

African-Americans Have Seven Times Greater Chance of Imprisonment

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Global Research, March 04, 2010

2 March 2010

Region: [USA](#)

Theme: [Law and Justice](#)

Many factors contribute to the incarceration today of more blacks than whites even though blacks make up just 13 percent of the U.S. population.

These factors go beyond the higher poverty and unemployment rates among black youth and include the higher arrest rate of blacks, judicial and prosecutorial discretion, better deals in plea bargaining for whites, and even differences in what is defined as a crime, writes authority Marc Mauer of the Prison Project of Washington, D.C., who says African-Americans “have a seven times greater chance of being incarcerated than do whites.”

For example, of nearly 250,000 state inmates serving time for drug offenses in 2004, 113,000 (or 45%) were blacks compared to 66,000, (or 26%) whites and 52,000, (or 21%) Hispanics.

In the 1950s, the Boggs Act penalized first-time possession of marijuana or heroin with a sentence of two to five years in prison—a pretty stiff penalty. The perception at the time was that marijuana was largely smoked by African-Americans and Mexicans, and was used frequently by jazz musicians.

However, when college campuses in the Sixties were flooded with youthful pot smokers who were predominantly white, “public attitudes began to change quickly,” Mauer wrote in *The Long Term View*, published by the Massachusetts School of Law at Andover.

“Marijuana came to be seen as a harmless drug, one that was not addictive and did not particularly lead to other criminal behavior,” Mauer noted.

Many states and localities revised their laws and some communities “all but decriminalized possession of small quantities,” he said. Even so, where Milwaukee regarded possession as a misdemeanor many of its suburbs treated it as an ordinance violation, allowing suburban whites to get off with a fine. “As whites became a larger portion of the user population and replaced blacks in the public image of the pot user, public policies changed rapidly in a more understanding and less punitive direction,” Mauer asserted.

“It is far more likely that in the late twentieth century, in contrast to earlier time, patterns of discrimination reflect unconscious biases rather than blatant attempts to oppress African Americans,” he wrote.

The “war on drugs,” though, later dramatically increased the number of drug arrests and made sentencing provisions harsher in most states. Drug possession arrests rose by 88

percent in the 1980-90 period and typical state penalties for drug possession (excluding marijuana) are up to five years for a first offense and up to 10 years for a second offense, Mauer said.

Again, drunk drivers — 78% of who in a 1990 study were white— were “generally charged as misdemeanants and typically receive sentences involving fines, license suspension, and community service,” Mauer said. By contrast, those convicted of drug possession—who are disproportionately low-income, Afro-American, and Hispanic, “are usually charged with felonies and frequently sentenced to incarceration.”

Prosecutors also tend to reduce the charges against whites convicted of felonies more often than against blacks convicted of felonies. A comprehensive examination of 700,000 criminal cases by the San Jose Mercury News, Mauer noted, included that of 71,000 adults with no prior records. In this group, one-third of whites had their felony charges reduced to misdemeanors “while only one quarter of blacks and Hispanics received this disposition.”

Sentencing practices in Western Europe are less harsh for some offenses than in the United States, Mauer pointed out. Many contend the reason for these practices is that Scandinavian societies are more homogeneous. “Precisely! Communities that feel a sense of commitment to their members are able to see the humanity of offenders despite their criminal behaviors and to see the potential for positive change in their lives,” he writes.

Mauer concludes that sentencing policies of recent years “have in fact unfairly affected low-income people and minorities...The toll that all this has taken on the African American community, and increasingly on the Latin community, is now truly staggering,” he concludes.

The Massachusetts School of Law, publisher of The Long Term View, is purposefully dedicated to providing a rigorous, affordable education to students from low-income, minority, and immigrant backgrounds that would otherwise be unable to obtain a legal education. Its tuition is approximately half that of other New England area law schools. Further information:

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