African Americans are disproportionately found in the inmate population of federal penal institutions. Although composing 12.1% of the total United States population (U.S. Bureau of the Census, 1992, p. 17), African Americans constituted 33.8% of all federal inmates in 1993 (Maguire & Pastore, 1994, p. 628). The overrepresentation of African Americans in federal prisons raises an interesting question: What effect have the U.S. sentencing guidelines, which emerged from the Sentencing Reform Act of 1984, and mandatory minimum statutes had on African Americans? Before reviewing the relevant empirical research, however, a succinct overview of recent sentencing reform is in order.

SENTENCING REFORM IN THE UNITED STATES

Recent changes in federal sentencing are the result of two simultaneous and related forces. First, “mandatory minimums” (i.e., statutory requirements that a person convicted of a specific offense shall receive at least the minimum sentence prescribed by that statute), which, until lately, were used sparingly, have today been expanded to include entire classes of offenses (U.S. Sentenc-
ing Commission, 1991b). Second, the Sentencing Reform Act of 1984 has altered the processing of federal defendants. This act created the U.S. Sentencing Commission and charged it with the responsibility of developing sentencing guidelines for federal offenses. The guidelines, submitted to Congress in April 1987, became effective on November 1, 1987 (Heaney, 1991).

To place these changes in proper perspective, it is necessary to discuss separately mandatory minimum sentencing provisions and the sentencing guidelines. Because mandatory minimum statutes preceded the sentencing guidelines, mandatory minimums are examined first.

MANDATORY MINIMUMS

Federal mandatory minimum sentences were not widely used until 1956 when the Narcotic Control Act required mandatory minimum sentences for most offenses involving the distribution and importation of drugs. By 1970, however, virtually all mandatory penalties for drug violations were abolished when Congress passed the Comprehensive Drug Abuse Prevention and Control Act (U.S. Sentencing Commission, 1991b).

Federal mandatory minimum penalties returned in 1984. The same comprehensive legislation that led to the development of the sentencing guidelines also established mandatory minimum penalty statutes. Within 10 years, more than 60 federal offenses carried mandatory minimum sentences (Vincent & Hofer, 1994, p. 2). Federal legislation emphasized crimes involving drugs and violence, with drug offenders being particularly affected by the mandatory minimum sentences. Between 1984 and 1990, 91% of the federal defendants sentenced to mandatory minimum sentences were convicted of drug-related crimes (Vincent & Hofer, 1994, p. 3). Moreover, the Bureau of Prisons estimates that 70% of the growth in the federal prison population can be attributed to longer sentences given to drug offenders (Vincent & Hofer, 1994, p. 9).

Changes in the processing of drug offenders occurred as a consequence of new legislation reflecting the “get tough” policy of the so-called War on Drugs. The Anti–Drug Abuse Act of 1986
established mandatory minimum penalties for offenses involving drug trafficking based on the quantity of drugs associated with the offense (U.S. Sentencing Commission, 1991b) and differentiated crack cocaine from powder cocaine for sentencing purposes (McDonald & Carlson, 1993). Given that African Americans were disproportionately likely to be charged with possession of crack cocaine, whereas Whites were substantially more likely to be charged with possession of powder cocaine (see State v. Russell, 1991), the establishment of stiffer sentences for crack cocaine possession had serious implications for Blacks. Further contributing to racial disparity in sentencing was the lack of emphasis on treatment and prevention. Only 14% of the allocated funding was set aside for the treatment and prevention of drug abuse (Johnson, Golub, & Fagan, 1995, p. 288).

Two years later, Congress passed the Omnibus Anti–Drug Abuse Act, which provided for a mandatory minimum of 5 years in prison for possession of 5 grams of crack cocaine, the approximate weight of two pennies (Wallace, 1993, p. 10). As with the earlier act, this legislation stressed law enforcement over treatment and prevention. The effect of this and similar federal legislation was that, by 1993, drug offenses composed the single most common offense in federal trials (Miller, 1995).

SENTENCING GUIDELINES

Although the sentencing guidelines are a form of mandatory sentencing in that they limit judicial discretion and eliminate parole, they are somewhat more flexible than the statutory minimum penalties in that upward and downward departures from the guideline range are permitted under certain circumstances. Additionally, if the minimum of the guideline range does not exceed 6 months, nonimprisonment sentences (e.g., home confinement) can be imposed (Vincent & Hofer, 1994).

The sentencing commission, in developing the guidelines, was given the mandate that its guidelines and policy statements should be "entirely neutral as to race, sex, national origin, creed, and
socioeconomic status of offenders” (cited in Heaney, 1991, p. 203). Under the guidelines, judges are prohibited from taking into consideration many personal attributes of the defendant, including (a) the defendant’s mental health or alcohol or drug dependence, (b) the defendant’s background, (c) prior victimization of the defendant, and (d) the potential impact of the sentence on the defendant or the defendant’s family (Tonry, 1995). Depending on the offense, such information as victim injury, drug quantity, amount of dollar loss, and use of a weapon may be relevant to the sentencing process. Moreover, the guidelines stipulate that a judge must consider these facts, if present, even if they are not charged and even if the participants in the case have agreed that such facts will not be included (Nagel & Schulhofer, 1992).

A sentencing table is used for ascertaining the appropriate guidelines sentence. The table has two axes—one for the offense level (there are 43 offense levels), the other for the offender’s criminal history (Karle & Sager, 1991). To locate the correct guidelines range, one must simply find the intersection of these two axes. A sentencing range between the maximum and minimum sentences of approximately 25% is typically specified by the guidelines (Nagel & Schulhofer, 1992).

Departures from the guidelines are tolerated under certain conditions. Downward departures (i.e., reductions in sentence length) under section 5K1.1, the substantial-assistance provision, are permitted in cases where a defendant has provided assistance in the prosecution of other offenders and the government has moved for a downward departure based on this assistance. Further, a two-level reduction for “acceptance of responsibility” may be awarded. If granted, this can have the effect of reducing the length of the sentence by about 25% (Nagel & Schulhofer, 1992).

Although parole was abolished for individuals engaging in federal crimes after the effective date of the guidelines, sentence reductions were still possible using good time credits earned in prison. Credit for up to 50 days annually can accrue to inmates exhibiting good behavior while incarcerated (Karle & Sager, 1991).
SENTENCING REFORM
AND RACIAL DISCRIMINATION

As indicated earlier, sentencing reform in the United States came packaged as either the U.S. Sentencing Commission's sentencing guidelines, which applied to all federal crimes committed on or after November 1, 1987, or legislatively mandated minimum sentences, which applied to only specified classes of crimes. Thus, to the extent possible, an evaluation of sentencing reform should analyze separately these two alterations in sentencing policy. Some caveats are necessary, however, prior to assessing the impact of sentencing reform on African Americans.

OBSTACLES TO DEMONSTRATING DISCRIMINATION IN SENTENCING

Whether a researcher finds evidence of differential treatment in sentencing is, in part, a function of the type of model the investigator employs. Commonly used in research are additive models that look at the effect of race on sentencing outcome. Alternatively, an interactive model allows the investigator to examine if race, in conjunction with other relevant variables, might result in differential processing. Terance Miethe and Charles Moore (1986) observed that the additive model conceals and suppresses racial differences in criminal processing, whereas the interactive model uncovers differential criminal processing between and within the two racial groups.

At least two additional problems related to statistical procedures can be identified. First, conventional regression techniques can distort one's findings so that the investigator incorrectly accepts the null hypothesis of no racial differences (Myers, 1985). Additionally, overreliance on statistical significance as a gauge of the importance of race in discrimination in the criminal justice system can result in overemphasizing minor relationships because statistical significance is, in part, a function of sample size.

Moreover, the way in which discrimination is operationalized will affect the conclusions of the investigator. Samuel Myers (1993) suggests that many researchers examining discrimination use mea-
sures of discrimination that are too narrow. Arguing for the employment of “residual differences” methodology, he posits that discrimination can exist even when systematic decisions are based on legitimate standards if their application differentially affects Blacks and Whites.

Difficulties further arise when investigators attempt to interpret their findings. Although harsher sanctions against African American defendants are typically construed as discriminatory in nature, do less severe penalties necessarily signify an absence of discrimination? As Wilbanks (1987) points out, greater leniency accorded African American offenders can, depending on the circumstances, be symptomatic of either nondiscriminatory or discriminatory behavior. For instance, a judge who devalues the lives of African Americans might sentence less severely the killers of Blacks than the killers of Whites. Because much murder is intraracial (i.e., offenders and victims are of the same race), this prejudicial attitude would typically translate into African American defendants receiving lighter sentences than their White counterparts. Racial discrimination might also be operative in cases where Black murderers are given shorter sentences because they are perceived as being prone to irrationality and impulsiveness and consequently less responsible for their actions.

The finding that Whites receive more severe sentences than African Americans may also mask racial discrimination if “selection bias” occurred during the presentencing stage (Blumstein, 1993). Illustrative of this would be a situation where a prosecutor is more likely to institute legal proceedings against African Americans than Whites. Hence, the White defendants coming to trial would, on average, have been involved in more serious crimes than their Black counterparts. Thus, even if a judge handles all cases the same, Whites would be subjected to more severe sentences due to their greater involvement in serious crime, thereby concealing the earlier discrimination.

Moreover, the use of aggregate data may result in a “canceling-out effect” that disguises the presence of racial bias (Wilbanks, 1987). If some judges are more likely to severely sanction African Americans, whereas others are more likely to severely sanction
Whites, the overall impact would be a washing out of these differences if aggregate data were employed in the analysis. To effectively determine if individuals within the criminal justice system discriminate against African Americans, studies of individual decision makers are needed; yet, such research is almost nonexistent.

Further complicating the assessment of sentencing reform on African Americans are four problems associated with sentencing guidelines research. One such problem is a weak research design (Tonry, 1993). Evaluations typically compare sentencing patterns before and after the implementation of the guidelines, instead of the ideal (but legally impossible) situation where defendants are randomly assigned to the two sentencing systems.

Another problem stems from changes occurring in the federal criminal justice system since 1987, the year the guidelines took effect (Tonry, 1993). Since the mid-1980s, federal criminal justice policy has become increasingly politicized. The conservative political agenda of the Reagan and Bush presidencies culminated in the appointment of many conservative judges, such that by 1992, a majority of all federal judges were conservative. Given these changes, it is difficult to know if any detected changes are the result of the guidelines or some other factor(s).

Meaningful comparisons of pre- and postguidelines data are also problematic because preguideline data often do not contain information used in sentencing decisions under the guidelines (Tonry, 1993). Quantity of drugs, presence of an unused firearm, and other uncharged crimes are all relevant factors under the guidelines, yet preguideline cases do not regularly contain such information.

Additionally, the shifting of sentencing power from judges to prosecutors since the arrival of sentencing guidelines makes comparisons of pre- and postguidelines cases more onerous (Tonry, 1993). Under the new standards, such items as the specific offense with which one is charged and the quantity of drugs one is alleged to have sold or possessed take on even greater significance. With judges having limited discretion and prosecutors deciding what data will be included in the case, prosecutorial decisions become even more important under the new system. And with data on
prosecutors’ decisions being largely unavailable, racial bias can go undetected.

These limitations notwithstanding, a critical examination of the extant research is warranted given the racial disparity in federal incarceration rates. Although no single investigation is likely to lead to definitive statements about the impact of sentencing reform on African Americans, drawing on multiple studies makes it possible to derive some general conclusions.

MANDATORY MINIMUMS AND RACIAL BIAS

Using data for fiscal year 1990, the U.S. Sentencing Commission (1991b) observed that African Americans were more likely than Whites to be convicted under mandatory minimum provisions, even though they constituted a much smaller percentage of all federal defendants than their White counterparts. African Americans, who constituted 28.2% of all federal defendants, accounted for 38.5% of all federal defendants convicted under mandatory minimum provisions. Comparable figures for Whites were 46.9% and 34.8%, respectively.

The study also found that African Americans were more likely than either Whites or Hispanics to be sentenced at or above the indicated mandatory minimum. More than two thirds (67.7%) of all Black federal defendants convicted under the mandatory minimum provisions received sentences that were at or above the indicated mandatory minimum. In contrast, 54% of the White and 57.1% of the Hispanic federal defendants convicted under the mandatory minimum provisions received these sentences (U.S. Sentencing Commission, 1991b, p. 80).

Why are African Americans disproportionately convicted under the mandatory minimum provisions and why are they more likely than Whites and Hispanics to receive severe sentences under the mandatory minimum provisions? Much of the disparity can be attributed to the emphasis on drug offenses. This is readily seen by analyzing data from pre- and postguidelines periods, in that the guidelines reflected the increasingly severe penalties required un-
der the mandatory minimum provisions. In 1986, the last full year prior to the implementation of the guidelines, only 19% of all African Americans convicted in federal court were convicted of drug trafficking. By the first half of 1990, however, this figure had risen to 46%. The comparable White rates were 26% in 1986 and 35% for the first 6 months of 1990 (McDonald & Carlson, 1993, p. 10). Thus, prior to the implementation of mandatory minimum provisions for drug offenses, Whites were more likely than Blacks to be convicted of drug trafficking, whereas the reverse was true after these provisions went into effect.

The dramatic increase in drug convictions for African Americans mirrors the harsher sanctions attached to crack cocaine offenses. With the law equating 1 gram of crack cocaine with 100 grams of powder cocaine, even relatively modest quantities of crack cocaine can lead to rather severe penalties. A serious user of crack cocaine, for instance, could require 5 or more grams of the substance for the weekend. Yet, this amount presently carries a mandatory minimum prison term of 5 years (Vincent & Hofer, 1994, p. 23). Prior to this, federal judges typically placed first-time offenders on probation (Alschuler, 1991).

Not only are crack cocaine offenses more heavily sanctioned, they are also somewhat more likely than offenses involving powder cocaine to be sentenced at or above the indicated mandatory minimum. Data analyzed by the U.S. Sentencing Commission (1991b, p. 72) revealed that 67.5% of the offenses involving crack cocaine, compared to 64.9% of the offenses involving powder cocaine, were sentenced at or above the indicated mandatory minimum.

The significance of the harsher sanctions attached to crack cocaine offenses is disclosed in an investigation by Douglas McDonald and Kenneth Carlson (1993). They conclude that the single most important difference that contributed to the longer sentences for Black federal offenders was their overrepresentation in crack cocaine trafficking. Examining the potential impact of sentencing crack and powder cocaine traffickers the same for identical amounts of the drug, McDonald and Carlson (1993, p. 21) report that instead of African Americans receiving sentences that averaged 30% longer than that of Whites, the average sentence for
African American cocaine traffickers would have been 10% shorter than that of their White counterparts. In addition, it would have reduced by half the Black/White difference in average prison sentence for all federal crimes.

Evidence of potential racial bias in the charging of Black defendants in federal court with the selling of crack cocaine has been detected by Richard Berk and Alec Campbell (1993). Analyzing data sets from Los Angeles, they observed that although state charges for the sale of crack cocaine were similar to the sheriff’s department arrest patterns, African Americans were overrepresented in federal cases when compared to their patterns of arrest by the sheriff’s department. Also indicative of possible racial bias was the finding that over a 4-year period in federal court, no Whites were charged with the sale of crack cocaine.

Arguments in favor of maintaining a legal distinction between crack and powder cocaine frequently center on the assumption that crack is more dangerous because it is instantly addicting and is related to violence. Contradictory evidence, nonetheless, is beginning to surface. Data from the Careers in Crack Project tend to refute the notion that crack is any more instantly addicting than powder cocaine. Additionally, crack use did not appear to substantially alter the involvement of men in nondrug offending. Moreover, whereas the use of crack was unrelated to violent behavior, the sale of crack was strongly related to violence, thereby suggesting that the violence associated with inner-city crack culture is probably the result of systemic violence involved in the sale of illicit drugs, rather than the pharmacological properties of the drug itself (Johnson et al., 1995).

The continuation of a legal distinction between the two types of cocaine can also be challenged on other grounds. First, the mood-altering ingredient is the same in both. Second, powder cocaine, if dissolved in water and injected intravenously, has a similar effect to that of smoking crack cocaine. Finally, powder cocaine can be converted into crack cocaine by using baking soda and water to remove the hydrochloride from the powder cocaine (see State v. Russell, 1991).
SENTENCING GUIDELINES AND RACIAL BIAS

Because the sentencing guidelines are anchored by mandatory minimum sentences, any discussion of the impact of the guidelines on African Americans is somewhat arbitrary. Though numerous studies have attempted to evaluate the effect of the new system on sentencing, few have specifically analyzed racial differences. Accordingly, care must be exercised when assessing the extant research.

Data analyzed by the U.S. Sentencing Commission (1991a) disclosed little sentencing disparity under the guidelines if offenders with similar criminal records are compared. When the commission limited the analysis to four major offenses (bank robbery, powder cocaine distribution, heroin distribution, and bank embezzlement), race was a factor \( p \leq .05 \) in sentencing outcome only for heroin distribution. Whereas 92.3% of all Whites convicted of heroin distribution were given sentences at the bottom of the guideline range, the comparable figures for African Americans and Hispanics were 82.6% and 56.7%, respectively (U.S. Sentencing Commission, 1991a, p. 310). Nonetheless, the small samples employed in the analyses of different offenses make any generalizations uncertain (for a critique of the study, see Tonry, 1993). The report further revealed that across all offense categories for the last half of fiscal year 1990, African Americans were more likely than either Whites or Hispanics to be sentenced at the bottom of the guidelines range.

An investigation by McDonald and Carlson (1993) found that substantial racial disparity in sentencing occurred after the guidelines were implemented. During the period 1986 to 1988, prior to full implementation of the new system, White, African American, and Hispanic defendants received similar sentences in federal district courts. Average maximum prison sentences ranged from 51 months for Whites and Hispanics to 55 months for African Americans (p. 3). However, between January 20, 1989, and June 30, 1990, racial disparities in sentencing appeared. African Americans and Hispanics convicted of federal offenses and subject to the provisions of the Sentencing Reform Act of 1984 were more likely than
Whites to be sentenced to prison. Further, African Americans received longer average prison sentences (71 months) than either Whites (50 months) or Hispanics (48 months) (p. 4). These disparities, the investigators note, were primarily the result of differences in the characteristics of the offenses and offenders that the law recognizes as legitimate for sentencing purposes. McDonald and Carlson (1993) conclude that the sentencing disparities they observed were generally not a consequence of the guidelines themselves with the exceptions of "the mandatory minimum sentencing laws passed for drugs, especially crack cocaine, and the particular way the Sentencing Commission arrayed guideline ranges above the statutory minima" (p. 21).

A study conducted by the U.S. General Accounting Office (1992) revealed that the effect of race on sentencing was not consistent under the guidelines. There were, nevertheless, some situations in which African Americans were at a disadvantage. Bank robbery and larceny, for instance, are offenses in which African Americans and Whites were less likely than Hispanics to have their counts reduced or dismissed and consequently received longer sentences for these crimes. Additionally, the data disclosed that African Americans were less likely than Whites and Hispanics to have their counts reduced or dismissed before going to trial for heroin distribution. And, though the reasons are unclear, African Americans were less likely than Whites to plead guilty, despite the fact that offenders convicted by plea generally received shorter sentences than those convicted at trial.

It additionally appears that the sentencing guidelines have increased the proportion of minority defendants processed in federal court. Methodological criticisms aside (see Schulhofer, 1992; Wilkins, 1992), Gerald Heaney's (1991, 1992) comparison of offenders sentenced under the guidelines to those sentenced under preguidelines law disclosed that African Americans accounted for 22.3% of the preguidelines defendants but composed 26.2% of the guidelines defendants. Hispanics fared even worse, going from 8.5% of the defendants under the preguidelines to 26.3% of the defendants under the guidelines (Heaney, 1991, p. 204; 1992, p. 781). In other words, Black representation increased by almost
4% and Hispanic representation grew by nearly 18% under the guidelines.

The investigator contends that two factors are primarily responsible for these changes (Heaney, 1991). First, he asserts, many law enforcement officials pursued their cases through federal court instead of state court believing that the defendants would be imprisoned longer under the new federal standards. The second factor attributed to the changes involves the filing of marginal cases. According to Heaney, some cases were filed in federal court that would otherwise not have been filed in either state or federal court because the guidelines now made the prosecution worth the effort.

Heaney (1991) also observed that under the guidelines, the average sentence increased most dramatically for African Americans. Although the average sentence for African Americans under preguidelines law in 1989 was 27.8 months, this figure swelled to 68.5 months for cases sentenced the same year under the guidelines. To be sure, the average sentence for Whites and Hispanics expanded as well under the guidelines, but the increases of 19 months for Whites and 13.7 months for Hispanics (p. 207) pale in comparison to that experienced by African Americans.

What accounts for the greater Black/White disparity under the new system? Heaney (1991) suggests that the emphasis on curtailing crack cocaine traffic, accompanied with the stiffer penalties attached to crack cocaine, contributed to the expansion of the average sentence for African Americans. Moreover, being more likely than Whites to possess a criminal record, African Americans are at a greater disadvantage in sentencing.

The negative impact of the guidelines on African Americans is apparently not confined to longer sentences: On average, African Americans are less likely than Whites to be given a probation-only disposition in federal court cases prosecuted under the new system (Heaney, 1991, 1992). The probability of receiving straight probation, of course, varies depending on the offense. For instance, Whites are over 3 times more likely than African Americans under the new standards to receive probation-only for offenses involving drugs and violence. On the other hand, African Americans are slightly more likely than Whites to receive a straight probation
disposition for property crimes and have a 6% greater chance than Whites to receive this disposition in immigration cases (Heaney, 1991, p. 207; 1992, p. 780).

Most recently, The Tennessean newspaper in Nashville conducted a study of all 1992-1993 federal convictions using data furnished by the U.S. Sentencing Commission. The analysis of approximately 80,000 cases controlled for offense severity and prior record. Overall, the investigation revealed that African Americans received sentences that averaged 10% longer than those of comparable Whites (p. 1A). Although Hispanics received sentences similar to those of Whites, in 74 of the 90 federal court districts, African Americans received longer sentences than Whites charged with the same crimes (p. 6A). The amount of disparity, however, varied from one federal district to another, with the largest disparity occurring in the East Missouri district where, on average, African Americans were given sentences that were 40% longer than those of Whites (p. 1A). Additionally, the disparity was not due to the imposition of mandatory minimum sentences as the disparity remained even after omitting drug convictions.

**DISCUSSION AND CONCLUSION**

That mandatory minimum statutes have had an adverse effect on African Americans is corroborated by the literature. Research shows that African Americans are more likely than Whites to be convicted under mandatory minimum provisions and more likely than Whites to be sentenced at or above the indicated mandatory minimum. Much of the disparity is apparently a consequence of the differential treatment accorded crack cocaine offenders.

The disparity between sentences involving crack and powder cocaine has recently been investigated by the U.S. Sentencing Commission. In a 220-page report submitted to Congress in February 1995, the Commission revealed its plans to modify the sentencing guidelines to remedy this disparity (Locy, 1995). Whether the sentencing standards will undergo alterations is unclear, though, as the Justice Department has exhorted Congress to
reject the commission's proposal to make the penalty for crack cocaine the same as that for powder cocaine ("Justice Agency Urges," 1995).9

Sentencing guidelines research suggests that racial disparities have been enhanced under the new sentencing structure. Investigators have observed that African Americans are more likely than Whites, under the guidelines, to be sentenced to prison and to receive longer sentences. Overall, African Americans are less likely than Whites to receive a disposition of probation only. They are also less likely than other groups to have their counts reduced or dismissed for certain crimes. Furthermore, since the guidelines have become effective, minority representation in federal court has grown substantially.

Explanations of the ineffectiveness of sentencing reform to alleviate racial disparity focus on several areas largely concealed from empirical analysis. According to Heaney (1991, 1992), the guidelines have created the possibility of additional sentencing disparity by giving greater power to prosecutors. With judges having carefully circumscribed discretion in sentencing decisions under the new standards, prosecutors now have greater influence on sentencing outcomes. As prosecutors decide who and what to charge, prosecutorial decisions, in effect, establish the appropriate sentencing guideline range. Moreover, prosecutors control the flow of information about the offense that will be used by probation officers in their presentence investigation reports. To the extent that racial bias might enter into prosecutorial decision making, additional disparity is possible.

Another source of disparity involves the decision regarding the court of jurisdiction (Heaney, 1991, 1992). The decision to prosecute in state court or federal court can have important consequences for defendants, particularly in drug cases, because mandatory minimum statutes have influenced the sentencing guidelines in cases prosecuted under federal law. The possibility of more severe sentences in federal court can be readily seen by examining background data from United States v. Williams (1990). In this U.S. District Court case, the defendants, who were African American, had been referred to federal court where their crack cocaine distri-
bution carried a sentencing range of 188 to 235 months under the guidelines. In contrast, conviction of the same offense by the state would result in a sentence of under 2 years.

Sentencing guidelines are additionally unlikely to eliminate racial disparity because sentence length is tied to the defendant’s criminal history and Black defendants are more likely than their White counterparts to have prior criminal records ("Developments in the Law," 1988; Heaney, 1992). Any previous racial bias in enforcement of the law is, therefore, amplified under the new standards.

The investigative and preprosecution practices of law enforcement officials can further lead to hidden sentencing disparities. This is especially evident in the enforcement of drug laws. Because sentence severity increases as the quantity of drugs bought or sold increases, some drug enforcement agents have encouraged their suspects to purchase or sell larger quantities to impose stiffer penalties when they are apprehended (see United States v. Rosen, 1991). Another practice leading to a longer sentence is to postpone the arrest until the cumulative amount purchased results in a statutory minimum sentence (Heaney, 1991). Given that drug law enforcement typically focuses on areas of the city where the poor and minorities are concentrated (Mauer, 1991), African Americans are adversely affected by these practices.

A final feature of the new sentencing system that precludes its being an effective deterrent to racial disparity in sentencing is its failure to address racial disparity during the first phase of the sentencing process. Sentencing typically involves two decisions. The first, the in/out decision, involves a decision as to whether the defendant should be incarcerated. If the defendant is to be incarcerated, then another decision must be made regarding the length of the prison term. The guidelines attempt to reduce racial disparity during the second phase of sentencing only. And yet, a review of numerous sentencing studies by Free (1996) found that empirical support for racial bias in sentencing is stronger for the in/out decision than for the decision on sentence length.

In conclusion, neither mandatory minimum sentences nor the guidelines have been effective in eliminating racial disparity in
sentencing in federal court. Much of the disparity can be attributed to drug laws (especially those pertaining to crack cocaine). Although changing the law to make penalties for identical amounts of powder and crack cocaine the same would reduce the disparity, it would not eradicate it because of the greater likelihood of drug enforcement to concentrate on inner-city neighborhoods. Moreover, selective law enforcement at preprosecutorial stages of the criminal justice system has an adverse effect on African Americans by producing criminal records that culminate in longer sentences under the new standards. Therefore, any meaningful attempt to promote equality between African Americans and Whites must address the dual issues of possible preprosecutorial racial bias as well as possible racial bias during sentencing.

NOTES


3. The minimum prison sentences established by this act for crack cocaine are identical to the minimum prison sentences for persons convicted of selling 100 times that amount of powder cocaine (McDonald & Carlson, 1993).

4. For second and third offenses, the amount of crack cocaine required to trigger the 5-year mandatory minimum sentence declines to 3 grams and 1 gram, respectively (Wallace, 1993, p. 17).

5. In 1993, 44% of the federal caseload involved drug offenses. The next most common offense was fraud, representing only 13% of the federal cases (Miller, 1995, p. 184).


7. This study has been heavily criticized by Joseph Finley (1993). He notes that the investigators failed to examine such data as quantity of narcotics and the offender’s previous criminal record, which might account for at least some of the reported disparity. Furthermore, a conclusion of selective prosecution in crack cocaine cases at the federal level is considerably weakened by the small number of federal cases involving this drug (n = 43).

8. The constitutionality of the sentencing guidelines was questioned by many federal officials until a 1989 Supreme Court decision (United States v. Mistretta, 1989) declared the Sentencing Reform Act of 1984 constitutional. Hence, inconsistent application of the sentencing standards was common for several years after the guidelines went into effect.
9. Although rejecting the view that crack cocaine and powder cocaine cases should be identically sentenced, the Justice Department intimated that some adjustment of the structure might be warranted ("Justice Agency Urges," 1995).

REFERENCES


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