THE IMPACT OF AFRICAN AMERICAN INCARCERATION ON AFRICAN AMERICAN CHILDREN IN THE CHILD WELFARE SYSTEM

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Abstract: Over the past decade, much has been written and discussed on the disproportionate number of African Americans in United States social systems. This paper highlights the issue of the increasing numbers of incarcerated African Americans, and the impact that it has on out-of-home placement for African American children. This paper presents literature that explores and describes the history of this trend. Discussion centers on statistics and trends on African American incarceration and out-of-home placement of children with incarcerated parents. Questions for future research are presented and strategies of advocacy, empowerment, and transformation are suggested to address the disproportionate representation of African Americans in the criminal justice and child welfare systems. This paper also discusses the implications of this problem for social workers, policy makers, and social scientist.

Keywords: African Americans; prison; incarceration; child welfare; out-of-home placement; foster care

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African Americans are disproportionately represented in the criminal justice and child welfare systems, specifically in prisons and out-of-home placements. Historically United States laws reflected discrimination against African Americans in both the criminal justice and child welfare systems. In the criminal justice system, documented discriminatory laws and practices against African Americans include slavery and Jim Crow. The Flemming rules of the child welfare system have been cited as a contributor to discriminatory practices against African Americans in the child welfare system. Since the early 1900s, the criminal justice and child welfare systems' discriminatory laws and practices promoted overrepresentation or exclusion of African Americans in these two systems. Today, both systems have a disproportionate percentage of African Americans as compared to the total percentage of African Americans in the U. S. population.

National statistics demonstrate in 2001 that African Americans represent 46.3% of the total prison population. In 2001, Whites represented 36.1%, and Hispanics represented 15.6% of the prison population (Harrison & Beck, 2002). Moreover, in 2000 African American children represent 40% of the total foster care population, followed by 38% White, and 15% Hispanic (AFCARS, 2002). The concern is when African Americans represent 12.8% (U. S. Census, 2000) of the total U. S. population, how is it that 46.3% represents African Americans in prisons, and 40% in foster care?

The purpose of this paper is to present information that leads to an understanding of the dynamics of this disturbing trend while suggesting there is a connective nature between the discrimination in the criminal justice and child welfare systems. Thus, this paper will discuss the disproportioned number of African Americans incarcerated and African American children in the child welfare system, specifically in out-of-home placements. A historical perspective of discriminatory practices in the criminal justice and child welfare systems are presented and an agenda for future research will be presented.

TRENDS

Criminal Justice System: The disproportionate number of African Americans involved in the penal system is well documented. The Bureau of Justice Statistics reveals a tremendous growth in the African American prison population from 1988 to 1996. The war on drugs has been cited as a major contributor to current racial disparities in the criminal justice system (Luna, 2003, Harris, 2003,
Incarceration and Child Welfare

Human Rights Watch, 2002, and Rolison, Bates, & Jacob, 2002). Bedi (2003) implies that discriminatory penal practices started during slavery, not with the implementation of war on drugs policies. She states, “embedded racism in the criminal justice system is born of the same hatred and fear that spawned slavery, Jim Crow, anti-miscegenation laws, and exclusionary immigration policy” (Bedi, 2003:181). Race classification has been used as bases of making laws since slavery. Bedi (2003) explains that racial profiling or race classification was necessary to implement the racially differentiation laws of slavery, Jim Crow, anti-miscegenation, and exclusionary immigration. Paula Johnson, an attorney of law in Michigan, states, (as cited by Bedi, 2003:182) “not only is race used to identify criminals, it is embedded in the very foundation of criminal laws.” For example, the difference in sentencing for possession of crack and powder cocaine shows to be racially bias, on the bases that crack is the least expensive of the two forms of the drug and that crack is associated with primarily African American communities. Paula Johnson further states “the increase stems, not so much from an increase in the number and seriousness of crime committed, but from changes in criminal justice policy—especially the war on drugs” (Johnson, 2003:1096).

Rolison, Bates, Poole, and Jacob (2002:131) posit that the “War on Drugs, differential sentencing for types of cocaine, harsher laws, increased number of law enforcement agents, and an inequitable access to legal representation” are contributors to the disproportionate distribution of African Americans in prisons. They indicate that the War on Drugs caused a shift of focus from the medical-juridical model used in the 60s to the criminal-juridical model in the 80s. The medical-juridical model of the 60s promotes drug treatment and intervention as opposed to the criminal-juridical model of the 80s that indicates the use, possession, and sell of drugs are criminal acts. The researchers reveal that black women are more likely than white women to go to jail for drugs. However, both black and white women have the same chance of going to jail for a violent crime. The information presented by Rolison, Bates, Poole, and Jacob (2002) suggest the War on Drugs has an impact on African American women as well as African American men.

Currently, African Americans are disproportionately assigned to every phase of the criminal justice system (Luna, 2003). Statistics reveal there are more African Americans in prisons, on probation and parole than any other ethnic group (Bureau of Criminal Justice, 2001). The Human Rights Watch Organization (2002), an organization that advocates for human rights, asserts that the criminal justice system creates racial disparities by discriminatory penal policies to control crime. Statistics from the War on Drugs is presented to show growth in racial disparities in prisons. The organization reports that in 15 states, blacks were 20 to 57 times more likely to be convicted of drugs than their white counterparts. Mauer (1997) reports, from 1986 to 1991 there was a 465.5 % increase in African Americans
Table 1: Incarceration rates for 1988 & 1994

<table>
<thead>
<tr>
<th></th>
<th>1988</th>
<th>1994</th>
<th>African American</th>
<th>White</th>
<th>African American</th>
<th>White</th>
<th>African American % increase</th>
<th>White % increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>922</td>
<td>134</td>
<td>1433</td>
<td>187</td>
<td>55%</td>
<td>39%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>757</td>
<td>164</td>
<td>1183</td>
<td>218</td>
<td>56%</td>
<td>32%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>745</td>
<td>139</td>
<td>1264</td>
<td>181</td>
<td>69%</td>
<td>30%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>903</td>
<td>159</td>
<td>1358</td>
<td>190</td>
<td>50%</td>
<td>19%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>562</td>
<td>135</td>
<td>850</td>
<td>161</td>
<td>51%</td>
<td>19%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Missouri</td>
<td>1003</td>
<td>145</td>
<td>1483</td>
<td>199</td>
<td>47%</td>
<td>37%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Mexico</td>
<td>983</td>
<td>213</td>
<td>1067</td>
<td>213</td>
<td>8%</td>
<td>0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td>1406</td>
<td>200</td>
<td>2411</td>
<td>329</td>
<td>71%</td>
<td>64%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>874</td>
<td>109</td>
<td>1943</td>
<td>178</td>
<td>122%</td>
<td>63%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Mauer, 1997
incarcerated for drug offences. He indicates that 66,000 African Americans are incarcerated for drugs as compared to 15,000 whites. The African American incarceration rate increased from 922 per 100,000 residents in 1988 to 1433 per 100,000 residents in 1994 as compared to 134 per 100,000 in 1988 to 187 per 100,000 residents in 1994 for whites (Table 1). These statistics reveal within seven years the incarceration rates of African Americans increased by 55%, as opposed to 39% increase for whites. The individual states' statistics for the Southwest Region of the United States revealed that the smallest increase of African American incarceration rates is 8% in New Mexico with no increase for whites. Texas leads the region with 122% increase for African Americans and 63% for whites. Although Texas has the largest increase for African Americans, the increase for the white incarceration rate is not the highest increase in the region. The state with the highest increase in the white incarceration rate is Oklahoma with 64% with an increase of 71% for the African American incarceration rate. Mississippi has an increase of 51% for African American and 19% increase for whites. Other states in the Southwest Region include Arkansas with a 69% increase in the incarceration rate for African Americans and 30% for whites, Alabama with 56% for African Americans and 32% for whites, Missouri with 47% increase for African Americans and 37% whites, and Louisiana with 50% increase for African Americans and 19% whites. The percentage of increase for African American incarceration rates compared to the increase in the white incarceration rates in these states from 1988 to 1994 is alarming.

The aforementioned statistics provide information that is utilized by opposing arguments to justify racial disparities. For instance, Luna (2003) provides several arguments to justify the statistical data that show racial disparities of African Americans. One argument is African Americans overrepresentation in prison is that "African Americans have a unique propensity toward crime" (Luna, 2003:183). This argument is used as justification for intense policing of African American communities. Another argument is that racial prejudice by law enforcement is the cause of the overrepresentation of African Americans in the criminal justice system. This argument would suggest that intense policing of African American communities are racially charged.

Harris (2003) addresses the issue of statistical data being used to persuade the public and others that racial disparities exist in the criminal justice system. He uses the War on Drugs and the Sentence Project (a non-profit organization that provides a source for criminal justice policy analysis) as examples to provide an understanding of how data are presented to the public guides a way of thinking about an issue. The Sentence Project analyzed government data that revealed one in every four young black males were involved in the criminal justice system. One in four black males in the criminal justice system quickly became the standard measure used to study the impact on urban minority communities. The statistics
presented brings forth questions concerning the very survival of the African American family and the communities in which they live. The impact of this social issue on the African American family points toward questions concerning the children of this highly incarcerated population.

*Child Welfare System:* Like the criminal justice system, the child welfare system has a history of discriminatory policies and racial classification that have excluded or over included African Americans. The child welfare system was developed in response to the many needs of the nation's children. The United States developed the child welfare system aimed at supporting and protecting children. However, Hodges (2001) asserts historical neglect and exclusion from the child welfare system created a need for African Americans to develop a child care system of their own. With many years of struggle for civil rights, African American children eventually became included in the child welfare system as part of civil rights legislation.

Phyllis Day, a social work historian, states that in the early 1900s “African Americans were subjected to rigid segregation or were blocked from even the meager social services that were provided other poor people” (2002:230). Lawrence-Webb (1997) declares that racially oppressive policies were written in child welfare programs. She attributes this to the Flemming Rule, which was implemented to ensure that the basic needs of children were met to prevent problems that lead to neglect. The mandates that are a part of the Flemming Rules were not sensitive to the needs of African Americans. Lawrence-Webb claims, “the Flemming Rule set up a situation in which African Americans were involved in a service system for which they could not withdraw once the neglect label was invoked” (1997:14). For instance, before the Flemming Rule, if a home was deemed neglectful or unsuitable the family was ineligible for benefits and basic needs of children were ignored. The standards for suitability were measured by what was considered moral behavior and the legitimacy of children in the home. Although the Flemming Rule prevented massive expulsions from the welfare rolls, it promoted out of home placement in cases deemed neglectful or unsuitable.

The Flemming Rule of the child welfare system can be compared to slavery and Jim Crow laws of the criminal justice system, as both policies were meant to control African Americans social behaviors by placing them into governmental systems of social control. Peebles-Wilkins (2001) indicates that entrapment of minority children in out-of-home placements due to discriminatory practices expands throughout the entire child welfare system. In the *Reluctant Welfare State,* Jansson (2001:394) posed the question, “if even there has been a decline in overt racism that was endemic until the early 1960s, do other, more subtle forms of racism persist, as reflected in a pervasive bias by employers and gatekeepers of large institutions against African American candidates?” Brown and Bailey-Etta

**Child Welfare Policy**

Today, the child welfare system continues to adjust to radical legislation that has restructured the welfare system for the first time since its development. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), commonly called welfare reform, dictated that foster care programs operate through Title IV-E of the Social Security Act. The welfare reform mandate under Title IV-E required responses to provisions that will move toward the legislative goals of providing safe and permanent homes for the nation's children and reducing the number of children in states' custody.

The Adoption and Safe Families Act of 1997 (ASFA) is legislation responding to provisions affecting children in foster care and their permanent placement. The new Title IV-E amendments promote permanency for children in the custody of states. The provisions provide guidance for foster care to be maintained at the state level, research requirements for the states, incentives for those participating in the permanency of children's placements and time limits for permanency placement planning (ASFA, 1997). The new legislation allows less time than previous legislation for the states to relinquish parental rights and free children for adoption sooner to prevent lingering in foster care. Like the war on drugs policies that skyrocketed African American incarceration rates, the permanency placement planning provisions impact the number of incarcerated parents who must relinquish legal custody of their children due to strict time limits for reunification.

Even though in 1997 some states implemented forms of permanency planning, the Children's Bureau reports that the number of children left in foster care has increased each year since 1998. The Adoption and Foster Care Analysis and Reporting System (AFCARS) indicates 39% of the children in foster care are African-Americans. As stated earlier, African American children are a minority in the total United States population of children. The 2000 Census indicates there were 70.4 million children under the age of 18 and 15% of them were African American. However, the representation of African American children in the foster care system exceeds all other ethnic/racial groups represented in the foster care system.

Statistics on incarcerated parents reveal that most incarcerated female
parents lived with their children at the time of incarceration. The Bureau of Justice Statistics Special Report revealed 64% of the state and 84% of the federal female prisoners lived with children at the time of incarceration (Table 2). The special report also revealed that 49% of state and 44% of the federal prisoners with minor children are African Americans (Mumola, 2000). The living arrangement for children of women in prison takes several avenues. For children of incarcerated mothers in state prisons 52% live with grandparents, 28% with other parent, 25.7% other relatives, 10.4% friends/other, and 9.6% are in foster homes (Table 3). Federal prison statistics show that 44.9% of children with incarcerated mother live with their grandparents, 33.9% other relatives, 30.7% other parent, 11.9% friends/other, and 3.2% in foster homes. This means not only are African Americans adults impacted by the increase in incarceration rates, but the number of African American children involved in the child welfare system is also impacted.

**Table 2: Incarcerated Parents**

<table>
<thead>
<tr>
<th></th>
<th>State</th>
<th>Federal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female prisoners lived with children at the time of incarceration</td>
<td>64.3%</td>
<td>84%</td>
</tr>
<tr>
<td>Prisoners with minor children are African Americans</td>
<td>49%</td>
<td>44%</td>
</tr>
</tbody>
</table>


**Table 3: Children with Incarcerated Mother**

<table>
<thead>
<tr>
<th>Living Arrangement</th>
<th>State</th>
<th>Federal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Parent</td>
<td>28%</td>
<td>30.7%</td>
</tr>
<tr>
<td>Grandparent</td>
<td>52%</td>
<td>44.9%</td>
</tr>
<tr>
<td>Other relatives</td>
<td>25.7%</td>
<td>33.9%</td>
</tr>
<tr>
<td>Foster Care</td>
<td>9.6%</td>
<td>3.2%</td>
</tr>
<tr>
<td>Friends/Others</td>
<td>10.4%</td>
<td>11.9%</td>
</tr>
</tbody>
</table>

DISCUSSION

The representation of African Americans in the criminal justice and child welfare systems are disproportionate to the representation of African Americans in the total United States population. The statistics discussed in this paper opens the door for many questions concerning the connective nature of the overrepresentation in both U. S. social systems. Steps must be taken to begin the process of reversing the growing trend of African Americans overrepresentation in United States social systems. Although over the past decade research has revealed some knowledge of the disproportionate number of African Americans in criminal justice and child welfare systems, inquiry of the connective nature of the two systems must be explored. Researchers must continue conducting studies that will answer the many unanswered questions concerning over inclusion of African Americans in prison and out-of-home placement. Causes and effects of the problem must be uncovered to effectively reverse over inclusion of African Americans in U. S. social systems. A few questions of interest to begin examining over inclusion of African Americans in the criminal justice and child welfare systems are:

• What is the connection between the criminal justice and child welfare systems that promote overrepresentation of African Americans?

• What are the laws, policies, and procedures that are racially bias against African Americans in the criminal justice and child welfare systems?

• What is the relationship between African American incarcerations and African American children involved in the child welfare system?

• What are the experiences and circumstances surrounding the arrest and conviction of African American parents with children?

• What are the circumstances surrounding incarcerated parent’s children placements?

These are just a few unanswered questions concerning the disproportionate number of African Americans represented in prisons and foster care. These unanswered questions indicate that both quantitative and qualitative research methods must be employed to explore and examine the issue of disproportionate representation of African Americans in the criminal justice and child welfare systems. The inquiry of the disproportionate number of African Americans represented in the U. S. criminal justice and child welfare systems will provide knowledge to guide policy and the development of services and interventions to reverse the trend of overrepresentation of African Americans in both social systems. Consequently, social workers, policy makers, political
scientists, and other social scientists must take the lead in inquiring about this growing social problem that is impacting the very existence of the African American family and community. Social scientists must begin to develop strategies of advocacy and empowerment to transform the issue of racial disparities in social systems.

**Implications**

The information presented in this paper must gain the attention of social researchers, social workers, political scientists, policy makers, along with all social scientists, and social work educators. Knowledge of the United States laws, policies, and procedures that perpetuate racial disparities in the criminal justice and child welfare systems can guide changes in policies that reflect discriminatory practices within the criminal justice and child welfare systems. Researchers must explore discriminatory practices that increase the probability of African Americans and other minorities to be disproportionately represented in U. S. social systems. Such research will guide the development of strategies that will advocate for non-racist laws, policies, and procedures. Moreover, this research will provide insight on service provisions needed to address the needs of incarcerated African American parents and their children. Inquiry of the connective nature of the disproportionate number of African Americans in the criminal justice and child welfare system will provide an understanding of the need for collaboration between the criminal justice and child welfare systems.

**Conclusion**

This paper has presented an issue for future research. Little is known of the impact of African American incarceration on African American children involved in the child welfare system. However, little more is known about racial disparities and the laws, policies, and procedures that perpetuate them. Questions have been posed that will only begin to answer the many unknowns concerning the over representation of African Americans in U. S. social systems. The answers to the questions will fill a gap in knowledge for social workers and social scientists alike. Professionals working with African Americans in the criminal justice and child welfare systems must be willing to document laws, policies, and procedures that seem to perpetuate over inclusion of African Americans in the criminal justice and child welfare systems. Social workers and social scientists in all disciplines must involve themselves in conducting research and developing strategies that will reverse this disturbing trend. Strategies of advocacy, empowerment, and transformation must be included in any plan to reverse and resolve the current trend.
BIBLIOGRAPHY


