

**A Review of California Legislation and Its Effect on the
Disparate Impact in Male Prisons**

BY

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The thesis of Valerie Freatman, "A Review of California Legislation and Its Effect on the Disparate Impacts in Male Prisons," approved by her Committee, has been accepted and approved by the Faculty of the College of Behavioral Sciences, in partial fulfillment of the requirements for the degree of Master of Arts in Forensic Psychology.

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DEDICATION

Can't means won't.

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ABSTRACT OF THE THESIS

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The United States of America has been known as a melting pot-where equality is hailed among the most sacred of doctrines and is written into the foundational documents of the society. When examining California's prison system, however, there appears to be large racial disparities and widespread discrimination within the judicial system and a disparate impact on minorities. California's legislation has consistently and disparately imprisoned minorities for charges while white populations only receive a warning for the same crime. This study reviewed the past 30 years of California legislation regarding substance abuse and highlighted the disparities in the prison system, as well

as the effect of imprisonment on inmates over time. This examination revealed California's legislation has negatively impacted minorities through disproportionate imprisonment, which lead to further social ostracism and the development of mental disorders.

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Chapter 1

THE PROBLEM STATEMENT

Within the past 30 years, millions of minorities have been incarcerated for substance abuse related offenses (California Department of Corrections and Rehabilitation, 2016). The incarceration rate between Caucasian and minority inmates illustrates a vast disparity, along the lines of racial backgrounds, especially in cases that deal with narcotics. While it is difficult to speculate on the purpose of the legislation historically, the legislation around this subject seems to be targeted towards disproportionately incarcerating individuals of minority backgrounds, poverty, and the mentally ill without much regard for the disparate impacts of such legislation.

Problem Statement

Acknowledgement of the racial disparity of California's inmates in regard to drug related offenses is often neglected due to the functionality of our governmental system. A majority of the inmates who are incarcerated are young minorities who are impoverished and suffer from a lack of resources (Mauer, 2011). California's incarceration rates have been equated to Mississippi's

segregation in relation to how both states demonstrate the social and legal distortions of the practice (Simon, 2014). The individuals being incarcerated have suffered numerous travesties due to laws that disparately impact those of low socioeconomic status and minorities, such as the Three Strikes rule which assigns harsher punishment for rock cocaine than powder cocaine.

Perhaps the overarching impact to minorities is greater because it is not simply incarceration itself that impacts them, but its ricochet effects. While it is understandable that offenders' privileges are removed while in prison, most permanently lose these freedoms after completing their parole duties. Offenders often struggle to find work, have difficulty re-establishing family and community roles, and have little to no preparation for re-entry into society (Wikoff et al., 2012). California should focus on the issues and legislation that perpetuate disparate impacts in the prison system and find ways to resolve this issue.

Purpose of the Study

The purpose of this study is to examine how California's legislation may have a disparate impact relating to substance abuse, such as the use and or selling

of drugs and narcotics in any form within the prison system. Furthermore, Long-term incarceration has a high potential to generate adverse effects and makes it difficult for an individual to live a well-adjusted life upon re-entry to society.

Therefore, revisions to laws are important to alleviate these discrepancies. This study will illustrate how California's legislation has led to disparate impacts in prison and will offer solutions to this issue.

Research Objectives

This research will explore and pose specific questions concerning California's legislation on illegal substances and the effect that these convictions have on minorities in the prison system. After exploring the review of several laws, propositions, and regulations, an analysis will be made to demonstrate the need for reform in the legislative system.

Delimitations

Assessment of California legislation within the last 30 years will be used. Specifically, this research focuses on male prisons, which may impact the validity regarding generalization because this does not look at female or juvenile detention centers. Minors will not be evaluated or

discussed in this study. All information gathered for this study will be from archival data and may not be inclusive of the most current information.

Assumptions

All data related to current and past legislation will be assumed accurate. Past information regarding long-term effects prison has on an individual as well as the disparate data will also be taken as accurate.

Definition of Key Terms

Addiction. A chronic disorder with biological, psychological, social and environmental factors influencing its development and maintenance (American Psychological Association, 2018).

Covert Racism. Can be either intentional or unintentional. Intentional covert racism occurs when an excuse is made for avoiding minorities in order to avoid experiencing social discomfort and unintentional covert racism is demonstrated when biases are made about an individual due to a lack of knowledge about the client's culture of reference (Nihill DeRicco & Sciarra, 2005).

Crack Cocaine. Crack cocaine is made from coca paste that is derived from a coca plant and is cooked with baking soda

until it turns hard, which is where the term "rock" was generated (The Sentencing Project, 2010).

Equal Protection. Equal treatment of all individuals who are born in the United States when involving law, life, liberty, and property (National Constitution Center, 1988, p.13).

Legislation. There are six classes of legislation, or measures, considered by legislature. The most common form is the bill, which establishes, repeals, or in some other way modifies state law. If a bill is to become a law it must be passed by a simple majority of both houses and signed by the Governor. Laws ordinarily take effect on the January 1st following their passage (Calstate.edu).

Narcotic Drug(s). means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

b) Any salt, compound, isomer, or derivative, whether natural or synthetic, of the substances referred to

in subdivision (a), but not including the isoquinoline alkaloids of opium.

- c) Opium poppy and poppy straw.
- d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, but not including decocainized coca leaves or extraction of coca leaves which do not contain cocaine or ecgonine.
- e) Cocaine, whether natural or synthetic, or any salt, isomer, derivative, or preparation thereof.
- f) Ecgonine, whether natural or synthetic, or any salt, isomer, derivative, or preparation thereof.
- g) Acetylfentanyl, the thiophene analog thereof, derivatives of either, and any salt, compound, isomer, or preparation of acetylfentanyl or the thiophene analog thereof. (California Drug Laws, 2017).

Overt Racism. began with slavery and continued during post-slavery de jure segregation when belief in white superiority and minority inferiority was explicit (Chin, 2015).

Powder Cocaine. A white powdery substance that is abused by snorting, or by dissolving in water and injecting into a vein. This form of [cocaine](#) cannot be smoked. It is produced

by combining coca paste and hydrochloric acid. Powder cocaine is much more expensive than crack cocaine (Cocaine.org, 2018).

Racial Disparity. Exists when the proportion of a racial or ethnic group within the control of the system is greater than the proportion of such groups in the general population. (The Sentencing Project, 2010).

Racial Profiling. an excuse to interrogate an individual on the assumption that they have committed a crime or to associate a higher propensity toward crime to certain individuals based on their skin color (Luna, 2002).

Sentencing. Federal sentencing guidelines have provided judges with a general set of rules and regulations to refer to when deciding how long an offender will serve in prison for committing a crime (Rhodes, Kling, Luallen, & Dyou, 2015).

Socioeconomic Status. A term used to describe a hypothetical ladder that individuals move up or down by measuring certain facets which generally utilizes an individual's income, occupation, and education to determine where they fall on the ladder (Wyatt-Nichol, Brown, & Haynes, 2011).

Systemic Racism. A social and ideological issue that is rooted in our legislative system and makes it more difficult for minorities to receive fair treatment from the law (Feagin, 2006).

War on Drugs. Began in 1968 when the Nixon administration decided to redouble efforts against the sale, distribution, and consumption of illicit drugs in the United States (Moore & Elkavich, 2008).

Chapter 2

REVIEW OF THE LITERATURE

America is known as the land of the free where individuals all have equal rights under the law. United States citizens have migrated from all over the world to obtain this freedom. However, when looking at California's male prison population, evidence demonstrates that, compared with the state's population, some demographics are disproportionately represented. California legislation has had a direct impact on the sentencing disparities of the prison population in cases involving narcotics. These disparities are perpetuated after release because these offenders often struggle to find jobs, receive support from family or community, and are poorly equipped for re-entry into society, so these individuals reoffend and continue the cycle (Wikoff, Linhorst, & Morani, 2012). There are two different forms of racism that have been present in our system, overt and covert. Overt racism is the direct relationship between racism and inequality such as slavery and segregation, while covert racism is the unconscious, institutional, and systemic form used in society (Clair & Denis, 2015).

Systemic Racism

Since the seventeenth century, those who controlled the development and land in the United States ensured the oppression of African Americans, indigenous peoples, and women (Feagin, 2006). This oppression turned into slavery, where a slave only counted as $\frac{3}{4}$ of a person, and segregation of goods and services (Feagin, 2006). Because of these travesties, minorities in the United States have been struggling to achieve equality in the legislative system for centuries. Systemic racism is a social and ideological issue that is rooted in our legislative system and is difficult to completely abolish because it occurred for so long (Feagin, 2006). In 1954, the United States Supreme Court ruled to discontinue the segregation of schools and set a precedent for African Americans to finally be recognized as first-class citizens (Feagin & McNair Barnett, 2005). Despite this huge win, minorities have still had an upward climb in areas that deal with the judicial system. Although there is rarely overt discrimination in the legal system currently, racial disparities are still pervasive in California's correctional facilities (American Sociological Association,

2007). Feagin and McNair Barnett (2005) state that research shows small amounts of racial discrimination in the justice system and that these differences that occur over time accumulate to show a more disparate impact.

Equal Protection

The constitution was created in 1787 to ensure just and equal treatment among individuals; however, equality did not, in reality, exist in America until sometime later. Until the creation of the thirteenth amendment, women were abused and minorities were enslaved. Section one of the Thirteenth Amendment states, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction" (National Constitution Center, 1988, p.p.13). This legislation ensured that minorities and women would no longer continue to be enslaved or forced to work unless it was for punishment of violating the law in which case they would receive due process before judgement. Section two of the Thirteenth Amendment states, "Congress shall have power to enforce this article by appropriate legislation" (National Constitution Center, 1988, p.13). Though this law provided the equality that the system was

lacking, many individuals in power continued to find ways around the new legislation. Because the Thirteenth Amendment did not specify a direct definition of what was considered crime, so many minorities would be arrested for insignificant happenings, such as loitering (Hallett, 2016). Following their arrest, offenders would be forced to participate in free labor for large corporations, which was essentially a legalized form of slavery that affected predominantly African Americans (Hallett, 2016). A year later Congress ratified the Fourteenth Amendment, also known as the equal protection of the laws. There are five sections of this amendment; however, for the purpose of this study, only the first one will be examined because it discusses how all individuals born in the United States have the right to life, liberty, and property. The first section of the Fourteenth Amendment reads,

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(National Constitution Center, 1988, p.13)

Following the ratification of the Fourteenth amendment in 1868, minorities had still endured prejudices, and many have been ingrained in the American society for centuries. Equal protection laws have been presumed to defend disenfranchised minorities from laws that are overtly prejudice (Sklansky, 1995). Sklansky (1995), further discusses how many individuals debate whether equal protection should be a matter of process or results, meaning that people can either be treated equally or made equal. Unfortunately, there has never been a specified definition of what constitutes individuals being treated equally. Legislation does not specifically break down individual cases to ensure there will be equal treatment of all individuals. Lawmakers and enforcers, also, have significant ability in regard to adding to prison sentences by manipulating offenses. California Legislation creates an underlying and unconscious promotion of prejudice and racism by perpetuating indifference and selective sympathy (Sklansky, 1995).

Who is Targeted

Drugs. Incarceration statistics appear to illustrate a disparate impact on California's population. While one in 17 White males will be incarcerated, a comparison between races reveals that one of every three African American males and one in every six Latino males will be imprisoned in their lifetime (Mauer, 2011). In order to understand the etiology of this discrepancy, a consideration for the types of crimes may be helpful. Despite the fact that African Americans are no more likely to use illegal drugs than other races, African-Americans are 6-10 times more likely to be imprisoned for drug use or solicitation (Netherland & Hansen, 2016). While two-thirds of those who abuse crack cocaine are Caucasian or Latino, 80% of the individuals who receive prison sentences for these offenses are African American, which disparately affects the prison population (Ghaly, 2013).

Crack v. Powder Cocaine. When examining federal sentencing in the United States, one of the most debated and studied topics is the sentencing for rock v. powder cocaine (Taifa, 2006). Due to the Anti-Drug Abuse Act, the National Drug Control Policy that was created in 1986 and 1988. The consequence for possessing crack cocaine was more

severe than if an individual were to possess powder cocaine (Vagins & McCurdy, 2006). If an individual was found with or was distributing at least 500 grams of powder cocaine, they would receive an automatic five-year mandatory prison sentence (Taifa, 2006). However, in order to receive a mandatory five-year sentence for distributing or possessing crack cocaine, an individual only had to have five grams (Taifa, 2006). This disproportionate sentencing has had a devastating impact on minorities due to the emphases from law enforcement (King & Mauer, 2006). Less than half of the individuals who use crack cocaine are black; in fact, two thirds of the individuals who use crack cocaine are either white or Hispanic; whereas, more than 80% of the individuals who are convicted for crack cocaine are African Americans (Taifa, 2006). These individuals have not only been focused on, but are often sentenced more harshly through mandatory minimums and are not as likely to be eligible for "safety-valve" departures (King & Mauer, 2006). A safety-valve departure is one of the only ways to get out of a mandatory minimum sentencing; however, there are strict guidelines one must qualify for in order to receive one (King & Mauer, 2006). The offender is required to have little to no past criminal record, must not have

been an organizer, leader, or supervisor in the offense, must not have been violent nor caused serious injury during the offense, and must be willing to provide all known information related to the offense and misconduct to law officials (Doyle, 2013).

Although there are some fundamental differences between crack and powder cocaine, there are also many similarities. Cocaine powder comes from the coca paste that is derived from a coca plant (Coyle, 2003). Crack cocaine is made with the same ingredients; however, it is prepared with baking soda until it hardens which is where the term "rock" was coined (The Sentencing Project, 2010). The effects on the mind and body are essentially the same for both drugs; however, the extent of the high and its intensity are determined by how the drug is administered (Coyle, 2003). Crack cocaine can only be used by smoking it through a crack pipe. This high affects individuals quickly and is extremely intense (The Sentencing Project, 2010). Powder cocaine is generally snorted through the nose which causes the high to be less intense and the effects are also slower (The Sentencing Project, 2010). Many individuals believe that due to the differences in the highs, crack cocaine is more addictive and more likely to be abused

because of its convenience and low cost (The Sentencing Project, 2010). Smaller quantities of crack cocaine are distributed than that of powder cocaine which makes it less expensive. Those who live in inner-city suburban areas, which are generally poor minorities, are more susceptible to addiction (Palamar, Davies, Ompad, Cleland, & Weitzman, 2015). Some individuals choose to inject powder cocaine into their arms, which equates to the same high as smoking crack (The Sentencing Project, 2010). Policy makers claimed that crack led to violence in society; however, in 1955 the United States Sentencing Commission (USSC) declared that the violence of the time was due to the trafficking and exchange of drugs and not from the direct effects of crack (Angeli, 1997). Powder and crack cocaine are both responsible for causing violence, but crack is scrutinized more because of the environments it is available in (The Sentencing Project, 2010). Because of its inexpensive nature, crack is more affordable to individuals with a lower income, so more is sold in poorer cities (The Sentencing Project, 2010). Legally, courts are not supposed to give a sentence that is greater than what is necessary to correct a crime and make an effort to educate an individual to make better decisions (King & Mauer, 2006).

This rule was created to ensure that those who commit minor crimes can learn from their mistakes and attempt to correct their behavior, or, if they make additional mistakes, penalties increase accordingly. In this occurrence, the disparities between the sentences of these two similar drugs are 100:1 and minorities are the ones being affected the most (King & Mauer, 2006). Due to biases and previous stigmas, minorities are singled out and imprisoned as a root to the problem, despite the fact that they add up to less than half of the individuals who smoke crack (King & Mauer, 2006). Judges often do not receive enough information regarding a defendant's past or their perceived dangerousness or threat, so they must make a decision that is occasionally based on stereotypes or attributions that accompany race, gender, and age (Spohn & Sample, 2013).

Addiction to Prescription Drugs vs. Narcotics. In the late 1990's, addiction to prescription opioids increased by 117% in the United States, especially among Caucasians (Netherland & Hansen, 2016). Due to media and political debates on the topic of opioids, prescription drugs became more difficult to obtain, and individuals began relying on heroin (Netherland & Hansen, 2016). This type of addiction was viewed to be more practical and in need of

rehabilitation since the addiction only existed due to a medical need (Netherland & Hansen, 2016). Treatment for opioid addiction became a widely promoted solution to the mass overdoses in society instead of turning to punitive action (Netherland & Hansen, 2016). This is known as harm reduction, which is a way that the government focuses on reducing harmful consequences that threaten an individual's health (Lauritsen, 2017). However, the addiction to crack cocaine is viewed as a choice and a failure of will by an individual (Netherland & Hansen, 2016). Dependency on opioids or crack remains an issue that should be addressed, and not everyone can afford to see a private physician, so individuals are forced to find alternatives (Mendoza, Rivera-Cabrero, & Hansen, 2016).

American culture makes addiction appear to be racially charged and often does not elicit sympathy, empathy, or assistance from the public through social media, the news, and entertainment. Individuals with addictions are often compared to fiends who lack impulse control. Despite the various drugs that one could be addicted to, all addicts deserve assistance in their struggle. This could not be more evident than in the sentencing process. Individuals who are addicted to crack cocaine are sentenced to prison

time; whereas, individuals who are addicted to opioids are placed in rehabilitation. Significantly, the individuals who happen to be addicted to prescription medications are mostly Caucasian, and those addicted to crack are predominantly poor minorities (Palamar et al., 2015). The federal government portrays addiction to prescription drugs as a physiological disease that individuals cannot prevent or avoid because they did not seek out the medication (Mendoza, Rivera-Cabrero, & Hansen, 2016). Approximately half of addicts in the United States are addicted to more than one substance, this does not include tobacco (Szalavitz, 2016). Addiction makes changes in the brain; therefore, it should be viewed and treated as a disorder by offering affordable or free rehabilitation, instead of a motive to imprison people.

Sentencing. Approximately one third of the prison population is made up of drug offenders (Saris, 2014). Federal sentencing guidelines have provided judges with a general set of rules and regulations to refer to when sentencing an offender of a crime (Rhodes, Kling, Luallen, & Dyou, 2015). These sentences can be increased for numerous reasons such as the quantity of drugs the offender possesses, criminal history, use of violence, whether or

not a weapon was involved, and the type of drugs involved in the offense (Saris, 2014). Chen and Nomura (2015) present research which indicates that sentencing is harsher on African American and Latino offenders than Caucasian offenders surrounding cases with drugs. Through systemic racism, prejudicial targeting, the war on drugs, and much of California's legislation, the United States has perpetuated a culture of racially driven sentencing, and through extensive research, it was discovered that, on average, African American males received longer sentences than Caucasian males for the same crimes (Rhodes et al., 2015). This lengthier sentencing directly contributes to the large disparity in the prison population. Occasionally, an offender will receive another opportunity through pardons and/or clemency; however, even these appear to be unfairly distributed (Freed & Chanenson, 2001).

Pardons are defined as a second chance given to an individual who has committed an offense who is supposed to serve a longer sentence in prison (Freed & Chanenson, 2001). This is granted by the President of the United States, and there is no need for an explanation of why the offender is chosen nor does due process need to take place (Freed & Chanenson, 2001). Throughout history, however,

most of these pardons have been given to White males and have been rarely given to African American males (Freed & Chanenson, 2001). This is pertinent because, although the government claims that prejudice in the legislative system no longer exists, the evidence may indicate otherwise.

Racial Profiling. Though controversial, racial profiling is believed by some to be an excuse to interrogate an individual on the assumption that they have committed a crime or to associate a higher propensity toward crime to certain individuals based on their skin color (Luna, 2002). Researchers have found this issue so prevalent that it has been coined, 'DWB' meaning "Driving While Black/Brown" (Luna, 2002, p. 764). When asked about this issue, law enforcement has claimed that the underlying offense was generally the distribution or possession of narcotics. This became a tool for law enforcers to use racial profiling to target those who carry, sell, or use contraband. The Supreme Court has never overtly condoned racial profiling; however, they have neglected to stop searches and seizures that result from pretextual stops (Luna, 2002). This does not mean that an officer is permitted to pull an individual over just because they are a minority, but they may be more inclined to stop these

individuals more often for minor infractions than others would not (Luna, 2002).

Socioeconomic Status. Socioeconomic status is a term that is used to describe a hypothetical ladder that individuals can move up or down by measuring certain factors. Generally, deciding factors include an individual's income, occupation, and education to determine where they fall on the ladder (Wyatt-Nichol, Brown, & Haynes, 2011). Socioeconomic inequality has existed for centuries and has been perpetuated due to a lack of support in creating a systematic way to solve the issue. Many individuals who are on the lower end of this ladder are considered to be impoverished (Wyatt-Nichol et al., 2011). Poverty is defined as a lack of resources that an individual requires to meet their minimum needs to survive (Webster & Kingston, 2014). Most individuals who are considered to live in poverty are not responsible for committing crime or being violent (Brown & Males, 2011). Despite these statistics, poor individuals are still often imprisoned due to prejudices from law enforcement (Brown & Males, 2011). These prejudices stem from the fact that many individuals who inhabit impoverished, urban areas suffer from a severe lack in resources such as education and jobs,

so the propensity for dependence on welfare and involvement in crime increases (Bobo & Thompson, 2010).

War on Drugs. In 1968, the Nixon administration decided that the use of illicit drugs was becoming overbearing and creating too much crime, so they doubled enforcement of punishment on the selling, distribution, and consumption of drugs (Moore & Elkavich, 2008). Reagan also believed in Nixon's ideals and focused much of his resources on the war on drugs which has, subsequently, created a colossal amount of prisons, detention facilities, and courts which have not succeeded in decreasing the use of drugs, but have created significant hardships for minorities in urban communities (Moore & Elkavich, 2008). The war on drugs has been viewed as a way to control urban minority populations and ensure that racial prejudice could be expressed through obeying the law (Lassiter, 2015). This idea comes from several studies that have been conducted on the systemic disparities that have been created to target certain races and avoid others such as the three-strikes rule (Lassiter, 2015). The major increase of the federal inmate population can be directly related to drug offenses (Netherland & Hansen, 2016). Drug offenses accounted for $\frac{2}{3}$ of the increase in the federal inmate population and $\frac{1}{2}$ of

the rise of the in the states' inmate population, with most of these new inmates being minorities (Netherland & Hansen, 2016). The new policies that were enforced geographically and racially targeted minorities and helped to protect White youth (Lassiter, 2015). The war on drugs is also responsible for creating mandatory minimum sentencing for drug offenses which were created to penalize all offenders for a longer, fixed period of time. This legislation was almost unanimously voted on in 1956, 1970, and 1986 (Lassiter, 2015). Through legislation such as the Three Strikes Rule, the Anti-Drug Abuse Act, and the Fair Sentencing Act, California has disparately incarcerated minorities for the same crimes committed by White offenders.

The United States has become a punitive country with an 'act first, question later' mentality. California houses more inmates than the entire Country of France (Patten, 2016). Imprisoning offenders appears to be the easier thing to do; however, it does not stop crime from occurring. Patten (2016) believes the United States' government highlights and incites fear in its citizens by overemphasizing crime. Because of this, more money is spent on the criminal justice system than education, and the

majority of funds are spent on corrections (Luna, 2002). Legislation has been put in place in order to manage offenders instead of attempting to rehabilitate or educate them (Luna, 2002). Most politicians would agree that it is better to respond proactively to offenders than to be reactive after a mass outbreak of crime (Patten, 2016). Due to this value system, America has chosen to take a heavy stance against drugs.

Legislation

Over the years, government has taken a "tough on drugs" stance which has led to the incarceration of thousands of addicts, homeless people, and mentally ill individuals (Szalavitz, 2016). Since prison culture is deeply rooted into America's culture, society produces an "out of sight, out of mind" mentality which perpetuates the neglect of minorities (Gutierrez, 2016). America is a punitive country that creates and enforces harsh laws in an attempt to reduce the amount of crime that occurs. However, incarceration is not always the answer, and numerous individuals need rehabilitation or support, but the law does not offer many options for those who are impoverished or uneducated. (Berenji, Chou, & D'Orsogna, 2014). Additionally, legislation has been made to extend a helping

hand wealthier individuals and imprison poor minorities for the same crimes (Szalavitz, 2016).

Anti-Drug Abuse Act

The Anti-Drug Abuse act was passed in 1986 and altered the forms and quantities of controlled substances one may possess and their consequences (H.R.§5484, 1985-86). This act was instated because many of the United States leaders believed there was a significant connection between drug use and crime (H.R.§5484, 1985-86). It took a little over a month to draft and pass this act; such hastiness had never occurred prior (Ghaly, 2013). Four years after the Act was passed, African American populations began to be sentenced at significantly higher rates than Caucasians seeing an increase from 11% to 49% (Vagins & McCurdy, 2006). This Act restored mandatory minimum sentences for individuals possessing and/or selling drugs (H.R.§5484, 1985-86). At this time, it was alleged that crack cocaine was far more harmful than powder cocaine, and this was predominantly the reason behind the speedy passage of the Anti-Drug Abuse Act (Ghaly, 2013). This Act also created a 100-1 powder-to-crack disparity for arrests (Ghaly, 2013). Individuals who were found to possess either 100 grams of heroin or 500

grams of powder cocaine automatically received a five-year prison sentence (H.R. §5484, 1985-86). Additionally, if an individual was trafficking more than 50 grams of cocaine, an automatic 10-year sentence was given (Ghaly, 2013). It was alleged that more violence was involved in the sale and use of crack cocaine (Ghaly, 2013). Due to widespread support of all the negative claims, the Act was instituted almost immediately. More than 80% of the offenders who were sentenced to prison for a drug offense related to crack were African American even though more than 66% of the individuals who use crack are White or Hispanic (Vagins & McCurdy, 2006). This Act made crack cocaine the only controlled substance that prompted mandatory minimum sentencing for first time offenders (Vagins & McCurdy, 2006).

National Drug Control Policy

In 1988, Ronald Reagan created the Drug Control Policy to counsel on issues related to drug-control and help acquire funding in the Federal Government for drug-control related activities (Office of National Drug Control Policy, 2017). Reagan created this policy to decrease illicit drug use, crimes and violence involving drugs, the manufacturing and trafficking of drugs, and drug-induced health issues

(AllGov, 2017). The way this law was created to help the United States was by requiring employers to contract with the government to ensure that the work place would be a drug-free zone (AllGov, 2018). The contract required each employer to make an honest effort to maintain a drug-free business, to create a drug abuse policy and a drug-free awareness program, and to report any individual who received a drug conviction within 10 days (AllGov, 2018). This act also created a new administrative position, the ONDCP Director, which was required to propose a strategy that contained measurable goals for reduction in drug activity and a budget to Congress and the President (Charles, 1996).

Proposition 184 (The Three Strikes Rule) and Proposition 36

In 1994, Proposition 184, more popularly known as the three strikes rule, was passed in response to a murder committed by a repeat offender that received national news coverage (Jones, 1999). Proposition 184 guaranteed that any second felony following a violent crime as an individual's first offense would automatically receive a double sentence (PEN§1170.12, 1994). If an offender received a third felony charge, the individual would automatically be sentenced to twenty-five years to life in prison (MacDonald, 2013). This

bill was passed with an approval rate of 72% at the ballots (Jones, 2005). Certain offenses are classified as either a felony or a misdemeanor and are referred to as a "wobbler" (Jones, 2005). A wobbler offense is usually considered to be a felony unless special circumstances are found by the courts that lower the offense to a misdemeanor (Jones, 2005). These definitions help to identify how many strikes an offender does or does not acquire, and this allows courts to avoid enforcing the three strikes rule (Jones, 2005). Proposition 184 was supposed to convict offenders with three violent offenses; however, California law stated that all felonies would be counted as long as the offender had a prior conviction of a violent offense, and this includes juvenile and out of state offenses (Austin, Clark, Hardyman, & Henry, 2000). The three strikes rule removed the power of the judges to enforce alternative sentences and applies mandatory prison time based off number of offenses (Austin, et al., 2000). The intention of a Federal Judge is to use their own discretion to sentence an offender to prison long enough to rehabilitate them (Austin et al., 2000).

Proposition 184 was later amended by Proposition 36 in 2012. This legislation was created with the intention to

reduce some third strike prison sentences as well as assist some offenders who were sentenced to life in prison for non-violent offenses on their third strike (MacDonald, 2013). This initiative was created to require offenders to receive probation and treatment for offences relating to controlled substances (PEN§1210.1, 2012). However, this law becomes null to an offender if they have been convicted of selling, manufacturing, or trafficking drugs (PEN§1210.1). This proposition assisted some of the offenders who were on their third strike, but did nothing for the offenders who were on their second strike and serving double sentences which were mostly minorities (MacDonald, 2013).

The Fair Sentencing Act

On August 3, 2010, President Obama signed the Fair Sentencing Act. This act reduced the 100:1 cocaine to crack ratio to 18:1 (Public Law 111-220, 2010). The Fair Sentencing Act was created to reduce the disparate impact of cocaine vs. crack offenses carried for offenders (Zimmerman, 2014). In 2011, the Sentencing Commission voted to retroactively honor the new ratio for past offenders; however, individuals who were affected by the mandatory minimum sentencing laws would not be eligible (Zimmerman, 2014). This perpetuates the issue of disparate impacts in

the prison system because a majority of the individuals who were affected by the mandatory minimums were minorities (Vagins & McCurdy, 2006).

Public Safety Realignment (AB-109)

In 2011, Governor Brown implemented the Public Safety Realignment, AB 109, which gave individual counties more authority over low level felony offenders after their release from prison (Assembly Bill 109, 2011-2012). Nonserious, nonviolent, and non-sex-registerable offenders would have originally needed to be supervised by the state; however, AB 109 gave control to the counties of California to regulate these offenses (Assembly Bill 109, 2011-2012). This policy was created with the idea that recidivism rates would decrease because each county has a better understanding of the needs of individuals in their own communities and have a greater understanding of how to manage offenders during parole (Bird & Grattet, 2015). This also intended to help keep offenders closer to their residence in order to provide better support from family and friends (Bird & Grattet, 2015). After implementation, the expectation was that one quarter of the state's inmates and three quarters of parolees would transfer to the county level (Lofstrom & Raphael, 2013). AB 109 is implicated by

requiring each county to provide a written implementation plan, although there are few specified requirements of what the plan must be, so it may not be extensive or fair (Verma, 2015). In order to create this plan, a specific committee is selected which intentionally excludes community members interested in rehabilitation and victims' rights, social service department heads, and the counties' chief fiscal agents (Verma, 2015). This means that the committee may be comprised with persons that do not have the best intentions in mind for the offenders and may not care whether or not they are rehabilitated or treated fairly. AB 109 did not require state-level review nor did it require funding condition requirements (Lofstrom & Raphael, 2013). However, the bill did state that it was in favor of community-based alternatives and a reduction in incarceration (Verma, 2015).

After President Obama took office, he made it clear that he wanted illicit drug use and addiction to be viewed and treated as a health issue and not a criminal issue (Drug Policy Alliance, 2015). He created the National Drug Control Budget in 2011 in an attempt to alleviate some drug use related issues. A majority of the funds raised were used to create policy in an effort to reduce the supply of

drugs and less than half of the funds were dispersed to rehabilitation centers to help the individuals in need (Drug Policy Alliance, 2015).

Proposition 47 and 57

In 2014, Proposition 47 was passed which would allow possessions of certain minor drugs to be reduced to a misdemeanor (PEN§1170.18, 2014). This proposition was introduced by district attorney George Gascon and former San Diego police chief William Lansdowne (CDCR, 2018). Prop 47 intended to reduce many non-violent and non-serious offenses down to misdemeanors so the government would save money from offenders being released from prison. This money would then be used to fund schools and Safe Neighborhood programs (CDCR, 2018). Not all offenders are eligible to reduce their sentence; however, this allowed inmates to apply for resentencing if their previous conviction did not include violent crime, a sex offense, or murder (Force, 2015).

Proposition 57, also known as the Public Safety and Rehabilitation Act, was recently passed in 2016 and allows the parole board to release non-violent offenders as long as they have served time for their primary offense (Proposition 57, 2016). This bill was drafted by Margaret

Prinzing and Harry Berezin and originally only applied to juveniles, but Governor Brown seized the opportunity to make amendments to the law in an attempt to reduce the prison population and to establish his first term as governor (Bhandal & Nevarez, 2016). This law attempts to promote rehabilitation to inmates and helps offenders who have received multiple convictions in one hearing. For example, as long as an offender served their sentence for their main offense, they were considered to have served their time (Proposition 57, 2016). The purpose this act intends to serve is to protect and enhance public safety, reduce wasteful prison spending, prevent indiscriminate prisoner release, emphasize rehabilitation, and require that a judge determine whether or not a juvenile should be tried as an adult (15-021A1, 2016) Because this bill is so recent, the effects it will have on the disparate prison population remain unknown.

An Individual's Prison Experience

Approximately one in 33 adults in the United States are imprisoned (DeVeaux, 2013). Minorities represent a significant portion of this population and account for two out of three inmates. The conditions in which inmates live in cannot be accurately assessed due to privacy laws and

the closed nature of a prisons' environment (Werth & Sumner, 2006). Since there is a lack of space in prisons and severe overcrowding, inmates must share cells with others despite the cell being created to house only one offender (Travis et al., 2014). The access an inmate has to higher education has been reduced, some exercise equipment has been taken away, and offenders are being charged if they need medical assistance and to run electrical appliances (Werth & Sumner, 2006). Offenders are strip searched prior to being allowed to have visitation, all conversations with an inmate's family are recorded, and some offenders are getting charged room and board if they are receiving compensation for any labor done in prison (Dolovich, 2009). Many individuals commit crimes in their juvenile years and are tried as adults who are, consequently, incarcerated in prison instead of juvenile hall, and this does not promote healthy psychological development (Travis et al., 2014). Many offenders also experience undesirable changes in their physical and behavioral characteristics when attempting to reintegrate back into society, and, often when an offender has a disorder prior to being incarcerated, there is a high chance that their disorder will be greatly exacerbated

(Travis et al., 2014). Many health issues arise that result from increased hostility, stress, and social introversion and the severity depends on the length of the prison sentence being served (Dolovich, 2009). Furthermore, Posttraumatic stress disorder (PTSD) is a common disorder acquired in prison and approximately 21% of male inmates and 48% of females who are incarcerated acquire PTSD (Travis et al., 2014). A significant percentage of offenders suffer from a multitude of untreated and undiagnosed disorders including, but not limited to clinical depression and even some psychosis (Dolovich, 2009).

Further exacerbating this issue, prison cultures are embraced while incarcerated because it assists an offender in making the prison experience bearable and helps avoid some violent interactions (Kirakossyan, 2015). This is commonly known as "prisonization" where offenders learn to distance themselves from prison guards and other staff, keep to themselves and not report any discrepancies they see, and to, purely, serve their time (Travis et al., 2014, p.176). Offenders lack autonomy; they are not permitted to make many of their own decisions and must follow a very rigid routine. They may become over-dependent on this

routine in order to feel comfortable (Travis et al., 2014). This is known as learned helplessness which is defined by a behavioral tendency to avoid putting forth effort or abandoning tasks altogether following excessive failure and can result in a decrease in confidence (Wang, Zhang, & Zhang, 2017). For many offenders, sexual assault is one of prisons most severe conditions that they will endure in order to avoid potential conflicts or to obtain protection (Specter, 2006). This experience is extremely traumatizing, and, frequently when males are sexually assaulted in prison, they feel their status as a man has been taken from them and will experience trouble being intimate and/or comfortable with their sexuality (Travis et al., 2014). Those who are imprisoned are supposed to be in prison for punishment for the crimes they have committed; however, the environments that offenders have been required to live in not only change their psyche, but they border on cruel and unusual punishment (Specter, 2006). The psychological effects an inmate may experience can remain with them for years after they are released into society (DeVeaux, 2013). Following release, many offenders will experience haunting memories of the violence they experienced and are forever impaired by their time served (DeVeaux, 2013). For all of

these reasons, it is imperative that California be attentive and careful with how long prison sentences are, the bias inherent in the system, and the nature of the environment that these laws are sentencing prisoners to endure.

The Prison Cycle

Close to three quarters of the offenders who are released back into society end up back in prison for committing a new crime or violating parole conditions (James, 2015). This happens for many reasons. Some of those reasons are lack of support in their community, an inability to find work, and/or difficulty handling the pressure of society upon release (James, 2015). Despite an offender serving his or her time, they are not released from prison with a fresh start. Frequently, ex-offenders have a difficult time obtaining employment because of their criminal record, and have the potential to be rejected by their family because they are unable to perform their household duties (James, 2015). These individuals are also required to follow extremely strict probation rules which generally last three to five years (Petersilia, 2007). For some offenders, prison life offers more stability, and is their only option for sobriety due to the high cost of

rehabilitation centers and the inability for the typical prison population to afford it (Petersilia, 2007). In order to reduce such devastating recidivism rates, conscious efforts must be implemented to encourage mental health treatment, provide trustworthy and sympathetic psychiatric care while imprisoned, and help prepare offenders to be reintroduced into society (Hirschtritt & Binder, 2017). Merely because an individual commits a forgivable crime does not mean they should be penalized forever. The biases that have wrongly been made against minorities should not be reason to imprison them while participating in a society whose foundational documents tout freedom and equality for all of its citizens.

Chapter 5

Discussion

California's legislation was examined to see if there was any relation between incarceration rates of minorities and the legislation itself. After extensive research, it was discovered that legislation in relation to drug offenses may have a direct impact on the disparate prison population because this legislation has historically targeted poor urban areas whose populations consist of more minorities than affluent and middle-class communities. To compound and further complicate the issues surrounding this legislation, it is difficult to repeal or remove it once it is in place. Admittedly, many of the major proponents of these laws have retroactively come forward decrying their need for revision including former President Bill Clinton. Clinton admits that the legislation did not provide the change for which it was intended initially. Despite the common understanding among the founders of this legislation, these laws remain in place. As these laws continue to exacerbate the current situation with increasing prison populations, prisons continue to exacerbate and compound mental health issues within, and this, in turn, bears a more significant issue in that the

system is releasing more maladjusted and traumatized inmates into the general population. Upon review, it appears that this legislation may be unfair and biased and leading many individuals to longer sentences, mental health conditions, and unsuccessful futures upon their release from the system.

Racism was prevalent in the United States since the Seventeenth Century. Not only was it prevalent, but it was widely accepted and encouraged as a social norm, in many areas, at the time. When slavery was abolished, the United States made significant strides in a positive direction; however, changing the social norms and mores of a generation is not an easy thing, and many continued to cling to archaic norms and structures. Some governmental structures still seek out and pursue ways to legally enslave the poor and ostracized groups of society today. This history echoes in society today as families who survived previous atrocities still struggle to cope with institutionalized prejudices against them. While institutions such as slavery have been eradicated on paper, many citizens still struggle with the social systems that remain. Furthermore, these citizens are oftentimes undereducated, and, with the propensity for creating new

laws by legislators, they are rendered incapable of knowing or understanding the details of the laws that are created disproportionately to affect them. And, this legislation is constantly updated with stipulations that may further affect them. For example, after the Three Strikes Law had been implemented and mandatory minimum sentences had taken effect, it was understood that this legislation was destructive and did not serve the purpose for which was intended, it was amended. However, many still remain in prison because they cannot attain retroactive release. Minorities in the country have been the ones to suffer the most from America's "tough on drugs" stance, and many have been unable to recover; further crippling their growth within the society. After reviewing California's Legislation, it is clear that it often perpetuates a long existing issue and struggles to bridge the gap when it comes to the disparities in the prison population. It is apparent that the government is aware of this issue; however, it is a difficult issue to resolve. It remains difficult to remove prior legislation, and it is difficult to amend said legislation in a way that is significant enough to change the circumstances of it. Furthermore, it is difficult to retroactively release prisoners.

Additionally, this release has been sensationalized by media outlets and many people are afraid of this persona that has been created for prisoners. This hyperbolic understanding is what allows legislators to keep current laws in place despite their possible flaws.

Future Research

Future research would include an in-depth investigation inside of prisons, the legislation that directly impacts prison populations growth, and interviews with inmates before and after their experiences with the prison system. A longitudinal study of prison populations following inmates post release from the system could be insightful in discovering the long-term effects of the system on the people who have been participants in it. Furthermore, studies on the psychological effects of the system on inmates who were wrongfully placed within it versus those who had actually committed a crime would be recommended to more fully understand the effects of the system on criminals in comparison to those innocents who forcefully underwent the process.

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