

Utah minority offenders now even more likely to get prison sentences

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<http://www.standard.net/Police-Fire/2018/02/15/Utah-minority-offenders-now-even-more-likely-to-get-prison-sentences>

Minority offenders are increasingly likely to be sentenced to prison in Utah since major justice system changes were implemented in 2015, and officials are trying to determine how implicit biases may be creeping into arrests, prosecutions and sentencings.

Utah Sentencing Commission data shows 43.2 percent of people receiving new prison sentences in fiscal year 2017 were racial or ethnic minorities, up from 33.2 percent in 2015. To date in 2018, the split has declined to 36.5 percent.

According to 2016 U.S. Census data, minorities make up 20.7 percent of the Utah population, including 13.5 percent Hispanic and 1.6 percent African-American.

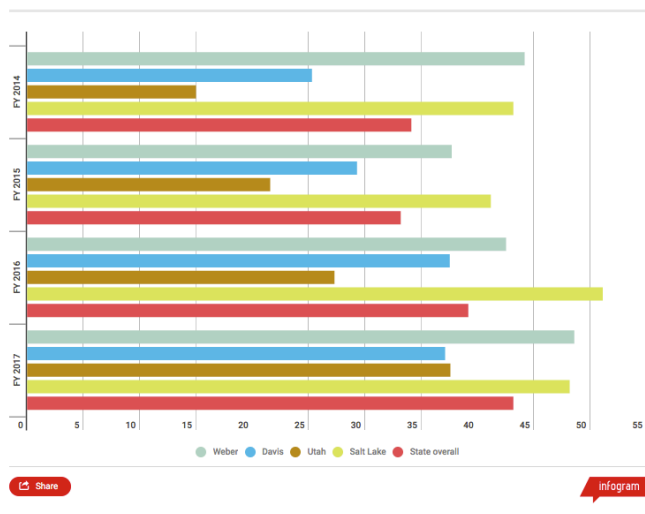
Weber County's prison sentences given to minorities in fiscal 2017 were 48.6 percent, compared to 37.7 percent in 2015. The county's population has greater shares of Hispanics (17.58 percent) and blacks (1.9 percent) than Utah overall.

"In general, this is a really tough problem, and it's always been a problem in the criminal justice system in America," said Marshall Thompson, commission director.

The Justice Reinvestment Initiative passed by the 2015 Legislature reworked the state's system of sentencing, incarceration, probation and parole in a sweeping attempt to reduce state prison populations and rehabilitate more offenders to cut down on repeat crime.

The JRI changes also were intended to "make sentences more consistent across the board for everybody" and stamp out any racial disparities inherent in the system, Thompson said.

Percentage Utah offenders sentenced to prison who are minorities



"What is happening, though, is we have this persistent disparity," he said. "There are ambiguities and nooks and crannies throughout the system where implicit bias sneaks in. There's nothing overtly racist, but we all have persistent biases we're not even aware of."

Circumstances of arrest by police, whether prosecutors decide to file charges, the level of those charges, whether a plea bargain is offered or accepted, and what the sentence should be — these are all points where subjectivity and implicit bias can arise.

“But we want to give prosecuting attorneys and judges room to make good decisions,” Thompson said. “You can’t sentence someone with a calculator.”

Utah judges receive ongoing training on implicit biases, and those responsible stay up to date on research in the field, said state court system spokesman Geoff Fattah.

“There are a lot of factors involved,” he said. “The courts don’t have any control over cases brought forward. It starts with the police, who they decide to arrest, and also who is recommended for screening” by prosecutors.

“The judges are always on the watch, making sure when they impose sentence that race is not a contributing factor,” Fattah said.

Judges and the state Pardons and Parole Board follow a sentencing matrix and the judiciary also follows evidence-based practices “that we hope would mitigate bias based on race,” Fattah said.

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The judiciary’s also moving to base pretrial release decisions on public safety risk factors rather than economics, Fattah said. Socioeconomic demographics show fewer minority offenders can raise \$5,000 bond to stay out of jail, for instance.

And because minorities more often rely on public defenders, the judiciary has changed some rules to give people more access to public defense.

The state does not track the judiciary’s racial demographics, Fattah said.

“But let’s not beat around the bush — most of the judges are white,” he said.

When community advocates point out that judges should be more reflective of the population, Fattah said he replies that the judiciary should reflect the Utah State Bar membership. That means the Bar and others need to work to increase minority enrollments in law school.

Thompson said the Sentencing Commission is looking for any structural causes for the minority punishment disparities. It also will emphasize better training on implicit bias, “not just how to recognize it, but check it in real time as you’re dealing with people.”

“We need more data, but we are watching it very closely,” he said.

The American Civil Liberties Union of Utah also is watching.

“At this point, there is not enough data to point to sources of disparities,” said the ACLU’s Jason Groth, who works on justice issues for the organization.

But he said the JRI changes didn’t account for race in some areas. “It doesn’t really implement policy for the law enforcement and police communities,” Groth said.

Groth pointed to a 2017 ACLU study that found Utah minorities, especially Hispanics, were much more likely to be referred to law enforcement by school officials and more likely to be referred to juvenile court.

He said the ACLU wants prosecutors and police to become more involved in reform efforts, and he lauded the recent formation of a prosecutorial oversight board in Utah County.

Nationally, the U.S. Sentencing Commission reported in November 2017 that black male offenders received an average of 19.1 percent longer sentences on federal charges than similarly situated white male offenders during the 2012-16 reporting period.

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