

**GENERAL CONVENTION OF THE EPISCOPAL CHURCH 2018
ARCHIVES' RESEARCH REPORT**

RESOLUTION NO.: 2018-D004
TITLE: Addressing Mass Incarceration
PROPOSER: Mr. Louis Glosson
TOPIC: Criminal Justice

Directly Related: (Attached)

2015-A011 Urge Advocacy for Policy Changes to End Mass Incarceration Practices
2003-A008 Urge Congress to Repeal Mandatory Federal Sentencing Guidelines
2000-B055 Reaffirm Criminal Justice System Reform

Indirectly Related: (Available in the [Acts of Convention](#) database, searchable by resolution number)

2015-A182 Address Systemic Racial Injustice
2003-B026 Establish the Joint Committee on Criminal Justice

In preparing this report, the Archives researched the resolutions in the Acts of Convention database for the period 1976 through 2015, selecting “direct” resolutions that have a substantive bearing on the proposed legislation. The “direct” resolutions are attached and “indirect” resolutions are available in the Acts of Convention database. Committee members who require other research assistance should contact the Archives at 800-525-9329 before Convention or at Convention in the General Convention Secretariat.

D004 Addressing Mass Incarceration

Proposer	Mr. Louis Glosson
Topic	Criminal Justice
Endorsed by	Link, Ms. Alexizendria; King, Mr. Sidney
Sponsored by	
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RESOLUTION TEXT

- Resolved*, the House of _____ concurring, That this 79th General Convention of The Episcopal Church (TEC) urges Congress to enact comprehensive federal sentencing reform legislation which would reduce some mandatory minimum sentences for drug offenses, particularly those that have a discriminatory impact on minorities in penalties for crack and powder cocaine offences; and be it further
- Resolved*, That this 79th General Convention of TEC calls upon State legislatures to repeal all existing laws or the portions of such laws that either allow for or mandate a sentence of life without parole (LWOP) for a nonviolent offense and/or offenses committed by children under 18 years of age; and be it further
- Resolved*, That this 79th General Convention Of TEC urges Congress to initiate studies to examine racial disparities in sentencing, including racial disparities in prosecutors' exercise of discretion in seeking sentencing enhancements under three-strikes, Section 851 federal drug enhancements, and other habitual offender laws and disparate racial effects of drug policies such as mandatory minimum sentences and school zone drug enhancements.

EXPLANATION

Mandatory Minimum Sentences:

The current Attorney General has issued a memorandum dated May 12, 2017, which directs The Justice Department to seek all charges against a defendant which would trigger implementation of Mandatory Minimum Sentences, thus wiping out the Sentencing Reforms Gains which have been recently achieved.

Sentencing Disparities:

There are significant racial disparities in sentencing decisions in the United States. Sentences imposed on Black males in the federal system are nearly 20 percent longer than those imposed on white males convicted of similar crimes; and

Black and Latino offenders sentenced in state and federal courts face significantly greater odds of incarceration than similarly situated white offenders and receive longer sentences than their white counterparts in some jurisdictions; and

Black male federal defendants receive longer sentences than whites arrested for the same offenses and

with comparable criminal histories; and

Blacks constitute only about 13 percent of the U.S. population, as of 2009, Blacks constitute 28.3 percent of all lifers, 56.4 percent of those serving LWOP, and 56.1 percent of those who received LWOP for offenses committed as a juvenile. As of 2012, 65.4 percent of prisoners serving LWOP for nonviolent offenses are Black; and

The racial disparities are even worse in some states. In 13 states and the federal system, the percentage of Blacks serving life sentences is over 60 percent. In Georgia and Louisiana, the proportion of Blacks serving LWOP sentences is as high as 73.9 and 73.3 percent, respectively. In the federal system, 71.3 percent of the 1,230 LWOP prisoners are Black; and

These racial disparities result from disparate treatment of Blacks at every stage of the criminal justice system, including stops and searches, arrests, prosecutions and plea negotiations, trials, and sentencing. Race matters at all phases and aspects of the criminal process, including the quality of representation, the charging phase, and the availability of plea agreements, each of which impact whether juvenile and adult defendants face a potential LWOP sentence; and

Racial disparities in sentencing can result from theoretically “race neutral” sentencing policies that have significant disparate racial effects, particularly in the cases of habitual offender laws and many drug policies, including mandatory minimums, school zone drug enhancements, and federal policies adopted by Congress in 1986 and 1996 that at the time established a 100-to- one sentencing disparity between crack and powder cocaine offenses.

Life Without Parole (LWOP):

The level of disproportionate representation of Blacks among prisoners who are serving life sentences without the possibility of parole (LWOP) is higher than that among parole-eligible prisoners serving life sentences. The disparity is even higher for juvenile offenders sentenced to LWOP, and higher still among prisoners sentenced to LWOP for nonviolent offenses; and

Blacks constitute a far greater percentage of the nonviolent LWOP population than of the census population as a whole. In the federal system, Blacks are 20 times more likely to be sentenced to LWOP for a nonviolent crime than whites. In Louisiana, the ACLU found that Blacks were 23 times more likely than whites to be sentenced to LWOP for a nonviolent crime. The racial disparities range from 33-to-1 in Illinois to 18-to-1 in Oklahoma, 8-to-1 in Florida, and 6-to-1 in Mississippi. Blacks are sentenced to life without parole for nonviolent offenses at rates that suggest unequal treatment and that cannot be explained by white and Black defendants’ differential involvement in crime alone; and There are stark racial disparities in the imposition of life without parole sentences for juvenile offenders in the United States. Nationally, about 77 percent of juvenile offenders serving LWOP are Black and Latino, while Black youth are serving these sentences at a rate 10 times higher than white youth. In California—the state with the highest number of prisoners serving LWOP for crimes committed as children)—Black youth are serving the sentence at a rate that is 18 times higher than the rate for white youth, and Latino youth are sentenced to life without parole five times more than white youth. In Michigan (the state with the second- highest number of such prisoners), while youth of color comprise only 29 percent of Michigan’s children, they are 73 percent of the state’s child offenders serving life without parole. As of 2009, in 14 of the 37 states with people serving LWOP for crimes committed as juveniles, the proportion of African-Americans serving that sentence exceeded 65 percent; and

The racial disparities in juvenile LWOP sentencing are symptomatic of racial disparities throughout the juvenile justice system. For U.S. children, the racial disparities grow with each step into the criminal justice system—from arrest, to referral, to secure confinement. Black youth account for 16 percent of all youth, 28 percent of all juvenile arrests, 35 percent of the youth waived to adult criminal court, and 58 percent of youth admitted to state adult prison. Black youth are twice as likely to be arrested as white youth. Among juveniles who are arrested, Black children are more likely to be referred to a juvenile court and more likely to be processed rather than diverted. Among those juveniles adjudicated delinquent (i.e. found guilty), Black children are more likely to be sent to secure confinement and are more likely to be transferred to adult facilities. Among youth who had never been incarcerated in a juvenile prison, Blacks are more than six times as likely as whites to be sentenced to prison for identical crimes. Black children are also more likely to be prosecuted as adults and incarcerated with adults: Black youth compose 35 percent of youth judicially waived to adult criminal courts and 58 percent of youth sent to state adult prisons; and,

Despite the Supreme Court's joint ruling in *Miller v. Alabama* and *Jackson v. Hobbs*, 132 S. Ct. 2455 (2012) that, for juveniles, LOWP sentences violate the Eight Amendment against cruel and unusual punishment, states have inconsistently interpreted the retroactive holding, resulting in thirty-two states which still allow the imposition of LOWP for juveniles.

Crack vs. Cocaine:

Racial disparities are particularly pronounced in cocaine sentencing. As part of the Anti- Drug Abuse Act of 1986, Congress ignored empirical evidence and created a 100-to-1 disparity between the amounts of crack and powder cocaine required to trigger certain mandatory minimum sentences. In fact, crack and powder cocaine are simply two forms of the same drug, and the only difference between them is that crack includes the addition of baking soda and heat. As a result of Congress's inaccurate perception of differences in the harmfulness and dangerousness between crack and powder cocaine, sentences for offenses involving crack cocaine were made much longer than those for offenses involving the same amount of powder cocaine. Thus, for example, someone convicted of an offense involving just five grams of crack cocaine was subject to the same five-year mandatory minimum federal prison sentence as someone convicted of an offense involving 500 grams of powder cocaine; and

The 100-to-1 ratio resulted in vast unwarranted racial disparities in the average length of sentences for comparable offenses because the majority of people arrested for crack offenses are Black. By 2004, under the 100-to-1 disparity, Blacks served virtually as much time in prison for a nonviolent drug offense (58.7 months) as whites did for a violent offense (61.7 months). In 2010, 85 percent of the 30,000 people sentenced for crack cocaine offenses under the 100-to-1 regime were African-American; and

In the past five years, the United States Sentencing Commission has made two adjustments to the federal Sentencing Guidelines that reduced, though did not eliminate, the unfounded sentencing disparity between crack and powder cocaine offenses in the Guidelines. First, in 2007, the Sentencing Commission amended the Sentencing Guidelines by lowering the sentencing ranges for most crack cocaine offenses and applied the new guidelines retroactively; and

In 2010, in long overdue recognition of the unfairness of the sentencing disparity, Congress passed the Fair Sentencing Act (FSA), which reduced the disparity between the amounts of crack and powder

cocaine required to trigger certain mandatory minimum sentences from 100-to-1 to 18-to-1. In 2011, the Sentencing Commission amended the Sentencing Guidelines consistent with the FSA and then voted to apply the new guidelines retroactively to individuals sentenced before the FSA was enacted. While the FSA was a step toward increased fairness, the 18-to-1 ratio continues to perpetuate the outdated and discredited assumptions about crack cocaine that gave rise to the unwarranted 100-to-1 disparity in the first place; and

Despite Congress's and the Sentencing Commission's determinations that the previous crack cocaine penalties under which thousands of defendants were sentenced were unfair, over 16,700 prisoners are still serving sentences under the 100-to-1 regime—the vast majority of whom are Black—have been unable to benefit from these sentencing adjustments. Of these, over 8,800 are still serving extreme sentences for crack cocaine-related offenses because the FSA is not retroactive and about 7,900 are categorically ineligible for reduction of their sentences, many of which are LWOP. In some cases, prisoners are ineligible because their sentences were controlled by statutory mandatory minimums determined by Congress prior to the passage of the FSA. The FSA lowered the quantity of drugs that triggered the mandatory minimum but did not change the mandatory minimum sentences. In such cases, people cannot benefit from the retroactive Sentencing Guideline amendments because they remain subject to statutory mandatory minimums. For others, neither the FSA nor the Commission's adjustments resulted in a reduction of their sentencing ranges because the amounts of drugs for which they were held responsible or the enhancements applied to their sentences render review or reduction of their sentences impossible.



Resolution Number: 2015-A011
Title: Urge Advocacy for Policy Changes to End Mass Incarceration Practices
Legislative Action Taken: Concurred as Substituted and Amended
Final Text:

Resolved, That the 78th General Convention acknowledges that implicit racial bias and racial profiling result in a criminal justice system that disproportionately incarcerates people of color damaging individuals, families, and communities; and be it further

Resolved, That the 78th General Convention challenges The Episcopal Church at every level to commit mindfully and intentionally to dismantling our current mass incarceration system; and be it further

Resolved, That the 78th General Convention urges the Presiding Bishop of The Episcopal Church, the Executive Council of The Episcopal Church and the Office of Governmental Relations of The Episcopal Church to advocate publicly for changes in Federal policies that perpetuate the mass incarceration system; and be it further

Resolved, That the 78th General Convention encourage each congregation and Diocese to undertake at least one specific initiative aimed at addressing the destructive consequences of the mass incarceration system. These initiatives include such possibilities as:

- 1. Advocating for alternatives to incarceration for those who are addicted, and increased funding for treatment programs;**
- 2. Advocating for alternatives to incarceration for those who are mentally ill, and increased funding for treatment programs;**
- 3. Advocating for protection of the civil rights and provision of appropriate support and accommodation for people with disabilities who are arrested and incarcerated;**
- 4. Advocating for funding for job training and apprentice programs for those who are at risk of incarceration and those who are formerly released from prison;**
- 5. Working with local businesses to create pathways to living wage jobs for formerly incarcerated people;**
- 6. Establishing mentoring and accompaniment programs for those leaving prison;**
- 7. Advocating for the repeal of mandatory-minimum sentences for nonviolent offenses;**
- 8. Calling for the abolition of the sentencing disparity between crack-cocaine and powder-cocaine offenses and, as an intermediate step, urging the U.S. Congress, in accordance with the recommendation of the U.S. Sentencing Commission, to make retroactive the 2010 Fair Sentencing Act, which reduces the disparity in sentencing from previous levels;**
- 9. Advocating to eliminate “three strikes” sentencing protocols;**
- 10. Joining local “Ban the Box” campaigns to remove questions about arrest records in on-line and written job application forms;**
- 11. Opposing the creation of “for profit” prisons and immigration detention centers, and, where they exist, organizing against guaranteed nightly numbers of prisoners and detainees, and advocate for access to education and rehabilitation programs for those being incarcerated or detained;**

12. Reforming monetary bail bond systems, which rely upon often-unlicensed and unregulated bail bond agents and on conditioning release from pre-trial incarceration solely on the ability to pay;

13. Advocating for immediate return of the right to vote for those who have served their sentences and left prison; and

14. Calling for the exploration and creation of restorative justice programs to transform juvenile justice systems; and be it further

Resolved, That the 78th General Convention request that each Diocese report back to the 79th General Convention on the initiatives engaged at congregational and Diocesan levels.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Salt Lake City, 2015* (New York: General Convention, 2015), pp. 300-301.



Resolution Number: 2003-A008
Title: Urge Congress to Repeal Mandatory Federal Sentencing Guidelines
Legislative Action Taken: Concurred as Amended
Final Text:

Resolved, That the 74th General Convention urge the Congress of the United States to repeal the mandatory Federal sentencing guidelines used in federal criminal matters, and direct the Office of Government Relations to work for such repeal in order to give federal judges more discretion in sentencing offenders, and to overcome the current racially discriminatory impact of these guidelines.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Minneapolis, 2003* (New York: General Convention, 2004), p. 126f.



Resolution Number: 2000-B055
Title: Reaffirm Criminal Justice System Reform
Legislative Action Taken: Concurred as Amended
Final Text:

Resolved, That the 73rd General Convention of the Episcopal Church reaffirm that the Episcopal Church at all levels become active at local, state and federal levels on public policy decisions affecting the growing prison industrial complex; and be it further

Resolved, That the Episcopal Church call for a moratorium to the posting of prisoners outside their home states and territories; and be it further

Resolved, That the Episcopal Church call for a moratorium on further prison construction and the use of private prisons, except where a local diocese discerns the need to do otherwise for pastoral reasons, and call for appropriate changes in the laws requiring mandatory sentencing for nonviolent and property crimes.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Denver, 2000* (New York: General Convention, 2001), p. 365.