National Conference of State Legislatures

Disproportionate Minority Contact

Juvenile Justice Guide Book for Legislators

Introduction

Youth of color are disproportionately overrepresented throughout juvenile justice systems in nearly every state. Disproportionality is recognized as a concerning problem by both states and the federal government. In response to the disconcerting numbers, state legislatures have taken measures to study the causes of disproportionality, identify strategies to reduce it and to create a fundamentally fair system.

Minority youth come into contact with the juvenile system at a higher rate than their white counterparts. Minority youth are overrepresented at every step of the process—they are more likely to be arrested, detained and confined. The proportion of minorities increases with each successive step into the system. Research by the National Council on Crime and Delinquency and the Center for Children's Law and Policy also indicates that minority youth receive harsher treatment than white youth. They are more likely to be confined and sentenced for longer periods of time and are less likely to receive alternative sentences or probation.

Disparity

There are approximately 70.5 million youth aged 10-17; 59 percent are white, and 41 percent are racial minorities. In contrast, 31 percent of youth detained by law enforcement officials are white, while 69 percent are minorities.

The disparity is particularly stark for African American and Latino youth. African American youth represent 13 percent of the juvenile population; however, they are 31 percent of those arrested, 42 percent of those detained, 39 percent of those placed in a residential facility, 32 percent of those on probation, 35 percent of those adjudicated, 40 percent of those transferred to adult prison, and 58 percent of those sentenced to prison (2007). African American youth are four times more likely to be incarcerated than white youth.

In short-term juvenile detention facilities, 42 percent of inmates are African American, 25 percent are Latino and 30 percent are white. In long-term secure juvenile facilities, 40 percent of inmates are African American, 29 percent are Latino and 32 percent are white. In adult facilities, 36 percent of juvenile inmates are African American, 24 percent are Latino and 25 percent are white. From 2000 to 2008, the percentage of Latino youth in adult prisons increased from 12 percent to 20 percent.

Explanations for Racial and Ethnic Disproportionality

Overrepresentation cannot be explained by offending rates. Jurisdictional differences, various police practices, punitive juvenile crime legislation, and racial and ethnic-based biases all play a role in creating **race** disparities.

Jurisdiction

According to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the jurisdiction in which a juvenile is processed can influence the outcome of the case. Cases adjudicated in urban areas are more likely to result in harsher penalties than similar cases adjudicated in non-urban areas. On the other hand, some offenses like drug possession are not considered serious in urban areas, but are considered serious in rural and suburban areas. Because minority populations are concentrated in urban areas, a geographic effect may work to overrepresent minorities statewide.

Furthermore, minority youth crimes in urban areas tend to be more visible. For instance, white youth tend to use and sell drugs from their homes, while minority youth are more likely to do so on street corners or in public neighborhood gathering spots.

Law Enforcement

Police practices that target low-income, urban neighborhoods and the use of group arrest procedures contribute to racial and ethnic disparities in the juvenile justice system. Low-income neighborhoods, particularly in urban areas, are often majority minority.

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Therefore, increased police presence in these areas leads to increased police contact with minorities and a greater opportunity for police officers to witness crimes committed by minority youth. OJJDP arrest rate statistics show that African American youth are arrested at much higher rates than their white counterparts for drug, property and violent crimes.

Overrepresentation of minority youth at the initial contact with law enforcement carries over to each successive step in the juvenile justice process. The increased probability of arrest, partially due to increased police presence in disproportionately minority communities, makes it more likely that minority youth will have longer criminal histories. Due to this fact, minority youth are more likely to be charged harshly and given stricter sentences.

Adult Treatment of Juveniles

As a result of the increase in juvenile crimes in the early 1990s, many states enacted automatic transfer, direct file and judicial waiver laws.

- Automatic transfer laws categorically exempt prosecution of certain offenses from juvenile court jurisdiction, allowing juveniles to be adjudicated automatically in criminal courts. Twenty-nine states have automatic transfer laws, which are also referred to as statutory exclusion laws.
- Direct file laws grant prosecutors discretion to charge juveniles as adults. Fourteen states and the District of Columbia have such laws.
- Judicial waiver laws allow juvenile court judges to waive jurisdiction so juveniles can be adjudicated in criminal courts. Forty-four states and the District of Columbia allow discretionary judicial waivers, 14 states and the District of Columbia allow presumptive judicial waivers, and 15 states have mandatory judicial waiver laws.

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Research indicates that automatic transfer provisions have disproportionately affected minority youth.

According to a 1997 survey on minority youth in secure facilities, these juveniles were transferred to criminal court around five times their proportion of the general population in Connecticut, Massachusetts, Pennsylvania, and Rhode Island.

Minority youth were overrepresented by four times their population in Montana and Tennessee, and by around three times in Maryland and New Jersey. In a 1996 evaluation of transfers of minority youth to criminal court in California, African American and Latino youth were six times more likely than whites to be transferred. In Los Angeles County alone, African American and Latino juveniles were 12 and 6 times, respectively, more likely to be adjudicated as adults than whites.

According to a 2007 study commissioned by the Campaign for Youth Justice, 83 percent of criminal court cases with juvenile defendants involved minority youth. For cases involving African American youth, 50 percent were transferred via statutory exclusion, 32 percent were transferred under direct file laws, and 19 percent were transferred by judicial waiver. A 2009 Campaign for Youth Justice report estimates that Latino youth are 43 percent more likely to be waived to adult court than white youth.

A 2007 National Council on Crime and Delinquency report estimated that, in 2002, minority youth accounted for 75 percent of the 4,100 juveniles admitted to adult state prisons nationwide. African

American youth reportedly are 58 percent of total admissions to adult prisons. The same report found that nearly every state reported minority youth as overrepresented and white youth as underrepresented in admissions to adult state prisons.

Racial Bias

Overt and indirect racial biases contribute to creating the overrepresentation of minority youth in the system. OJJDP's analysis of various studies spanning 12 years reveals that, in approximately two-thirds of the studies, "negative racial and ethnic effects" were present at various stages of the juvenile justice process.

The complex explanations for the disproportionality, along with sensitive racial and ethnic issues, make it an important and difficult challenge for states.

Initiatives to Reduce the Racial and Ethnic Disparities

Federal Action

The federal Juvenile Justice and Delinquency Prevention Act (JJDPA), originally passed in 1974, sets standards for local and state juvenile justice systems and provides funding to encourage reform. To be eligible for funding, states must comply with the law's four core protections, one of which regards racial and ethnic disproportionality. This provision requires states to address the overrepresentation of minority youth at key stages of the juvenile justice process, from arrest to detention to confinement. The OJJDP, created by the JJDPA, is the central national office that facilitates coordination and provides leadership and resources to help states improve their systems.

States use various methods to address the disproportionality, including collecting data to determine the extent of the problem; establishing task forces and commissions to study policies to facilitate racially neutral decisions throughout the system; developing and expanding early intervention services for minority youth and their families; and creating alternatives to incarceration.

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Models for Change

Models for Change is a national initiative funded by the John D. and Catherine T. MacArthur Foundation to accelerate reform of juvenile justice systems across the country. Focused on efforts in select states, the initiative aims to create replicable models for reform that effectively hold young people accountable for their actions, provide for their rehabilitation, protect them from harm, increase their life chances, and manage the risk they pose to themselves and to public safety. The Models for Change Research

Initiative emphasizes evidence-based practices and provides support to the states in develop, implement, and sustain lasting reform. Targeted juvenile justice leverage points where success will stimulate system-wide reforms.

- Aftercare
- Racial and ethnic fairness/ Disproportionate minority contact
- Mental health
- Community-based alternatives
- Right-sizing jurisdiction
- Evidence-based practices
- Juvenile indigent defense

While all states involved in the Models for Change initiative are working to reduce racial and ethnic disparities in the juvenile justice system, the DMC Action Network was launched in 2007 to bring together teams from select local jurisdictions, expose them to the latest thinking of national experts, and give them an opportunity to learn from one another about effective ways to reduce the disproportionate contact of minority and ethnic youth with the juvenile justice system.

The DMC Action Network is active in the four core states and in four additional partner states—Kansas, Maryland, North Carolina, and Wisconsin. Twelve localities originally participated in the DMC Action Network. Each locality was required to implement at least two strategic innovations to help reduce disparities. Examples of strategic innovations include initiatives on collecting and reporting data, increasing cultural competency[1], implementing detention alternatives, and reducing detention of post-disposition youth by using graduated sanctions or expediting post-disposition placements.

> “Models for Change seeks juvenile justice reform grounded in the core principles of fundamental fairness; developmental differences between youth and adults; individual strengths and needs; and youth potential, responsibility and safety.

Nine additional sites in Kansas, Maryland, North Carolina, Pennsylvania and Washington were added in 2009.

[1] In the fourth edition of OJJDP’s *Disproportionate Minority Contact Technical Assistance Manual,* cultural competency is “defined as a set of congruent behaviors, attitudes, and policies that interface with each other in a system, an agency, or a network of professionals to work effectively in cross-cultural situations.” The manual states that “[c]ultural competency training can engender a deeper awareness of cultural factors.”

The original 12 DMC Action Network Localities and their Progress

- ***Peoria, Illinois***
  In-school restorative justice programs, such as peer juries and peacemaking circles, helped reduce school referrals to secure detention by 35 percent, including a 43 percent decrease in referrals of African American students.

- ***Sedgwick County, Kansas***
  Secure detention days were reduced by 45 percent, partially due to objective detention screening, alternatives to detention, and improved advocacy for diversion.

- ***Jefferson Parish, Louisiana***
  Juvenile justice databases were updated for more accurate race and ethnic data collection. After full implementation of the detention screening tool, the detention population decreased by 25 percent.

- ***Rapides Parish, Louisiana***
  A detention screening instrument was recently developed and tested. In July 2008, the instrument was used to guide decisions on whether a juvenile went to a secure facility, a detention alternative, or to a parent or guardian.

- ***Baltimore City, Maryland***
  Following a detention utilization study that showed 60 percent of juveniles admitted to secure detention had a risk assessment score low enough to not warrant detention, the Pre-Adjudication Coordination and Training (PACT) Center, a community-based detention alternative, was created. Ninety-five percent of PACT participants were present for their court hearings, and 93 percent did not receive additional charges while in the program.

- ***Union County, North Carolina***
  Plans developed to translate common forms into Spanish, provide cultural competency training, and conduct community forums. A graduated sanctions grid for probation violations reduced Union County's use of secure detention. A race and ethnic questionnaire was implemented at intake to better understand needs related to race, ethnicity and language.

- ***Allegheny County, Pennsylvania***
  A failure to adjust study on post-disposition placements was conducted to identify and better understand disparities.

- ***Berks County, Pennsylvania***
  A new detention screening instrument was implemented, and it reduced the average daily detention population by 50 percent. The Probation Department has eliminated 24 beds in its secure detention facility—it removed locks from doors and now uses the space for several youth and family programs. Further, as a result of closely examining data used in decision making, Berks began using multi-systemic

therapy instead of secure placements for post-disposition youth; it saved $4 million in the first year alone.

- ***Philadelphia, Pennsylvania***
  A system of graduated sanctions was developed, along with a graduated sanctions court. The Youth-Law Enforcement curriculum in the Police Academy has also been expanded to include a module of cadet training involving direct contact with youth.

- ***Benton/Franklin Counties, Washington***
  The Benton/Franklin Juvenile Court has made numerous community engagement attempts to better understand the needs, challenges and concerns of racial minority youth. The attempts included a needs assessment survey and a focus group process specifically for African American youth assigned to probation and their parents or guardians.

- ***Pierce County, Washington***
  In an attempt to increase cultural competency in the evidence-based program functional family therapy, a number of actions have been taken, including the implementation of a specialized caseload for minority youth, cultural competency training, and increased staff diversity. A two-fold increase in completion in this program has occurred, which is expected to favorably affect African American youth.

- ***Rock County, Wisconsin***
  An evidence-based, detention diversion program, aggression replacement training, was implemented, which has led to a 61 percent increase in minority youth diverted from detention. Due to policy reform, the site has also seen a 50 percent decline in African American youth being waived into adult criminal court since 2006.

Juvenile Detention Alternatives Initiative

The Juvenile Detention Alternative Initiative (JDAI) was founded by the Annie E. Casey Foundation to address the efficiency and effectiveness of juvenile detention. As one of JDAI's eight core strategies, JDAI gives priority to reducing racial disparities as an integral detention reform strategy.

Currently, there are 110 JDAI sites in 27 states and the District of Columbia. Within these sites, JDAI has made substantial progress in reducing the overrepresentation of minority youth in the system and in confinement, in particular. JDAI has worked to reduce the percentage of minority youth in secure detention and reduce the number of minority youth in detention generally.

JDAI has achieved this by implementing specific strategies that target racial disparities at the critical processing point of pretrial detention. JDAI developed risk assessment instruments for detention admissions screening; created new

or enhanced alternative detention programs; expedited case processing to reduce time spent in secure detention; and promoted new policies and practices for responding to youth who have violated probation, have outstanding warrants or are awaiting placement. In addition, JDAI continues to promote collaboration between agencies and among stakeholders. JDAI also relies heavily on data to identify stages of disproportionate treatment, advocates for the use of objective decision-making and encourages cultural competency.

Recent JDAI Accomplishments

- ***Multnomah County, Oregon***
  A detention intake team was created to evaluate youth in custody and help successfully implement risk assessment instruments and alternatives to detention. Between 1995 (when risk assessment instruments were first implemented) and 2000, the gap between detained white and minority youth—consisting of African Americans and Latinos—narrowed from around 11 percent to roughly 2 percent. Overall detention admissions were reduced by 65 percent. Also critical to the site's success was collaboration with law enforcement personnel and policymakers, sound data collection, and training to raise awareness about **race** disproportionality.

- ***Cook County, Illinois***
  Between 1996 and 2000, the number of minority youth in detention dropped 31 percent. Detention alternatives were developed for youth who did not pose a serious threat. Alternatives include community-based evening reporting centers that offer constructive activities during afternoons and early evenings so youth can stay at home and in school.

- ***Santa Cruz County, California***
  JDAI worked to reduce high rates of minority detention that emphasized streamlining case management and risk assessment screening tools. In Santa Cruz, a risk assessment instrument was used to detain only high-risk offenders; alternative programs and procedures were developed for low- and medium-risk youth. Partnerships with community organizations to provide culturally responsive alternatives to detention were critical. This included recognizing the importance of having a bilingual staff and staff with close community ties and life experience that help them relate to youth.

State Action

During the 1990s, states began to enact policies prescribing methods to curb the overrepresentation of minority youth in the juvenile justice system. Washington was the first passing legislation in 1993 to link county funding to programs that address

Burns Institute

The W. Haywood Burns Institute (BI) has worked in more than 50 jurisdictions to reduce racial and ethnic disparities. The BI has created and implemented a data template that quickly allows disparities and various decision points to be quickly identified. In nearly every jurisdiction, youth of color are overrepresented and detained for minor misbehaviors that do not result in detention for most white youth. The BI incorporates neighborhood involvement and stakeholder alliances to deconstruct the institutional culture and decision-making process that result in disparities. A key component of this work is surveying probation, law enforcement and judicial officers to determine their attitudes and perceptions about disparities and conducting department-wide trainings to highlight practices that result in disparities.

Changes in policies and practices that result in reducing disparities without jeopardizing public safety include creating detention alternatives for family disputes, instituting court notification systems, interventions prior to probation violations and behavior response grids.

Burns Institute and Disparity

As a result of this approach, some sites where the BI has been able to reduce disparities for Black youth include:

- St. Paul, Minnesota
- Baltimore County, Maryland
- Louisville, Kentucky
- Peoria, Illinois

Similarly, some sites where the BI has been able to reduce disparities for Latino youth include:

- Tucson, Arizona
- Santa Cruz, California
- Marin County, California

overrepresentation, improve data collection, and implement cultural and ethnic training for judges and juvenile court personnel. Subsequent Washington laws required overrepresentation reporting by state agencies, the implementation of pilot programs to reduce inequality in juvenile prosecution, and the development of detention screening instruments.

Washington was the first passing legislation in 1993 to link county funding to programs that address overrepresentation, improve data collection, and implement cultural and ethnic training.

Other states followed with similar efforts in the late 1990s and early 2000s. In response to the high rates of disproportionality, Connecticut formed a 20-member inter-branch Commission on Racial and Ethnic Disparity in the criminal justice system to explore ways to reduce the number of African Americans and Latinos in the system, including the juvenile justice system. In North Carolina, the Governor's Crime Commission created a Disproportionate Minority Contact Committee to evaluate overall disproportionality and make recommendations to reduce racial disparities.

Missouri took steps to require the state court administrator to develop standards, training and assessment on racial disparities. Oregon established the Office of Minority Services as an independent state agency and formed pilot programs to initiate cultural competency training and detention alternatives. Oregon is also in its tenth year of conducting an annual governor's summit on minority overrepresentation in the juvenile justice system; attendees include judges, attorneys, among others.

In 2007, South Dakota established pilot programs in three cities to address the higher rates of contact with the juvenile system for minority youth. The arrest rate for Native American youth in South Dakota is almost 2.5 times greater than for white youth, and they also are overrepresented in other areas of the state juvenile justice system. Federal funding from the JJDPA is helping South Dakota implement the programs, which focus on Native American cultural awareness and agency cultural assessment training for juvenile justice practitioners and service providers.

In Iowa, a Youth Race and Detention Task Force established in 2007 is addressing racial and ethnic disproportionality—particularly for African American youth—in juvenile detention centers. Wisconsin's governor formed a Commission on Reducing Racial Disparities in 2007 that is to recommend strategies and solutions for decreasing minority youth overrepresentation within the state's criminal justice system. The commission, in its final report in 2008,

listed numerous recommendations including better data collection, cultural awareness, stronger eligibility requirements for public defenders, and adequate interpreters throughout the judicial process.

Colorado's judicial and executive branches held a 2007 summit that was attended by more than 200 judges, judicial officers, prosecutors, child welfare administrators and others to discuss overrepresentation of minority youth in the state's juvenile court system. The Colorado Court Improvement Committee also sponsored cultural competency training for juvenile court personnel to address race disproportionality and raise awareness of culturally appropriate resources and approaches.

Iowa became the first state in 2008 to require a "minority impact statement," which is required for proposed legislation related to crimes, sentencing, parole and probation—as well as for any grant application to a state agency. A statement for proposed criminal legislation must include the estimated number of criminal cases the bill will affect and the bill's impact on minorities, its fiscal impact, and its impact on existing correction facilities and resources. Connecticut soon followed, requiring racial and ethnic impact statements for bills and amendments that could if passed, increase or decrease the pretrial or sentenced population of state correctional facilities. Similar to fiscal impact statements, the new requirements seek to provide greater understanding of the implications of a proposed law for minorities.

In Pennsylvania, a disproportionality subcommittee of a state advisory group has been working to improve the relationships between youth and law enforcement personnel in communities. Through a series of local forums, law enforcement officials and youth meet to learn from one another.

In 2008, Iowa became the first state to require a "minority impact statement."

Indiana created a Board for the Coordination of Programs Serving Vulnerable Individuals. Vulnerable individuals are defined as youth of color who receive services or who are otherwise vulnerable. The board has numerous duties, including coordinating racial and ethnic-specific data collection; recommending early intervention and prevention programs and monitoring, supporting and improving efforts to reduce disproportionate representation of youth of color in youth services. In 2008, Virginia adopted a law directing the Joint Commission on Health Care to continue its study of the mental health needs and treatment of young minorities.

Maryland enacted a 2010 law requiring cultural competency model training for all law enforcement officers assigned to public school buildings and grounds. The training is to facilitate improved

communication and understanding between the officers and school communities. The training requires personal exposure to the assigned community and learning about the available resources in order to prevent juvenile arrests.

Maryland enacted a 2010 law requiring cultural competency model training for all law enforcement officers assigned to public schools.

According to OJJDP's 2007 formula grant calculations, 33 states have designated state-level coordinators to address race disproportionality; 37 states have subcommittees under their state advisory groups; and 34 states have invested financial support for local reduction sites that are working on the issue.

Strategies For The Future

As states continue to study and formulate policies to reduce racial and ethnic disparities, some common problems and effective strategies are emerging. Reduction efforts are predominantly data driven; however, data collection is a common problem because race identification often is complex and personal. A standardized model for uniform data collection helps local data collectors accurately record and report information.

One important aspect of data collection is to recognize and record both race and ethnicity. Research suggests that, if ethnicity and race are not identified separately, Latino youth may be significantly undercounted. Guidelines from the National Center for Juvenile Justice and the Center for Children's Law and Policy suggest a series of questions—in addition to self-identification, observation and other sources such as court documents—to help obtain the most accurate and detailed documentation. Reliable data are important to effective analysis and development of appropriate solutions to reduce racial disparities. Awareness is a critical aspect of reducing institutional biases. The Models for Change initiative has raised awareness about racial and ethnic disproportionality among community representatives, leaders, parents and others. Some states have sponsored seminars and training sessions for prosecutors, judges, agency personnel and others involved in the juvenile justice process. According to OJJDP, 15 states have implemented cultural competency training and/or organization cultural competency assessments. Many counties, parishes and cities also have implemented awareness programs.

In line with JJDPA's system-wide effort to address racial and ethnic disproportionality, the Center for Children's Law and Policy and the Models for Change initiative suggest states analyze and address the problem at nine critical processing points. The Center for Children's Law and Policy encourages creation of an oversight body composed

of stakeholders to identify where disparities exist, pinpoint unnecessary juvenile justice system involvement, and monitor implementation of reforms to address disproportionate minority representation. One specific suggestion is to use standardized screenings and protocols, which would remove subjectivity in decision-making.

Risk assessment that helps avoid overuse of secure detention also helps to reduce minority detention and overrepresentation. The Juvenile Detention Alternatives Initiative has used risk assessment instruments with measurable success in local programs, particularly in Multnomah County, Ore.

Appropriate use of alternatives to secure confinement of juveniles in correction facilities can be used to reduce disproportionality. These include community-based services and graduated parole violation sanctions. According to the Office of Juvenile Justice and Delinquency Prevention, 19 states currently use objective risk assessment instruments, and 25 fund alternatives to detention. Many counties, parishes and cities also have implemented such reforms.

Conclusion

The overrepresentation of minority youth in the juvenile system remains a complex issue for states. It also prompts questions about equality of treatment for youth by police, courts and other personnel in criminal and juvenile justice systems. How these juveniles are handled can significantly affect their development and future opportunities. State attention to the issue, along with the research and resources of various private organizations, can strengthen efforts to reduce the disproportionality and improve fairness for all youth in juvenile justice systems.

For references and additional resources, please see the **References, Glossary & Resources** section.

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