

TO: Sentencing Guidelines Commission

FROM: David Boerner, Chair

DATE: August 7, 2014

RE: A Proposal for an Exploration of Factors Leading to Racial and Ethnic Disproportionality in Washington's Criminal Justice System

It is widely acknowledged that racial and ethnic disproportionality exists in Washington's criminal justice system. The facts are stark and essentially undisputed. Blacks and Hispanics comprise just over 12% of our state's population yet they represent 30% of our prison population. Why this disproportionality exists and what can be done about it is another matter. On these issues deep divisions exist among people of good will who acknowledge the underlying facts. As Marc Mauer, executive director of the Sentencing Project and one of our nation's most informed students of these issues puts it:

"These outcomes result from a complex set of factors, including socioeconomic disadvantages, involvement in criminal behavior, resource allocation in the criminal justice system, sentencing policies, limited diversionary options, and biased decision making among practitioners. We can debate the relative contribution of each of these factors, but there are few who would dispute that each plays at least some role."

Moving past the recognition of the fact of disproportionality, however, requires identifying how these factors interrelate and determining what can be done to reduce the impact of these factors. The fact that people of good will disagree as to the relative weight each of the factors plays has led to accusations and denials from all sides but, unfortunately, little progress toward the goal all share, reducing the disproportionality.

A recent study in Minnesota (Frase, What Explains Persistent Racial Disproportionation Minnesota's Prison and Jail Population, Crime and Justice 201 (2009)) offers promise as a model for an exploration of disproportionality in Washington. Minnesota is a state that is in many ways comparable to Washington; social and demographic characteristics are similar; both states have similar sentencing

guideline systems and both states have collected data on their criminal justice systems for many years. The Minnesota study used existing data and while many gaps existed it was able to identify a number explanations for why disproportionality existed in Minnesota. A similar study in Washington, using existing data, offers considerable promise for shedding light on what explains Washington's persistent racial and ethnic disproportionality. The study would move past documenting the facts that all agree on – that Washington's prison and jail populations are racially and ethnically disproportionate – to explore what leads to that fact.

The Minnesota study explored each stage of the criminal justice system including:

- Criminal behavior
- Reporting of crime
- Decisions to investigate and arrest
- Victim cooperation
- Prosecutorial screening and charging decisions
- Prosecutorial charge reviews and plea bargaining
- Available defense resource
- Criminal and sentencing laws
- Sentencing practices
- Post sentencing policies and practices

Complete data on each of these steps did not exist in Minnesota, but the data which was available was sufficient to permit significant analysis. Washington has long collected considerable information at the state level which would permit the same level of analysis as in Minnesota. The available data in Washington will inevitably have gaps which will preclude definitive analysis of all issues. But the analysis which was possible from the existing data shed considerable light on why Minnesota's disproportionality existed and identified areas of potential action which might reduce that disproportionality.

A similar study in Washington, using existing data would, in my judgment, offers considerable promise. It would provide the factual information necessary to move beyond the current arguments to constructive action to address the problem of disproportionality we all agree exists. While precise

answers to the question of why disproportionality continues to exist are unlikely to emerge, Minnesota's experience teaches that considerable progress can be made in our understanding.

It is essential that such a study be conducted by researchers of unquestioned ability and integrity. The painful truths which the study will likely reveal will provoke, initially, defensive reactions which, experience teaches, will focus on the messenger. Our Institute for Public Policy has, over the years, justly earned a reputation for quality and integrity in its exploration of deeply contentious issues of public policy. The Institute has no institutional involvement in the issues and can bring the necessary detachment which has marked their work over the years. The Institute has examined the Minnesota study and estimates that it can be replicated in Washington for a cost of \$_____ and could be completed within ____ months.

In my judgment this would be a wise expenditure of public resources.

DRAFT