford courts and the courts in Litchfield, Derby and New London. At the two courts serving large minority populations, disqualification rates are significantly higher than for the remainder of the sample. Confirmation rates are lower in Bridgeport and Hartford than in the sample. The rate of undeliverable mail is also significantly above the sample for Bridgeport and Hartford.
- Although Bridgeport and Hartford have significant minority populations, outcome differences when compared to other courts do <u>not</u> prove that minorities do not serve at the same rate as the general adult population. In the court appearance data, Hartford and Bridgeport fall within the range, or exceed the range, for the rate of jury service. Nevertheless, the No Response rate is significantly above the sample in both Hartford and Bridgeport. Court excusal rates account for only a small percentage of outcomes. Excusals are under three percent in both Hartford and Bridgeport.

Without explicit data on the race and ethnicity of prospective jurors at critical points in the jury selection process, no definitive system-wide conclusions can be drawn about the rates at which the state's minorities participate in the jury process. Acquiring such data would require statutory approval.

Overview of Findings

Sentencing data

- **Differences in sentencing across race and ethnicity:** Approximately 10 percent of defendants were sentenced to incarceration: 15 percent of African Americans, 11 percent of Latinos/Hispanics and 7.4 percent of Caucasians. In other words, African Americans were twice as likely as Caucasians to be sentenced to a period of incarceration. Latinos/Hispanics were sentenced to incarceration at rates about mid-way between African Americans and Caucasians. However, this fact alone does not provide a full picture of sentencing, because sentencing responds to specific charges and other considerations.
- **Differences in criminal case profile across race and ethnicity:** African American and Latino/Hispanic defendants had more serious criminal cases as measured in different ways:
 - They were more likely to be charged with felonies.
 - Their charges were more likely to be associated with mandatory minimum sentences.
 - They were more likely to have been arrested on multiple charges.
 - They were more likely to have other criminal cases disposed during the same year.
- Multivariate analysis of cases with sentences to either incarceration or probation, based only on "Criminal Motor Vehicle System" (CRMVS) data, showed that the number of cases disposed for an individual defendant in 2001 (with arrests in 2000 or 2001) was the strongest predictor of a sentence of incarceration. This was followed, in order, by: the charge at arrest being associated with a mandatory minimum sentence, male gender, seriousness of the highest charge at disposition (A felony, B felony, etc.), race/ethnicity, number of charges in the case, and age. In other words, race/ethnicity remained a statistically significant predictor of a sentence to incarceration even when the other factors listed above were controlled statistically, but ranked fifth of the seven predictors.
- Multivariate analysis of cases with sentences to either incarceration or probation, based on both CRMVS and bail data (as described above), showed that the severity of the most serious charge at conviction was the strongest predictor of a sentence to incarceration. This was followed, in order, by: number of other cases disposed in 2001, male gender, court location, charge at arrest associated with a mandatory minimum, race/ethnicity, age, and number of charges in the case. In other words, when these factors were controlled statistically, race/ethnicity was the sixth of the eight predictors of a sentence to incarceration.
- Difference in length of sentence by race and ethnicity: Although African Americans and Latinos/Hispanics were more likely than Caucasians to be sentenced to more than three years of incarceration and less likely to be sentenced to a year or less, multivariate analysis showed that the seriousness of the charge (A felony, B felony, etc.) and the number of charges were the most powerful predictors of longer sentences. Race/ethnicity was not a statistically significant predictor when these and other factors were controlled statistically.

More refined analysis of the data

- Court location: Court location and defendants' town of residence were among the statistically significant predictors of a sentence to incarceration. Controlling for other factors, African American and Latino/Hispanic defendants whose cases were heard outside of the four major urban courts were more likely to be sentenced to incarceration. Similarly, African American and Latino/Hispanic defendants who live in towns where African Americans and Latinos/Hispanics comprise a smaller percentage of the population were more likely to be sentenced to incarceration.
- **Drug charges:** Multivariate analysis only of cases with unclassified felony drug charges (both possession and sale) at the time of disposition also found that severity of the most serious charge at conviction was the strongest predictor of a sentence to incarceration. This was followed, in order, by the number of cases disposed in 2001 (with arrests in 2000 or 2001), race/ethnicity, male gender, number of charges, and court location.

Section 3 RECOMMENDATIONS / NEXT STEPS

3.A POLICE

Data Limitations

Of 102 departments statewide who received the police survey, 78 responded. Although the response was better than for most mailed surveys, additional input from the remaining departments, as well as more detailed information regarding the types of services departments would like to employ, will allow more targeted, effective, policy development.

Recommendations/Next Steps

The Commission recommends the following next steps:

- Collect data from departments who did not respond.
- Conduct follow up interviews regarding specific types of alternatives that departments would like to use.
- Undertake further analysis of what proportion of incidents result in arrest and how incidents resulting in arrest compare to incidents where no arrests were made, *e.g.*, collecting and analyzing samples of incident reports from selected municipalities where incident reports are available electronically.
- Endorse the Connecticut Justice Information System (CJIS) governing board's proposed revision to the Uniform Arrest Report. This revision would include one additional field of yes/no for Hispanics, ensuring that the designation of Hispanic is an ethnic designation rather than a racial one and conforming the report to the U.S. Census. The Commission further recommended that police departments request self-reported information of arrestees on race and ethnicity for reporting accuracy as part of the paperwork documentation.

Data Limitations

There are three primary limitations in the analyses that can be conducted with available data:

- **1.** Lack of clear data on criminal history. The bail instrument provides some evidence in its summary measures of prior record of convictions and Failure To Appear(s), but the variables do not indicate the number of convictions or FTAs, or their severity (beyond felony or misdemeanor). Criminal history data could be obtained from criminal records manually, but that is a time-consuming process.
- **2.** Inconsistent data entry for specific measures on the bail instrument and total bail score. Some gaps could be filled in by extracting the information from paper bail records, but this, again, would be time-consuming and costly (although less costly than complete collection of criminal history data).
- **3.** Lack of direct measures that describe social class. Education is the best indicator available, and education data are missing for over 20 percent of the bail sample. Employment and income data are even less consistently entered.

Additional limitations include such potentially influential factors as defendants' affect and demeanor, and input from victims, advocates, attorneys and other personnel present in court.

Recommendations/Next Steps

In November 2003, the State implemented a new bail instrument that eliminated several fields, including many of the non-crime related variables. The Commission recommends:

- Analysis of data from the new bail instrument which was implemented in November 2003. Data should be obtained electronically after six months or more of implementation and analyzed to provide a comparison with the prior instrument. The comparison should include racial/ethnic differences in scores on each item, as well as the relationship between total scores and the recommendations made by the bail commissioners and ultimate court orders.
- Preliminary analysis of data collected after six months or more of the implementation of the additional reporting filed on the uniform arrest reports and self reporting police forms.

The Commission recommends the following:

- That the most effective procedure(s) to collect information on race and ethnicity of prospective jurors be identified and implemented and that responses over time be evaluated to determine racial and ethnic distributions.
- That legislation insuring that permanent part-time employees are compensated by their employers for jury service be supported.
- That a Review and crafting of recommendations consistent with the effects of P.A. 03-202 which provides for Department of Labor enforcement of wages paid to jurors for jury service be undertaken.
- That the Judicial Branch be urged to develop and institute a program to proactively improve access to transportation for prospective jurors and / or selected jurors.
- An Examination of the jurisdictions currently providing child care to determine costs and impact on the numbers of jurors who serve.
- The repeal of existing criminal sanctions for juror non-compliance.
- The articulation of recommendations based on a review of the evaluations of the Judicial Branch's outreach efforts and Connecticut Courts school curriculum, and similar national efforts in order to support the refinement and expansion of jury education programs.
- A review of juror comments on the impact of the Judicial Branch's juror appreciation efforts in Hartford and data on similar nationwide efforts in order to support the enhancement and expansion of this program.
- The establishment of a public / private partnership between the Commission and community and civic organizations for a public information campaign emphasizing the necessity of participation in jury duty.
- That the Judicial Branch undertake efforts to assure that a high level of diligence is employed, wherever possible, to conceal the incarcerated status of detained defendants from juries.
- That interpretive services for defendants and witnesses be fully funded.

The following next research steps are recommended:

- Undertake manual data retrieval from the bail instrument for a representative sample of cases for which bail data are available of criminal history-related material (such as prior felony convictions, prior record, probation sentences, and other pending cases) as well as information that measures social and class-related items (such as education, employment and income). This will provide data for analyses that measure criminal history more precisely, and will help to separate the potential competing influences of race/ethnicity and social class.
- Undertake manual data retrieval of complete criminal history information from the COLLECT system maintained by the Department of Public Safety. Such information is available to court personnel and can influence decision-making. It is more complete than the summary information contained in the bail instrument both the one used in 2000 and 2001 and the revised instrument recently implemented.
- Obtain electronic data from the Adult Probation On-Line Information system (APOLIS) to investigate potential differences in how violations of probation are handled. An analysis of data from the APOLIS system will also provide more data about differences in conditions associated with sentences to probation such as reporting to an Alternative Incarceration Center or drug treatment program.
- Conduct a 'snap-shot' analysis of individuals in Department of Correction (DOC) facilities sentenced to three years or less in order to determine specific populations that could be targeted for alternative sentencing. Also obtain data on individuals in DOC custody on a given day broken down by gender, race, ethnicity, severity of charge, criminal history, and the fifteen most frequently convicted offenses.
- Undertake a judicial decision-making study. This study will look at the role victims, advocates, judicial experience on the bench, and defendant demeanor play in judicial determinations. The Commission staff will propose a methodology for the study.

With regard to reducing the number of African Americans and Latinos/Hispanics comprising the pretrial and sentenced population of correctional facilities, the Commission recommends:

- Increase in funding to community-based alternative sanctions and transitional services that
 provide support to evidence-based, culturally competent, gender specific services proven to
 reduce recidivism.
- Review and further develop culturally sensitive programming for male and female minority offenders in the custody of the Department of Correction, the Department of Children and Families, and the Court Support Services Division of the Judicial Branch.
- Recommend that the Department of Correction, Court Support Services Division of the Judicial Branch, and the Department of Mental Health and Addiction Services develop a semi-annual report that identifies the race, ethnicity, and gender of individuals who are:
 - Sentenced to probation;
 - o Receiving alternative sanctions;
 - o Processed through mental health court diversion programs;
 - o Sentenced to incarceration;
 - Incarcerated due to parole violations.

This semi-annual report should also contain evidence of the parties' joint efforts to remedy instances of disparity in the above five identified post-conviction outcomes. The final report (not draft) should be issued to the members of this Commission, the legislative leaders, the Commissioner of the Department of Correction, Commissioner of Department of Mental Health and Addiction Services, the Executive Director of Court Support Services Division, the Chief Court Administrator, and the Office of Policy and Management.

- Support the development of urban Juvenile Review Boards (JRB) in Hartford, New Haven, Bridgeport, and Waterbury, in an effort to reduce the number of children of color entering the juvenile justice system by diverting them to community-based alternatives. At this time JRBs exist primarily in suburban settings. Funding for urban JRBs should be issued from the relevant municipality, the Department of Children and Families, the Court Support Services Division of the Judicial Branch, the Connecticut Department of Correction, the State Department of Education, and philanthropic organizations.
- Review the Juvenile Justice Advisory Committee study on "Overrepresentation of Minorities in the Juvenile Justice System" and make recommendations based on those findings.
- Support i.) programs to divert children who are identified as having behavioral needs from the juvenile justice system to programs that provide appropriate treatment, including specialized treatment for children with a history of trauma; and, ii.) efforts to coordinate with the KidCare program of the Department of Children and Families (DCF) and other evidence-based, culturally competent, gender specific initiatives (based on the findings of the Commission's 2003 police survey in which responding departments expressed a need for increased diversion services for young people, especially those with behavioral/mental health needs).
- Conduct an analysis to determine if there is disparity in the racial composition of children serviced by the mental health system compared to children serviced through the juvenile justice system.
- Develop and recommend funding for alternative program interventions for FWSNs (Families With Service Needs) and YICs (Youth in Crisis). Program interventions might include expansion of emergency shelters, priority access to specialized residential beds, emergency foster care placements, supportive housing, home and community based services, intensive case management, therapeutic foster care, intensive family support and respite services, and crisis response teams.
- Endorse and review the efforts of the Department of Children and Families and the Court Support Services Division of the Judicial Branch to develop a juvenile justice plan having as its goal the reduction of the number of African Americans and Latinos/Hispanics in the juvenile justice system, and to include community service options in lieu of detention for juveniles arrested.
- Plan, with time tables, for the further development of existing curricula for training of employees and state contractors at all levels of the juvenile justice system on issues of cultural competency and strategies to address disproportionate minority confinement.
- Establish a plan, with time tables, to address any barriers to family involvement in alternatives to incarceration.
- Promote, establish and/or expand truancy reduction programs in schools, the Department of Children and Families, the Office of the Child Advocate, and the Court Support Services Division of the Judicial Branch.

- Recommend that the Department of Children and Families, the Office of the Child Advocate, and the Court Support Services Division of the Judicial Branch promote restorative justice models for juveniles.
- Recommend that the Department of Children and Families and the Court Support Services
 Division of the Judicial Branch develop a semi-annual report that identifies the race, ethnicity and
 gender of children who are:
 - Detained on a pre-trial basis;
 - o Receive court based assessments; juvenile justice intermediate evaluations; and Riverview evaluations;
 - o Sentenced to probation;
 - o Committed as delinquent and placed in residential treatment;
 - o Committed as delinquent and placed in the Connecticut Juvenile Training School.

This semi-annual report should also contain evidence of the parties' joint efforts to remedy instances of disparity at all five of the decision points identified above. The final report (not draft) should be issued to legislative leaders, the Commissioner of Department of Children and Families, the Executive Director of Court Support Services Division of the Judicial Branch, the Office of Policy and Management, and the Office of the Child Advocate.

Monitor any new initiatives, including the recent joint strategic planning process between DCF and CSSD.

The Commission will request reports from relevant agencies in order to evaluate next steps. To that end, the Commission recommends:

- Encourage an increase in the numbers of minority employees visible at all levels of the criminal justice system. The Commission will request and collect statistics and information on staff composition in the following organizations: Department of Correction, Public Defender Services, Judicial Branch, Division of Criminal Justice, Department of Children and Families, Connecticut Bar Association, State Marshals, and private agencies under contract with these organizations for providing criminal justice services.
- Promote aggressive multi-lingual/cultural recruitment and hiring in the Department of Correction, Public Defender Services, Division of Criminal Justice, Department of Children and Families, Judicial Branch, Connecticut Bar Association, State Marshals, and private agencies under contract with these organizations for providing criminal justice services.
- Increase opportunities for skills enhancement in order to encourage promotions of current minority employees in these organizations.
- Solicit a summary of all efforts to date for the recruitment, retention, and promotion of minority employees and appointees, including opportunities for skills enhancement from the Department of Correction, Public Defender Services, the Division of Criminal Justice, Department of Children and Families, the Judicial Branch, the Connecticut Bar Association, the State Marshals, and private agencies under contract with these organizations for providing criminal justice services.
- Examine and make recommendations assuring the implementation of comprehensive, mandatory cultural sensitivity education and training initiatives for personnel at all levels of the criminal system that address the special issues and concerns of minorities interfacing with the criminal justice system. These curricula should include specialized diversity training for management staff, and should consider and measure outcomes.
- Plan and develop with timetables education initiatives that address the gaps between perception and reality about racial and ethnic disparity within the system.