Data, AI, and Access to (California Racial) Justice (Act)

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About Me

1. Engineer and patent lawyer by training

1. Mom to two boys

1. Teacher

There are thousands of people locked in cages because of a computer problem. - Jessica Jackson SCU Law '11, CEO Reform Alliance
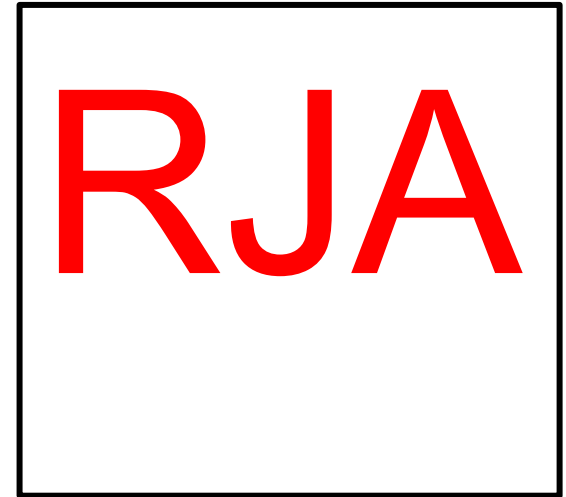
Credit: San Francisco Chronicle/Hearst Newspapers

There's a new law and data would be helpful. Can you help?
- Ellen Krietzberg, Death Penalty College Director, SCU Law Professor

About the Paper Prisons Initiative

We use data and empirical research to bridge the gap between eligibility and delivery of relief from the criminal justice system

Equal Protection and *Yick Wo v. Hopkins*

"Though the law itself be fair on its face, []if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances [] the denial of equal justice is still within the prohibition of the constitution."

Equal Protection and *McCleskey v. Kemp*

Majority: "Racial disparities are 'an inevitable part of our criminal justice system.' The claim "taken to its logical conclusion, throw[] into serious question the principles that underlie our entire criminal justice system"

Dissent: "such a statement seems to suggest a fear of **too much justice**"

CRJA Findings of Legislative Intent (2020)

Even though racial bias is widely acknowledged as intolerable in our criminal justice system, it nevertheless persists because courts generally only address racial bias in its most extreme and blatant forms." **-** (Sec. 2(c) of the California Racial Justice Act)

CRJA "Patterns of Disparity Claims" A(3) and A(4)

(a) (3) The defendant was **charged or convicted** of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated, and the evidence establishes that the prosecution more **frequently sought or obtained convictions** for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained.

(4) (A) A **longer or more severe sentence was imposed** on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and **longer or more severe sentences were more frequently imposed** for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed.

...

(h) As used in this section, the following definitions apply:

(1) "More frequently sought or obtained" or "more frequently imposed" means that **statistical evidence** or **aggregate data** demonstrate a **significant difference** in seeking or obtaining convictions or in imposing sentences comparing individuals who have committed similar offenses and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity.

2022 Amendment to the CRJA

Made the Act retroactive

Clarified the evidence standard to make it more inclusive

745(h)(1) "~~statistical evidence or aggregate data demonstrate~~ *the totality of the evidence demonstrates* a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have ~~committed~~ *engaged in* similar ~~offenses~~ *conduct* and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity." *The evidence may include statistical evidence, aggregate data, or nonstatistical evidence. Statistical significance is a factor the court may consider, but is not necessary to establish a significant difference."*

Young v. Solano 79 Cal. App. 5th 138 (2022)

The "Escalating Burdens" of Proof in the CRJA

If shown...	Defendant entitled to...
745 (d) good cause	Discovery subject to redaction or a protective order
745 (c) Prima facie showing of a violation (defendant produces facts that,if true, establish that there is a substantial likelihood that a violation of subdivision, per 745 (h)(2))	Trial court hearing
745 (e) Prove violation by preponderance of the evidence	A remedy specific to the violation

Proving Actionable Racial Disparity under the CRJA (75 UC College of Law SF L. J., 1 (2023)

The Paper Prisons RJA Tool (29 Berk. L. J. Crim Law 1) (2024)

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Proving Actionable Racial Disparity Under the California Racial Justice Act

by technology@hastingslawjournal.org | Dec 30, 2023 | Volume 75, Issue 1

Colleen V. Chien, W. David Ball, and William A. Sundstrom

Volume 75, Issue 1, 1-66

Racial disparity is a fact of the United States criminal justice system, but under the Supreme Court's holding in McCleskey v. Kemp, racial disparities—even sizable, statistically significant disparities—do not establish an equal protection violation without a showing of "purposeful discrimination." The California Racial Justice Act (CRJA), enacted in 2020 and further amended in 2022, introduced a first-of-its-kind test for actionable racial disparity even in the absence of a showing of intent, allowing for relief when the "totality of the evidence demonstrates a significant difference" in charging, conviction, or sentencing across racial groups when compared to those who are "similarly situated" and who have engaged in "similar conduct." Though the CRJA was enacted over two years ago, two obstacles have made its promised remedies exist largely only on paper: confusion about how to apply its new test and a lack of access to the data needed to demonstrate a significant difference. This Article attempts to overcome these obstacles by exploring and interpreting the "significant difference" test and by analyzing a database of disparities that enables controls for criminal history and geography (similarly situated) and overlapping elements (similar conduct) based on comprehensive data from the California Department of Justice. This Article also presents two case studies that demonstrate how defendants might establish an initial showing of significant difference sufficient to successfully move for discovery.

Full Article

Racial Justice Act Tool

About the Data   Methodology   Acknowledg

This site provides summary data representing the raw numbers, rates per population, and disparity gaps by race of adults in the California criminal justice system using data provided by the California Department of Justice as well as by the Census Department. Access the Census data here. For questions or comments, please email us at rja@paperprisons.org (See also *Proving Actionable Racial Disparity Under the California Racial Justice Act*, 76 UC L. Journal 1 (2023))

Tool link: www.paperprisons.org/RJA

The Paper Prisons RJA Tool

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Full Article

Tool link: www.paperprisons.org/RJA

Data source: CORI

- Cal DOJ's Criminal Offender Record Information (CORI) data set, available to researchers through the California Department of Justice Automated Criminal History System (ACHS)

- Essentially a repository of the information that is contained in a RAP sheet

- Our data are anonymized and do not contain any PII.

- The rows in the raw data capture events or decisions for an individual and a particular cycle.

- We focus on Penal Code offenses and arrest and court events.

- Individuals with arrest or court record 2010-2021 (Sept): c. 28 million rows (multiple rows per individual)

CORI data processed for tool

- For each incident (individual x cycle), each offense is a separate row, and we ask whether they were arrested on this offense, charge filed, conviction, etc.

- These rows are aggregated to counts of events by offense, county, year, and race.

- Offense: PC code including subsection; PC 148(A) different from PC 148(B)

- Events: arrest, court (charge filed), conviction, felony conviction, prison sentence (does not include suspended sentences)

Racial categories

- CORI records a single (mutually exclusive) racial category.

- We compare these with county population numbers reported in the American Community Survey to obtain rates of events per population and compare across races.

- These categories are not strictly comparable.

Tool race categories

Tool	CORI	ACS (population)
AAPI	AAPI combined categories	AAPI (alone) combined categories
Black	Black	Black (alone)
Hispanic	Hispanic	Hispanic (any race)
Native American	American Indian	Native American (alone or in combination)
White	White	White race (alone), not Hispanic

Measuring disparities: tool metrics

- **Rate per 100 population:** How many incidents per 100 people of the relevant race in the county?

- **Disparity gap per population:** Above population rate for target race divided by same rate for non-Hispanic whites. Gap = 1 indicates equal representation relative to county population.

- **Rate per prior event point:** Number experiencing an event (e.g. conviction) as a percentage of the number who experienced the prior event (charge filed)

- **Disparity gap per prior event:** relative to non-Hispanic whites

RJA standards and the tool

- **Significant difference:** We restrict reported metrics to cases with >10 obs, but otherwise do not offer any assessment of magnitude or precision.

- **Similarly situated:** We stratify by county and year. One can also use the rates per prior event to "condition" on a person being at risk of the event. We do not (yet) offer controls for an individual's criminal history / priors.

- **Similar conduct:** We stratify by offense. CORI offers limited additional information about conduct or circumstances.

- **Caveats about controls**

Two case studies

- **Case study #1: How broad is the reach of the RJA?**

    - Statistical evidence cannot be brought bear on cases with insufficient data.

    - Tradeoff between sample size and precision of comparisons

- **Case study #2: Potential for supporting habeas cases through analysis of disparities in prison sentencing**

    - How many people were sentenced in jurisdictions with very large racial disparities?

# Case study #1: The challenge of small N

- Reliance on statistical evidence is compromised by small samples.

- Every stratification (slice) diminishes the number of cases: hence a tradeoff between "similarity" and "significance"

- Big problem for **small counties** and **uncommon offenses**

- Some evidence of the problem: Percentage of offense-incidents meeting the N>10 threshold
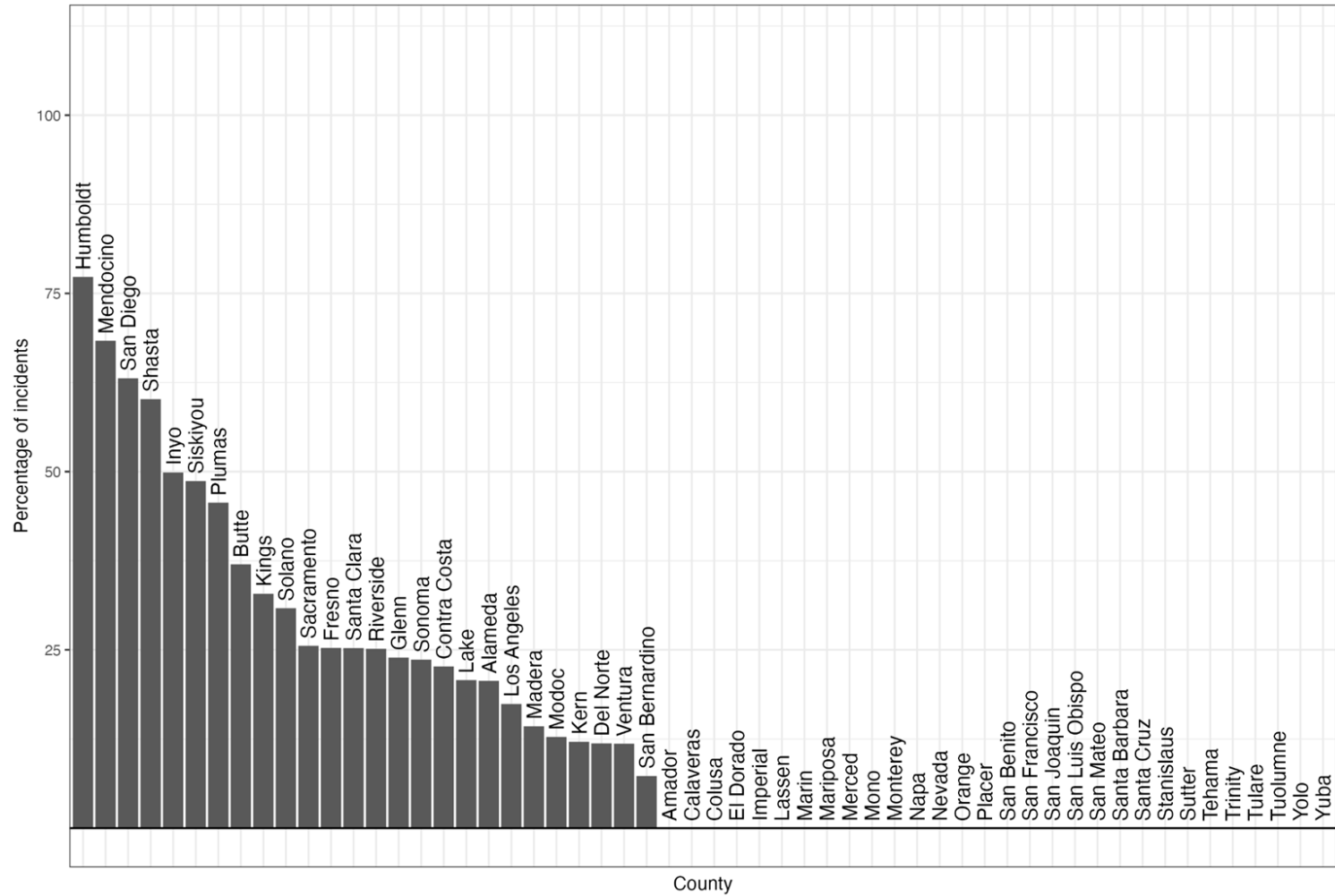
Percent of arrests incidents 2018 with samples > 10, Black
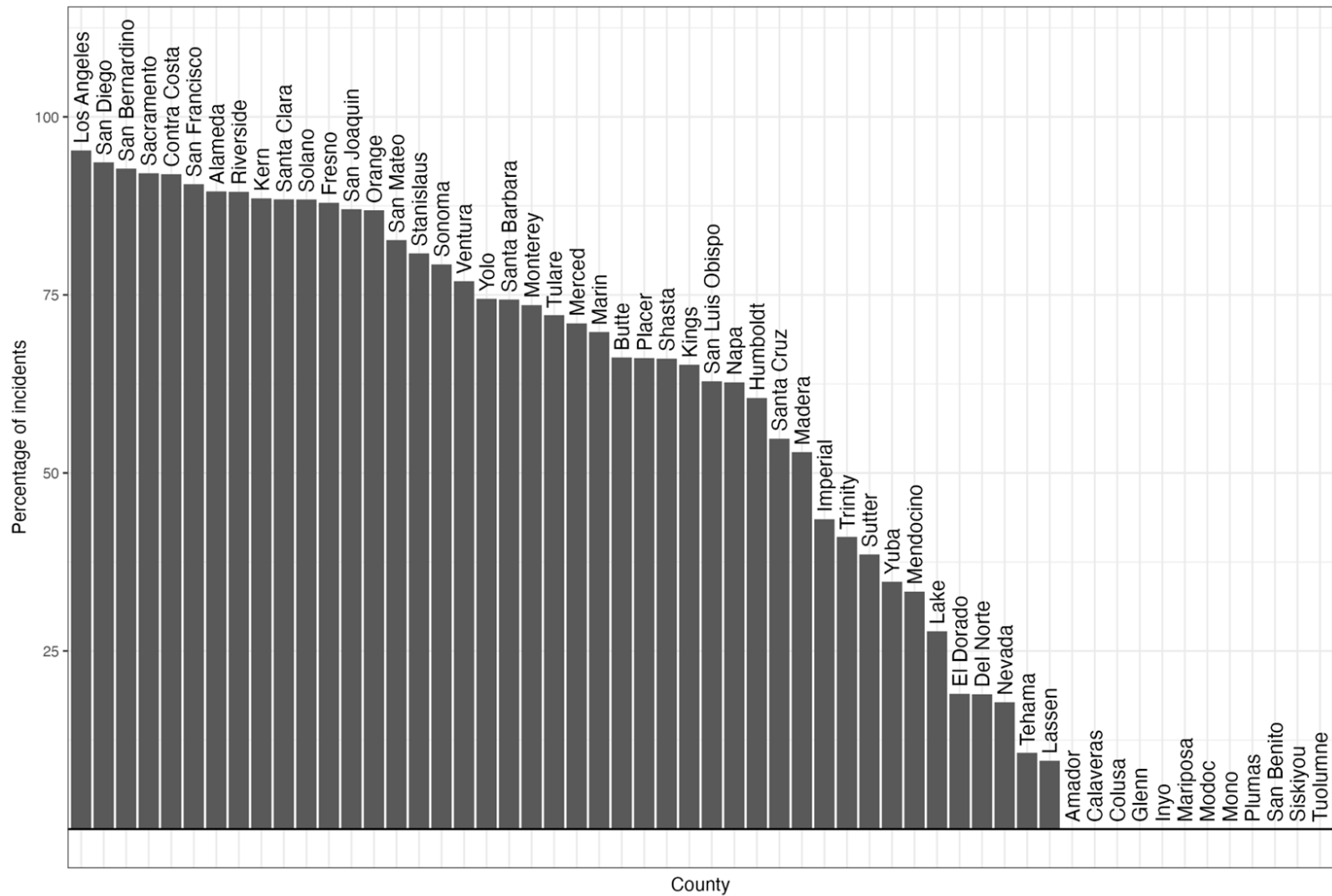
Percent of felony conviction incidents 2018 with samples > 10, Black
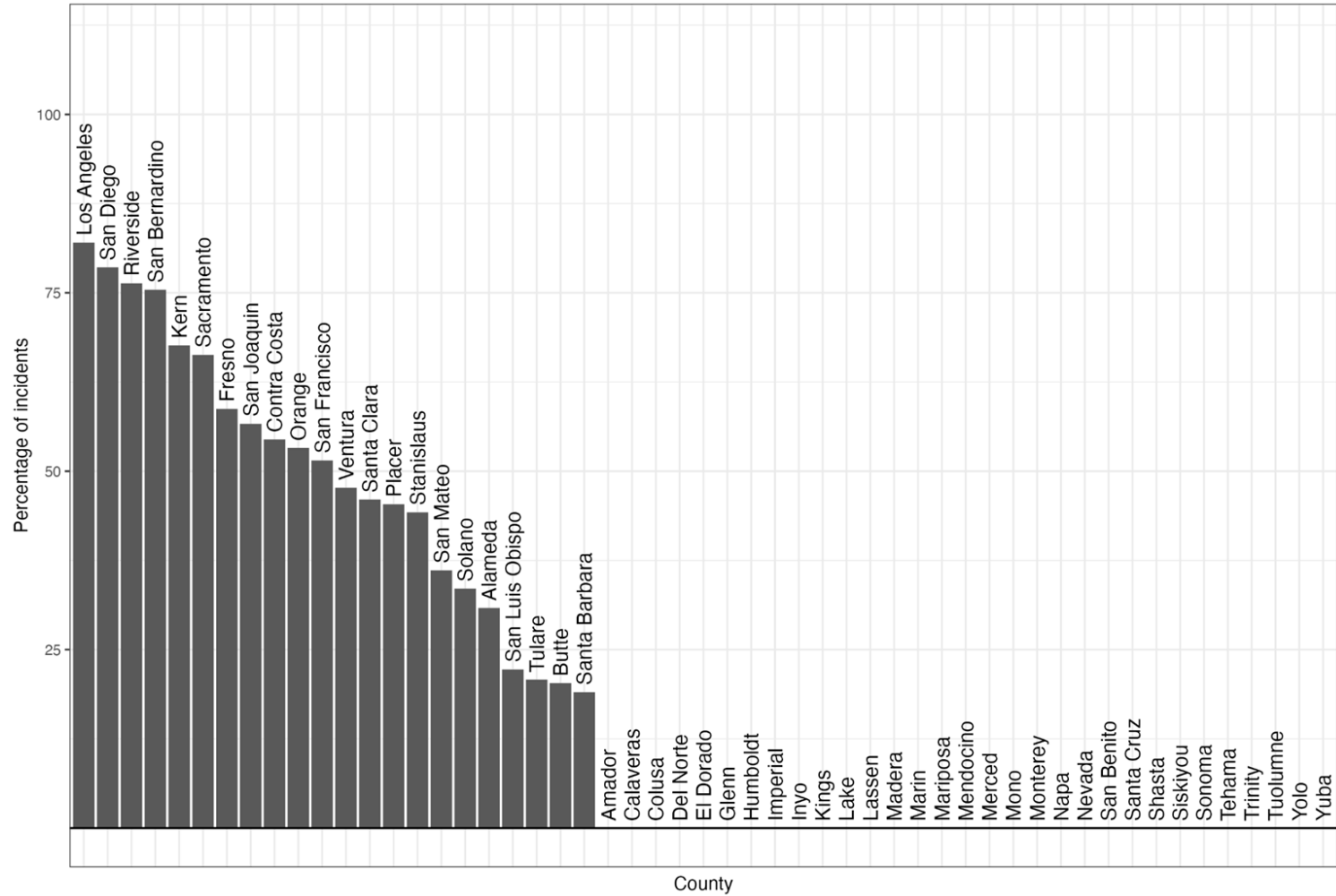
Percent of arrest incidents 2018 with samples > 10, Native American

Case study #2: Prison sentencing

- Potential for supporting habeas cases through analysis of disparities in past prison sentencing

- Although the tool is a crude "hammer" for establishing significant difference for similar conduct among similarly situated, the disparity gap per population may help flag especially egregious cases.

- Large population disparity gaps are common: An example using rates of prison sentencing, 2010-2019.

Number of persons with at least one prison sentence on case with indicated population disparity gap relative to non-Hispanic whites

Race	All	Gap < 1/5	Gap > 5
AAPI	4,658	1,179	437
Black	52,848	0	43,109
Hispanic	93,479	148	12,236
Native American	1,286	122	337
Total of non-White	152,271	1,449	56,119
White	53,403	NA	NA

I am seeking to find statistics or data regarding racial disparities in the Riverside County's charging policies.

The reason for the time period is based on the fact my father was prosecuted for his case in 2006 and was taken to trial and convicted in 2010
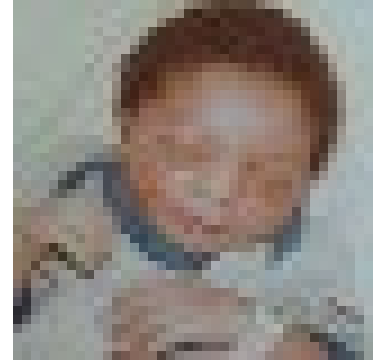
I hope with the passage of the RJA that the disparities in my father's sentence can be examined, and my father be granted a similar sentence of those whose offenses had a similar impact. This will bring me an opportunity to know my father outside the confines of prison, and finally allow me to hug him for the very first time

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so I can connect with this inmate »

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