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Richard S. Frase

What Explains Persistent Racial Disproportionality in Minnesota's Prison and Jail Populations?

ABSTRACT

Racial disparity in prison and jail populations, measured by the ratio of black to white per capita incarceration rates, varies substantially from state to state. To understand these variations, researchers must examine disparity at earlier stages of the criminal process and also racial differences in socioeconomic status that help explain disparity in cases entering the system. Researchers must adjust disparity ratios to correct for limitations in available data and in studies of prior incarceration rates. Minnesota has one of the highest black/white incarceration ratios. Disparities at the earliest measurable stages of Minnesota's criminal process—arrest and felony conviction—are as great as the disparity in total custody (prison plus jail) populations. Disparities are substantially greater in prison sentences imposed and prison populations than at arrest and conviction. The primary reason is the heavy weight sentencing guidelines give to offenders' prior conviction records. Highly disparate arrest rates appear to reflect unusually high rates of socioeconomic disparity between black and white residents.

Studies comparing incarceration rates by race have found wide variations among American states. For example, in 2005 the ratio of black to white per capita incarceration rates ranged from a high of 13.6 : 1

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in Iowa to a low of 1.9 : 1 in Hawaii (Mauer and King 2007, table 6). What accounts for these substantial variations? What are the policy implications?

This essay examines the nature and sources of racial disproportionality in Minnesota prison and jail populations. Minnesota is a state blessed with extensive statewide sentencing data. It is also a state with high racial disproportionality in its inmate populations. Studies of state prison populations in the 1980s and early 1990s found that Minnesota's black per capita incarceration rates were about 20 times higher than white rates—the highest ratio reported for any state. Minnesota has done better in more recent studies, but its ratio of black to white incarceration rates is still in the top quartile.

Disparate inmate populations are, of course, part of a larger problem of racial and ethnic disparity throughout the criminal justice system (Tonry 1995; Sampson and Lauritsen 1997; Cole 1999; Walker, Spohn, and DeLone 2007; Tonry and Melewski 2008). Numerous studies have shown that blacks and members of other minorities are disproportionately represented not only among inmate populations and on death rows (Snell 2006) but at virtually all the earlier stages of criminal processing. Disparity has been documented in victim surveys reporting race of the perpetrator (BJS 2007a); in pedestrian and traffic stops, searches, and arrests (Meehan and Ponder 2002; Institute and Council 2003; Engel and Calnon 2004; Leinfelt 2006); in bail and pretrial release decision making (Patterson and Lynch 1991; Minnesota Task Force 1993; Office of Justice Systems Analysis 1995); in prosecutorial screening decisions (Crutchfield et al. 1995); in the use of prison and jail sentences (Crutchfield et al. 1995; Spohn 2000; Spohn and Holleran 2000; Harrington and Spohn 2007); and in probation and parole revocations (Steen and Opsal 2007; Wisconsin Office of Justice Assistance 2008). It has been suggested that disparity is cumulative, steadily increasing at each successive stage of criminal processing (Sentencing Project 2008). But is this true in all jurisdictions? And in any given jurisdiction, do some stages of the process or some legal and extralegal decision criteria contribute much more heavily to disparity or certain forms of disparity?

In a pioneering study, Alfred Blumstein (1982) estimated that 80 percent of the black/white disproportionality in U.S. prisons in 1974 and in 1979 was accounted for by racial differences in arrest rates, and similar findings were reported in later studies (Langan 1985; Blumstein

1993; Sorensen, Hope, and Stemen 2003; Garland, Spohn, and Wodahl 2008 [summarizing these and other studies using Blumstein's method]; see also Bridges and Crutchfield [1988] examining correlations between states' black and white imprisonment rates and various social and demographic measures). But Blumstein recognized the limitations of such aggregate measures and called for further research in individual jurisdictions, tracking cases longitudinally through the various stages of the criminal process.

This essay seeks to provide some of that state-level analysis, examining several of the stages between arrest and prison and using more detailed offense and offender data than were available in the earlier studies. It provides what appears to be the first systemwide study in any American jurisdiction of racial disparities at multiple stages of the criminal process and of the socioeconomic differences that precede and help to explain racial disparities in cases entering the system.

Some of the data needed to examine these problems in Minnesota are not currently available, and the data that exist are often not kept in a consistent or complete form. However, the available data do tell us a lot about where the worst racial disparities are likely to be found and where more consistent and complete data are most needed. For reasons explained in more detail below, I examine only black versus white disparities. Even with that limitation, however, the topic is broad and very complex; the goal of this exploratory effort is to present an overview, identifying basic research concepts and problems, and suggesting tentative conclusions and specific topics worthy of more detailed study in Minnesota and other states with high rates of racial disproportionality in custody populations. The principal findings are as follows.

Racial disproportionality in Minnesota's prisons has fallen substantially in recent years, although it remains well above the national average. The state's falling black/white ratio was due primarily to higher growth in prison commitment rates for whites combined with substantial growth in the state's black population due to a large influx of recent African immigrants that was not matched by corresponding increases in numbers of black criminal defendants and inmates. Another cause of declining black/white ratios is the use of improved measures: the most recent studies have counted jail as well as prison inmates and have excluded Hispanics from race categories; these changes further lowered Minnesota's black/white ratio and the national ranking of its

TABLE 1
 Minnesota and U.S. Black/White Ratios for Poverty Rates and
 Selected Stages of the Criminal Process (the Black Rate as
 a Multiple of the White Rate)

	Minnesota	All States
2000 family poverty rates (percent of families below poverty)	6.2	3.4
2002 arrest rates per 100,000 residents (Part I crimes plus drug crime)	9.1	3.2
2002–4 felony conviction rates per 100,000 residents (all crimes; population bases lagged 1 year)	8.8*	4.0 [†]
2002–4 custody sentence rates per 100,000 residents (prison or jail sentence imposed, all crimes; population bases lagged 1 year)	9.0*	4.3 [†]
June 2005 incarceration rates per 100,000 (inmates in prisons and jails, all crimes; population bases lagged 3 years [July 2002])	9.9 [‡]	5.7 [‡]

SOURCES.—MSGC (2003, 2004, 2005); BJS (2004, 2006, 2007c); USCB (2007a, 2007d, 2007e, 2007f); BCA (2008); FBI (2008a, tables 29, 43).

NOTE.—Except as indicated, Hispanics are included in the black and white race categories.

* The 3-year average was used for greater comparability to U.S. data (next note) and because conviction and sentencing data vary more by year than arrest and inmate data. Hispanics are allocated to race categories on the basis of data from the closest year (2005) with data reported both with and without Hispanics. Population base is the average of July 2001, 2002, and 2003.

[†] Equals the average of ratios for 2002 (population base: July 2001) and 2004 (population base: July 2003); U.S. sentencing data for 2003 are not available.

[‡] Hispanics are excluded from the black and white race categories (data including Hispanics are not available). If Hispanics were included, these black/white ratios would both probably be somewhat lower.

ratio. However, Minnesota's ratio and ranking in recent studies may have been lowered artificially (i.e., understated) because, as in all prior studies, the population bases used to compute black and white per capita incarceration rates were not time-lagged to adjust for recent dramatic increases in Minnesota's black population. Inmate populations must be compared to resident populations at the time inmates committed their crimes, not when they are in prison.

As shown in table 1, summarizing data on several key measures for which both state and national data are available, Minnesota has high rates of racial disparity not only in its prison and jail populations but also at earlier stages of the criminal process. Minnesota disparity ratios

TABLE 2
 Minnesota and U.S. Black/White Ratios for Felony Convictions,
 Prison Sentences Imposed, and Prison Populations (Black Rate
 as a Multiple of the White Rate)

	Minnesota	All States
2002–4 felony conviction rates per 100,000 residents (population bases lagged 1 year)	8.8*	4.0 [†]
2002–4 prison sentences imposed per 100,000 residents (population bases lagged 1 year)	12.1*	4.6 [†]
2005 year-end prison rates (inmates per 100,000 residents; population bases lagged 3.5 years [July 2002])	12.4	6.0 [†]

SOURCES.—MSGC (2003, 2004, 2005); BJS (2004, 2007*c*, 2008*a*); USCB (2007*e*, 2007*f*); Minnesota Department of Corrections (2008).

NOTE.—Except as indicated, Hispanics are included in the black and white race categories.

* The 3-year average was used for greater comparability to U.S. data (next note) and because conviction and sentencing data vary more by year than inmate data. Hispanics are allocated to race categories on the basis of data from the closest year (2005) with data reported both with and without Hispanics. Population base is the average of July 2001, 2002, and 2003.

[†] Equals the average of ratios for 2002 (population base: July 2001) and 2004 (population base: July 2003). U.S. sentencing data for 2003 are not available.

* Hispanics are excluded from the black and white race categories (data including Hispanics are not available). If Hispanics were included, the black/white ratio would probably be somewhat lower.

exceed national ratios to an even greater degree at these early stages (especially at arrest) than they do for inmate populations. And unlike the national pattern of steadily increasing disparity at later stages, racial disparity in Minnesota is not much higher at the end of the process (custody sentences and combined prison-jail populations) than at arrest.

However, as shown in table 2, disparity does increase substantially in Minnesota, after the stage of conviction, when we look only at prison sentences and prison populations. The principal cause of this disparity increase is the heavy weight that Minnesota sentencing guidelines give to prior conviction record. The national data show a much smaller increase from conviction to sentencing (but a larger increase from prison sentencing to prison populations).

The socioeconomic disparity between blacks and whites in Minnesota is comparable to the state's criminal justice disparities and is much greater than socioeconomic disparity for the nation as a whole. Minnesota blacks are also much more likely to live in high-crime urban

areas and much less likely to live in low-crime rural areas—not only when compared to Minnesota whites but also when compared to blacks in other states. Such disparities and urban concentrations are consistent with elevated black offense rates and may also lead to law enforcement policies that increase black arrest rates. National data suggest that variations in socioeconomic disparity and residential patterns may also help to explain surprising state and regional patterns of custodial disproportionality.

The limited available data on charging, plea bargaining, and trial outcomes suggest that these stages contribute relatively little to Minnesota's disparate prison and jail populations. Racial disproportionality is about the same at felony conviction as at arrest (whereas for all states combined, disparity increases between these two points).

The extensive available data on Minnesota sentencing outcomes reveal little racial disparity in initial sentencing decisions. However, certain sentencing laws and guideline rules have a disparate impact on prison sentence rates for blacks. Decisions to revoke probationary and postprison release also have a disparate impact (black revocation rates are higher for both types of release), but these effects are countered by the much larger proportions of whites who obtain release and thus are at risk of revocation.

All the disparity measures discussed above and in later sections of this essay are ratios of black and white per capita rates. Minnesota's very high black/white ratios are caused in part by its very low white rates on all measures. It could be argued that the "real story" is the very low white rates. Perhaps Minnesota's high black/white ratios say more about the remarkable success of its white citizens than about the deprivations of its blacks. On most dimensions, however, the high black/white ratio is caused not just by a low white rate but also by a high black rate: Minnesota whites are better off than the national average and Minnesota blacks are worse off. The one exception is incarceration rates, for which Minnesota's per capita black rate is below the national average. This reflects Minnesota sentencing policies that discourage incarceration and benefit offenders of all races. But the high black/white incarceration ratio shows that these policies are favoring whites much more than blacks. So the question remains, why?

This essay is organized as follows. Section I describes Minnesota's sentencing laws, its criminal justice system, and the social and political milieu. Section II discusses the paper's methodological approach and

limitations, beginning with an overview of the various stages of the criminal process at which racial disproportionality could arise. It is important to study all these stages, not only the sentencing and post-sentencing decisions that most directly affect prison and jail populations. Section II also examines the subjects on which current data are most limited and identifies persistent problems (which may arise at multiple stages) with the available data and interpretation of those data (the Appendix further examines these problems).

Section III summarizes prior research and presents the most recent data on black and white incarceration rates in Minnesota and other states. The patterns by state and region are somewhat surprising: the states with the highest rates of disproportionality tend to be politically liberal states of the Northeast and upper Midwest, whereas most of the states with the lowest ratios are in the South.

Section IV moves back to the earliest stage of the criminal process for which we have substantial data: arrest. Various explanations for Minnesota's unusually disparate arrest rates are examined, in particular, racial differences in criminal behavior and law enforcement practices that directly or indirectly target blacks and black neighborhoods. The underlying social causes of racial disparities in offense rates, and racially disparate law enforcement policies, are then examined for Minnesota and, briefly, for other states with particularly high or particularly low racial disparity in custody populations.

In Section V, the story jumps from arrest to felony conviction. Lack of data prevents any direct examination of the steps from arrest to filing of charges and from filing to conviction, but rough comparisons, overall and by offense, can be made between adult arrest rates and felony conviction rates. Section V also reports what is known about the contributions to custodial disproportionality of Minnesota's criminal laws, its sentencing guidelines, felony sentencing decisions (in particular, departures under the guidelines), and postsentencing decisions to revoke probation or postprison release or to delay prison release.

Section VI summarizes what we already know, and most need to find out, about racial disproportionality in Minnesota criminal justice. This section also examines the policy implications of finding (or not finding) racial disparities at various stages of the criminal process in Minnesota and other states facing similar racial disproportionality problems.

I. Minnesota and Its Criminal Justice System

The most important features of Minnesota's criminal justice system, and the ones most directly relevant to the focus of this essay, are its sentencing guidelines regime and its low incarceration rate. But other important dimensions of criminal justice must also be taken into account, along with the broader social and political context.

A. Minnesota Sentencing Laws

In 1980 Minnesota became the first American jurisdiction to adopt legally binding guidelines promulgated by a permanent sentencing commission. The guidelines were intended to reduce but not eliminate sentencing and prison release discretion and the disparities, including racial disparities, associated with such discretion (Frase 2005*a*). Parole release discretion was abolished except for life sentences, but inmates may reduce their pronounced prison terms by up to one-third for good behavior (since 1992, inmates may lose "good time" credits not only for disciplinary infractions but also if they refuse to participate in treatment or other assigned programming). When inmates are released from prison, they serve a "supervised release term" similar to traditional parole and subject to revocation for violation of release conditions. The duration of this term equals the sentence credit for good behavior (for sex crimes and certain other offenses a longer conditional release period applies).

The guidelines (current version, MSGC [2008*b*]) include recommendations as to both the duration of prison terms and the "disposition"—whether the prison term should be executed (immediately carried out) or stayed (suspended). In the latter case the offender is normally placed on probation. The length of probation may be any period up to the maximum prison term that could have been imposed, or 4 years, whichever is longer. The guidelines provide some general, nonbinding policies but no specific recommendations concerning the conditions of stayed sentences; judges thus have broad discretion to select stay conditions, which may include up to 1 year of confinement in a local jail or workhouse; treatment (residential or out-patient); home detention (with or without electronic monitoring); probation (with "intensive," regular, or no supervision); fines; restitution; victim-offender mediation; and community service. Subsequent decisions to revoke the stay are likewise subject to general policy statements but no specific, binding guidelines. Further flexibility is provided by means of

charging and plea bargaining discretion, neither of which is regulated by the guidelines or other law.

Recommended guidelines sentences are based primarily on two factors: the severity of the offender's most serious current offense and the extent of his or her prior convictions. The guidelines recommendations are contained in a two-dimensional grid; as of August 2006, a separate grid is provided for sex offenses. Offense severity forms the vertical axis, with 11 levels on the main grid; the defendant's criminal history score forms the horizontal axis (seven columns on both grids) and consists primarily of previous felony convictions weighted by their severity levels (e.g., 2 points for each prior conviction at level 8 or higher; $\frac{1}{2}$ point each for convictions at levels 1 and 2); limited additional points are added for prior misdemeanor convictions, juvenile delinquency adjudications, and "custody status" (whether the offender was in custody or on some form of conditional release at the time of the current offense). The most recent version of the main grid is shown in figure 1.

Offenders with low to medium criminal history scores, convicted of lower-severity offenses, receive a recommended stayed (suspended) prison term of a specified number of months. For more serious offenses or criminal history scores, the recommended sentence is an executed prison term within a specified range. The boundary between recommended stayed and executed prison terms is shown on the grid by a heavy black line (the "disposition line"). Most cases in the shaded area below the line have presumptive stayed sentences. A few cases below the disposition line, mostly involving recidivists or the use of a dangerous weapon, are subject to mandatory minimum prison terms provided in state statutes. But in many of these cases the prison term is not really "mandatory": courts may avoid the prison term if they meet the general standards for guidelines departure, described below. There are relatively few cases subject to truly mandatory penalties. It should also be noted that state statutes and the guidelines no longer make any distinction between crack and powdered cocaine. A 1991 state Supreme Court decision based on the Minnesota constitution invalidated the distinctions previously recognized, in part because of the disparate impact on nonwhite offenders of the more severe crack penalties (*State v. Russell*, 477 NW2d 886 [Minn. 1991]). In 1992 the legislature responded by raising powder penalties to equal the crack penalties (Frase 2005a, pp. 157, 164).

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in Italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree (intentional murder; drive-by-shootings)</i>	XI	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ¹	426 363-480 ²
<i>Murder, 3rd Degree Murder, 2nd Degree (unintentional murder)</i>	X	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Assault, 1st Degree Controlled Substance Crime, 1st Degree</i>	IX	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Aggravated Robbery, 1st Degree Controlled Substance Crime, 2nd Degree</i>	VIII	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI</i>	VII				54 46-64	60 51-72	66 57-79	72 62-84 ²
<i>Controlled Substance Crime, 3rd Degree</i>	VI				39 34-48	45 39-54	51 44-61	57 49-68
<i>Residential Burglary Simple Robbery</i>	V				33 33-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	IV					24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	III					19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$5,000 or less) Check Forgery (\$251-\$2,500)</i>	II							21 18-25
<i>Sale of Simulated Controlled Substance</i>	I							19 17-22



Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the guidelines by law. See Guidelines Section II.E., Mandatory Sentences, for policy regarding those sentences controlled by law.



Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. See, Guidelines Sections II.C., Presumptive Sentence and II.E., Mandatory Sentences.

¹ One year and one day

FIG. 1.—Minnesota Sentencing Guidelines main grid effective August 1, 2008: presumptive sentence lengths in months.

Judges may depart from guidelines recommendations as to prison duration or prison disposition if they cite “substantial and compelling circumstances.” Some of the permissible bases for departure are specified in the guidelines, but many others have been recognized in appellate case law. In extreme cases upward durational departures may go all the way to the statutory maximum prison term for the offense. (In accordance with the requirements of *Blakely v. Washington* [542 U.S., 296 (2004)], all factual findings required for an upward departure, other than those based solely on prior record, must be admitted by the defendant or found by the jury beyond a reasonable doubt; *Blakely* has

thus far not had any major impact on Minnesota sentencing procedures and outcomes [Frase 2006].) The prosecution and defense each have the right to appeal the sentence on the grounds that the departure (or refusal to depart) was improper.

B. Minnesota Sentencing Practices

Compared to other states, Minnesota was a low-incarceration rate state before the guidelines were adopted and remains so today. When the guidelines-enabling statute was enacted in 1978, Minnesota's state prison incarceration rate was 49 per 100,000 state residents; Massachusetts had the same rate, and only two states had lower rates (BJS 1980, p. 4). By 2007 Minnesota's prison rate had risen to 181 per 100,000, but that rate was still the second-lowest in the country (BJS 2008a, p. 18). And although Minnesota and national imprisonment rates have grown at about the same rate over this 29-year period (both increased by about 260 percent), the Minnesota increase was fueled to a greater extent by felony caseload increases: from 1986 to 2004 (the earliest and latest years with national data), Minnesota felony convictions increased by 145 percent whereas felony convictions in all states increased only by 85 percent (BJS 1989, table 1; 2007c, p. 2; MSGC 2008c, p. 12).

Minnesota's low imprisonment rate is due in part to its frequent use of local jail sentences in lieu of prison: in 2004, 68 percent of sentenced Minnesota felons received jail terms, and 23 percent were sent to prison. For all states these proportions were in the opposite order: 30 percent of felons received a jail term, and 40 percent were sent to prison (BJS 2007c, p. 3). However, even when jail inmates are included, Minnesota's incarceration rate (300 per 100,000) was still the second-lowest of all states in 2005 (BJS 2006, p. 9).

The Minnesota guidelines seek to achieve sentencing "neutrality": sentences should avoid disparities based on race, gender, and socioeconomic status (MSGC 1980, p. 26; 2008b, sec. I[1]). Early postguidelines evaluations by the commission and outside researchers found that racial disparities had been reduced, at least when measured against guidelines definitions of conviction offense severity and prior record score (MSGC 1984; Miethe and Moore 1985; Frase 1993a, 2005a). The commission did not expect the guidelines to have a racially disproportionate impact on prison populations, since it predicted that the guidelines policy of favoring imprisonment for violent offenses would in-

crease white imprisonment rates more than black rates (MSGC 1980, pp. 16–17). The commission also apparently did not anticipate any racially disparate impact of the guidelines policy favoring imprisonment for offenders with high criminal history scores; however, the potential for such an impact was noted in later evaluations (MSGC 1984, pp. 83–84; Miethe and Moore 1985, p. 358).

C. Other Important Aspects of Minnesota Criminal Justice

The state department of corrections runs all state prisons and also supervises some persons on probation and postprison release in counties (mostly rural, totaling about 30 percent of the state's population) that do not participate in the state-local partnership provided in the Community Corrections Act (CCA) of 1973. All counties that participate in CCA, and some that do not, supervise released persons with county staff, and local detention facilities (jails and workhouses) in all counties are run by local governments. The cost of community corrections, in both CCA and non-CCA counties, is mostly paid from local funds.

Minnesota state judges hold elected positions, but in practice most are initially appointed by the governor to fill an unexpired term and then are routinely reelected in uncontested elections without political party endorsement.¹ Judges usually retire during their terms so that their successors can likewise be appointed. Chief prosecutors in each county are also chosen in nonpartisan elections, but (unlike judges and public defenders) they have been described as “a well-organized and active political force” (Martin 1984, p. 30).

D. The Broader Political and Social Contexts

Although Minnesota has generally been a politically liberal state since the 1970s, consistently voting Democratic in presidential elections, it has become considerably more conservative in recent years (e.g., two of the three governors elected since 1990 were Republicans, and the third was an independent). At the time the guidelines were adopted the state's political culture was one in which citizens viewed government “as a means to achieve a good community through positive

¹ Recent court decisions have invalidated judicial ethics standards that prevented judges from expressing political views or accepting political endorsement; see, e.g., *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002). But judges and many attorneys have resisted these decisions, and it remains to be seen whether the decisions will have much effect on judicial selection and retention decisions.

political action,” and the legislature had a tradition of nonpartisanship with respect to criminal justice policy issues (Martin 1984, pp. 28, 61n180). A “good government” culture still seems to characterize the state, but perhaps to a lesser extent.

Almost three-quarters of Minnesota’s 5 million residents live in the Minneapolis–St. Paul metropolitan area. In 1970, 98 percent of the state population was white, mostly of northern European ancestry (Martin 1984, p. 28). Since then the state has become considerably more ethnically diverse: Minnesota’s black population more than quadrupled from 1980 to 2005,² and there have also been major increases in the state’s Asian population, due primarily to an influx of Hmong refugees after the end of the Vietnam War. Despite these changes, Minnesota’s population remains quite homogeneous in comparison to other U.S. states. In the 2000 Census, 89.4 percent of Minnesotans listing one race said they were non-Hispanic whites versus 70.5 percent for the nation as a whole, 3.6 percent of Minnesotans said they were non-Hispanic blacks (vs. 12.4 percent for the nation), and 2.9 percent said they were Hispanic (vs. 12.5 percent for the nation; USCB 2007e, 2007f).

The growing diversity of Minnesota’s population has produced substantial changes in the state’s criminal case loads: from 1981 to 2005 the proportion of non-Hispanic whites among convicted felons declined from 82 percent to 62 percent, and there were substantial increases in all nonwhite categories except American Indians: non-Hispanic blacks increased from 11 percent in 1981 to 24 percent in 2005, Hispanics from 1.6 to 5.5 percent, and Asians from 0.2 to 2.0 percent (MSGC 2008c, p. 19).

II. Assessing Causes of Disparate Inmate Populations

The first subsection below examines the kinds of disparities that may arise at each stage of the criminal process. The second briefly discusses the stages at which current data are most limited and identifies persis-

² In 1980, 53,344 Minnesotans identified themselves as black (including Hispanics; Minnesota State Planning Agency 1991, p. 3). In the 2000 Census, 179,957 respondents said they were black (including those also identifying themselves as Hispanic), and 205,531 said they were black or black plus another race; by midyear 2005 an estimated 221,724 Minnesotans were black (only), and 257,740 were black or black plus another race (USCB 2007f).

tent problems (which may arise at multiple stages) with the available data and the interpretation of those data.

A. Stages of the Criminal Process

Racial disparities in inmate populations reflect more than sentencing laws and practices; such disparity may originate at every stage of the criminal process leading up to sentencing and at several postsentencing stages (Bridges and Crutchfield 1988; Minnesota Task Force 1993). At a minimum, research must examine disparities in the following system inputs and stages, each of which may contribute to disparate prison and jail populations.

1. *Racial Differences in Criminal Behavior.* Such differences usually reflect socioeconomic disparities, residential patterns, and other individual, family, or social factors strongly correlated with the risk of committing crime, the types and locations of crimes, and the risk of being a crime victim.

2. *Racial Differences in Reporting of Crime.* If such differences exist, they may reflect cultural values or different levels of trust in government officials. Since most crime is intraracial (Sampson and Lauritsen 1997; BJS 2007a; FBI 2008c, table 5), any factor that leads to underreporting of crimes against nonwhite victims tends to favor, rather than disfavor, nonwhite offenders (see the “compensating biases” discussion in subsection B below and in the Appendix).

3. *Police Decisions to Investigate and Arrest.* These decisions could result in racially disparate overenforcement (e.g., racial profiling, overemphasis on street-level enforcement) or underenforcement (if police devote less effort to enforcement of some or all crimes committed in nonwhite neighborhoods or committed against nonwhites in any location).

4. *Victim Cooperation with Police Investigation and Prosecution.* Just as there may be differences in victim reporting to the police, there may also be racial differences in willingness or ability to cooperate with police and prosecutors in their efforts to solve crimes, apprehend offenders, and obtain convictions. A lower level of cooperation by nonwhite victims is a factor that tends to favor nonwhite offenders.

5. *Prosecutorial Screening and Initial Charging Decisions.* Here too, there may be overenforcement, underenforcement, or both, varying by crime and by location.

6. *Postfiling Charge Revisions and Plea Bargaining.* These discre-

tionary decisions may cause racially disparate overenforcement or underenforcement. Even in the absence of deliberate bias, such decisions may have disparate impacts due to racial variations in factors such as victim cooperation, defense effectiveness, offense severity, and offender prior record.

7. *Ability of Defendants to Mount an Effective Defense or Propose Alternative Sentencing.* Given the strong correlation between race and class, minority offenders are likely to be indigent and have court-appointed counsel. Public defender programs are often underfunded, resulting in high caseloads, low pay, high turnover, and limited resources for investigation and sentence planning. In addition, if indigent minority offenders are more likely to be held in pretrial detention, they will face greater disadvantage in preparing for trial, negotiating a plea, and arguing for a noncustodial sentence. At trial, they may have difficulty effectively assisting in their defense or testifying because of mental or linguistic disabilities. At sentencing they may be disadvantaged by lack of private insurance or other funding for treatment, unstable family situations, lack of employment, and limited alternative sentencing resources in their communities.

8. *Criminal and Sentencing Laws.* Criminal statutes and sentencing guidelines may have unintended disparate impacts on different racial groups. In particular, sentence-enhancement factors related to offense severity ranking and criminal history scoring often apply more frequently to nonwhite offenders.

9. *Sentencing Practices.* Under the Minnesota sentencing guidelines, racial disproportionality in prison populations could result from decisions to depart from the recommended disposition (execution or suspension of the prison sentence) or from the recommended prison duration. Racially disparate jail populations could result from decisions imposing jail as a condition of felony probation, as a misdemeanor sentence, or as pretrial detention.

10. *Postsentencing Policies and Practices.* Inmate populations also depend on policies and decisions determining release conditions, revocation of probation or postprison conditional release, delay of prison or jail release through denial of good-conduct credits, and, where applicable, denial of parole release. Revocation decisions affect jail as well as prison populations, since offenders may be jailed as a sanction for alleged violations of release conditions and are often held in jail awaiting revocation proceedings. There may also be inherent racial biases

in risk assessment tools used to set probation and parole conditions, determine the timing of prison release, and respond to probation and parole violations. In addition, minority offenders may be less able to argue effectively for favorable probation conditions, prison release, or postprison release conditions; less able to mount an effective defense to alleged violations of release conditions; and less able to propose alternatives to revocation of release.

B. Missing, Inconsistent, and Hard-to-Interpret Data

Very few data are available for several of the system inputs and stages summarized above. Even when data are available, they are often not reported in a form consistent with data for other stages, or the data may be distorted by the manner in which they are reported or analyzed by researchers (for more detailed discussion of these problems, see the Appendix).

Other than arrest statistics, there are very few Minnesota-specific data on racial differences in criminal behavior and on police decisions to investigate and arrest. There are almost no race-specific Minnesota data on reporting of crime to the police, victim cooperation, pretrial detention decisions, defense resources, prosecutorial charging and plea bargaining, misdemeanor sentencing practices, postsentencing decisions that affect prison and jail populations, and, at all stages of the process, the race of crime victims.

There are also several persistent problems of inconsistent data. First, all arrest and some sentencing and prison data include Hispanics in the race categories. In other sentencing and prison data, and in most jail statistics, Hispanics are excluded from all racial categories and are reported as a separate group. Most Hispanics are white, and Hispanic whites tend to have higher arrest, conviction, and incarceration rates than non-Hispanic whites. Including Hispanics in race categories thus tends to raise the white rate and lower the black/white disparity ratio, concealing the greater disparity that exists between non-Hispanic whites and other groups. In this essay, whenever possible, data from different sources are compared using the same categorization (including or excluding Hispanics in the race categories); when the sources treat Hispanics differently, one set of data is adjusted using the best available estimates of race-ethnicity relationships in those data or related data.

Second, the major data sources employ two differing temporal per-

spectives. Some sources (e.g., sentencing statistics) report the “flow” of cases or offenders processed during a year or other defined time period, whereas other sources (e.g., statistics on inmate populations) report “stocks” of offenders at year end or some other time.

There are also important limitations in the scope and methodology of prior racial disproportionality studies. Most focus on black versus white disparities, ignoring other racial and ethnic groups, and do not separately examine males and females. In addition, all prior state-level studies compute per capita incarceration rates by comparing mostly adult inmate populations to the total resident population including juveniles. Furthermore, when computing per capita incarceration rates by race, these studies use no time lag between inmate measures and resident population bases. The problem is that prison inmate counts (and, to a lesser extent, jail counts) reflect crimes committed several years earlier, and the size of each race’s resident population may not be changing at the same rate. The volume of crimes committed by a racial group, and of the resulting criminal caseloads and inmate stocks for that group, should be assessed relative to the population of that group when the crimes were committed.

Owing to space limitations and to facilitate comparisons with prior research, I likewise disregard gender differences and focus on black/white disparities (blacks remain the largest nonwhite group in Minnesota). For the same reasons and also because of limited state population data by race and age, my racial disproportionality measures are based on total population bases including juveniles. But readers should keep in mind that the highly disparate Minnesota and U.S. black/white ratios reported here would be even higher if they were based on adult populations (and higher still if these ratios were limited to males).

In contrast to previous studies, however, I use time-lagged population bases to compute all black and white incarceration rates and black/white ratios, except when comparison is being made to the unlagged results of prior research (as in table 3). Time lagging is also used (as was done in tables 1 and 2) when computing per capita rates for other stages after the point of arrest, that is, conviction rates, guidelines prison recommendation rates, prison sentence rates, and rates of custody sentencing (prison or jail). Such time lagging is particularly important for Minnesota, where the black population has grown very much faster than the white population in recent years. Basing black and white rates and ratios on the much higher black populations of

later years would substantially understate black per capita rates and the true extent of racial disparity, particularly in prison populations.

Finally, when interpreting the limited available data on racial disproportionality, one must consider the possibility of compensating biases (Blumstein 1982). Bias against black victims tends to favor black offenders (since most crime is intraracial); if this bias coexists with bias against black offenders, the two opposing biases may cancel each other out (or at least mitigate each other somewhat), thus concealing the extent of each type of bias. Several other types of compensating bias are described in the Appendix.

Limitations on the availability and comparability of data constrain the time periods that I was able to examine. The most recent national survey of racial disparities in state prison and jail populations when I ran these analyses was as of midyear 2005. Furthermore, the U.S. Census Bureau in 2000 substantially changed the way it collects population data by race (in previous years, people were not allowed to self-identify under two or more specific races). Therefore, I primarily examine racial differences in sentencing and other matters in the years from 2000 through 2005, with only occasional references to available data for earlier or later years.

III. Prison and Jail Custody Rates by Race

Published data reveal substantial racial disproportionality in Minnesota's inmate populations. Five early studies focused on state prison populations; in each year, Minnesota's ratio of per capita black and white incarceration rates was the highest of any of the states reported:³

- 1982—20.9 : 1 (Bridges and Crutchfield [1988], reporting on 49 states);
- 1982—21.7 : 1 (Blumstein [1988], reporting on 33 states, male inmates only);
- 1988—19.0 : 1 (Tonry [1991], reporting on 49 states);
- 1990—20.4 : 1 (Blumstein [1993], reporting on 42 states);
- 1994—22.8 : 1 (Mauer [1997], reporting on 50 states).

No researcher or agency appears to have published state-by-state

³ Analyzing prison *admissions* instead of populations, Sorensen, Hope, and Stemen (2003, table 3) found that in 1997 the ratio of Minnesota's black and white per capita prison admission rates was 24.0 : 1, the highest ratio of the 23 states examined.

TABLE 3

Ratio of Black to White Per Capita Prison Rates in Minnesota and for All States, 1979–2007 (Black Rate as a Multiple of the White Rate)

	Minnesota	All States		Minnesota	All States
1979	...*	6.9	2002	14.9	...
1982	20.9	...	2003	13.1	...
1988	19.0	6.9	2004	12.1	...
1990	20.4	7.1	2005	11.3	6.1
1994	22.8	7.7	2006	11.1	...
2000 [†]	19.1	...	2007	11.4	...
2001	17.5	6.6			

SOURCES.—1979: Blumstein (1982); 1982: Bridges and Crutchfield (1988); 1988: Tony (1991; Minnesota), Mauer (1997; all states); 1990: Blumstein (1993); 1994: Mauer (1997); Minnesota 2000–2007: USCB (2007*e*, 2007*f*, 2008*f*); Minnesota Department of Corrections (2008); all states 2001: BJS (2002; combining data reported at pp. 9 and 13); all states 2005: BJS (2006; combining data reported at pp. 8 and 11).

NOTE.—Ratios equal the black prison rate (inmates per 100,000 black residents) divided by the white prison rate. Inmate and state population data are as of July 1 of each year; all population bases are unlagged to permit comparison of ratios computed by the author with results of previous studies. Minnesota inmate counts exclude short-term offenders serving a felony prison term in a local detention facility (usually because at the time of commitment to the custody of the Department of Corrections their remaining time to serve was 180 days or less). Data on such inmates are available only for 2004 and later; in those years the black/white ratios are identical with and without inclusion of these inmates.

* Data are not available.

[†] Except for 2000, black and white race categories include Hispanics. If Hispanics were included in 2000 data, the black/white ratio for that year would probably be somewhat lower.

black/white prison population ratios for the years since 1994, but more recent Minnesota imprisonment rates and ratios can be computed using inmate data from the Minnesota Department of Corrections and U.S. Census Bureau population estimates.⁴

As shown in table 3, the ratio of black to white per capita incarceration rates in Minnesota's prisons has declined substantially in recent

⁴ Minnesota prison data for recent years consist of inmate counts at 6-month intervals (Minnesota Department of Corrections 2008). For dates before July 2001, Hispanics are reported separately and are not included in race categories; after that date totals are reported for Hispanics, but these inmates are also included in the race categories. To simplify computations and presentation, the per capita rates reported in this essay are based on census estimates for persons listing only one race (i.e., excluding those who listed two or more races); in 2005, such multirace residents constituted an estimated 1.4 percent of all Minnesotans and 1.5 percent of the U.S. population (USCB 2007*e*, 2007*f*).

years.⁵ For the United States as a whole (excluding federal prisons), black/white prison ratios also declined, but by a much lesser amount, after similarly reaching a peak in the early 1990s.

The stronger downward shift in Minnesota after 2000 appears to be primarily the result of two factors: white commitments to prison rose much faster than black commitments, and the resident black population increased much more than the white population. First, the number of white offenders sentenced to prison increased by 58 percent from 2000 to 2005, whereas for blacks the increase was only 29 percent (MSGC [2006*b*] and similar data sets for 2001–4).⁶ The increase in white prison sentences was particularly great for methamphetamine and other drug offenses and for felony drunk driving.⁷ Second, the state's black population rose by 22 percent from 2000 to 2005, whereas the white population increased only by 1.6 percent (USCB [2007*f*], excluding Hispanics). The rapid growth in the black population ap-

⁵ All the ratios in table 3 are based on per capita black and white rates using unlagged population bases, in order to permit comparison to similarly unlagged figures reported in prior studies. All the ratios in the table would probably be higher if time-lagged bases were used. For example, the 2005 black/white prison ratio using population bases 3.5 years earlier is 12.4 : 1 (vs. 11.3 : 1, unlagged). But the direction and pace of the downward state and national trends shown in table 3 would be similar if all rate bases were time-lagged.

⁶ Guidelines sentencing data are available for every year since the guidelines became effective in 1980; the data sets contain demographic, processing, and sentencing data for all felons sentenced under the guidelines that year. In the remainder of this essay, when guidelines sentencing data are reported only by year, the sources are annual guidelines data sets obtained from the Minnesota Sentencing Guidelines Commission and analyzed by the author using SPSS software.

Minnesota sentencing data generally exclude Hispanics from race categories, whereas prison data almost always include them. Prison sentences have increased at a lower rate for Hispanics than for non-Hispanics since 2000, and most Hispanics are white, so the increase in prison sentences for all whites (including Hispanics) was probably a few percentage points lower than the 58 percent (non-Hispanic white) increase reported in the text.

⁷ From July 2001 to July 2005 the number of methamphetamine offenders in Minnesota prisons increased by almost 400 percent, and as of midyear 2006, 85 percent of such offenders were white (Minnesota Department of Corrections 2005, 2007). For all drug types combined, white prison sentences increased by 125 percent from 2000 to 2005, whereas for blacks the increase was only 10 percent. This racial difference is probably due to meth cases, but drug type data are available only in sentencing statistics for 2005. By that year, however, new trends seemed to be emerging, and there were very few distinctive racial patterns of drug offending: within each of the major drug type categories (heroin and opium, marijuana, powder cocaine, crack cocaine, meth or other amphetamines, and hallucinogens), about two-thirds of sentenced drug offenders were white and one-quarter were black.

The state's first felony driving while intoxicated (DWI) law went into effect in August 2002, and by July 2005 this offense accounted for 6 percent of prison inmates (Minnesota Department of Corrections 2008). In 2005, 73 percent of convicted felony DWI offenders were white, whereas only 62 percent of all convicted offenders were white.

appears to be due in large part to substantial numbers of recent immigrants from Somalia and other African nations. There is reason to believe that crime rates are lower for these immigrant populations than for native-born blacks. Differences in age demographics played only a small role in the patterns noted above and in table 3. From 2000 to 2005, both white and black populations grew slightly older, in terms of both median age and the proportions aged 18 and over; the proportion of white residents aged 20–29 (an age group accounting for 35–40 percent of prison sentences for both races) increased slightly, whereas there was a small decline in the proportion of black residents in their 20s (USCB 2007*b*).

The earlier national surveys and recent Minnesota prison data discussed above have three major limitations: they include Hispanics in the black and white race categories, they do not include inmates held in local jails and workhouses, and they use unlagged population bases to compute per capita incarceration rates for each race. The inclusion of Hispanics tends to understate the non-Hispanic black/white incarceration ratio. Mauer (1997, p. 8) demonstrated the converse: exclusion of Hispanics from race categories will dramatically lower the white per capita incarceration rate in some states, thus raising the black/white incarceration ratio; for example, without Hispanics the white prison rate in 1994 was 32 percent lower for California and 74 percent lower for New York.

Racial disproportionality tends to be lower in jail populations, so calculating black/white incarceration ratios solely on the basis of prison data tends to overstate racial disparities in the combined (prison plus jail) custodial population. The opposing effects of including Hispanics and excluding jail inmates vary from state to state. Recent studies correcting these two problems in the prior data suggest that for Minnesota the net effect of those problems was to exaggerate the state's black/white ratio, while also exaggerating the rank order of its total incarceration ratio when compared to ratios in other states. For example, in 2001 Minnesota's black/white ratio for prisons alone (17.5 : 1, unlagged) was almost 40 percent higher than its black/white prison-plus-jail ratio (12.6 : 1); for all states, the prison-only ratio (6.6 : 1) was only 10 percent higher than the prison-plus-jail ratio (6.0 : 1). These differential effects are the result of two Minnesota characteristics: the state has a relatively low proportion of Hispanic residents, and Min-

nesota felons receive jail terms much more often than felons in other states.

Two recent Department of Justice reports on inmate population disparities in each state exclude Hispanics from race categories and also include jail as well as prison inmates. The first report (BJS 2002; also reported in Sentencing Project [2004]) provides data as of midyear 2001. Minnesota's black/white incarceration ratio was 12.6 : 1, the third-highest of the 50 states (for all states combined, the ratio was 6.0 : 1). The second report (BJS 2006; also reported in Mauer and King [2007]) provides data as of midyear 2005 and showed that Minnesota's black/white ratio had fallen to 9.1 : 1 (national average: 5.6 : 1). Of the 48 states reporting both prison and jail rates by race in 2005, nine states had higher black/white ratios and four states (Illinois, New Hampshire, Pennsylvania, and Utah) had approximately the same ratio as Minnesota.

However, these two latest reports did not correct a third problem found in all prior state-by-state studies of racial disparity in custodial populations: black/white incarceration rates and ratios are computed using unlagged population bases. Failure to lag the bases tends to understate black/white ratios when (as is usually the case) black resident populations are rising faster than white populations. The use of unlagged bases has a particularly distorting effect on comparisons between Minnesota and other states. Since Minnesota's black population has recently been increasing much faster than black populations in many other states, the use of unlagged bases understates Minnesota's black/white ratio more than it understates ratios in those other states, thus probably understating Minnesota's national ranking. The state's black/white ratio would have a higher ("worse") rank if appropriately lagged bases were used. A comparison between national and Minnesota ratios shows how much more the latter are affected by the timing of population bases: using a 3-year lagged base (2002 populations) increases the 2005 national black/white ratio for prison and jail inmates only from 5.6 to 5.7, but it raises Minnesota's ratio from 9.1 to 9.9.

In later sections I examine the available evidence on black/white disproportionality at earlier stages of the criminal process, beginning with arrest. Those disparities are compared with several key numbers that summarize Minnesota incarceration rate disparities in recent years.

For Minnesota prison populations, the ratio of black to white per capita incarceration rates in 2005, including Hispanics in the race cat-

egories and using population bases lagged 3.5 years, was 12.4 : 1 (table 2 above). The estimated ratio with Hispanics excluded (based on race-ethnicity relationships in cases sentenced to prison in that year) was 13.2 : 1. With a broader, multiyear measure of prison stocks (2003–7), corresponding to the multiyear measures used in later sections of this essay for arrests, convictions, and sentencing, Minnesota's black/white, lagged-base prison ratio was 12.9 : 1 including Hispanics in the race categories and an estimated 13.8 : 1 without Hispanics (table 10 below).

For prisons and jails combined, Minnesota's black/white inmate ratio in 2005, excluding Hispanics and using population bases lagged 3 years, was 9.9 : 1 (table 1); the estimated ratio with Hispanics included (based on race-ethnicity relationships in cases sentenced to prison or jail) was 9.5 (table 10 below). (Multiyear data for prisons and jails combined are not available.)

Before I conclude this survey of previous studies, it is useful to reflect on several consistent and curious findings concerning the geography of disparity.

First, in all seven of the national studies summarized above, the states with the worst black/white ratios tended to be northeastern and upper-midwestern states with liberal political traditions; many southern states had black/white ratios lower than the national average. This pattern was previously noted by Bridges and Crutchfield (1988), Tonry (1991), Blumstein (1993), Mauer (1997), and Sorensen, Hope, and Stemen (2003). In 2005, the two regions with the lowest black/white ratios for prison and jail inmates were the South (4.02 : 1) and the West (6.03 : 1), whereas the regions with the highest ratios were the Northeast (9.16 : 1) and the Midwest (6.49 : 1; BJS 2006).

Second, states and regions with very low total incarceration rates (inmates in jail or prison per capita) tend to have very high black/white ratios, and vice versa. This was also noted by Tonry (1991), Blumstein (1993), and Mauer (1997).

Third, most states with high black/white incarceration ratios have higher than average black incarceration rates (10 out of the 13 highest-ratio states in 2005) and lower than average white rates (11 out of 13 states). Conversely, states in the low-ratio quartile, most of which are in the South, tend to show the opposite pattern: all 13 of these states had higher than average white incarceration rates in 2005, and eight had lower than average black rates. (The 13 highest-ratio and 13 lowest-ratio states in 2005 are identified and further discussed in Sec. IV.)

This pattern has existed for some time, at least in the case of southern states (Bridges and Crutchfield [1988], analyzing 1982 data).

Among the high-ratio states, Minnesota, Rhode Island, and New York show a third pattern: per capita incarceration rates are lower than average for both whites and blacks (albeit especially low for whites; hence the high black/white ratios for these states). In most prior studies Minnesota's white rate was the lowest reported for any state, whereas its black prison rate was lower than the national average in all but the first (1982) study. The low incarceration rates for Minnesota blacks and whites might suggest that there is nothing particularly interesting about the state's high black/white ratio or, at least, that the more interesting question is why the white incarceration rate is so low. However, as noted previously, other disparity ratios for Minnesota (in arrests, convictions, and socioeconomic measures) tend to conform to the majority pattern for states with a high incarceration ratio: whites are better off than the national average, and blacks are worse off. As for incarceration rates, Minnesota's lower-than-average black rate results from sentencing policies designed to minimize the use of state prison sentences. Minnesota blacks benefit from those policies when compared to blacks in other states, but they do not benefit nearly as much as Minnesota whites do.

Prior researchers (Tonry 1991; Blumstein 1993; Mauer 1997) have sought to attribute these geographic variations to state sentencing policies. A (more liberal, northern) state that uses its prisons mainly for violent offenders will have higher black incarceration rates, since blacks are more likely to be arrested and convicted of violent crimes. Other (more conservative, southern) states, where prison terms are frequently given to nonviolent offenders, will have higher white incarceration rates than the first group of states and, as a result, lower black/white prison ratios. There is undoubtedly much truth in this theory, but it works less well in explaining geographic patterns of racial disproportionality in jail populations: jails are less heavily used than prisons for violent offenders, yet the same geographic variations in racial disproportionality, albeit less pronounced, also exist in jail populations. And as I discuss in the next section, both kinds of disparity—in prisons and in jails—are preceded and to a large extent seem to be caused by equal or greater racial disproportionality at the arrest stage. Clearly, sentencing decisions and state-to-state differences in sentencing policy are not the only causes of prison and jail disparities and geographic vari-

ations in disparity. In particular, it appears that the high incarceration rates for southern whites and northern blacks reflect not just sentencing policies in these states but also offense rates for both groups (Sorensen, Hope, and Stemen 2003).

Blumstein (1993, pp. 755–56) offered two additional explanations for state and regional patterns of disparity: that blacks who have remained in the South are more “compliant and socialized to local mores” and more locally rooted than those who migrated to the North and Midwest; and that these migrants tended to move from rural, low-crime to urban, high-crime areas. The latter theory was examined on a regional basis by Sorensen, Hope, and Stemen (2003). Minnesota, regional, and national data supporting this theory are presented in Section IV.

IV. Disproportionate Arrest Rates: Differences in Offending, Policing, Both?

The focus now shifts to the first stage of criminal justice processing, arrest. Ideally, one would begin by examining data on racial patterns of offending to see whether disparities exist prior to and independent of police activity and subsequent criminal justice processing, but very little race-specific data on offending are available for Minnesota. However, several indirect measures, discussed in subsection B below, suggest that substantial racial differences in offending do exist in the state and probably explain most of the disparities found at the arrest stage.

A. Black and White Per Capita Arrest Rates

Minnesota’s adult arrest rates for some types of crime are even more disparate than its inmate populations. For all types of crime, arrests in Minnesota are substantially more disparate than the national average. As shown in table 4,⁸ black per capita adult arrest rates for serious (“Part I”) violent crimes in 2000–2004 (the period preceding the latest survey of state prison and jail disparities) were on average over 15 times higher than white rates. For murder and robbery Minnesota’s black arrest rates were almost 40 times higher. Black/white arrest ratios were

⁸ FBI national arrest data include Hispanics in white and black race categories. Estimated U.S. total adult white and black arrests are extrapolations based on the jurisdictions reporting arrestee race and age data (these jurisdictions accounted for 70–75 percent of estimated total arrests each year). Minnesota data are from the Minnesota Bureau of Criminal Apprehension (BCA 2008), which, like the FBI national data, include Hispanics in the white and black race totals for juvenile and for adult arrests.

TABLE 4
 Ratio of Black to White Per Capita Adult Arrest Rates in Minnesota and the United States, by Year and by FBI
 Offense Groups (Black Rate as a Multiple of the White Rate)

	Murder and Robbery		Part I Violent		Part I Property		Drug Crimes		Part I Violent Plus Drug		All Part I Crimes Plus Drug	
	Minn.	U.S.	Minn.	U.S.	Minn.	U.S.	Minn.	U.S.	Minn.	U.S.	Minn.	U.S.
1990	72.0	10.5	25.6	5.4	10.1	3.6	14.6	4.6	18.3	4.9	12.9	4.2
2000-2004 (mean)	39.8	6.6	15.4	3.8	8.5	2.9	9.0	3.4	10.2	3.5	9.5	3.3

SOURCES.—USCB (1990*b*, 2007*e*, 2007*f*, 2008*a*, 2008*b*); FBI (2008*b*, tables 29, 43) and similar reports for other years; BCA (2008). Minnesota arrest data for 2003 and 2004 exclude St. Paul, so the population bases do too; see the text.

NOTE.—Part I violent crimes are murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault. Part I property crimes are burglary, larceny-theft, auto theft, and arson.

lower for Part I property crimes and for drug crimes in these years; for all Part I crimes plus drug crimes combined, black arrest rates averaged 9.5 times higher.⁹ In all these offense categories, arrest disparities were greater in 1990.¹⁰

Arrest data permit only rough comparisons with prison and jail data, since the latter are “stocks” and the former are “flow” measures. In addition, data on prison and jail populations exclude Hispanics from the race categories, whereas Hispanics are included in all Minnesota and U.S. arrest data. Nevertheless, it is noteworthy that the average Minnesota black/white arrest ratio for all Part I crimes plus drugs in 2000–2004 (9.5 : 1) is identical to the estimated black/white ratio for Minnesota prison and jail populations at midyear 2005 (including Hispanics, 3-year lagged base) derived in Section III (also shown in table 10). Moreover, the higher arrest disparities in 1990 are consistent with Minnesota’s higher prison disparities in earlier years (20.4 : 1 in 1990 and 22.8 in 1994, falling to 11.3 : 1 by 2005; see table 3 above).

Comparison of black/white per capita arrest ratios for Minnesota with ratios for the entire United States reveals that arrest rates are much more racially disproportionate in Minnesota than they are in many other states. In 2000–2004 Minnesota’s average black/white adult arrest ratio for serious (Part I) violent crime arrests was four times higher than the U.S. ratio, and for murder and robbery Minnesota’s average ratio was six times higher. Drug crime and property crime arrest rates were also more disparate in Minnesota, although to a lesser extent. Minnesota’s average black/white ratio in 2000–2004 was almost three times higher than the national average for serious property crimes and over two and half times higher for drug crimes.

⁹ Arrests for Part II offenses other than drugs are less suitable as predictors of prison and jail populations, since custody sentence rates and durations are lower and prison and jail populations are smaller for most of these crimes. See BJS (2007c); see also Minnesota Department of Corrections (2008). As of July 1, 2007, 70 percent of prison inmates had been convicted of violent and other “person” crimes (49 percent) or drug crimes (21 percent); the remainder consisted of property crimes (13 percent), DWI (7 percent), weapons (5 percent), and other (6 percent). Post-2004 data are excluded from the multiyear averages discussed in the text because these arrests would not have affected the most recent Minnesota and U.S. black/white prison-jail ratios reported earlier.

Minnesota arrest data (BCA 2008) for 2003 and 2004 do not include St. Paul, the state’s second-largest city. In computations of 2003 and 2004 black and white per capita arrest rates included in the multiyear averages shown in tables 4 and 10, state population bases for 2003 and 2004 were revised to exclude St. Paul black and white populations (USCB 2008a, 2008b).

¹⁰ Per capita rates and ratios for 1990 are not directly comparable with those for 2000 and later years, since the 1990 Census permitted choice of only one specified racial identity.

The finding that Minnesota arrest disparities are particularly great for violent crimes is consistent with prior research examining regional patterns. Sorensen, Hope, and Stemen (2003, p. 80) reported that the ratio of black and white violent crime arrest rates in 1996 was 15.5 : 1 for the Midwest but only 5.5 : 1 for the other three regions combined (Northeast, West, and South).

Minnesota arrest disparities would probably be even higher, and the Minnesota-U.S. differences greater, if black and white arrest rates were based on adult populations (since black populations are relatively younger than white populations, especially in Minnesota). If Hispanics were excluded from white and black race categories in arrest data, this would also probably increase black/white arrest ratios, but it would tend somewhat to reduce Minnesota-U.S. differences (since Minnesota has relatively few Hispanics compared to the national average).

Minnesota's high black/white arrest ratios are the combined result of low white rates and high black rates. For example, in 2002 per capita white arrest rates for the four primary crime categories shown in table 4 were all below the national rates for whites. The Minnesota white murder and robbery rate was 66 percent below the national rate, and the rates for Part I violent, Part I property, and drugs were, respectively, 60 percent, 26 percent, and 38 percent below the national rates. Minnesota black per capita arrest rates in that year were all well above the national rates for blacks. The Minnesota black murder and robbery rate was 165 percent above the national rate, and the rates for Part I violent, Part I property, and drugs were 59 percent, 105 percent, and 66 percent above the national rates.

B. Preliminary Assessment of Minnesota's Disparate Arrest Rates

Why are arrest rates so much more racially disparate in Minnesota than for the nation as a whole? The most likely explanations probably involve one or more of the following factors: especially high black crime rates relative to white rates in Minnesota, greater willingness of Minnesota victims of black crimes to report those crimes to the police, and police overenforcement in Minnesota black communities or underenforcement in black communities elsewhere or both. Some or all of these factors could also help explain the curious geographic patterns of racial disproportionality in prison and jail populations, previously noted (that the states with the worst black/white ratios tend to be northeastern and midwestern states with liberal political traditions,

whereas conservative southern states have black/white prison and jail ratios equal to or lower than the national average).

Each of the three theories summarized above merits thorough examination, beyond the scope of this exploratory analysis. A preliminary assessment reveals substantial support for the first theory (higher black crime rates) and some support for the third (disparate law enforcement policies).

1. *Racial Differences in Criminal Behavior.* Although arrests reflect police discretion and policies as well as offense behavior, victim survey data on the perceived race of offenders suggest that black violent crime rates are higher: although blacks represented about 13 percent of the national population in 2005, they were perceived to have committed 28 percent of single-offender violent crimes and 47 percent of multi-offender violent crimes, excluding crimes in which the offender's race was unknown or not reported (BJS 2007a, tables 40, 46; see also Wilson 1987, pp. 22–26; Tonry 1995, pp. viii, 49, 63–80; American Law Institute 2007, pp. 38–39). However, very little of this research has been done in Minnesota;¹¹ and of course, victim surveys cannot assess racial offending patterns for crimes without face-to-face victim-offender contact and for crimes with no direct victim at all, in particular, drug crimes. Thus, for all types of crime we can assess racial offending patterns in Minnesota only indirectly. Here are four such indirect measures.

a. *Black/White Socioeconomic Disparities.* Crime is highly correlated with race and poverty, especially high concentrations of race and poverty (see studies cited in American Law Institute [2007, pp. 38–39]; see also Wilson 1987, pp. 20–62; Massey and Denton 1993, pp. 132–39; Ruth and Reitz 2003, pp. 32–37; Western 2006, pp. 34–38). If such concentrations and other measures of disparity in socioeconomic status (SES) between blacks and whites are greater in Minnesota than in other

¹¹ Four crime victimization surveys have been conducted in Minnesota since 1993, but in each case low response rates from minorities prevented any analysis of the data by race (see, e.g., Minnesota Criminal Justice Statistics Center 2003, p. 14). However, some indirect victimization data by race can be found in Minnesota Student Surveys of sixth, ninth, and twelfth graders (Minnesota Departments 2007) conducted from 1992 through 2004; these surveys have found consistently higher black responses to questions such as whether the child felt unsafe at school or on the way to school; gangs were a problem at the school; the child or a friend was a gang member; someone had threatened, stabbed, or shot at the child; or the child had been a victim of violence on a date or a victim of physical or sexual abuse. Since most crime is intraracial, these data imply higher black offense as well as victimization rates.

states, then Minnesota would be expected to have above-average racial differences in crime rates. High relative levels of black poverty and disadvantage in Minnesota would not be surprising, given that many of the state's blacks are recent arrivals and are therefore less socially integrated.

Prior research has only occasionally examined the effects of social status variables on custody disparities. Bridges and Crutchfield (1988) modeled white and black per capita imprisonment rates, using states as the unit of analysis, and found that higher levels of prison racial disparity were associated with higher black poverty rates, higher proportions of blacks living in inner-city areas, and smaller proportions of blacks in the total population. These authors also asserted that these factors were independent of racial differences in offending, but it appears that their models could not fully control for such differences. The white and black arrest rates Bridges and Crutchfield used to control for racial differences in offending included all index (Part I) crimes or, alternatively, all index violent or all index property crimes, but none of these measures fully captures the average severity of black and white arrest charges. Moreover, no variables directly measured racial differences in drug and other non-index crime arrests or in prior conviction records. Thus, uncontrolled racial differences in offending probably increased the apparent significance of any model variables with which crime rates are strongly correlated, including poverty rate, residential location, and percent black. These three factors do seem to be linked to racially disparate custody rates, but by a much more direct route. With high degrees of black poverty and inner-city residential concentration and a small, politically weak black population, the risks are much greater that blacks will be drawn into crime and apprehended by highly targeted law enforcement measures. And these three disparity risk factors, not coincidentally, are all present in Minnesota (tables 5, 6, and 7 below).

Table 5 reports black/white "disadvantage ratios" for Minnesota and the United States on various SES measures taken from the 2000 Census (USCB 2007*d*).¹² (This table includes Hispanics in the race categories to facilitate comparison with similarly categorized arrest data reported in table 4.) On each one of these SES measures, the Min-

¹² SES disparities in more recent surveys are very similar, and in some cases worse. For example, on the percentage of families below poverty, Minnesota's 2005 black/white ratio was 6.93 : 1, almost twice the national ratio of 3.60 : 1 (USCB 2007*a*).

TABLE 5
Minnesota and National Black/White Socioeconomic Disadvantage
Ratios in 2000 (Black Rate as a Multiple of the White Rate)

SES Measure	Minnesota	United States
Percent age 25 and over less than high school graduate	1.94	1.69
Percent living in a different U.S. house in 1995	1.48	1.10
Percent unemployed, of population 16 and over	3.04	2.30
Percent unemployed, of labor force 16 and over	3.28	2.52
Median household income	.60*	.66*
Median family income	.53*	.62*
Per capita income	.56*	.60*
Percent of families below poverty	6.18	3.43
Percent of individuals below poverty	4.37	2.74

SOURCE.—USCB (2007*d*).

NOTE.—Black and white race categories include Hispanics, for comparison with arrest data.

* A higher number on this measure means less relative black disadvantage.

nesota black/white disadvantage ratio was worse than the national average. On some measures, Minnesota's racial disadvantage ratio was *substantially* worse than average: the black family poverty rate in Minnesota was over six times higher than the white poverty rate, whereas for the United States as a whole the black poverty rate was 3.4 times higher. Minnesota's high racial disadvantage ratios result from the fact that its blacks are almost always equal to or worse off than the national average for blacks on these SES measures, whereas on every measure, Minnesota whites are better off than the national average for whites.

i. *The Effects of Immigration on SES and Racial Disproportionality Measures.* One potential problem with the above comparisons is that a high percentage of Minnesota's blacks are immigrants: in 2000, 18 percent of the state's blacks were foreign born (excluding persons born in Puerto Rico or other U.S. island territories or born abroad of U.S. parents), whereas the proportion for U.S. blacks was only 6 percent (USCB 2007*d*). As of 2005, the foreign-born proportions were 23 percent for Minnesota blacks and 8 percent for U.S. blacks (Ruggles et al. 2004). If black immigrants to Minnesota have especially low SES measures, their inclusion along with native-born blacks could distort comparisons with other states. On the basis of the limited available information, however, this does not appear to be the case. In 2000 and 2005, poverty rates were only slightly higher for foreign-born Minnesota blacks than for native-born blacks, and rates of unemployment

were actually substantially *lower* for foreign-born Minnesota blacks in both years (Ruggles et al. 2004; USCB 2007*d*). Finally, an examination of SES data for 1990, when only 5 percent of Minnesota blacks were foreign-born, reveals black/white SES disparities almost as great as those found in the 2000 and 2005 data. For example, the black/white ratio (including Hispanics) for the percentage of individuals below poverty in 1990 was 4.22 : 1 versus 4.37 : 1 in 2000 (USCB 1990*a*).

Despite the high poverty rate of Minnesota's foreign-born blacks, there is reason to believe that they are less crime-prone than native-born blacks. This pattern, if true, would be consistent with research dating back to the start of the twentieth century: first-generation immigrant groups tend to be less involved with crime, although second- and third-generation groups often have higher crime rates (Tonry 1997, pp. 19–25). And if the pattern is true, it would help to explain recent declines in the state's black/white incarceration ratios: immigrants were expanding the population base denominator of the black incarceration rate but not (yet) contributing in equal measure to the inmate numerator. Data to examine this theory properly are not available; Minnesota state and local police statistics do not report the citizenship, birthplace, or national origin of persons arrested. However, population data including place of birth are available by census tract, so an indirect assessment of the "immigrant effect" can be based on comparison of crime rates in neighborhoods with higher and lower proportions of native- and foreign-born blacks. Data from Minneapolis (where many of the recent black immigrants live) show that in 20 neighborhoods with above-average proportions of black residents, the proportion of African-born persons in the neighborhood was negatively correlated with reported violent crime rates in 2000, whereas the estimated proportion of native-born blacks in the neighborhood (total blacks minus African-born persons) was positively correlated with violent crime.¹³

¹³ The model is based on neighborhoods (described in Minneapolis [2008*c*]) for which 2000 census tract data on place of birth (USCB 2008*e*) could be matched with police-reported crime data by precinct for that year (Minneapolis 2008*a*, 2008*b*; data were hand-tabulated for one neighborhood not included in the main data source). Such matching was available for 21 neighborhoods; of these, one downtown neighborhood of condominiums, offices, stores, bars, and sports centers (Minneapolis 2008*d*) was excluded because most of the violent crime there appears to be committed by (and against) nonresidents.

In bivariate analysis, the correlations between a neighborhood's Part I violent crime rate and the percentage of the population that is native-born black was +.441 ($p > .05$);

TABLE 6

Black/White Socioeconomic Disadvantage Ratios in 2000 and 2005 (Average) for States with the Highest and Lowest Prison-Jail Black/White Disproportionality in 2005, and for Minnesota and the Entire United States (Black Rate as a Multiple of the White Rate)

	Minnesota	13 States with Highest Custody Rate Disparities	United States	13 States with Lowest Custody Rate Disparities
Percent age 25 and over less than high school graduate	2.34	1.79	1.85	1.60
Percent living in a different U.S. house in 1995	1.90	1.54	1.22	1.20
Percent unemployed, of population 16 and over	3.54	2.69	2.44	2.31
Percent unemployed, of labor force 16 and over	3.58	2.78	2.55	2.36
Median household income	.54*	.63*	.63*	.64*
Median family income	.48*	.59*	.60*	.62*
Per capita income	.53*	.58*	.58*	.59*
Percent of families below poverty	6.75	4.60	3.77	3.27
Percent of individuals below poverty	4.69	3.50	2.95	2.64

SOURCES.—USCB (2007a, 2007d).

NOTE.—Black and white race categories exclude Hispanics, for comparison with prisoner data.

* A higher number on this measure means less relative black disadvantage.

ii. *State-to-State Variations in Socioeconomic Disparity.* The link between SES disparities and prison-jail disparities is corroborated by comparison of black-to-white SES disadvantage ratios in the states with the highest and lowest black/white incarceration ratios. Table 6 reports these SES ratios for Minnesota, the United States, and the highest and

for percentage African-born, the correlation was $-.351$ ($p > .05$). The strongest factor associated with violent crime rates in these neighborhoods was the unemployment rate ($r = +.518$, $p < .05$). When these three variables are put into a single model, only unemployment rate and African-born are significant (standardized beta = $+.827$, $p < .000$, and standardized beta = $-.743$, $p < .005$, respectively). But the African- and native-born variables are strongly and negatively correlated with each other ($r = +.591$, $p < .001$), which makes it difficult to assess their independent strengths. In separate multiple regression models of each variable with unemployment, both variables were significant, or nearly so, as predictors of Part I violent crime (for percentage African-born, standardized beta = $-.660$, $p < .001$; for percentage native-born, standardized beta = $+.378$, $p < .061$); unemployment remained significant in both models (standardized beta = $+.780$, $p < .000$, and standardized beta = $+.468$, $p < .024$, respectively).

lowest quartile of states in the most recent (2005) ranking of black/white incarceration rate ratios (Mauer and King 2007, table 6). All but one of the high-ratio states are in the Northeast and upper Midwest, whereas 10 of the 13 low-ratio states are in the South. The 13 high-ratio states (in *decreasing* order of their 2005 black/white incarceration rate ratios) are Iowa, Vermont, New Jersey, Connecticut, Wisconsin, North Dakota, South Dakota, Rhode Island, New York, New Hampshire, Pennsylvania, Utah, and Minnesota. The 13 low-ratio states (in *increasing* order of their 2005 black/white ratios) are Georgia, Mississippi, Alabama, Arkansas, Tennessee, Idaho, Alaska, Oklahoma, Florida, South Carolina, Nevada, Louisiana, and Texas.¹⁴

The theory being tested here is that states with the highest black/white incarceration ratios will have SES racial disparities greater than the national average, whereas the states with the lowest black-white incarceration ratios will have lower-than-average SES disparities. Accordingly, table 6 places the U.S. (national-average) rates in a middle column, between the high- and low-incarceration ratio states.¹⁵ On every measure, the low-ratio states have black/white SES disparity ratios equal to or lower than the national average (because whites in these states are more disadvantaged than U.S. whites generally, because blacks in these states have a disadvantage equal to or less than that of U.S. blacks generally, or both). The SES-incarceration ratio link is less consistent for the high-ratio states. As predicted, blacks are relatively more transient (living in a different house) in these states and have higher unemployment and poverty rates. On some other SES measures (education and income levels) black/white disparities in these states are

¹⁴ Washington, DC, is excluded from the high-ratio group because it is a city, not a state, and because the DC data cover only short-term prisoners (see BJS 2006, p. 11 n. c). Hawaii is excluded from the low-ratio group because that state has a unique racial composition (very few blacks and a very high proportion of Asians). Sorensen, Hope, and Stemen (2003, p. 76 n. 7) excluded Hawaii for similar reasons.

The 2005 SES data incorporated in table 6 are based on surveys, and some high- and low-ratio states had too few blacks to estimate black rates. Six high-ratio states reported 2005 black SES data: Connecticut, Minnesota, New Jersey, New York, Pennsylvania, and Wisconsin. Eleven low-ratio states (all but Alaska and Idaho) reported 2005 black SES data.

¹⁵ Table 6 excludes Hispanics since the most recent state-by-state incarceration rate ratio data also exclude Hispanics from the race categories. Prison and jail populations reflect crimes committed and social disadvantages several years earlier, so this table uses the average of 2000 and 2005 SES measures, which yields a time lag of approximately 2.5 years between the dates of the SES averages and the 2005 incarceration rate data used to compute high- and low-ratio states. The 2000 and 2005 ratios show similar patterns, but most of the 2005 ratios are higher.

equal to or lower than those for the United States as a whole. Finally, it should be noted that Minnesota's black/white SES disadvantage ratios are the worst on every measure when compared to other high-ratio states, national rates, and the low-ratio states.

b. Location, Location, Location (of Residence). Another reason why Minnesota blacks may have higher crime rates than blacks in other states, and much higher crime rates than Minnesota whites, has to do with where people of each race live. Minnesota's black population is concentrated in high-crime, urban neighborhoods, whereas in other states, particularly in the South, many blacks live in rural areas with lower crime rates. And Minnesota whites, like whites in most other states, tend to live in low-crime suburban and rural areas.

Victimization studies report crime in three locations—urban, suburban, and rural—with violent and property crime rates declining from the first to the third category (BJS 2007*a*, table 54). FBI “crimes-known” data are also reported for three locations—metropolitan statistical areas (MSAs), cities outside such areas, and “nonmetropolitan counties”—with the third category having the lowest rates for almost all crimes and each of the other two categories having the highest rates for certain types of crime. In 2005 MSAs had the highest rates for murder, robbery, assault, and motor vehicle theft. Cities outside any MSA had the highest rates for rape, larceny, and burglary (FBI 2008*c*, table 2).

Comparison of residential patterns by race with crime rates is seemingly complicated by the different geographic categories employed in the crime measures just described. Closer inspection reveals that the victim surveys and FBI crime reports both use versions of census-defined categories. Census Bureau population data are categorized, *inter alia*, by whether the location is within an MSA or not, with each of these two categories further subdivided: MSAs include “central city” and other areas; non-MSAs include urban and rural areas. The correspondence between victim survey, FBI, and Census of Population categories is shown in table 7. The table also shows, for Minnesota, the entire United States, and the southern region, the proportions of blacks and whites living in each crime rate area.

Sixty-three percent of Minnesota blacks live in the highest-crime area category used in victimization data (urban/central city area); this proportion is higher than for U.S. blacks (53 percent) and southern blacks (42 percent) and far higher than the proportions for Minnesota,

TABLE 7
 Location of Residence in 2000, by Race and by Crime Data Categories: Percentage of Each Race Living in Each Geographic Area

	Minnesota		United States		South	
	Blacks	Whites	Blacks	Whites	Blacks	Whites
Total population	172,181	4,398,014	34,614,894	211,347,851	18,944,758	72,771,931
Victim survey categories:						
Urban (in MA, central city)	63.0%	15.4%	53.3%	24.2%	42.3%	22.9%
Suburban (in MA, not central city)	32.4%	53.3%	33.3%	53.6%	35.2%	51.0%
Rural (not in MA)	4.2%	31.4%	13.8%	22.2%	22.6%	26.1%
FBI (Uniform Crime Reports) categories:						
MSA (in MA, total)	96.6%	68.7%	86.2%	77.8%	77.4%	73.9%
Non-MSA city (not in MA, urban)	3.1%	11.5%	7.1%	8.6%	11.1%	8.8%
Nonmetro county (not in MA, rural)	1.1%	19.9%	6.6%	13.6%	11.5%	17.4%

SOURCE.—USCB (2007c).

NOTE.—MA = metropolitan area; MSA = metropolitan statistical area.

U.S., and southern whites (15, 24, and 23 percent, respectively). Conversely, almost no Minnesota blacks live in the lowest-crime areas; only 4 percent of blacks live in a rural/nonmetropolitan area, and 1 percent live in a nonmetro county, whereas substantial proportions of whites and non-Minnesota blacks (especially in the South) live in such areas.

The finding that Minnesota has particularly high racial disparity in location of residence is consistent with prior research examining regional patterns. Sorensen, Hope, and Stemen (2003, pp. 80–81) reported that the Midwest region had the greatest difference between the proportions of black and white residents living in urban areas (which they defined as areas having a population greater than 50,000 and a population density greater than 1,000 persons per square mile).

Bridges and Crutchfield (1988) found a significant relationship, independent of crime rates, between concentrations of blacks in inner-city areas and racially disparate prison populations. But as noted above, given the limited controls in these models for racial differences in offense rates and prior records, at least part of that relationship may have been due to the more direct connection between urban segregation and black crime rates. Bridges and Crutchfield also proposed a new segregation measure: percentage of blacks living in central city areas compared to the percentage of whites living there. By that measure, Minnesota's central city segregation ratio in 2000 was 4.1 : 1, the national ratio was 2.2 : 1, and for the southern region the ratio was 1.8 : 1.

Unfortunately for Minnesotans of all races, concentrations of race and poverty (and, thus, of crime) appear to be increasing. Minneapolis schools have recently become much more segregated by class and race: poverty enrollments rose from 43 to 66 percent between 1990 and 2000, and by 2003 almost half of reporting schools had nonwhite enrollments exceeding 80 percent (Orfield and Wallace 2007). Statewide, the proportion of Minnesota's black children attending schools that were 95–100 percent minority increased from zero in the 1993–94 school year to 12 percent in 2005–6; only five states had higher increases in this time period (*Minneapolis Star Tribune* 2007).¹⁶

¹⁶ According to *Minneapolis Star Tribune* (2006), data gathered in 2002–3 showed that only 44 percent of Minnesota black students graduated from high school in 4 years, compared to 83 percent of the state's white students and a national average for black students of 52 percent. According to *Minneapolis Star Tribune* (2008a), in 2006–7 a black Minnesota student was about six times more likely than a white student to be suspended from school.

c. Racial Disproportionality in Murder Rates. In addition to low SES and residence in high-crime areas, murder rates provide a third measure that is disturbing in itself and that bears on the likelihood of high Minnesota black/white disparities in violent crime offending. In 2004 and 2005, a black Minnesotan's odds of being murdered were about 28 times higher than a white Minnesotan's (BJS [2007*b*], reporting number of homicides and percentage of homicide victims by race, for each state; these data, combined with census population data by race [USCB 2007*f*], yield estimated victimization rates per 100,000 population of each race).

For the nation as a whole in these two years, this ratio was about 6 : 1 (BJS 2007*d*). Given the predominantly intraracial nature of homicide (93 percent of U.S. black homicide victims in 2005 were killed by another black, excluding the 2 percent with assailant race unknown; FBI 2008*c*, table 5), high racial disparity in victimization rates implies highly disparate offense rates. And although murders are relatively infrequent for any race, this crime has a substantial impact on prison populations because of the long prison terms typically imposed. Moreover, the high rates of crime reporting, police clearance, and prosecution make murder a useful proxy for other violent crimes, which are not as reliably compared across jurisdictions (Zimring and Hawkins 1997, p. 41).

d. Racial Differences in Drug Use and Sale. As shown in table 4, Minnesota's racial disproportionality in drug arrests is much lower than for violent crimes and is not as high relative to national black/white ratios (Minnesota's ratio for drug arrests is about two and a half times the national ratio, whereas its ratio for Part I violent crimes is four times greater). Nevertheless, it is important to assess the causes of drug crime arrest disparities. Drug offenders represent a substantial segment of Minnesota's state prison population (about one-fifth as of January 2008, down from one-fourth in 2004–5; Minnesota Department of Corrections 2008). Moreover, drug arrests are often more a reflection of law enforcement policies than of offense behavior: drug crime has few civilian witnesses and direct victims, so arrests are almost always the result of police decisions to target certain areas or suspects.

Since victimization data on the perceived race of offenders are unavailable for drug crimes, studies comparing drug arrest rates by race with estimated offense rates often estimate the latter by means of self-reported data on drug use. Such data have often been interpreted as

showing that whites and blacks are about equal in their overall tendencies to use illegal drugs (Tonry 1995, pp. 108–10; Reiman 1998, p. 109; Cole 1999, p. 144; Mauer 1999, p. 147; Western 2006, p. 47). Data from the 2005 National Survey on Drug Use and Health tend to confirm that assessment (U.S. Department of Health and Human Services 2007*b*).

A number of studies have found, however, that drug use and abuse are positively correlated with neighborhood disadvantage and other social and psychological stressors that disproportionately afflict blacks (Boardman et al. 2001; Thomas 2007 [reviewing prior studies]; Williams and Latkin 2007). And although the reach of the 2005 National Survey is quite broad, sampling by residence to include children not in school and including homeless shelters, the survey did not count homeless persons who do not use shelters, and it also excluded persons in prisons, jails, and other institutional housing (U.S. Department of Health and Human Services 2006, p. 1). These excluded and underrepresented groups are likely to be disproportionately black and to be relatively high users of drugs. Furthermore, research suggests that blacks are more likely to underreport substance abuse (Kim, Fendrich, and Wisler [2000, pp. 429–30], also citing consistent prior studies). And although drug users tend to purchase from someone of their own race (Riley 1997), it remains possible that drug use patterns are not a reliable measure of drug trafficking¹⁷ and, in particular, are not indicative of the kinds of public acts of sale, purchase, or possession that more readily allow the police to discover the violation and make an arrest. As Michael Tonry has observed, it is much easier for the police to make drug arrests in poor urban neighborhoods than in more affluent areas (1995, p. 106).

Although national data on drug use and abuse suggest some racial differences, they are probably not great enough to explain the substantial racial differences in U.S. arrest rates. Nationwide emergency room data indicate that blacks have higher rates of admissions for illegal-drug overdoses,¹⁸ which suggests that blacks are using more dan-

¹⁷ In 2005, almost one-fifth of drug arrests, nationwide and in the Midwest region, were for trafficking rather than possession (FBI 2008*c*). In 2004, 56 percent of felony drug convictions were for trafficking (BJS 2007*c*, p. 2), and presumably some additional cases of actual trafficking were plea-bargained down to possession.

¹⁸ See U.S. Department of Health and Human Services (2007*a*, p. 23), showing that 32 percent of U.S. ER visits in 2005 for illicit drugs were made by non-Hispanic blacks, 54 percent by non-Hispanic whites, and 13 percent by Hispanics (excluding cases of unknown race and ethnicity, which were 13 percent of total visits). This source does not

gerous drugs, using them more heavily, or using them under more dangerous circumstances. The 2005 National Survey on Drug Use and Health also included data on self-reported sale of drugs and on the location and circumstances of drug purchases. Non-Hispanic blacks were twice as likely as non-Hispanic whites to report selling drugs six or more times within the last 12 months. Data on the location of drug purchases (reported only for marijuana) show that blacks often reported buying their drugs outdoors or in public buildings, whereas whites were much more likely to say they bought in a home, apartment, or dorm (U.S. Department of Health and Human Services 2007*b*; Tonry and Melewski 2008). In addition, whites often said they bought marijuana from a friend or relative; blacks were much more likely to say they bought from “someone I had just met or didn’t know very well”—someone who is probably more likely to be an undercover police officer or informant. Another study (Riley 1997) found that arrested crack users were disproportionately black and were more likely to buy outdoors and from a number of suppliers.

Finally, several National Survey questions illustrate the high-crime nature of areas frequented by blacks and provide a measure of their greater exposure to being drawn into drug crime and undercover police enforcement. Blacks were more likely to report being “approached by someone selling illegal drugs in the past 30 days.” For all drug types measured, blacks were more likely to say that it would be “fairly easy” or “very easy” for them to obtain the drug. The differences were small for LSD and marijuana, but for cocaine, crack, and heroin, blacks were much more likely to say the drugs would be fairly easy or very easy to obtain.

All the data summarized above are at the national level, and it is possible that racial patterns in Minnesota are different. But the limited data on Minnesota suggest higher drug use by most nonwhite race and ethnic groups.¹⁹ And to the extent that higher rates of serious drug use

report ER visit rates per 100,000 population of each race, but non-Hispanic blacks are clearly disproportionately represented, since they were less than 13 percent of the total U.S. population in 2005. The disproportion was particularly high for cocaine, with blacks accounting for almost one-half of ER visits.

¹⁹ See Council on Crime and Justice (2002, table 3), reporting that, while black and white self-reported past-year drug use was about the same in 1996–97 for cocaine, hallucinogens, stimulants, and sedatives, black rates were substantially higher for marijuana and “any drug.” Drug use data from the Minnesota Student Surveys (Minnesota Departments 2007) show few consistent racial patterns, but there are very high nonresponse rates on all these questions.

and drug dealing reflect the stresses, frustrations, and temptations associated with socioeconomic deprivation and lack of opportunity (Boardman et al. 2001; Thomas 2007; Williams and Latkin 2007), Minnesota's higher-than-average socioeconomic racial disparities make it reasonable to assume that black/white disparities in drug use and drug dealing are greater in Minnesota than for the nation as a whole.

But is black drug use and trafficking conduct the most important factor behind the racial disproportionality in drug crime arrest rates shown in table 4? Or are these disparities primarily produced by law enforcement decisions to focus drug enforcement efforts on black suspects and black inner-city neighborhoods? The latter hypothesis is addressed below.

2. *Racial Differences in Crime Reporting.* Racial differences in arrest rates across jurisdictions could also be caused in part by racial and geographic differences in crime reporting by victims. Perhaps Minnesota victims of crimes committed by blacks are particularly likely to report crime and urge the police to take action. Alternatively or in addition, perhaps victims of black crimes in other states are less likely to report and urge the police to make an arrest.

Unfortunately, there are no race-specific data by state or even by region on these matters. The available national data on crime reporting rates by race and by urban-suburban-rural area are not consistent with this theory: blacks and persons living in rural areas are actually slightly more likely to say they reported the crime to the police (BJS 2003, tables 2, 3). Of course, these national figures could very well conceal major local and regional racial variations in crime reporting by victims.

3. *Law Enforcement Policies or Biases.* A third possible explanation for much higher black/white arrest disparities in Minnesota might be found in police practices. Perhaps Minnesota police overenforce the law in black neighborhoods and against black offenders, or police in other states engage in underenforcement.

Much attention has been given in recent years to instances of apparent racial profiling. A major study in Minnesota found that, in nearly every police jurisdiction examined, black and other nonwhite drivers were stopped at greater rates than whites (relative to the numbers of driving age persons of each race in that jurisdiction). Blacks were also searched in a higher percentage of stops, but the "hit rate" was lower. Blacks were less often found to be carrying weapons, drugs, or other contraband (Institute and Council 2003). In addition, other

police practices used in Minnesota such as “Codefor,” “Compstat,” and similar “hot-spot” policing, while seemingly race neutral, are likely greatly to increase black arrest rates (Council on Crime and Justice 2007*c*, pp. 6–7). This occurs because blacks represent a high proportion of residents in the high-crime areas targeted by these policies. It is also possible that in some states, black arrest rates are artificially suppressed by police decisions not fully to enforce the law in black neighborhoods—a form of bias against black victims (Tonry 1995, p. 68; Napatoff 2006).

It is difficult to assess these patterns of possible police over- and underenforcement, even in a single jurisdiction, and to relate those patterns to racial disproportionality at later stages. Increased law enforcement is appropriate in high-crime areas, but how much of an increase is too much? It seems likely that the highly disproportionate traffic stops and searches in Minnesota are excessive relative to legitimate law enforcement needs; even if black suspects more often present proper grounds to stop and to search, the lower hit rate in searches of blacks suggests that police are exaggerating those grounds (hit rates should be approximately equal if police are stopping and searching the optimum numbers of each race).²⁰ But a search that yields no contraband is, for that reason, less likely to result in arrest, and fruitless searches do not, in themselves, directly contribute to racial disproportionality in arrests, convictions, and inmate populations. Of course arrests are often made without a successful search, or any search at all (e.g., if a records check reveals an open arrest warrant). Moreover, the arrests examined in the Minnesota traffic stops study were very racially disproportionate: the percentage of stops resulting in arrest was over twice as high for blacks as for whites (Institute and Council 2003, pp. 10, 15). But the Minnesota study, which was based on 65 jurisdictions representing over half the state population in 2002, produced a total of only about 8,620 arrests—less than 4 percent of the 220,850 arrests reported by Minnesota police in that year (BCA 2008). It is unknown how representative racial patterns in these traffic stop arrests were of all arrests in all jurisdictions.

Drug enforcement is an area in which law enforcement policy decisions can very easily produce racial disparities unjustified by differences in offense rates. Drug arrests are often made in disadvantaged,

²⁰ But see Harcourt (2007, pp. 112–25), arguing that a policy of maintaining equal hit rates across racial groups is not optimal in the long term.

inner-city neighborhoods in which many of the buyers, and most of the sellers, are nonwhite (Johnson et al. 1990; Tonry 1995, p. 106; Hagedorn 1998; Western 2006, p. 37). It would be much more difficult, expensive, and politically sensitive to attempt serious drug enforcement in predominantly white and middle-class communities. However, political and operational convenience is not a sufficient justification for policies with such a dramatic potential for a racially disparate impact. It might be argued, in support of the current policies of highly selective and racially targeted drug enforcement, that drug possession and trafficking in public places, especially in disadvantaged neighborhoods, cause more social harm than the same acts done in private. But current policies have not stopped the drug trade in these neighborhoods.

Comparison of over- and underenforcement levels across state boundaries raises further difficulties. Perhaps a preliminary assessment could be made by examining data on which jurisdictions have implemented hot-spot policing programs. Another possible indirect measure might be the racial composition of police forces (on the theory that departments with a high proportion of nonwhite officers, relative to the size of the nonwhite population or the size of the police force, are more likely to attempt serious and sustained law enforcement in nonwhite neighborhoods and less likely to make discriminatory case-level policing decisions). Comparison of police staffing levels (officers per capita) might provide a third indirect measure of enforcement levels across jurisdictions.

4. *Summary.* Much more study is needed both on bias in law enforcement and on the underlying causes of crimes by whites and blacks. These are critical problems in Minnesota. There is evidence of racial profiling in Minnesota traffic stops and a strong possibility of bias in drug enforcement policies. There is also reason to think that the criminogenic factors that cause racial disparities in criminal behavior are quite concentrated and are growing worse. Future demographic shifts may further aggravate social and criminal justice disparities in Minnesota. The number of whites in the high crime ages of 18–30 is expected to decline, whereas the numbers of blacks and other minorities in this age bracket will continue to increase (Council on Crime and Justice 2007a, pp. 47–48). And if a “first-generation-immigrant” effect has recently caused black per capita arrest and inmate rates to decline, this pattern may disappear or even be reversed in the next generation. Indeed, there are indications that this change is already happening in

Minneapolis, where African-immigrant communities have recently experienced a substantial increase in murders and other violent crimes (*Minneapolis Star Tribune* 2008b).

V. Racial Disproportionality in Conviction Rates, Sentencing, and Postsentencing Decisions

Currently available data do not permit us to examine in detail the steps from arrest to the filing of charges and from filing to conviction. Subsection A below presents the data available, by race, on conviction rates per capita and on the relationship between arrest and conviction, by offense. Subsections B–D summarize what we know about how Minnesota sentencing laws and guidelines, and their application, contribute to racially disparate custody-sentence rates and prison and jail populations. Subsection E briefly examines the limited available data on postsentencing decisions. Subsection F summarizes the racial disproportionality data from subsections A–E, combines them with arrest data from Section IV, and compares disproportionality ratios at multiple stages of the criminal process (table 10).

A. Felony Conviction Rates per Capita, by Race

The substantial racial disproportionality seen in Minnesota arrest rates is still present when we examine rates and ratios based on felony convictions (offense-specific data on misdemeanor convictions are not available). When guidelines commission conviction data for 2001–5 are pooled (MSGC [2006a, table 4] and similar tables in published data reports for earlier years), the ratio of black to white per capita felony conviction rates (using population bases lagged 1 year)²¹ was 9.3 : 1. This figure is approximately the same as or lower than most of the arrest ratios reported in Section IV and table 4 above. For the broadest arrest measure—all Part I crimes plus drugs—the 2000–2004 Minnesota black/white arrest ratio was 9.5 : 1. However, arrest data include Hispanics in the race categories, whereas conviction data exclude them. If Hispanics were likewise included in computing black/white conviction ratios, the 5-year average conviction ratio would be somewhat

²¹ A 1-year time lag in the conviction rate population base (and also the 1-year lag between arrest and conviction data) provides the best fit with guidelines commission data: in recent years, the average delay between date of offense and date of sentencing has been 10–11 months.

lower, probably around 8.9 : 1 (based on 2005 commission data, which separately categorized offenders by race and by Hispanic ethnicity). (These figures and other key findings on disproportionality ratios at various stages of the criminal process are summarized in table 10 and subsec. F below.)

In short, it appears that racial disproportionality declines somewhat between the stages of arrest and felony conviction, at least if Part I plus drug arrests are a suitable proxy for all felony arrests (arrest statistics do not distinguish between felony- and misdemeanor-level arrests, and several important arrest data categories [Part I property crimes, drug crimes] include a substantial number of misdemeanor arrests). Offense-specific comparisons, discussed below, support the conclusion that racial disproportionality in Minnesota declines between arrest and conviction, unlike the national pattern of increasing disparity, shown in table 1.

As was also shown in table 1, Minnesota's black/white conviction ratios are much higher than the U.S. average. The estimated Minnesota black/white felony conviction ratio of 8.8 : 1 for 2002–4 (including Hispanics; rate bases lagged 1 year) is more than twice the national ratio of 4.0 : 1.²²

More precise comparison of disparities at the arrest and conviction stages cannot be done without collecting race-specific data on how arrests are initially charged by prosecutors, and how these charges change between filing and conviction. However, we can gain a rough idea of how charges change from arrest to conviction (while also clarifying the arrest vs. conviction ratio comparisons above) by comparing adult arrest rates from the BCA (2008) with felony conviction data from the guidelines commission (e.g., MSGC 2004), by race and offense (recognizing, of course, that BCA and commission offense categories are not identical). These comparisons are based on the following MSGC conviction-offense categories, all of which have fairly direct counterparts in BCA data, and most of which (all but drug crimes) involve behavior usually charged only at the felony level: murder and

²² See BJS (2004, table 5; 2007c, table 2.1). Each source reports the percentages of blacks and whites (including Hispanics) among estimated total felony convictions in 2002 and 2004, respectively. National per capita conviction rates equal these percentages multiplied by total convictions and divided by the estimated U.S. population of each race (USCB 2007e) on July 1 of the same year for unlagged bases and July 1 of the prior year for lagged bases. The ratios of black and white lagged-base conviction rates are 3.9 : 1 for 2002 and 4.1 : 1 for 2004.

TABLE 8
 Estimated White and Black Arrest-to-Conviction Retention
 Rates in Minnesota, by Offense: 2000–2003 Felony
 Convictions as a Percentage of 1999–2002 Adult Arrests

Offense	Retention Rate by Race*	
	Whites (%)	Blacks (%)
Murder and manslaughter	81	76
Criminal sexual conduct	36	31
Robbery	44	32
Felony assault	22	18
Subtotal (Part I violent crimes)	30	25
Burglary	49	39
Drug crimes	17	22
Total for all crimes above	23	24

SOURCES.—MSGC (2004) (and similar guidelines data files on convictions in 2000, 2001, and 2002); BCA (2008). Retention rates for later years cannot be computed because of problems in matching arrest and conviction data; see the text.

* Arrest data include Hispanics in the race categories. Conviction data race categories in the source exclude Hispanics; Hispanic convictions have been allocated to the white and black categories according to data on known ethnicity from 2005 (the earliest year for which separate race and ethnicity data are reported).

first-degree manslaughter; criminal sexual conduct, first through fourth degree; robbery (simple and aggravated); assault, first through third degree; burglary, first through third degree; and controlled substance (drug) crimes, first through fifth degree plus “other drug” crimes. The corresponding BCA arrest categories are murder and nonnegligent manslaughter, rape plus “other sex offenses” (most of which are probably statutory rape), robbery, aggravated assault, burglary, and “narcotics.”

The results of these comparisons are shown in table 8. Arrest data for 1999–2002 are compared with conviction data for 2000–2003 (1 year later than the arrest data). (The comparison ends with 2002 arrest data because Minnesota data for 2003 and 2004 do not include arrests in St. Paul, the state’s second-largest city, and it is not possible to identify and exclude St. Paul convictions in guidelines conviction data.) As shown in the table, black arrest-to-conviction “retention” rates (convictions as a percentage of adult arrests) are somewhat lower than white retention rates for violent crimes and for burglary but are higher for drug crimes. However, the latter offense category is the only one

shown in the table for which arrest data include misdemeanor crimes (mainly possession of small amounts of marijuana).²³ A lower white retention rate could be due to more frequent white drug arrests involving misdemeanor charges. Alternatively, the lower white retention rate could be due to prosecutorial charging policies if whites are favored in some way or if more lenient charging policies are applied to all offenders in (some) jurisdictions with higher proportions of white drug offenders (a third possibility, overcharging of whites at the arrest stage, seems less likely).

As for the lower black retention rates for burglary and the four violent crimes listed in table 8, this could result from overcharging of blacks at the arrest stage, the inability or unwillingness of prosecutors to obtain felony convictions against black offenders, or charging policies that are race neutral but have racially disparate impacts (e.g., if more lenient charging policies are applied in jurisdictions with higher proportions of black offenders).

Again, these comparisons are very approximate, given the unknowable differences in the categorization of crimes in arrest and conviction data. But the lower black retention rates are consistent with earlier studies in the state's largest county (Hennepin), finding that blacks had higher rates of postarrest dismissal (Minnesota Task Force 1993, pp. 11–12). Clearly, arrest and charging practices are an important area for further, in-depth research.

B. Recommended Guidelines Sentences by Race

Guidelines recommendations as to prison commitment and prison duration have a major impact on the racial composition of prisons (and, to a lesser extent, jails). Guidelines policy emphasizes the use of prison beds for serious crimes (especially crimes of violence and sexual abuse) and for offenders convicted of less serious crimes but with substantial prior-conviction records (MSGC 2008*b*). These priorities have a disproportionately severe impact on people of color, especially blacks. In 2005, 39 percent of black offenders had recommended executed prison sentences under the guidelines, versus 25 percent for whites (and 31 percent for Hispanics, 33 percent for Asians, and 35 percent for Native Americans). Similar racial disproportionality in prison commitment

²³ Minn. Stat. sec. 152.027, subd. 3: possession of more than 1.4 grams and no more than 42.5 grams of marijuana in a motor vehicle; classified as a misdemeanor; subd. 4: possession of no more than 42.5 grams of marijuana, a petty misdemeanor.

recommendations is found in other years; when these data are converted into per capita rates (again using population bases lagged 1 year), the average black/white ratio of recommended executed prison sentences in 2001–5 is 13.6 : 1. Thus, racial disproportionality increases substantially when we move from conviction measures (with an average lagged ratio of 9.3 : 1 in these years) to measures that focus on offenders recommended for prison commitment (both ratios are based on rates excluding Hispanics).

The two principal factors determining these guidelines recommendations are the conviction offense severity level and the offender's prior conviction record (criminal history score). Of these, racial differences are much greater for criminal history. For example, in 2005 the average offense severity scores for blacks and whites were 3.92 and 3.78, respectively, but black and white average criminal history scores were 2.20 and 1.48. The difference in black and white criminal history scores was apparently due to actual prior convictions, not multiple current offenses (even though the latter are counted as criminal history when offenders are sentenced concurrently on multiple counts). There were few differences between blacks and whites in the average number of counts reported on guidelines sentencing worksheets.

Differences between black and white offense severity and criminal history scores were similar in earlier years, but in some years (e.g., 2003) the white average severity score was higher. Racial differences are generally greater at the highest severity levels, but the differences go in both directions, depending on the year. In 2001, 2004, and 2005, a higher percentage of blacks were convicted at a severity level for which an executed prison sentence is recommended even for offenders with no criminal history (level 7 and higher in 2001–2; level 8 and higher in 2003–5), but in 2002 and 2003 a higher proportion of whites were convicted at these high levels.

In most years, black criminal history scores are higher within all major offense types (violent, property, drug, other), but the disparities tend to be highest for drug offenders. In general, blacks were not more likely than whites to have a juvenile history point or points.²⁴ They were more likely, however, to have a custody status point (committing

²⁴ For both blacks and whites in 2005, 5 percent of offenders received a juvenile point or points. But among offenders legally eligible (aged 24 or less on the date of the offense), blacks were slightly more likely to receive points (15 percent of blacks vs. 13 percent of whites).

the current offense while under supervision or in custody for an earlier offense: 41 percent vs. 34 percent for whites), a misdemeanor point (11 percent vs. 8 percent), and a higher prior-felony contribution to their criminal history scores (mean of 2.01 points vs. 1.29 for whites) (criminal history prior-felony “points” are weighted according to their guidelines severity level).

In addition to having higher average offense severity and criminal history scores, blacks are also more likely to be found to have used or possessed a dangerous weapon or be otherwise subject to a mandatory prison term. In 2005, for example, 7 percent of black offenders and 4 percent of white offenders fell below the disposition line but nevertheless had a recommended prison term because of a mandatory minimum statute.

Several differences between black and white offenders thus contribute to the higher proportion of blacks with recommended prison terms, but criminal history is the most important factor. An example, using 2005 data, illustrates the relative contribution of racial differences in offense severity, criminal history, and eligibility for a mandatory prison term. These three presumptive-commit factors correspond to three groups of offenders: (1) high-severity offenders (in 2005, those convicted at offense severity level 8 or higher) for whom prison is recommended even at zero criminal history; (2) high-criminal history offenders (those convicted at lower severity levels who, because of their criminal history score, are in a grid cell above the disposition line); and (3) offenders below the disposition line who nevertheless have a recommended prison term because of a mandatory minimum statute. The relative contribution of differences in offense severity, criminal history, and mandatory minimum statutes can be estimated by comparing the number of black offenders who fall into each of these three groups with the lower number that would be there using the proportion of whites who fall into each group (e.g., white percentage at severity level 8 or higher multiplied by the number of blacks sentenced that year). The results for each group are as follows: (1) high offense severity: 65 additional black offenders recommended for prison; (2) high criminal history: 349 additional black offenders; (3) mandatory minimum statute: 115 additional black offenders, for a total of 529 additional black offenders recommended for prison. Thus, high criminal history accounts for about two-thirds of the black/white difference in recommended-prison rates, high severity for 12 percent, and mandatory min-

imum statutes for 22 percent (and some of these mandatories are based on repeat offending).

Other researchers have noted the disparate racial impact of criminal history in sentencing guidelines systems (Tonry 1995, pp. 168–69; 1996, p. 57). Indeed, it appears that in most states—with or without guidelines—black offenders have more serious prior conviction records. For example, among felony defendants prosecuted in 2002 in a sample of the 75 largest counties, blacks were 40 percent more likely than whites to have a prior felony conviction, 79 percent more likely to have a prior violent-felony conviction, and 89 percent more likely to have previously served a prison term (BJS 2008*b*). The racially disparate effect of criminal history on sentencing severity probably accounts for much of the unexplained increase in racial disproportionality that previous studies found when comparing arrest data with prison inmate stocks (Blumstein 1982, 1993; Langan 1985).

C. Guidelines Departure Decisions

There are two kinds of departures from recommended guidelines sentences: durational departures from the length of the recommended prison term and dispositional departures from the recommendation as to execution or suspension (“stay”) of the prison term. Only dispositional departures appear to involve potential racial disproportionality.

1. *Durational Departures.* In 2005 and many prior years, blacks had higher rates of both upward and downward durational departure, and this was true on both stayed and executed prison terms. Since most stayed prison terms are not revoked, the remaining analysis here focuses on executed prison terms. In such cases, downward departures are more common than upward departures (the former are from two to five times more frequent, depending on the year), so it seems likely that the combined effect of upward and downward departures is an overall (net) mitigation of the recommended term, and one that favors blacks more than whites. This is borne out by computing the difference (positive or negative) between the recommended prison term and the actual prison term for all offenders given an executed prison sentence; in 2005 the average net change was -4.3 months for black offenders and -3.0 months for whites.

Given these results, I do not further analyze durational departure decisions. Statistical analysis of durational departures is problematic in any case because such departures are mostly based on aggravating and

mitigating offense details that are not captured in annual guidelines data sets. Such details have been included only in special samples collected in the early 1980s. Those samples revealed that cases of blacks and other nonwhite offenders more often had aggravating factors justifying an upward durational departure (MSGC 1984, pp. 66–67).

2. *Dispositional Departures.* Upward dispositional departures are infrequent; 5–6 percent of offenders with a recommended stay are given an executed prison term, and many of these are agreed to by the defendant, usually because he or she is already in prison or is going to prison on other charges (MSGC 2006a, p. 29). Moreover, in recent years upward dispositional departure rates for blacks have been equal to or lower than those for whites.

Downward dispositional departures (a stayed sentence instead of the recommended prison term) are another matter. In most years the departure rate (as a percentage of offenders with recommended prison terms) has been lower for blacks than for whites—in some years, substantially lower. For example, in 2004 the downward dispositional departure rate was 39 percent for whites and 31 percent for blacks.

Over the past 15 years I have constructed a series of multivariate models examining the effect of race and other factors on downward dispositional departure decisions in years in which the apparent (bivariate) black versus white disproportionality was particularly great. In logistic regression models of 1987 and 1989 cases (Frase 1993a) and of 2000 and 2001 cases (Frase 2005a), race was not a statistically significant predictor of a prison sentence.²⁵ As shown in table 9, the same was true in 2005: after other legal and extralegal factors were taken into account, race was not a significant predictor of an executed prison sentence for presumptive (recommended) prison-commit white and black defendants (moreover, the nonsignificant effect of race was negative; blacks were *less* likely to receive a prison sentence, after control-

²⁵ But see Minnesota Task Force (1993, pp. 53–56, app. D), which finds statistically significant race effects in three of eight models of sentences imposed from 1986 to 1990 (combined). The four crimes analyzed were criminal sexual conduct, aggravated robbery (bodily harm or use of a dangerous weapon), second-degree assault (dangerous weapon), and other crimes involving a dangerous weapon. For offenders with no criminal history, black downward departure rates were significantly lower than white rates for one of these crimes (assault); for offenders with some criminal history, blacks rates were significantly lower in two offense categories (robbery and sex crimes). However, the four “some history” models lump together minor and very serious criminal histories, and none of the eight models examined the other independent variables included in the author’s research, summarized in the text.

TABLE 9

Logistic Regression for Presumptive-Commit White and Black
Defendants Sentenced in 2005

Dependent Variable: PRISON; 0 = No, 1 = Executed Prison Term

Independent Variable	Direction of Effect	Significance Level	Odds Ratio
Attempt crime	+	.0005	2.552
Offense severity	+	.0005	1.574
Custody status point	+	.0005	1.618
Other criminal history	+	.0005	2.593
Male offender	+	.0005	1.570
Black offender	-	.205	.905
Convicted by trial	+	.0005	4.227
Dangerous weapon in cell above the disposition line	+	.015	1.424
Dangerous weapon in cell below the disposition line	-	.0005	.542
DWI crime	-	.0005	.470
Constant	-	.0005	.174

SOURCE.—MSGC (2006b).

NOTE.—Independent variables are defined and coded as follows (see the text): Attempt crime (0 = no, 1 = conviction offense involved an attempt rather than a completed offense). Offense severity: natural log transformation of guidelines severity level (original scoring: 1 = low, 11 = high). Custody status point (0 = no, 1 = defendant's criminal history score included a custody status point). Other criminal history: natural log transformation of criminal history score (without custody status; 0 = low score). Male offender (0 = female, 1 = male). Black offender (0 = white, 1 = African American). Convicted by trial (0 = defendant pled guilty; 1 = defendant pled not guilty and was found guilty at trial). Dangerous weapon in cell above the disposition line (0 = no, 1 = defendant found to have used/possessed weapon). Dangerous weapon in cell below the disposition line (0 = no, 1 = defendant found to have used/possessed weapon). DWI crime (0 = no, 1 = defendant convicted of felony drunk driving). "Direction of effect" indicates whether that variable is positively or negatively correlated with the dependent variable. "Significance level" measures the statistical significance of the findings with respect to that variable. For example, the figure .015 reported for "dangerous weapon in cell above the disposition line" means that the probability is 1.5 percent that the positive relationship (direction of effect) reported for that variable is due to chance. "Odds" ratio measures the strength of the relationship between that independent variable and the dependent variable; the value of the odds ratio shows the effect that a one-unit increase in the former has on the latter, after controlling for other variables in the model. For example, the figure 4.227 reported for "convicted by trial" means that the odds of receiving a prison sentence are 4.227 times (322.7 percent) higher if the offender is convicted at trial (coded as 1) than if the offender pleads guilty (coded as 0).

ling for other sentencing factors).²⁶ However, race does appear to have been a significant factor in some judicial districts in some years.²⁷ And without more detailed data and more elaborate statistical analysis we cannot rule out the possibility of compensating biases, for example, if some blacks benefit from generally more lenient sentencing in urban courts or from bias against black victims, whereas other blacks (those with white victims or in other parts of the state) receive harsher treatment.

These models assume that there is no bias built in to rules and decisions that determine the presumptive sentence itself. There is certainly room for debate about whether criminal history should receive so much weight under the guidelines, given the disparate impact this factor has on black (and other nonwhite) offenders. Further research is also needed on current and prior law enforcement, charging, and plea bargaining decisions that affect an offender's conviction offense, criminal history score, and other guidelines rules. And although Minnesota no longer punishes crack cocaine offenses more severely than powder, there may be other questionable sentencing laws and guide-

²⁶ Multiple-regression models assume that each of the independent variables is normally distributed around its mean, but distributions of guidelines severity ranks and criminal history scores are strongly skewed to the low end. Natural logarithmic transformations are applied to these variables to reduce their skew and make the data more consistent with model assumptions.

The curious finding that defendants convicted of attempt are more likely to receive the recommended executed prison term might be explained in several ways: these cases may reflect more serious potential harms; attempt requires proof of specific intent, whereas many other crimes do not; or some of these cases may have been completed crimes that were plea-bargained down to attempt (after which the court saw little need for further mitigation).

The model described in the text and table 9 includes two illegitimate variables in addition to race: method of conviction (plea vs. trial) and defendant gender. But when one or both of these variables are deleted, the effect and significance levels of the other variables change very little (and offender race, still negative in sign, has an even lower effect and significance level).

²⁷ For example, in a 2004 model (results not shown here) of seven of the state's 10 judicial districts, race was highly significant ($p < .0005$). However, the race effect was less than for many other independent variables in the model: being black rather than white increased the odds of receiving a prison term by 62 percent, whereas pleading guilty increased the odds by 425 percent, and for three other variables the odds increases were over 100 percent. This seven-district model excluded Hennepin County and two other districts lacking bivariate racial disproportionality in 2004 (i.e., there was no difference in the downward departure rates for blacks and whites in those districts). Those three districts accounted for 44 percent of the state's presumptive-commit white and black defendants in 2004. The model used the same 10 independent variables as the 2005 model whose results are shown in table 9; all nine of the other independent variables were also significant at $p < .0005$ except weapon above ($p < .002$).

lines rules that have a strong disparate impact on blacks and other minorities.

For blacks and whites, in every year, downward dispositional departures greatly outnumber upward departures, so the net effect of these departures, for both races, is that the number of prison sentences imposed is lower than the number of recommended prison sentences. Moreover, this net reduction in the number of prison commitments favors blacks: in 2001–5, the net decrease in the number of prison sentences represented 5.4 percent of white convictions, compared with a net decrease of 8.4 percent for black convictions. There are two reasons for this seeming anomaly: the higher downward dispositional departure rate for whites applies to a much lower proportion of all white offenders (since fewer whites have recommended prison sentences), so the number of downward departures as a percentage of all convicted offenders is lower for whites than it is for blacks; upward dispositional departure rates are the same or higher for whites, and these rates apply to a relatively high proportion of all white offenders, so the number of upward departures, as a percentage of all convicted offenders, is higher for whites.

D. Executed Prison and Jail Sentences

The cumulative effects of racial differences in conviction rates per capita, in guidelines prison recommendations and in guidelines departure decisions, can be seen in the ratio of black and white per capita rates of executed prison sentences. In the 5-year period 2001–5, the average ratio of black and white prison sentence rates per capita (again, using population bases lagged 1 year) was 13.3 : 1 (MSGC [2006a, table 26] and similar tables in the annual data reports for earlier years; USCB 2007f). This ratio is slightly lower than the black/white ratio for recommended executed prison sentences in these years (13.6 : 1) because of the net effects of upward and downward dispositional departures that favor blacks. But both of these ratios are significantly higher than the 9.3 : 1 black/white ratio for felony convictions. Again, the principal source of the increase in racial disproportionality from conviction to sentencing appears to be racial differences in average criminal history scores, combined with the heavy weight these scores have in determining which offenders are recommended to receive executed prison terms.

Minnesota's substantial increase in disparity between conviction and

prison sentencing is greater than the average for the nation as a whole. As shown in table 2, the national estimates, based on felony convictions in 2002 and 2004, show black/white disparity ratios increasing by 15 percent (from 4.0 : 1 for conviction rates to 4.6 : 1 for prison sentence rates). In the same 3-year period, the increase in Minnesota was 38 percent (rising from 8.8 : 1 to 12.1 : 1). From averaged 5-year ratios derived from the 2001–5 data reported above (but adjusted to include estimates of white and black Hispanic offenders, since the U.S. data include Hispanics), Minnesota's black/white ratios increased by 40 percent (from 8.9 : 1 for conviction rates to 12.5 : 1 for prison sentence rates).

There are no substantial racial differences in the duration of executed prison terms. Although blacks have slightly longer average terms in most years (46.8 months in 2005 vs. 43.4 months for whites), the reverse is true within guidelines grid cells (i.e., controlling for conviction offense severity and criminal history score). In 2005, for example, in the 67 grid cells containing both whites and blacks with executed terms, the average white prison term was higher in 45 cells, the average black term was higher in 19 cells, and in three cells average black and white durations were about equal. These patterns occur because the net mitigating effect of upward and downward durational departures favors black defendants more than whites.

Except for a small number of cases, jail sentences are not regulated under the guidelines. Courts have discretion to impose a jail term of up to 1 year as a condition of felony probation. The average jail term imposed is about 3.5 months. Fewer blacks receive jail sentences: 63.3 percent of black offenders sentenced in 2001–5 compared to 69.6 percent of whites. The ratio of black and white jail sentence rates per capita in the same time period was “only” 8.5 : 1 (vs. 13.3 : 1 for prison sentences; both ratios use 1-year lagged population bases). However, since an offender can receive only a prison or a jail sentence, but not both, the higher jail sentence rate for whites is largely the result of the lower white prison sentence rate: 20.4 percent in 2001–5 versus 29.1 percent for blacks.

When the prison and jail sentence data for 2001–5 are combined, the proportion of blacks receiving a custody sentence was slightly higher: 92.3 percent versus 90.0 percent for whites. The ratio of (lagged) black and white custody sentence rates per capita in that 5-year period was 9.6 : 1. And although the average duration of custody

terms is about the same (slightly longer average prison terms for blacks and slightly longer average jail terms for whites), the average duration of custody sentences (prison or jail) imposed on blacks is substantially longer since a higher proportion of them are sentenced to prison. For example, in 2005 the average custody sentence duration for blacks was 15.7 months, but only 11.0 months for whites.

E. Postsentencing Decisions

Decisions to revoke probation or postprison conditional release, to delay prison or jail release, or to jail released offenders pending revocation hearings all have impacts on the racial composition of inmate populations. The impact of revocation proceedings needs to be studied by examining “flow” data on convicted offenders received in jails and prisons, by race and offense; but no such data are currently available for jails, and only limited published data are available for prisons. There are also no published data on decisions that delay prison or jail release by denying good-conduct credits. However, a preliminary assessment of potential postsentencing disparities can be made by combining commission data on prison-sentenced offenders with two later measures: flow data on offenders admitted to prison and data on prison stocks. Both of these measures reflect the effects of revocations to prison, and prison stocks also reflect decisions to delay release (in Minnesota, these decisions almost always involve denial of good-conduct credits, since very few offenders are subject to parole release discretion).

1. *Admissions to Prison.* Prison admissions data are available from the National Corrections Reporting Program [NCRP] (BJS 2007e), but data for the most recent year (2003) appear to be incomplete,²⁸ so the analysis below is based on data for 2000, 2001, and 2002. Using these data, combined with data from the guidelines commission, we can estimate the numbers of offenders of each race whose probation or postprison release was revoked during that 3-year period.

The NCRP reports three categories of prison admissions (excluding transfers): “court commitment,” “mandatory parole release—new sentence,” and “mandatory parole release—no new sentence.” The first

²⁸ In the NCRP data for 2003, there are over 700 fewer admissions to Minnesota prisons than are shown in summary data available from the Minnesota Department of Corrections (2008), whereas for other recent years the NCRP and department totals are very similar.

category is composed of direct sentences to prison (including life sentences, which were not included in guidelines sentencing data prior to 2006) as well as revocations of probation. The second and third categories involve admissions of offenders who were sent back to prison after being placed on postprison supervised release (their prior release was “mandatory” in the sense that, under the guidelines, a prisoner must be released when his or her maximum term, reduced by earned good time credits, has been served). Cases in the third category are analogous to parole revocations for so-called technical violations (some of these offenders could have been prosecuted for new crimes but were not). Cases in the second category involve new convictions and are also included in guidelines sentencing data. Adding the first and second NCRP categories thus yields the total number of direct prison sentences plus probation revocations. If, for each race, we subtract from this total the number of direct prison sentences shown in guidelines sentencing data (plus the life sentences shown in the NCRP data), the difference is the number of probation revocations. For 2000–2002 combined, 1,146 probation revocations were of non-Hispanic whites and 683 were of non-Hispanic blacks.

These estimated probation revocation totals indicate that there were 1.68 white revocations for every black revocation. This ratio is higher (“whiter”) than the totals for executed prison sentences in these years (1.54 white prison sentences for every black prison sentence); thus probation revocations have a tendency to lower the black/white ratio among prison inmates. However, the higher proportion of whites among revocations results in part from the fact that a much higher proportion of whites receive probationary sentences (a consequence of the higher rates of prison sentences for blacks, noted earlier). Actual revocation rates by race cannot be computed because of the lack of suitable statewide data on the number of felony offenders under supervision, but the rate can be estimated using as a base the number of probation sentences imposed for each race. A 1-year time lag is used (i.e., probation sentences in 1999–2001) since probation is rarely immediately revoked; on this basis, the estimated probation revocation rates in these years were 7.0 percent for whites and 10.3 percent for blacks.

The third category of NCRP data (mandatory parole release—no new sentence) represents offenders whose parole or other postprison release was revoked without a new conviction because of a violation of

release conditions. From pooled data for 2000–2002, there were 1,566 revocations of non-Hispanic whites and 1,586 revocations of non-Hispanic blacks. Given that the number of whites in Minnesota prisons is considerably greater than the number of blacks, it is immediately apparent that the black postprison revocation rate is much higher than the white rate. Offenders released from prison in preceding years provide the best available base for computing revocation rates. The most appropriate time lag appears to be either 1 or 2 years,²⁹ and both time lags yield the same estimated postprison revocation rates: 32 percent for non-Hispanic whites and 41 percent for non-Hispanic blacks.

Thus, it appears that black revocation rates are higher for both probationers and those on postprison release. At least some of this difference may be due to black offenders having higher criminal history scores or more serious current conviction offenses. But it would not be surprising to find biased or unexplained, racially disparate revocation decisions, given that these decisions are very weakly regulated under Minnesota's guidelines and related statutes and are probably based heavily on individualized assessments of offender risk. Further research is needed on these decisions to clarify the nature of and justification for disparity in revocation rates.

The much larger numbers and proportions of white offenders on probation mean that, despite higher black revocation rates, the probation revocation process brings relatively more whites to prison (compared with direct commitments at the time of initial sentencing), thus tending to reduce racial disproportionality in prison populations. But postprison revocation has the opposite effect because of the higher rate of black revocations combined with the large numbers of blacks among prisoners and prison releasees.

2. *Prison Stocks.* The combined impact of the offsetting revocation effects as well as the effects, if any, of racial differences in the award of good-conduct credits can be roughly assessed by comparing executed prison sentences with prison stocks. A time lag of several years must be applied, since inmates were often sentenced in a prior year. Indeed, the date of initial sentencing can be many years earlier in the case of offenders who enter prison upon revocation (representing over

²⁹ The average executed prison term is about 48 months, yielding an average postprison supervised release term of 16 months if all good-conduct credits are earned (most probably are; see MSGC 1984, p. 101); however, some offenders are subject to longer supervised release terms (Frase 2005a, p. 139).

40 percent of prison admissions each year; Frase 2005*a*); such offenders either were placed on probation and later revoked or were sent to prison, released after serving at least two-thirds of their sentence, and then revoked and reimprisoned.

A 2.5-year time lag is used between sentencing and prison population data;³⁰ the comparison is between initial executed prison sentences in 2001–5 and prison stocks at year end in 2003–7. To permit comparisons to data in earlier parts of this essay, black and white sentencing and inmate data are again expressed in terms of the ratio of black and white per capita rates. The same population bases (2000–2004) are used for both sentencing and imprisonment rates, since these are assumed to be the same inmates at different times. Prison sentencing rate bases are thus lagged 1 year, and prison stock rate bases are lagged 3.5 years. Prison sentence data are further adjusted to include estimated numbers of Hispanic inmates (since prison stock data include them).

The results are as follows: the average estimated black/white prison sentence ratio for 2001–5 is 12.5 : 1, and the average black/white prison stocks ratio for year end 2003–7 is 12.9 : 1. Thus, it appears that the opposing effects of probation and postprison revocation processes, combined with the effects of decisions delaying prison release by denying good-conduct credit, are adding a modest increment of disparity to what was present at the time of initial sentencing. However, if revocation rates were not higher for blacks, such disproportionality should have *declined* as a result of the higher numbers of white offenders given probationary sentences and thereby placed at risk of revocation.

F. Summary: Comparing Disproportionality Measures from Arrest through Prison and Jail Stocks

Table 10 summarizes the data presented in subsections A–E above and in Section IV. Because of limits on availability and compatibility of data, the table separates the arrest-to-conviction stage from later stages and reports black/white ratios with and without Hispanics included in the race categories (cols. 1 and 2). Various data-year and

³⁰ The average expected prison term prior to initial release is about 33 months (assuming that most offenders earn nearly all of their one-third good-conduct credit; MSGC 1984, p. 101). Many offenders further reduce the actual duration of their imprisonment by receiving credit for time they spent in pretrial detention; in addition, revoked offenders usually have less than 3 years to serve in prison. However, some revoked offenders do not arrive in prison until months or years after their initial sentencing.

TABLE 10
 Minnesota Black/White Per Capita Ratios by Stage of Processing
 and Ethnicity, 2000–2007 (Black Rate as a Multiple
 of the White Rate)

	Including Hispanics (1)	Excluding Hispanics (2)
A. Arrest to conviction:		
1. 2000–2004 adult Part I violent arrests	15.4	NA
2. 2000–2004 Part I + drug arrests	9.5	NA
3. 2001–5 felony convictions*†	8.9 [†]	9.3
B. Sentencing and inmate populations:		
4. 2001–5 recommended prison terms*	12.8 [†]	13.6
5. 2001–5 prison sentences imposed*	12.5 [†]	13.3
6. 2003–7 year-end prison stocks	12.9	13.8 [‡]
7. 2001–5 prison* + jail sentences imposed	9.1 [†]	9.6
8. Midyear 2005 prison + jail stocks	9.5 [§]	9.9

SOURCES.—BJS (2006); MSGC (2006a) and similar reports for other years; USCB (2007e, 2007f, 2008a, 2008b, 2008f); BCA (2008); FBI (2008b, tables 29, 43) and similar reports for other years.

NOTE.—Ratios are based on per capita rates for each race. Except for arrest rates, population bases are lagged, using the resident population of that race 1 or more years earlier; conviction and sentencing rate bases are lagged 1 year; prison stock rate bases are lagged 3.5 years; bases for prison + jail stock rates are lagged 3 years.

* Includes offenders with mandatory life sentences.

† These figures are estimates based on comparisons of ratios with and without Hispanics in 2005, the earliest year for which separate race and ethnicity data are reported.

‡ Estimate is based on comparison of 2005 prison sentence ratios with and without Hispanics.

§ Estimate is based on comparison of 2005 custody sentence ratios with and without Hispanics.

population-base time lags are employed to provide more meaningful comparisons between ratios at different points in the criminal process.

The data and estimates in part A of the table suggest that black/white racial disproportionality does not change very much as cases move from the arrest to the conviction stage. The black/white ratio for convictions in line 3, column 1 (8.9 : 1), is slightly lower than the ratio for the broader of the two arrest measures (9.5 : 1). The lower black offense-specific retention rates reported earlier (table 8) lend support to the conclusion that, at least for burglary and serious violent offenses, racial disproportionality declines somewhat between the arrest and conviction stages.

However, a comparison of lines 3 and 5 of the table shows that

disparity increases between conviction and the imposition of a prison sentence, primarily because of the much higher proportion of blacks who have recommended prison sentences under the guidelines (line 4); the black/white ratio for these recommendations is 12.8 : 1 (13.6 : 1, excluding Hispanics). The most important reason for the higher recommended prison rate for blacks is criminal history; this factor has a major effect on guidelines prison sentence recommendations, and blacks have much higher average criminal history scores.

Since there are limited usable data on prison admissions by race, the next ratios shown in table 10 are for prison inmate stocks (line 6); disparity appears to have increased slightly in comparison to the stage at which prison sentences are imposed (line 5). Prison admissions data available for some of these years (2000–2002) imply higher black rates for revocation of probation and postprison release. However, these higher revocation rates appear to have little net impact on black/white ratios in prison stocks because the effect of higher black revocation rates is counteracted by the much larger number of whites on probation (i.e., at risk of revocation).

As shown in the last two lines of table 10, black/white custodial disparity is considerably lower when jail inmates are included, reflecting the higher proportion of whites receiving felony jail sentences (which, in turn, reflects the lower proportion of whites receiving prison sentences). Again, there is a slight increase in disparity when prison and jail stock ratios (line 8) are compared to the stage at which these sentences are imposed (line 7). This increase is roughly comparable to the increased disparity observed when we compare ratios based on prison stocks and prison sentences (lines 5 and 6).

One explanation for rising disparity in both sets of measures could be the difference between flow measures (sentences imposed) and stock measures (inmate populations). The average duration of black custody sentences is higher since a lower proportion of black offenders receive jail terms. This causes black offenders to accumulate in custody (prison) stocks. Other factors may also be at work. Jail populations include not only sentenced felons but also pretrial detainees and offenders serving misdemeanor sentences. Further research is needed to determine whether these competing jail uses have especially racially disparate impacts on jail populations (an earlier study suggests that they do; see Minnesota Task Force 1993, pp. 46, 57).

Another possible cause of racial disproportionality in jail populations

might be higher black rates of revocation of probation and postprison release leading to pre- or posthearing jail commitment. Given the relatively short custody terms available to sanction release violations, it is likely that a large number of these offenders are detained and sanctioned in jail rather than being sent to state prison. It would not be surprising to find that blacks have higher rates of revocation to jail, given higher black criminal history scores and higher rates of black disadvantage and crime. Research should examine whether such revocations are in fact more frequent for blacks and, if so, whether this reflects higher rates of serious noncompliance with release conditions, valid risk assessments, or the effects of conscious or unconscious bias.

VI. Conclusion

Discussions of racial disproportionality in criminal justice sometimes seem to reveal two opposing states of denial. One view denies the possibility of conscious or even unconscious racial bias, supposing that racial disproportions in criminal justice solely reflect racial differences in criminal behavior. The opposing view denies behavioral differences, supposing that the observed disproportions solely reflect bias (see Bridges and Crutchfield [1988, p. 700], describing “normative” [behavior] and “stratification” [bias] theories of disparity). Thoughtful observers such as Alfred Blumstein (1982, pp. 1280–81; 1993, p. 759), William Julius Wilson (1987, pp. 22–26), Michael Tonry (1995, pp. 63–80), and Kevin Reitz (2003, pp. 89–106) have recognized that both of these extreme positions are wrong. The analysis in this essay supports that view: the high degree of racial disproportionality in Minnesota’s prison and jail populations appears to reflect racial differences in criminal behavior, the disparate impact of seemingly race-neutral sentencing policies, and, possibly, racial stereotyping or disparate impact in policing decisions and in decisions to revoke probation or postprison release.

Prison disproportionality largely reflects racial differences in presumptive sentences; presumptive sentences, in turn, largely (but not entirely) reflect racial differences already present at arrest, which in turn reflect, in large part, racial differences in offending. The latter differences represent both individual and societal failures. These differences appear to be much greater in Minnesota than in the nation as a whole, reflecting above-average differences in socioeconomic status

of the state's black and white citizens and the particularly high concentration of its black residents in high-crime urban areas. These status and residential differences, and the crimes they foster, are the legacy of historic, deliberate racial bias, combined with a willful blindness that allows the modern products of that bias to continue and in some ways grow worse. In particular, city, county, and metro-level policies regarding schools, housing, transportation, and other public services and subsidies have often worsened, and rarely tried to ameliorate, criminogenic concentrations of race and poverty (Orfield 1997, 2002; Orfield and Luce 2009).

These are not just failings of society at large. The criminal justice system's response to crime in poor, nonwhite areas magnifies and perpetuates racial differences in socioeconomic status and criminal behavior. Poverty and lack of opportunity are associated with higher crime rates; crime leads to arrest, a criminal record, and usually a jail or prison sentence; past crimes lengthen those sentences; offenders released from prison or jail confront family and neighborhood dysfunction, increased risks of unemployment, and other crime-producing disadvantages; this makes them likelier to commit new crimes, and the cycle repeats itself (Council on Crime and Justice 2007*c*).

Social disadvantage, crime, and criminal law enforcement thus reinforce each other: disadvantage promotes crime; crime worsens the condition of already-disadvantaged victims; already-disadvantaged offenders and their families are further burdened by criminal penalties and the collateral consequences of conviction. Mass incarceration also substantially burdens the already-disadvantaged communities from which most of these offenders come and to which they will return (see, e.g., Clear 2008). As Bruce Western (2006, p. 196) has succinctly stated, "Mass incarceration is . . . a key component in a system of inequality—a social structure in which social inequalities are self-sustaining and those at the bottom have few prospects for upward mobility."

At least some of the substantial racial disproportionality in Minnesota arrest rates may reflect the disparate impacts of law enforcement decisions, in particular, decisions to target black citizens or black neighborhoods where reported crime rates are higher and drug offenses are concentrated and are easy to detect. For all crime categories, the real differences that exist in black and white offense rates are accentuated by the strongly disparate impact of sentencing guidelines policies giving heavy weight to the offender's criminal history score. What re-

mains of unregulated sentencing discretion under the guidelines shows relatively little evidence of bias or racially disparate impact. However, black/white disparity may be further increased by decisions to revoke probation and postprison supervised release.

Further research is urgently needed on these revocation decisions and on policing policies that may exaggerate racial differences in offending. In addition, current data do not allow us to examine the possible effects of various “compensating biases” that may conceal disparities that occur at various stages of case processing and, in aggregate comparisons, tend to cancel each other out. These possibilities can be assessed only by means of a detailed, in-depth sample of cases, tracing the effects of law enforcement policies, charging, plea bargaining, pre-trial detention, and other factors that shape the flow of cases entering and moving through the criminal justice system.

At the same time, research is also needed on the social roots of crime in Minnesota—the specific individual, family, neighborhood, school, and societal causes of Minnesota’s stark socioeconomic disparities between whites and blacks.

There is reason to hope that much-needed data on many of these issues will soon become available in Minnesota. The Minnesota Sentencing Guidelines Commission, in partnership with the Institute on Race and Poverty at the University of Minnesota, is planning to conduct an in-depth, two-pronged assessment of racial disparity, tracing a sample of cases forward through the criminal justice system and backward into the communities from which the offenders came (MSGC 2008a, p. 6).

There are several important policy implications of this essay and of a more detailed assessment of these problems. Where racial stereotyping or other illegitimate disparities exist, they must be addressed and corrected. Seemingly race-neutral drug enforcement policies must be changed if they are found to produce disproportionately high black arrest rates relative to actual rates of black drug use and trafficking. As suggested in a recent report (King 2008, p. 31), noncriminal referral to hospitals, shelters, and treatment facilities, in lieu of arrest and criminal justice processing, would often provide a faster and more effective response to the needs of low-level drug offenders, many of whom are chemically dependent. Such a major change does not lack historical precedent: in the past four decades there has been a massive diversion of public drunks from arrest to noncriminal detoxification centers (see,

e.g., Aaronson, Dienes, and Musheno 1978). Between 1970 and 2005, arrests for public drunkenness fell from 22.5 percent of all arrests to 3.9 percent (FBI 1971, p. 119; 2008c, table 29).

My analyses suggest that seemingly legitimate sentencing factors such as criminal history scoring can have strongly disparate impacts on nonwhite defendants. Sentencing guidelines systems like Minnesota's have a substantial capacity to identify and address such disparate impacts. These systems specify a limited number of legally relevant sentencing factors, and their permanent sentencing commissions collect and analyze detailed statistical data on cases that have been sentenced.

But it is not enough to recognize a disparate impact after it has occurred; the identification of such impacts and reexamination of underlying policies should occur before the policies are implemented. Sentencing guidelines systems like Minnesota's can more easily do this because such guidelines make sentences predictable, and sentencing commissions are already using that greater predictability to model their systems and project future resource needs. These commissions can and should adapt their resource-impact projection models so that they also show the predicted racial and ethnic impact of current and proposed sentencing policies. Regular use of such demographic impact projections is one of the most important recommendations in recent proposals to revise the sentencing and corrections provisions of the Model Penal Code (Reitz 2003, pp. 104–6; American Law Institute 2007, sec. 6A.07[3]). Several states, including Minnesota, have recently begun to make such projections (Mauer 2009).

Once past or projected future disparate impacts of certain sentencing factors are identified and quantified, policy makers must reexamine the assumptions and purposes underlying those factors. Even if a sentencing factor such as criminal history is legitimate, and indeed necessary for the protection of potential victims (most of whom are themselves disadvantaged nonwhites), policy makers must explore more creative ways to handle these problems so as to minimize the damage caused by conviction and incarceration. Criminal history scoring, and perhaps other guidelines rules that limit judicial flexibility in the use of intermediate sanctions, will probably have to be changed if Minnesotans want to reduce the racially disparate impact of the state's sentencing laws on prison and jail populations.

Michael Tonry (1995, chaps. 4–7) proposed that sentencing guidelines should explicitly allow judges to mitigate sentences on the basis

of the reduced culpability and social vulnerability of disadvantaged offenders, particularly when such offenders have managed to overcome the odds and maintain stable employment and family ties. He also cited data suggesting that reduced sentencing severity would not necessarily lead to higher crime rates. Tonry has also proposed increased treatment and other services for disadvantaged offenders (pp. 201–7) and more frequent and creative use of community-based sanctions (Morris and Tonry 1990). In the past such sanctions have mostly been used for low-risk offenders, who are disproportionately white. But if we are serious about reducing the harm that criminal law enforcement and sentencing cause to vulnerable nonwhite offenders (and their families and communities), courts must be willing to extend (and even prioritize) the use of intermediate sanctions to disadvantaged offenders, even though these offenders often pose higher risks of recidivism if they are released.

To the extent that research reveals few illegitimate disparities or unacceptable disparate impacts, at least at some stages of the criminal and sentencing processes, such findings will give Minnesotans a sound basis to appreciate and retain what is good about their state's laws and practices. Minnesota and its guidelines have sometimes been blamed for the state's strongly disparate inmate populations. This exploratory essay suggests that such criticisms are only partially correct. It appears that most of the disparity is already present at arrest and that the principal contribution of the guidelines to racial disproportionality is to be found in one particular aspect of their design—the heavy weight given to prior record. That problematic design feature would be easy to change without discarding or radically changing the guidelines—a sentencing system that has served the state well. Overall, the guidelines have helped to reduce racial and other disparities (Frase 1993*b*). The fiscal-impact projections made possible by the guidelines permit policy makers to manage and prioritize the use of limited and expensive state prison resources (Frase 2005*a*, 2005*b*). And although Minnesota's prison and jail populations have increased steadily under the guidelines, these populations have grown no faster than national inmate populations, despite higher Minnesota growth rates in felony convictions. Given racial differences in offending, a relatively low incarceration rate will probably always tend to yield relatively high racial disproportionality. But if the solution to that problem were simply to lock up more

nonviolent offenders, the result would also be to increase the absolute number of minority persons incarcerated (Zimring 2005).

To the extent that racial disproportionality at arrest reflects differences in criminal behavior, we must address the causes of those behavioral differences. One by-product of my analyses is documentation of shockingly high socioeconomic disparity between blacks and whites in Minnesota. Serious and sustained efforts must be made to reduce these and other racial/ethnic disparities, not only because reduction of hardship and of increased risk of criminal victimization and punishment is the right and decent thing to do, but also because such disparities greatly increase public expense for criminal justice and many other government programs. If the state fails to address these disparities, black citizens will continue to be disproportionately victimized, arrested, and incarcerated, and all the state's citizens will continue to incur substantial human, social, and financial costs—costs that will continue to grow, given current trends and demographic forecasts (Council on Crime and Justice 2007*a*).

At present, the state as a whole, and particularly the Twin Cities metropolitan area, where most blacks live, remains one of the most affluent in the nation. A recent survey (Bureau of Labor Statistics 2007) found that the Twin Cities was the third richest in pretax income per consumer unit of 24 major metropolitan areas surveyed. Poverty in the midst of affluence must be very frustrating to the state's most disadvantaged, predominantly nonwhite citizens, and these frustrations may contribute to further despair and criminal conduct—most of it directed at other disadvantaged nonwhites. But the good news here is that, if they choose, the state and the metro area have the resources to address some of the worst racial socioeconomic disparities and lessen their future costs.

Stark racial disparities in custodial populations are a constant reminder of society's failure to deliver on its ideals of equality. Prison and jail disparities are also extremely costly, especially in the long run. They represent a key link in the constantly repeating cycle of disadvantage, crime, incarceration, release to continued or worsened disadvantage, and repeated crime. Minnesotans must find ways to break the cycle. And so must other states with high racial disproportionality in their inmate populations.

APPENDIX

Problems of Missing, Inconsistent, and Hard-to-Interpret Data

Very few data currently are available on many critical dimensions of race and criminal justice in Minnesota, and the available data are often reported or analyzed inconsistently, raising difficult issues of interpretation.

A. Missing Data

There are few Minnesota-specific data for many stages of the criminal process. Data on criminal behavior, crime reporting, and law enforcement are particularly sparse, which greatly limits our ability to specify to what extent racial differences in arrest rates reflect behavior, as opposed to disparate law enforcement decisions. The principal published sources include a racial-profiling study based on traffic stops in 65 jurisdictions in 2002 (Institute and Council 2003), various papers published by the Council on Crime and Justice (2007*b*) as part of its Racial Disparity Initiative, and crime victimization and drug use surveys conducted in Minnesota in the 1990s (cited and discussed in several of the Council on Crime and Justice reports; see also Minnesota Criminal Justice Statistics Center 2003; Minnesota Departments 2007).³¹

We also lack detailed data on victim cooperation, charging, plea bargaining, and defense effectiveness. Such variations could cause disparity to rise or fall between the stage of arrest and the next stage (felony conviction) for which race-specific Minnesota data are available.

The data on felony sentencing collected and published by the Minnesota Sentencing Guidelines Commission are among the most complete in any state. But there are very few Minnesota or even national data on misdemeanor sentencing, nor are there data at the state level on the proportions of jail inmates in pretrial detention or other temporary holding, serving sentences (directly or following revocation) for felonies, and serving sentences for misdemeanors (Minnesota jail data are not broken down by race, offense, or conviction status). However, the limited available Minnesota data suggest that blacks are more likely to be held in pretrial detention and more likely to receive jail sentences in misdemeanor cases (Minnesota Task Force 1993, pp. 46, 57).

There are no detailed, race-specific data on postsentencing decisions, especially revocation of probation and postprison release, and denial of good-conducts credits.

At all stages of criminal processing we lack data on the race of crime victims (Minnesota Task Force 1993, p. 10). Research in other jurisdictions has shown that this factor can have major effects on sentencing outcomes

³¹ This is an SPSS-formatted file, provided to the author by the sponsoring agencies. The file contains same-school data from the 1992, 1995, 1998, 2001, and 2004 Minnesota Student Survey; selected findings from these surveys are reported in Minnesota Departments (2005).

(Sentencing Project 2005), and it may also affect victim reporting and cooperation and police and prosecution decisions. Minnesota surveys in the early 1990s found that substantial numbers of judges and defense attorneys believed that charges were less likely to be filed, and plea offers were more generous, when the crime victim was nonwhite (Minnesota Task Force 1993, pp. 18, 28).

B. Inconsistent Data

Much of the data we have at various stages in the process are reported in ways that make it difficult to compare with data from other stages. The treatment of offender ethnicity is a particularly difficult subject. Persons of Hispanic (or Latino) ethnicity are sometimes put in a separate nonoverlapping category (i.e., they are excluded from racial categories), whereas in other data Hispanics are included within racial categories even if their total is also reported separately. Most Hispanics in Minnesota are white: in 2005, 77 percent of sentenced Hispanics (excluding those of “unknown” race) were identified as white; if one also excludes Hispanics whose race was identified as “other” (neither white, black, American Indian, nor Asian), 96 percent of sentenced Hispanics were white. Hispanic whites tend to have higher arrest and incarceration rates than non-Hispanic whites, so inclusion of Hispanics in racial categories tends to raise white arrest, conviction, and incarceration rates (while having little effect on black rates), thus concealing the greater disparities that exist between non-Hispanic whites and blacks. Minnesota has few Hispanics compared to the United States as a whole, so inclusion of Hispanics in race categories has a much greater tendency to understate U.S. black/white ratios than Minnesota ratios.

The scope and treatment of racial categories in prior research are also problematic. Many studies have focused only on black versus white incarceration rates, even though substantial racial disproportionality also exists for other nonwhite groups, especially Hispanics and Native Americans. (However, blacks remain the largest nonwhite group in Minnesota; for that reason, and because of space limitations, my analyses likewise focused on black/white disparities.)

Comparisons of racial differences in per capita arrest, conviction, and incarceration rates are further complicated by a change in the way U.S. Census Bureau population data are collected. The 2000 Census and subsequent population estimates allow persons to list more than one specified race, whereas the prior census data used to compute per capita custody rates in earlier studies and arrest, court, and correctional data permitted only one racial identity. The use of multiracial census data as a base would distort most per capita estimates, since inmate, arrest, and court data in the numerator are not multiracial and the same person could be counted in more than one population base (denominator). These census changes also complicate comparisons to earlier per capita data. Accordingly, I generally avoid comparisons between years before and after 2000, and the population data used to com-

pute per capita rates for 2000 and later years include only persons listing one race ("black alone" and "white alone").

Prior research also has usually not separately examined males and females. Male incarceration rates are much higher than female rates, and black/white inmate disparities are also greater for males than for females. In 2005, for example, the black/white ratio of per capita prison sentence rates in Minnesota was 12.2 : 1 for males but only 5.8 : 1 for females. However, because of the limited availability of Minnesota arrest and inmate data broken down by both race and gender and space limitations, I do not separately analyze racial disparities for males and females.

Another problem with the population bases used to compute per capita rates in prior state-level studies is that the base equals the total resident population of each race, including juveniles, even though very few juveniles are eligible to be confined in state prisons and local jails. The reason for this disconnect appears to be that the U.S. Census Bureau does not regularly publish state population estimates broken down by both race and age; thus, state-level adult population estimates for each race must be hand-calculated, combining published age-race breakdowns for males and females. Moreover, the surveys on which the published data are based are less representative than general population estimate surveys, excluding residents in low-population areas and (until 2006) also excluding all inmates and other institutionalized persons (USCB 2008*d*). Use of a total population base understates adult incarceration rates (relative to adult populations) and also understates black/white inmate disparities (black populations are younger, so the inclusion of juveniles in population denominators lowers black incarceration rates more than white rates). The degree of understatement is greater in states such as Minnesota, where the relative youthfulness of the black population is above the national average. (The median age of non-Hispanic blacks in 2000 was 25 in Minnesota and 30 for the United States as a whole; the median ages of Minnesota and U.S. non-Hispanic whites were 37 and 38, respectively [USCB 2007*b*].) Nevertheless, I use total population bases to compute adult arrest, conviction, sentencing, and incarceration rates and black/white ratios. This was done to facilitate comparisons to prior research and government data and because of the need for hand tabulation of state-level adult population estimates by race and the less representative samples on which such estimates are based. Since both U.S. and Minnesota populations have grown slightly older in recent decades, black/white ratios for later years are somewhat less understated. (It should also be noted that census data tend to undercount blacks [Tonry 1995, p. 31], thus introducing a countervailing bias: the underestimated black population base results in a higher black per capita rate, thus tending to overstate the black/white ratio.)

Available state-level data on adult populations of each race (USCB 2008*c*) suggest that Minnesota's black/white ratio rises more than that of many other states when rates are based on estimated adult rather than total populations. For example, Minnesota's 2005 black/white prison plus jail incarceration ratio rises from 9.14 : 1 (total population base) to 11.35 : 1 (adult population

base), an increase of 24 percent; for all states, the black/white ratio rises from 5.56 : 1 to 6.18 : 1, an increase of only 11 percent. However, the rank order of state incarceration ratios does not change substantially when estimated adult populations are used as a base, and the states in the high- and low-ratio quartiles (see table 6) are almost identical.

Another problem with the black/white incarceration ratios reported in prior research is the failure to use any time lag between inmate counts and resident population bases. Per capita incarceration rates assume that, in the absence of disparity, inmate stocks should be proportional to the resident populations of each race. But jail and prison stocks reflect crimes committed several years earlier, so inmate stocks should be compared with white and black populations in those earlier years. If black populations are rising faster than white populations, comparing inmate stocks to populations in the same year tends to understate black incarceration rates more than white rates and thus tends to understate black/white ratios. This is a particular problem for research on Minnesota, since the state's black population has risen much faster than the white population in recent years and also much faster than the U.S. black population. Accordingly, I employ time-lagged population bases when computing per capita rates and black/white ratios for comparison with earlier stages of the criminal process (e.g., comparing prison stocks ratios with conviction ratios).

Finally, when comparing disproportionality at different stages of the criminal process, one must keep in mind that arrest and sentencing data are based on a "flow" of cases (analogous to the quantity of fluid flowing through a pipe in a given time period), whereas inmate population figures represent "stock" data (analogous to the quantity of fluid stored in a tank at any moment in time). Since offenders with longer sentences tend to accumulate in custodial populations, such offenders would be expected to make up a higher proportion of stocks than they do of flows, and such differences may distort race-specific comparisons, especially if offenders in some racial groups consistently receive longer sentences.

C. Problems of Interpretation

The limitations noted above make it difficult to interpret what data we have. In addition to problems of comparability, there is a problem of possible opposing or compensating biases that tend to cancel each other out, thus concealing the true nature and extent of each form of bias (Blumstein 1982, pp. 1263, 1269, 1279–80). Here are four examples.

Given the intraracial nature of many crimes (people tend to commit crimes close to where they live and tend to live with people of their own race), if there is any systematic underreporting of crime by black victims, this would tend to favor black offenders, causing them to be underrepresented among arrests and thus masking the full extent of racial disparities in arrest decisions and at all later stages of the process (i.e., the overrepresentation of blacks among arrestees, in criminal court data, and in prisons and jails would be even greater if black victims reported more crimes). Even for crimes known

to the police, a pro-black offender bias would exist if black victims are less able or willing to cooperate effectively with police and prosecutors.

Similarly, any form of official bias against black crime victims or police underenforcement in black neighborhoods also causes a bias that tends to favor black offenders. Such an anti-black victim bias may then mask the full extent of other biases that disfavor black offenders, or the two biases could even cancel each other out.

Another factor that may favor or disfavor nonwhite offenders is the overall level of sentencing severity or leniency in the jurisdictions in which these offenders live. Most Minnesota blacks live in urban jurisdictions (see table 7). To the extent that sentencing is less severe in those courts than it is in many suburban and rural jurisdictions, the overall severity of black sentences will be lowered, but this may conceal other biases against blacks, especially those who live in nonurban areas. In 2004 and 2005 (the two most recent years for which sentencing data are examined in this essay), Minnesota's nonmetropolitan courts as a group had higher rates of upward dispositional departure for presumptive stays than metro courts and lower rates of downward departure for presumptive prison commits. But all such cross-jurisdictional comparisons are uncertain, given possible charging differences in these counties. Moreover, analysis of such geographic variations requires complex, hierarchical modeling of data that includes contextual (county or judicial district) and well as case-level variables (Weidner, Frase, and Schultz 2005, pp. 409–11). Even with such models, however, geographic variations are difficult to interpret when data are limited (as they are at present in Minnesota) to the conviction offense, which may not be comparable across jurisdictions because of major differences in charging and plea-bargaining practices (see, e.g., MSGC [1984, pp. 71–86], finding numerous county-to-county variations in charging and plea-bargaining practices; Feld [1991, pp. 172–78], reporting data suggesting major differences between Minnesota urban, suburban, and rural counties in prepetition screening of juvenile cases).

If one finds comparable proportions of black and white offenders at earlier and later stages of the criminal process, this does not necessarily mean that there is no bias in the intervening stages. Instead, seemingly constant black/white proportions might be due to the opposing effects of earlier and later biases. For example, suppose that overarrest of blacks (resulting in large numbers of weak or unfounded arrests) is followed by especially strict charging or sentencing of black offenders. Such an overarrest pattern would be likely to cause a high percentage of cases against blacks to be dismissed after arrest (lowering the black/white ratio at that point), but if the remaining cases against blacks are treated harshly in charging, plea bargaining, or sentencing, the black/white ratio at the conviction, sentencing, and custody stages may go back up, perhaps to the same high level originally seen at the point of arrest.

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