

Theological Musings from Dave's Laptop

April 10, 2018

Fifty years is a long time.

President Kennedy was assassinated during my first semester in high school, and Dr. King was assassinated during my last semester.¹ The sixties were turbulent years.

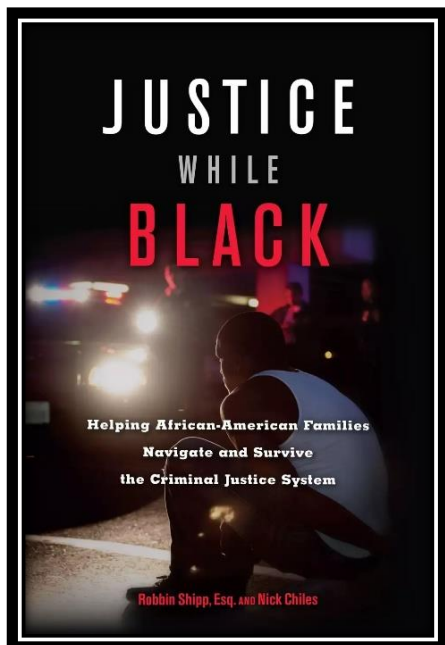


We've come a long way in these 50 years. Indeed, without the turbulent sixties and without Dr. King, there would probably be no CBF. I give thanks for all the good that has come, and for the deep gladness of sharing life with you.

At the same time, the last two years have seen a significant regression from the best of what has been. Even sadder is the likely reality that the last two years do not so much represent a regression as an uncovering of the racism and hatred that has continued all along.

One evidence of such racism can be seen in our criminal justice system. I certainly do not pretend to be an authority of any sort on the state of criminal justice, but I suspect that most of us would agree that the current levels of incarceration in these United States are both unsatisfactory and unsustainable. Dr. King was all about justice; and justice seems pretty hard to come by in many parts of our land.

Nesa Herring recently shared with me a book written by Robbin Shipp, an attorney in Decatur, Georgia (a suburb of Atlanta, my hometown). The book is *Justice While Black: Helping African-American Families Navigate and Survive the Criminal Justice System*.²



Ms. Shipp explained the impetus for writing the book as “I was sick and tired of being sick and tired. I cried over this nation’s propensity to be okay with the mass incarceration and death of hundreds of thousands of African-American men” (10).

The rest of this week’s *Laptop* consists of quotes from the beginning of the book. Nothing that follows will be a surprise to you if your skin is any hue besides white, but for those of us who are “paler,” some of this may be new . . .

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When it comes to murder, we don’t see white men and women being gunned down under the guise of “standing your ground.” That distinction seems reserved for African-Americans (10).

<sup>1</sup> Yes, I was in high school for five years. In those days, there were no middle schools in Atlanta, and the 8<sup>th</sup> grade was spent in high school as a “sub-freshman.” That “trauma” explains a lot about my subsequent life ☺.

<sup>2</sup> Chicago: Bolden, 2014.

We have become a nation where many police forces have resorted to quick and easy racial identifiers to determine who is suspect, who is criminal, and who should be locked up (13).

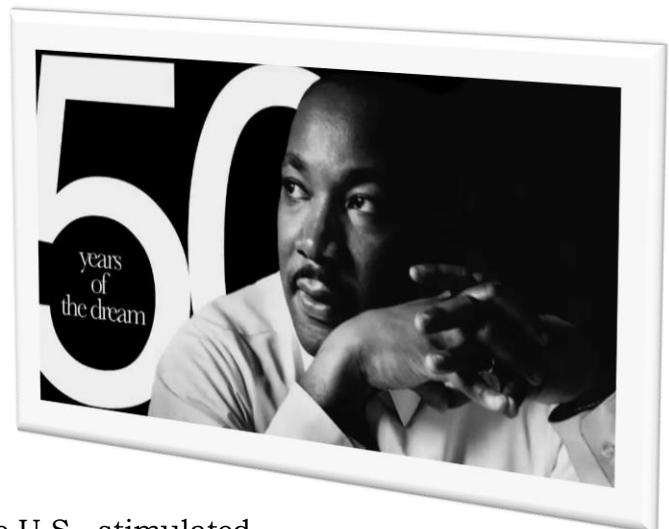
Though the U.S. Constitution and U.S. Courts prohibit racial profiling, the practice is still prevalent across the nation. Stopping it appears to be as tricky as removing hate from the human heart (14).

Freedom from official tyranny, from an overzealous state, is one of the rights that most Americans take for granted. We step out of our front doors expecting a form of invisibility from law enforcement – “Don’t call us, we’ll call you.” Until we summon them, we don’t expect much interaction with the police.

But for black men under 40, that expectation of invisibility is just a fantasy. Sixty years after Ralph Ellison published his aching cry against the black man’s irrelevancy and powerlessness in *Invisible Man*, the black man ironically is now all too visible in the eyes of American law enforcement. From the West Coast to the East, from the frigid North to the sweltering South, black boys and young black men move through their days enveloped in a cloak of suspicion (14).

In Washington, DC, an estimated three out of four young black men – and nearly all of those from the poorest neighborhoods – can expect to serve time in prison. In some of our major cities, as many as 80% of young black males have criminal records. In 2003, the Bureau of Justice Statistics released a report that was received like a nuclear bomb in many quarters: one in every three young black men in this country could expect to be incarcerated at some point in his life (15).

Although educators and activists in many communities report that the circumstances facing black females in this country have grown increasingly precarious, black males are much more likely to wind up in prison. While the U.S. prison population in 2009 was 39.4% black, that number consisted of 841,000 black males and 64,800 black females (out of a total prison population of 2,096,300 males and 201,200 females), according to the U.S. Bureau of Justice Statistics. Currently there are 13 black males in prison for every black female.



Racial profiling takes many sinister forms in the U.S., stimulated by a toxic mix of stereotyping, bias, and laziness. One of the most far-reaching is expressed in the sentencing disparities evident in many areas of the criminal justice system, most notably in drug cases.

Though blacks and whites use marijuana in roughly the same proportions, a report by the ACLU found that in 2010 blacks were approximately four times more likely than whites to be arrested for marijuana possession. In Washington, DC, blacks were an astounding eight times more likely than whites to be arrested for marijuana possession (15).

In recent years, Georgia, where I practice, has begun to funnel large amounts of state funding and treatment programs for methamphetamine addicts. If you aren’t aware, meth has become the drug of choice for suburban and rural white kids. In creating diversion treatment

programs, the state can offer an alternative to sending these kids to prison. The prisons are reserved for a different (darker) population (19).

The most common form of racial profiling occurs when a police officer pulls over one or a group of young black males in an automobile. The vehicle stop is the reveille, the bugle call that initiates the entire legal drama that many of us have come to describe as “driving while black” (19).

A growing body of research has highlighted the likelihood of inaccuracies in eyewitness identifications. The Innocence Project estimates that eyewitness misidentification plays a role in nearly 75% of convictions overturned through DNA testing, making it the single greatest cause of wrongful convictions in the nation.

When researchers conduct controlled experiments to test the accuracy of eyewitness identifications, they have found that eyewitnesses incorrectly identify strangers at about the same rate as they identify them correctly. That’s a horrible truth, especially considering how compelling and powerful eyewitness testimony is to judges and juries and how frequently it is used to send defendants to prison for a long time.

Compounding the problem significantly is the added unreliability of cross-racial eyewitness identification. People are much more likely to misidentify a stranger of another race. And most appallingly for black males, white people appear to have an especially hard time identifying African-Americans, according to researchers (21-22).

Once the officers find a reason to put you in their car, your life could drastically, horribly transform in an instant, because you are now entering “the system.” Once you are placed in that squad car, the likelihood is that you’re going to jail.

What you must understand is that the whole process you’re going through is designed to *not* let you go. Remember, economies depend on this. The prison-industrial complex across the nation is designed to pick you up off the street, book you into jail, hold you in a cell, take you to court, get you to plead guilty, and send you to prison. That’s the system’s intelligent design. That’s what police officers are there for. Don’t get it twisted by thinking the system is

desperately going to want to correct the mistake it made in slapping handcuffs on your wrist. The system has no interest in protecting your rights and ensuring that you make it home to your family (26).

I know African-American lawyers of some of the biggest law firms in the country whose kids have been racially profiled. They couldn’t let their kids drive dad’s fancy car to their expensive private school in the suburbs for fear the kids would get stopped and harassed. U.S. Attorney General Eric Holder, the top law enforcement officer in the land, has talked about the conversations he has to have with his son about what to do when a police officer stops you – how you’re supposed to behave. Getting pulled into the system can happen to any of us. When your skin is brown, neither your education, your money, know your prestige is going to shield you or your children (26-27).



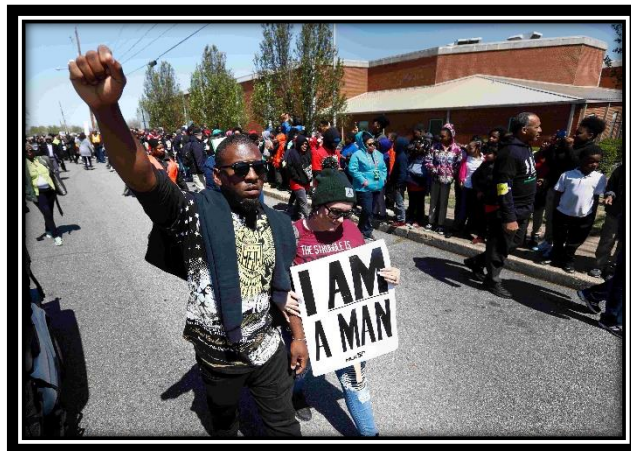
expensive private school in the suburbs for fear the kids would get stopped and harassed. U.S. Attorney General Eric Holder, the top law enforcement officer in the land, has talked about the conversations he has to have with his son about what to do when a police officer stops you – how you’re supposed to behave. Getting pulled into the system can happen to any of us. When your skin is brown, neither your education, your money, know your prestige is going to shield you or your children (26-27).

Many African-American men and women have had the experience of what has come to be called “shopping while black”: when retailers see an African-American shopping in their store as a likely thief, rather than as a paying customer. Even Oprah Winfrey, one of the richest women in the world, gets the “shopping while black” treatment. Oprah was at a ritzy store in Zürich Switzerland, and the clerk refused to show her a \$38,000 handbag, thinking it was too expensive for her.

I had my own “shopping while black” encounter a few years ago, when I ordered a new cell phone from the carrier and went to the carrier’s store in Midtown Atlanta to switch my memory card to my new phone. The young white man waiting on me said, in an accusatory tone, “Where did you get this phone from?”

I was startled by the question. Here I was, this articulate, professional black woman, and he was essentially asking whether or not I had stolen the phone (27-28).

One study has shown that white women in their 40s engage in much more shoplifting and other demographic groups, but they don’t get caught because they aren’t being watched. Statistics showing that black customers steal more “are not really an indication of who shoplifting,” the author said. “It’s a reflection of who’s getting caught, which is a reflection of who’s getting watched. It becomes a self-fulfilling prophecy” (28).



Even when controlling for socio-economic status, African-American students in all grades are suspended and expelled at 2 to 3 times the rate of white students. In 1997, study by the U.S. Department of Education revealed that nearly 25% of all African-American male students were suspended at least once over a four-year period – despite a lack of evidence that African-American students engage in higher levels of disruptive behavior than other students (29).

The consequences of these suspensions are severe, because it becomes the first step into what has been called the “school to prison pipeline”: 49% of students who entered high school with three suspensions on the record eventually dropped out of school, according to a study by Johns Hopkins University.

This leads us to an astounding statistic: black male high school dropouts are 38 times more likely to be incarcerated than black males with a four-year college degree. That first suspension on the record of a four-year-old child could be the Scarlet Letter that eventually propels him into a jail cell. What a dramatically-outsized role teachers have in the lives of young people – and what a large role they unwittingly play in the prison-industrial complex, a system that has created circumstances in this country that have led to the destruction of our young.

The deeper you dig into the system, from the arrests all the way through the plea bargain and the rules of probation, the more you find the systemic booby-traps and tricks that suck in our kids. From the perspective of a defense attorney, it starts to feel like these poor black boys in the ‘hood have no chance once they’re sucked in, because there are so many ways the system is set up against them.

From what I’ve seen, education is the only escape, the only way to wriggle free from the traps. That young boy has to make a conscious decision, early on in his life, that he will devote

himself to academic performance and educational attainment. Otherwise he really doesn't have a shot in hell (29-30).

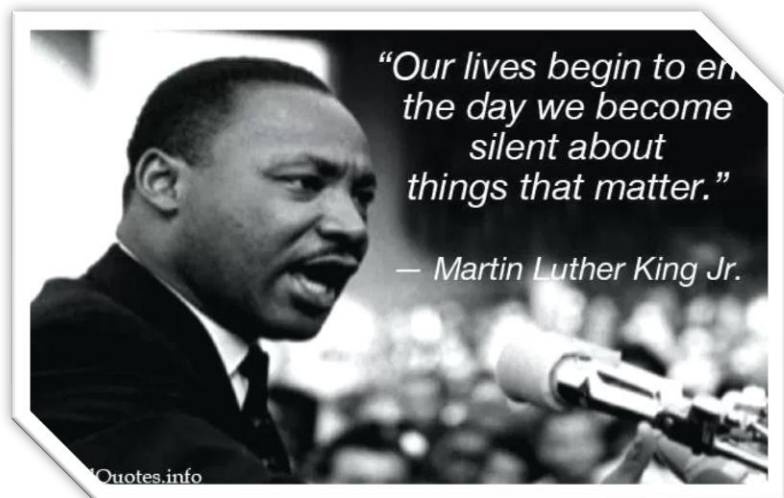
It is crucial for young black males to educate themselves as much as possible about search and seizure laws, about probable cause, and about the rules and regulations that control the actions of law enforcement. The ideal situation would be for all young black males to have enough knowledge of their rights that the cops wouldn't dare to harass them. That is one of the purposes of this book (32).

### **WHAT TO DO IF STOPPED WHILE DRIVING**

- Pull over safely to the side of the road if you see a police car with flashing lights behind you.
- If the officer asks where you're coming from, politely ask why you were stopped – the Supreme Court has ruled that the officer must have a reasonable suspicion based on "specific and articulable facts" that a person is armed or has committed, is committing, or is about to commit a crime.
- Answer the officer's questions as succinctly as possible, without embellishment.
- Always have your identification handy; if the officer asks for your license and registration, get his permission to reach for them – you don't want him thinking you may be reaching for a weapon.
- If they ask for permission to search your car, politely refuse.
- If the officer tells you to get out of the car, do as he says – and if he puts you up against the car – *stay there*.
- If the police insist on searching the vehicle, remain silent while they are doing so.
- Most importantly – though you will certainly be outraged – don't give the cop any attitude, or any reason to claim you were hostile or difficult, because that's the quickest way to escalate the encounter.

### **WHAT TO DO IF STOPPED WHILE WALKING**

- No matter what, never run from the police.
- Police have the right to stop you and ask your name, so if this happens, politely tell them your name.
- Beyond that initial question, remember that the U.S. Constitution guarantees each of us the right to remain silent, so don't volunteer any additional information.
- Because the stop is usually a pretext for the officer to have close contact with you to see if you are under the influence of alcohol or illegal drugs, or in possession of contraband, be as polite and courteous as possible.
- Don't curse or antagonize the officer.
- There is a good chance the officer is stopping you because he believes you match the description for a suspect to did something nearby – such as a young black male with short hair. If that's the case, you won't be able to talk your way out of it – so don't say anything.



## **WHAT TO DO IF ARRESTED**

- Be polite and don't contradict the officer's reason for arresting you.
- Try to stay calm and resist the urge to become loud or aggressive.
- Use every ounce of your willpower to resist the urge to say something to get them to release you – it's not going to happen, and will likely just make things worse.
- As soon as you can, call someone who can hire you an attorney to come to the station as soon as possible.
- If your parents or family members come to assist you, resist the urge to explain to them everything that happened – the police are likely recording every word you say.

## **WHAT TO DO IF YOU SEE POLICE HARASSING A FRIEND**

- Don't confront the police.
- Your primary job is to get your friend to remain as calm and nonthreatening as possible. Keep telling him, "Calm down and be quiet."
- Create some distance between you and the police so they don't perceive you as dangerous.
- As surreptitiously as possible, turn on the recording device on your cell phone. Having a video or audio recording of the encounter may become extremely important.
- Do not intervene, because there's nothing you can do except escalate the encounter and make it worse.
- Make sure you get the badge number of the officer involved (39-40).



# Black Disparities in Youth Incarceration

## African Americans 5X More Likely than Whites to be Held

Black youth were more than five times as likely to be detained or committed compared to white youth, according to data from the Department of Justice collected in October 2015 and recently released.<sup>1</sup> Racial and ethnic disparities have long-plagued juvenile justice systems nationwide, and the new data show the problem is increasing. In 2001, black youth were four times as likely as whites to be incarcerated.

Juvenile facilities, including 1,800 residential treatment centers, detention centers, training schools, and juvenile jails and prisons<sup>2</sup> held 48,043 youth as of October 2015.<sup>3</sup> Forty-four percent of these youth were African American, despite the fact that African Americans comprise only 16 percent of all youth in the United States.<sup>4</sup> African American youth are more likely to be in custody than white youth in every state but one, Hawaii.

Between 2001 and 2015, overall juvenile placements fell by 54 percent. However, white youth placements have declined faster than black youth placements, resulting in a worsening of already significant racial disparity.

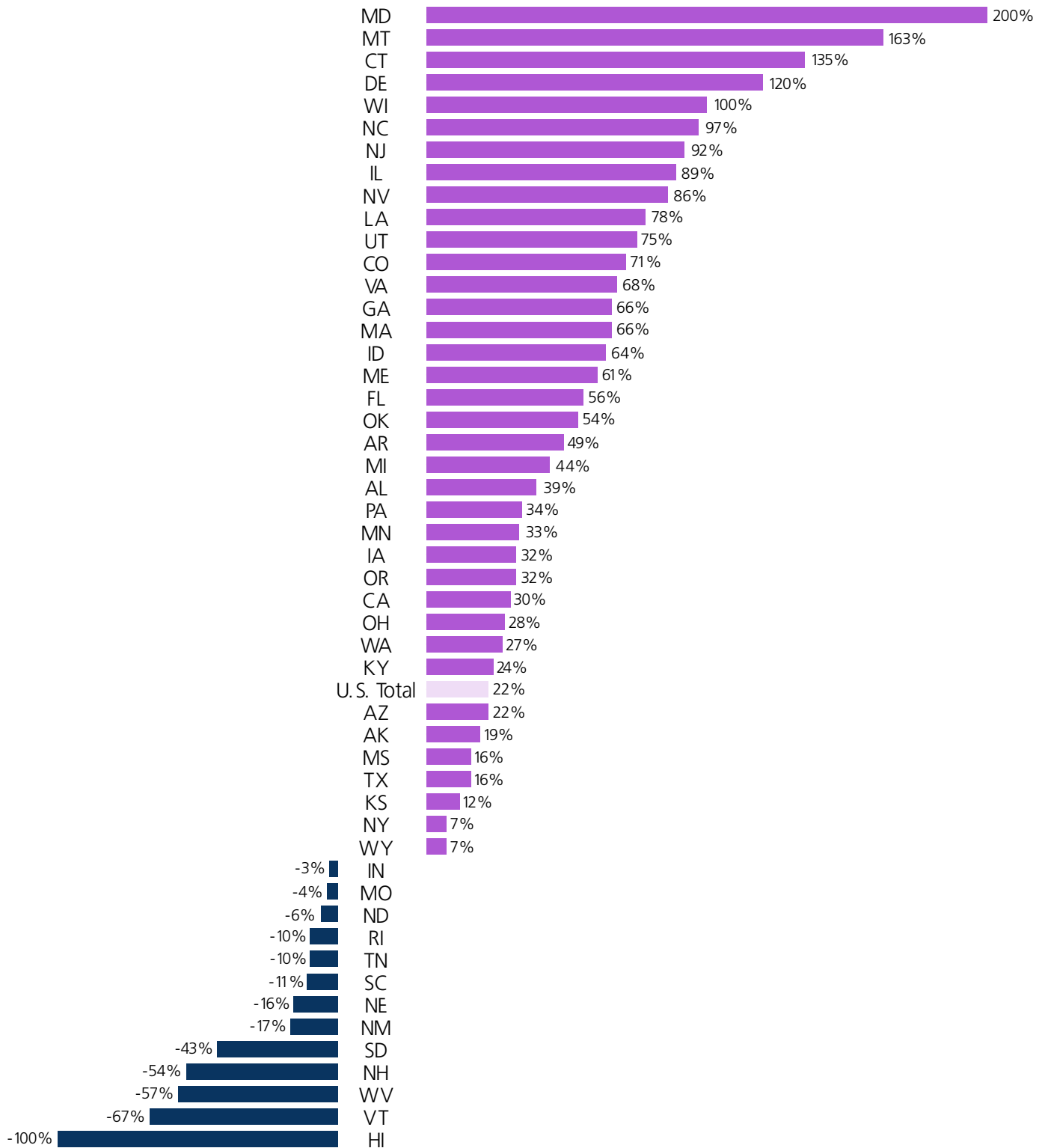
Nationally, the youth rate of incarceration was 152 per 100,000. Black youth placement rate was 433 per 100,000, compared to a white youth placement rate of 86 per 100,000. Overall, the racial disparity between black and white youth in custody increased 22 percent since 2001. Racial disparities grew in 37 states and decreased in 13.

- In six states, African American youth are at least 10 times as likely to be held in placement as are white youth: New Jersey, Wisconsin, Montana, Delaware, Connecticut, and Massachusetts.
- Five states saw their racial disparity at least double: Maryland, Montana, Connecticut, Delaware, and Wisconsin.
- Three states decreased their racial disparity by at least half: Vermont, West Virginia, and New Hampshire.

### Black/White Youth Placement Rate per 100,000, 2015

| State                | White Rate | Black Rate | B/W Racial Disparity |
|----------------------|------------|------------|----------------------|
| Alabama              | 97         | 331        | 3.41                 |
| Alaska               | 176        | 710        | 4.03                 |
| Arizona              | 75         | 277        | 3.69                 |
| Arkansas             | 93         | 522        | 5.61                 |
| California           | 76         | 711        | 9.36                 |
| Colorado             | 108        | 701        | 6.49                 |
| Connecticut          | 14         | 145        | 10.36                |
| Delaware             | 42         | 505        | 12.02                |
| District of Columbia | 0          | 363        | –                    |
| Florida              | 97         | 445        | 4.59                 |
| Georgia              | 42         | 235        | 5.60                 |
| Hawaii               | 36         | 0          | 0.00                 |
| Idaho                | 179        | 306        | 1.71                 |
| Illinois             | 44         | 426        | 9.68                 |
| Indiana              | 154        | 621        | 4.03                 |
| Iowa                 | 141        | 1,030      | 7.30                 |
| Kansas               | 114        | 721        | 6.32                 |
| Kentucky             | 76         | 361        | 4.75                 |
| Louisiana            | 61         | 403        | 6.61                 |
| Maine                | 56         | 333        | 5.95                 |
| Maryland             | 30         | 238        | 7.93                 |
| Massachusetts        | 22         | 222        | 10.09                |
| Michigan             | 96         | 479        | 4.99                 |
| Minnesota            | 75         | 648        | 8.64                 |
| Mississippi          | 32         | 131        | 4.09                 |
| Missouri             | 112        | 516        | 4.61                 |
| Montana              | 113        | 1,485      | 13.14                |
| Nebraska             | 123        | 811        | 6.59                 |
| Nevada               | 131        | 736        | 5.62                 |
| New Hampshire        | 47         | 206        | 4.38                 |
| New Jersey           | 11         | 337        | 30.64                |
| New Mexico           | 86         | 472        | 5.49                 |
| New York             | 54         | 305        | 5.65                 |
| North Carolina       | 22         | 164        | 7.45                 |
| North Dakota         | 135        | 683        | 5.06                 |
| Ohio                 | 98         | 560        | 5.71                 |
| Oklahoma             | 84         | 516        | 6.14                 |
| Oregon               | 235        | 1,103      | 4.69                 |
| Pennsylvania         | 93         | 862        | 9.27                 |
| Rhode Island         | 97         | 693        | 7.14                 |
| South Carolina       | 89         | 242        | 2.72                 |
| South Dakota         | 162        | 341        | 2.10                 |
| Tennessee            | 65         | 195        | 3.00                 |
| Texas                | 94         | 417        | 4.44                 |
| Utah                 | 73         | 606        | 8.30                 |
| Vermont              | 46         | 189        | 4.11                 |
| Virginia             | 59         | 410        | 6.95                 |
| Washington           | 88         | 487        | 5.53                 |
| West Virginia        | 301        | 566        | 1.88                 |
| Wisconsin            | 56         | 846        | 15.11                |
| Wyoming              | 243        | 1,166      | 4.80                 |
| <b>U.S. Total</b>    | <b>86</b>  | <b>433</b> | <b>5.03</b>          |

## Change in Black/White Racial Disparity in Youth Incarceration, 2001 vs. 2015



1 This fact sheet addresses black-white placement disparities. Fact sheets on Latino and American Indian disparities are forthcoming.  
 2 Hockenberry, S., Wachter, A., & Sladky, A. (Sept. 2016). Juvenile Residential Facility Census, 2014: Selected Findings (NCJ 250123). Available: <https://www.ojjdp.gov/pubs/250123.pdf>  
 3 Placement statistics throughout this factsheet are calculated from Sickmund, M., Sladky, T.J., Kang, W., & Puzanchera, C. (2017). "Easy Access to the Census of Juveniles in Residential Placement." Available: <http://www.ojjdp.gov/ojstatbb/ezacjrp/>  
 4 Puzanchera, C., Sladky, A. and Kang, W. (2016). "Easy Access to Juvenile Populations: 1990-2015." Online. Available: <http://www.ojjdp.gov/ojstatbb/ezapop/>. Youth is defined as those between the ages of 10 and 17, inclusive.

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