

# Study cites racial disparity in drug, alcohol sentencing

**By Samira Jafari**  
The Associated Press

Alabama's sentences for minor drug offenders are among the harshest in the nation, and some researchers say the stiff punishments create racial disparities among offenders and continue to fill state prisons beyond capacity.

A study by the Equal Justice Initiative points out that more than half of prisoners locked up for first-degree marijuana possession are black men, while nearly three-fourths of felony DUI offenders are white men.

But driving while drunk doesn't even become a felony until the driver has been convicted of DUI four times, and the average sentence is nearly half that for first-degree marijuana possession — creating a racial disparity, the study says.

“Even though penalties for drunk driving have become more severe, they are still very modest compared to the punishments for drug offenses,” said Mark Mauer, assistant director of the Sentencing Project, a Washington-based con-

sulting firm for criminal justice research.

“And you think about the people who are affected by this: Drunk drivers are predominantly white and the majority of drug offenders are African American. There's two forms of substance abuse and two very different approaches, but both of them can be harmful in a different way.”

A first-degree marijuana possession can result if a person has a prior misdemeanor conviction or if it's a first offense with 2.2 pounds of marijuana or more.

The average sentence for first-degree marijuana possession is 8.4 years, while the average felony DUI sentence is 4.8 years, according to the Alabama Department of Corrections.

Jefferson County Drug Court Judge Pete Johnson said blacks are not the only ones getting harsh sentences for drug-related offenses under Alabama's law — it's a problem for all drug offenders.

“We have overreacted totally

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## its designed capacity

with zero tolerance and a lot of people are getting swept up for minor things and they have a little bit of drugs," said Johnson, a former member of the sentencing commission.

There has been an impact on the prison system: Drug-related offenses made up 3,202 of the 10,267 prison admissions in 2004 — nearly twice the number of robbery, murder, rape and manslaughter entries combined, according to the Alabama Sentencing Commission's 2005 report. Despite a second parole board to speed up paroles for nonviolent offenders, the new inmates have pushed Alabama's prison population to more than twice its designed capacity.

Bryan Stevenson, executive director of the Equal Justice Initiative, takes a different view than Johnson on the racial aspect.

"There's no question the racial disparities exist. But why they exist is a complicated question," he said.

He blamed the reported disparities on what he said was a two-pronged problem: First, police are more likely to target blacks for drug crimes, resulting in more black arrests. Second, minorities are disproportionately poor, resulting in weak court-

room defense and, ultimately, longer sentences.

"I think it has a lot to do with who's being punished," Stevenson said. "We're too harsh in the drug context. Why is someone serving life in prison for simple possession?"

Part of the answer lies in Alabama's drug sentencing laws, which are some of the harshest in the country, according to the state sentencing commission. Alabama ranks with only four other states — Arkansas, Georgia, Mississippi and South Dakota — which allow up to 10 years in prison for possession of 2.2 pounds or less of marijuana.

Only Mississippi authorizes a more severe sentence of up to 16 years in prison.

"I think the problem with that ... is that we're using a lot of our prison beds for drug offenders. What we've got to do is maintain room for our violent offenders," said state Rep. Marcel Black, D-Tusculum, chairman of the House Judiciary Committee.

But Black and Linda Flynn, executive director of the sentencing commission, said there's no clear evidence that race plays a role in sentencing and that the commission had not conducted an independent analysis on the issue.

Still, other studies support

EJR's findings. Most recently, Professor Ted Chiricos of Florida State University completed research in 2004 about racial stereotypes and their effects in sentencing.

"Generally the case for drug crimes is that African-Americans and Hispanics are consistently dealt with more harshly than white defendants," he said.

Chiricos said there is a perception that blacks are more likely to commit drug crimes than whites and that view indirectly influences sentencing. He called this trend "modern racism."

"It's not overt racism. In court, decisions have to be made about sentencing with imperfect information. Judges have to make a decision on who is more dangerous to the community," he said. "In absence of perfect information, the stereotyping fills the void and they get a harsher outcome."

Johnson, who has served in the Jefferson drug court for more than a decade, said he has noticed more white drug offend-

ers than black appear in his court, though the numbers seem close.

"Race should have nothing to do with a sentence," Johnson said. "I know from being on the sentencing commission, there's people going to prison for long periods of time who shouldn't — and it's not just black folks."

While Stevenson and the sentencing commission may disagree on race playing a role in stiff sentencing, they agree that alternative measures should be taken for drug offenses — whether it be treatment programs like those offered by Johnson's court or more consistent sentences for first-time drug and alcohol offenses.

"With drug or substance abuse offenders, they're due punishment but we also have to come up with a way to get them treatment," said Black, who is also a member of the sentencing commission.

"If you made the sentencing scheme identical, we could eliminate these disparities," Stevenson said.