RED
PRACTICE
MANUAL

Introduction and Chapter 1: Beginning or Restarting Work to Reduce Racial and Ethnic Disparities

CENTER FOR
Children's
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Foreword

Promoting racial and ethnic fairness in the juvenile justice system has been a central goal of the Models for Change initiative. In 2007, Models for Change launched the DMC Action Network to create a community of public officials and advocates focused specifically on creating more equitable juvenile justice systems. Through the DMC Action Network, sites improved data collection and reporting, restructured decision making to reduce the opportunity for bias, and enhanced the cultural responsiveness of services for youth and families. More importantly, the Network helped proponents shift from a conversation about racial and ethnic fairness into a movement of concrete actions.

The work of the DMC Action Network, led by the Center for Children's Law and Policy, demonstrated that communities can implement reforms that have a measurable and positive impact on youth of color. However, in many jurisdictions, racial and ethnic disparities persist. Officials may not know how to translate data into action. Agency leaders may struggle to bring stakeholders to the table to discuss disproportionality and disparate treatment. Juvenile justice professionals may lack the latest information about policies, practices, and programs can help eliminate racial and ethnic disparities.

This resource is designed to fill those gaps. The Racial and Ethnic Disparities Reduction Practice Manual provides practitioners with concrete guidance and strategies, downloadable tools and resources, and examples of successful reform work in jurisdictions throughout the country. By compiling lessons from Models for Change and other successful reform initiatives, the Practice Manual captures the most current and comprehensive information on reducing racial and ethnic disparities across the entire juvenile justice system, from arrest through re-entry.

The Models for Change initiative envisioned the development of more fair and effective juvenile justice systems. This practical new tool will help the field move closer to that goal for youth and families of color.

Laurie Garduque
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Introduction

Over the past two years, the deaths of a number of African-Americans during arrests by white police officers or in police custody have raised new levels of public concern about racial bias and the system of justice in this country. Several events were recorded on video, either on police car dashboard cameras or by witnesses with smartphones, and the videos have been seen on the internet by millions of people all over the world. The list includes Michael Brown in Ferguson, Missouri; Tamir Rice in Cleveland, Ohio; Eric Harris in Tulsa, Oklahoma; Eric Garner in Staten Island, New York City; Walter Scott in North Charleston, South Carolina; Freddie Gray in Baltimore, Maryland; Sandra Bland in Waller County, Texas; Samuel DuBose in Cincinnati, Ohio; and Laquan McDonald in Chicago, Illinois.

Each situation has been different in important ways, including the circumstances of the initial police contacts, the behavior of the individuals involved during the incidents, and the responses to the deaths by police authorities, prosecutors, and grand juries. However, the deaths have had a cumulative impact, and distrust between communities of color and law enforcement agencies has grown accordingly.

In the juvenile justice field, these events have heightened awareness about the impact of racial bias in the system. They have also spurred public officials, policymakers, parents, and community leaders to look with greater determination for effective strategies and programs to reduce the impact of racial and ethnic bias at key decision points in the juvenile justice system and in the structures of our society.

Racial disparities have long been a feature of the juvenile justice system. Researchers and policymakers have focused on the problem for many years, particularly since the Coalition for Juvenile Justice brought the issue to the attention of Congress in 1988.[1] Studies have repeatedly shown that youth of color are over-represented at key decision points in the juvenile justice system, particularly at arrest, detention, commitment to a state facility, and transfer to adult criminal court. Researchers have found that youth of color are treated more harshly than white youth even when charged with the same offenses. Yet solutions have remained elusive. In its recent comprehensive report on the juvenile justice system, the National Research Council concluded:

> *Despite a research and policy focus on this matter for more than two decades, remarkably little progress has been made on reducing the disparities themselves or in reaching scholarly consensus on the root source of these disparities.[2]*

This Practice Manual is an effort to provide practical, concrete strategies for jurisdictions to use to reduce racial and ethnic disparities in their juvenile justice systems. The Practice Manual covers the key decision points in the juvenile justice system, from arrest to re-entry into the community after state commitment. For each decision point, the Practice Manual provides an overview of the key issues, discusses the data that should be collected and analyzed in order to understand the issues more clearly, and recommends strategies, interventions, programs, and practices that have proven effective in addressing the issues.

Many of the racial and ethnic disparities in the juvenile justice system are the result of implicit (i.e., unconscious) bias by key decision makers in the system. In many jurisdictions, inequity is also structural and systemic: it is built into the system in the form of long-established procedures that, intentionally or not, treat youth of color differently and more harshly than white youth. This Practice Manual provides effective strategies for bringing reform to both types of problems.

The Practice Manual is intended for a wide variety of audiences: juvenile justice professionals, agency administrators, legislators, governors, mayors, law enforcement officials, community leaders, parents, civil rights organizations, and other advocates for children. These audiences have different interests and needs, and the Manual provides useful information on policies and practices that have proven effective in reducing racial disparities.

Although the research literature on the *existence* of racial and ethnic disparities is very extensive, there is relatively little available on what jurisdictions actually need to do to achieve equity for youth of color in the juvenile justice system. Much of the pragmatic work in this area (as distinguished from scholarly research) has been supported by two foundations: the John D. and Catherine T. MacArthur Foundation and the Annie E. Casey Foundation.

The MacArthur Foundation's Models for Change juvenile justice reform initiative identified reduction of racial and ethnic disparities as a primary "targeted area of improvement" in multiple jurisdictions in its four core states of Pennsylvania, Illinois, Louisiana, and Washington State. Models for Change also supported a Disproportionate Minority Contact (DMC) Action Network that included counties and parishes in the four core states as well as counties in "partner" states of Kansas, Maryland, North Carolina, and Wisconsin. The Models for Change effort to reduce racial disparities, which covered 17 counties or parishes in 8 states, was coordinated by the Center for Children's Law and Policy (CCLP).[3]

The Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) began in 1992 as an effort to reduce unnecessary and inappropriate secure detention of young people without jeopardizing public safety. In the ensuing years, JDAI has grown from five initial sites to more than 250 sites in 39 states and the District of Columbia. From the beginning of the initiative, reducing racial and ethnic disparities has been one of JDAI's guiding principles and "core strategies." CCLP staff who wrote this manual work as technical assistance team leaders in a number of JDAI sites.[4] Staff of the W. Haywood Burns Institute for Juvenile Justice Fairness and Equity also serve as team leaders to JDAI sites, in addition to providing specialized assistance on racial and ethnic disparities reduction strategies.

The analyses and recommendations in this Practice Manual are based to a large degree on the efforts funded by the MacArthur and Casey foundations, and subsequent work in Connecticut, funded by the Tow Foundation, and in Colorado and Florida, funded by the MacArthur Foundation and the federal Office of Juvenile Justice and Delinquency Prevention.

Beginning or Restarting Work to Reduce Racial and Ethnic Disparities

To lay a firm foundation for reform, the Practice Manual begins with a discussion of underlying issues: the history of bias against youth of color in the juvenile justice system; recent efforts to address racial disparities; the definitions of key terms; the research on implicit bias against people of color, including young people, in the criminal and juvenile justice systems; and why many attempts to address racial and ethnic disparities have ended in failure. The Practice Manual then describes effective strategies that have been used around the country to reduce disparities, and how the strategies can be coordinated and managed.

I. Overview

A. History of Bias Against Youth of Color in the Juvenile Justice System

Bias against youth of color has been a feature of the juvenile justice system since its earliest days. In 1834 the first juvenile detention facility in the United States, the New York House of Refuge, excluded youth of color from rehabilitative services and consigned them to a "colored" section, on the rationale that providing services to such youth was a "waste of resources."[5] Similar attitudes were present at the Philadelphia House of Refuge. In Mississippi, legislation to develop a reform school for black children was rejected on the grounds that "it was no use trying to reform a Negro."[6]

Native American youth experienced similar bias. In 1885 Congress passed the Major Crimes Act, which ended tribal sovereignty and replaced restorative justice approaches to delinquency with lengthy periods of incarceration. The prevailing attitude was summarized in the guiding principle in Indian boarding schools, "Kill the Indian, Save the Man."[7]

Latino youth also faced enormous bias. In 1940, Latino youth were an estimated 8% of the population of Los Angeles, but 32% of the youth arrested. Youth who spoke only Spanish were given tests in English at the California State Reform School in Whittier. Based on the test results, officials labeled more than 60% of Latino youth as "feeble-

minded" or "unable to develop beyond the intellectual level of an average 12-year-old."[8]

In the modern era, the "Central Park Jogger" case cemented the racial stereotype in the public's mind of dark-skinned youth running amok, preying on white women. On April 19, 1989, a 28-year-old female investment banker was brutally attacked and raped while jogging in Central Park. Police soon focused on five teenagers from East Harlem – four black, one Latino. After hours of police questioning, the boys confessed. Although the teenagers claimed their confessions were coerced, they were all convicted and served prison terms of five to thirteen years. Television and tabloid news coverage of the case was sensationalistic and unrelenting.

But they didn't commit the crime. The police ignored contradictions in the confessions, as well as the fact that DNA evidence did not match any of the defendants, and didn't follow other leads. Eventually a serial rapist confessed to attacking the Central Park jogger and DNA evidence tied him to the crime. The five individuals were exonerated, but the image was fixed. In the years that followed, commentators reinforced the connection between youth of color and violence. In 1995, John Dilulio, a Princeton professor, coined the term "super-predators," which was widely recognized as a code-word for young black males.[9]

Twenty years later, on October 26, 2015, white school resource officer Ben Fields was on duty at Spring Valley High School in Columbia, South Carolina. He confronted a 16-year-old African-American girl who refused to give up her cell phone and leave class when told to do so by her math teacher. Fields flipped the girl's desk back, grabbed her and threw her to the floor, then dragged her several feet across the classroom. She was arrested on the charge of "disturbing school." Other students recorded the incident on their cell phones because Fields was known as "Officer Slam." One video went viral, and people throughout the country were horrified at the brutal use of force by the officer.

Fields was quickly fired, but the incident highlighted frequently-asked questions about the juvenile justice system in this country, and specifically about the treatment of young people of color in the system. Do law enforcement authorities use too much force, too quickly, when dealing with young people they suspect of breaking the law? Are they more likely to use force against youth of color? Is the rule against "disturbing school" too broad and vague? Does it criminalize normal adolescent behavior? Is the law used by school or law enforcement authorities to remove students who are disrespectful or annoying, but don't pose an actual threat to themselves or others? Was implicit or explicit racial bias a factor in the incident? Would the officer have acted the same way if the girl had been white?

B. Efforts to Reduce Racial and Ethnic Disparities in the Juvenile Justice System

There have been numerous efforts to reduce racial and ethnic disparities in the juvenile justice system. In 1988, the Coalition for Juvenile Justice brought the issue of racial disparities to the attention of the President and Congress in a report entitled *A Delicate Balance*.[10] Later that year, Congress amended the federal Juvenile Justice and Delinquency Prevention Act to require states receiving federal juvenile justice funds to address "Disproportionate Minority Confinement" (DMC), *i.e.*, incarceration, in their juvenile justice systems.[11] In 1992, Congress made the DMC requirement a "core requirement" of the Act, meaning that failure to meet the requirement would result in withholding of 25% of federal funds.[12] In 2002, Congress expanded the DMC requirement to cover "Disproportionate Minority Contact" with the system at other decision points, not just at the point of confinement.[13] However, the basic requirement – that states "address" the problem[14] – has remained vague. With a weak federal requirement, many states have had little incentive to adopt real reforms and achieve measurable outcomes.

Outside of the federal government, there has been more progress. As noted above, the Annie E. Casey Foundation began its Juvenile Detention Alternatives Initiative (JDAI) in 1992, with reduction of racial and ethnic disparities as one of its core strategies and an emphasis on data-driven planning and implementation. Among the original and early JDAI sites, Multnomah County (Portland), Oregon, and Santa Cruz County, California, achieved notable (and measurable) success in reducing disparities. Reports of the progress in Multnomah and Santa Cruz inspired other JDAI sites to set similar goals.[15]

In 1995, the Youth Law Center began a multi-disciplinary, multi-site effort that became known as Building Blocks for Youth. The effort eventually included the Justice Policy Institute, W. Haywood Burns Institute, Juvenile Law Center, Pretrial Services Resource Center, National Council on Crime and Delinquency, American Bar Association Juvenile Justice Center (and its successor, the National Juvenile Defender Center), and Minorities in Law Enforcement. In 2000, Building Blocks for Youth[16] published *And Justice for Some*,[17] the first comprehensive report to frame the issue primarily in terms of disparate treatment of youth of color compared to white youth similarly situated, i.e., the impact of actual discrimination against youth of color. The report contributed significantly to public education on the issue and received unprecedented news coverage on the front page of The New York Times, National Public Radio, major television networks, and local radio and television stations throughout the country.

In 2001, James Bell founded the W. Haywood Burns Institute for Juvenile Justice Fairness and Equity, which has become a national leader on this issue. The Burns Institute is a national organization established to protect and improve the lives of youth of color, poor children and their communities by ensuring fairness and equity throughout all public and private youth serving systems. It provides technical assistance and training to sites on reducing racial and ethnic disparities and has worked with more than 100 jurisdictions around the country.

As noted above, in 2004, the John D. and Catherine T. MacArthur Foundation launched Models for Change, with reduction of racial and ethnic disparities as one of its targeted areas of improvement in sites in its four core states and the four partner states of the DMC Action Network. The DMC Action Network focused on "strategic innovations" in four areas of the juvenile justice process: (1) data collection and analysis, (2) culture and community, (3) arrest and pre-adjudication, and (4) post-disposition.

In 2006, the Center for Children's Law and Policy (CCLP) was established in Washington, DC. CCLP has also become one of the national leaders in addressing racial disparities, and has worked with more than 30 jurisdictions around the country on the issue.[18]

More recently, in 2013 the National Research Council published a comprehensive overview of the juvenile justice system and concluded that only limited progress had been made on eliminating racial and ethnic disparities. As a follow-up to that report, in 2014 the National Research Council published a prioritized plan to implement a developmental approach in juvenile justice reform through the Office of Juvenile Justice and Delinquency Prevention, with specific recommendations for a new approach to reducing racial and ethnic disparities.[19] The Office of Juvenile Justice and Delinquency Prevention is now implementing that plan.

II. Core Values of Effective Work to Reduce Racial and Ethnic Disparities

Effective efforts to reduce racial and ethnic disparities in the juvenile justice system share a set of core values. These values reflect common goals for juvenile justice reform, recent research on adolescents and the juvenile justice system, and the lived experience of those who have worked on the ground to reduce racial disparities.

A. All Youth Should be Treated Fairly and as Individuals

Treating youth fairly means avoiding bias and stereotypes and looking at the individual strengths and weaknesses of each youth in the system. Research discussed below demonstrates the pervasive impact of bias and stereotypes in the system: in many jurisdictions and at many decisions points, youth of color consistently receive harsher treatment than white youth, even when charged with the same type of offenses. Implicit (i.e., unconscious) bias can affect key decision makers in the system, including police, probation officers, prosecutors, public defenders, and judges. Deeply-held stereotypes about youth based on their race or ethnicity can make juvenile justice system personnel more likely to arrest youth, securely detain them before adjudication, commit them to state custody at disposition, and transfer them to adult criminal court.

The juvenile justice system should treat youth as individuals rather than as members of a group or category. This is important for both accountability and rehabilitation. When young people are accused of crimes, they should be held accountable for their own behavior, but they should not be saddled with negative attributions based on extrinsic, immutable, or imagined characteristics. At the same time, rehabilitation efforts should focus on the needs of individual youth and their families, rather than providing cookie-cutter programs and requiring youth to fit in.

B. Adolescents Do Not Have the Maturity and Judgment of Adults

Research on adolescent brain development over the past fifteen years has shown that the area of the brain that controls executive functions such as reasoning, judgment, and regulating behavior does not fully mature until the mid-twenties. The U.S. Supreme Court recognized the differences between adolescents and adults in its landmark decision in Roper v. Simmons,[20] holding that the imposition of the death penalty on individuals who were under the age of 18 when they committed their crimes violates the Eighth and Fourteenth Amendment to the U.S. Constitution. The Court cited three major differences between adolescents and adults: that youths' "lack of maturity and an underdeveloped sense of responsibility" often results in "ill-

> ### *Roper v. Simmons*, 543 US 551 (2005)
>
> There are three major differences between adolescents and adults:
>
> 1) Youth "lack of maturity and an underdeveloped sense of responsibility" often results in "ill-considered" behavior
>
> 2) Youth are "more vulnerable or susceptible to negative influences and outside pressures"
>
> 3) Youths' personalities are still forming

considered" behavior; that youth "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressures"; and that juveniles' personalities are still forming.[21]

Accordingly, juvenile justice policy should reflect developmental realities, e.g., by keeping adolescents in the juvenile justice system rather than prosecuting them in adult criminal courts. This developmental approach has been the basis of the MacArthur Foundation's Models for Change juvenile justice reform initiative and the National Research Council's analysis of the juvenile justice system and prescriptions for reform.

C. Incarceration Should be Reserved for Youth Who Represent a Significant Danger to the Community

Young people who commit violent offenses may need to be incarcerated for their own safety as well as the safety of the community. However, only a small percentage of youth arrested each year are charged with violent crimes. Nevertheless, the extensive use of unnecessary and inappropriate incarceration of young people in the United States, and the dangers of such incarceration, have been well-documented.[22]

For more than twenty years, the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) has worked throughout the country to reduce unnecessary and inappropriate secure detention without jeopardizing public safety. JDAI has demonstrated significant effectiveness in achieving these goals in a wide variety of jurisdictions throughout the country.[23]

D. Reform Efforts Should Include Families and Communities

Until recently, most reform efforts were developed and implemented exclusively by professionals who work in the juvenile justice system: judges, probation officers, agency directors, prosecutors, law enforcement officials, and defense attorneys.

However, since 2001, when the parents of incarcerated youth and their supporters helped lead the successful effort to close the infamous Tallulah Correctional Center for Youth in Louisiana,[24] families and community representatives have taken a larger role in planning and monitoring juvenile justice reforms.

Families and community representatives bring credibility, lived experience with the juvenile justice system, and a sense of urgency to reform efforts. Several local and national organizations provide support for family members and a voice for families in policy policymaking discussion.[25]

E. Reform Efforts Should Be Culturally Responsive and Linguistically Competent

"Culture" refers to shared values, attitudes, beliefs, customs, history, traditions, norms, and language among a group of people. Culture is manifested through communication, the arts, religion, and other group activities. There are many cultures (or "ethnicities") throughout the United States.

In the juvenile justice system, "culture" often refers to Hispanic or Latino culture. That is because Latino youth and families constitute a significant portion of the juvenile justice system and because the federal government is only interested in distinguishing one "ethnic" group. Latino youth face special challenges in the system, including over-representation in the juvenile justice system, harsher treatment than white youth for similar offenses, and unnecessary entry and movement deeper into the system; inadequate data collection resulting in under-reporting of Latino youth in the system; inadequate separation of race from ethnicity; inadequate bilingual

Key Terms

Culture: Shared values, attitudes, beliefs, customs, history, traditions, norms, and language among a group of people. In the juvenile justice system, culture often refers to Hispanic or Latino culture.

Culturally Responsive: Policies, practices, and programs in the juvenile justice system are responsive to the particular challenges of Hispanic or Latino youth.

Linguistic Competency: Translating all relevant court-, probation-, and incarceration-related documents into Spanish; providing interpreters for all court hearings; and having bilingual staff or translation services available at all times.

services to youth and families; failure to provide bilingual and bicultural staff; inappropriate consideration of immigration status, resulting in incarceration, deportation, and permanent separation of youth from families; and over-broad implementation of anti-gang laws.[26]

In this context, "culturally responsive" means that the policies, practices, and programs in the juvenile justice system seek to address these particular challenges. Responsiveness may involve training program staff on the challenges facing Latino youth and families; hiring bilingual and bicultural staff in agencies and programs; looking for resources within the Latino community; and including Latino families and community representatives in policy making committees.

Language can be a particular challenge for Latino youth and families. For those with limited English proficiency (LEP), navigating the juvenile justice system can be a nightmare. Accordingly, in jurisdictions with Latino youth in their juvenile justice system, key stakeholders should ensure language access to LEP youth and their parents or guardians. "Linguistic competency" involves translating relevant court-, probation- , and incarceration-related documents into Spanish; providing interpreters at all court hearings; and having bilingual staff or translation services available at all times.

Moreover, under Title VI of the Civil Rights Act of 1964 and U.S. Department of Justice guidelines, recipients of federal funding, including state courts, must take reasonable steps to ensure that individuals with limited English proficiency have meaningful access to programs and activities. The Supreme Court has held that the failure to provide reasonable language accommodations for LEP individuals violates the prohibition on discrimination based on national origin that is contained in Title VI.[27] The Department of Justice has issued general LEP guidelines for recipients of federal financial assistance, based on the mandate in Title VI. The guidelines apply to a broad range of governmental entities including courts, police, sheriff's departments, departments of corrections, and other agencies with public safety and emergency service missions.[28] CCLP has also prepared summaries of the guidance issued by the Justice Department to courts regarding their obligations to LEP youth and families under federal law.[29]

III. Understanding the Issues

State and local law enforcement officials, juvenile justice agencies, and other stakeholders often use the concepts of race and ethnicity interchangeably. However, they are different.

A. Definitions and Basic Terminology

The word "race" is used in many ways in the juvenile justice system and other areas of society, often with political or sociological overtones. A full discussion of the complexities of defining race is beyond the scope of this Practice Manual. As a practical matter, the federal government has identified five races for the purposes of collecting information for the decennial census and reporting information to government agencies. Those are (1) American Indian or Alaska Native, (2) Asian, (3) Black or African American, (4) Native Hawaiian or Other Pacific Islander, and (5) White.[30]

The federal government has identified Hispanic or Latino "ethnicity" as meaning a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.[31]

Many state and local law enforcement and juvenile justice agencies do not collect accurate information on Latino youth because they either don't ask the youth any questions about ethnicity, or they rely on a law enforcement officer's or probation staff's visual assessment of a youth's ethnicity. In some jurisdictions, officials have lumped race and ethnicity into a single question: "What race are you—White, Black, Latino, Asian, or Native American?" This question mixes race and ethnicity together and forces Latino individuals to choose between identifying their race or identifying their ethnicity. These methods result in an undercount of Latino youth in the system, which may be very significant, and an over-count of white youth at key decision points in the system.[32]

To remedy this problem, the White House Office of Management and Budget issued guidelines to federal agencies to collect information on ethnicity and race separately

> **Race vs. Ethnicity: Two Questions to Ask of All Youth**
>
> 1) Are you Latino or Hispanic?
>
> 2) What is your race?

through two questions.[33] The Census Bureau follows those guidelines. Thus, the preferred method for collecting ethnicity and race information is to ask an initial question, "Are you Hispanic or Latino?" The second question is "What is your race?" Several states, such as Pennsylvania, have adopted this procedure in collecting juvenile justice data.[34]

B. Goals of Reducing Racial and Ethnic Disparities

1. Key Decision Points

To understand the goals and basic approach to reducing racial and ethnic disparities, it is helpful to view the juvenile justice system as a series of decision points. The figure below represents those decision points.

The Juvenile Justice Process:
Key Decision Points and Pathways Out

At each decision point, there is a key person or key people who determine what happens to a youth at that point in the system. Thus, at the arrest decision point,

police officers, school administrators, probation officers, and child welfare case managers (e.g., if a youth has run away from a court-ordered placement) determine whether the youth will be arrested. At the detention decision point, a judge or magistrate determines whether the youth will be released to a parent or guardian, released with supervision by a community-based program or other alternative to detention, or held in secure detention.

The decision points have two important characteristics. First, at each point the key decision makers have considerable discretion. For example, a police officer coming into contact with a youth alleged to have committed an offense has several options. The officer can talk to the youth and release him ("counsel and release"); take the youth home to the youth's paren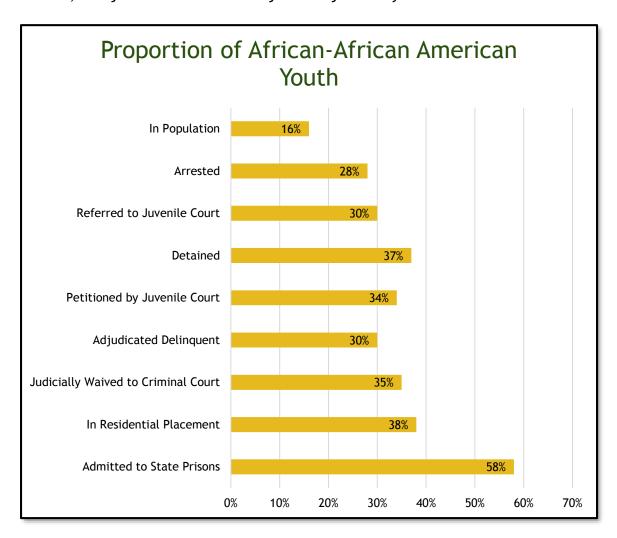t or guardian; issue a citation or summons to the youth, which specifies the charge and directs the youth to appear in court at a later date; take the youth to a "juvenile assessment center," where probation staff assess the youth's need for services; or take the youth to intake, where probation or other staff make an initial determination, pending the youth's first appearance in court, whether the youth should be released to parent or guardian, released to an alternative program, or held in secure detention. The key decision maker also has discretion to send the youth deeper into the system.

Second, at every key decision point, there are pathways for the youth to exit or move to the "shallow end" of the system. As noted, at the point of arrest a youth can be released, released to parent or guardian, issued a citation, taken to a juvenile assessment center, or supervised in a community-based program. At the referral stage, intake staff can send the youth to a diversion program, resolve the matter by "informal process" (e.g., continue the matter to a later date at which time the matter may be dismissed), enter into a "consent decree" (which may be similar to "informal process" but is done under authority of a court order), or refer the case for formal prosecution.

The goals and basic approach to reducing racial and ethnic disparities are focused on the key decision points in the system, and the goals are defined in the context of those decision points. Thus, in this Practice Manual, there are three separate but related goals to reduce racial and ethnic disparities: reducing over-representation, reducing disparate treatment, and reducing unnecessary entry and moving deeper into the system.

2. Reducing Over-representation of Youth of Color

Over-representation occurs when the percentage of a group at one decision point in the juvenile justice system is higher than the percentage of that group in the general population or at the previous decision point. Thus, in 2003, African-American youth

aged 10 to 17 years old constituted 16% of the adolescent population of the United States, but 28% of the youth arrested, 37% of the youth detained prior to adjudication, and 35% of the youth judicially waived to adult criminal court.[35]Thus, we say that African-American youth are over-represented at the points of arrest, detention, and judicial waiver in the juvenile justice system.

Proportion of African-African American Youth

Category	Percentage
In Population	16%
Arrested	28%
Referred to Juvenile Court	30%
Detained	37%
Petitioned by Juvenile Court	34%
Adjudicated Delinquent	30%
Judicially Waived to Criminal Court	35%
In Residential Placement	38%
Admitted to State Prisons	58%

Source: And Justice for Some.

3. Reducing Disparate Treatment

Reform efforts also seek to reduce disparate and harsher treatment of youth of color compared to white youth who are similarly situated. In the most comprehensive assessment of this issue, researchers found that African-American youth with no prior admissions to state juvenile facilities who were charged with offenses against persons were nine times as likely to be committed to state facilities as white youth with no

prior admissions who were charged with the same category of offenses. Latino youth were five times as likely as white youth to be committed to state facilities.[36]

This disparate treatment of youth of color also occurred in all other offense categories. African-American youth with no prior admissions who were charged with property offenses were almost four times as likely to be committed to state facilities as white youth with no priors who were charged with property offenses. Latino youth were almost twice as likely to be committed as white youth.

For public order offenses, African-American youth were seven times as likely to be committed as white youth. For drug offenses, African-American youth with no priors were forty-eight times as likely to be committed as white youth charged with the same category of offense. Latino youth were thirteen times as likely to be committed as white youth.[37]

Youth With No Prior Admissions: Rates of Admission to State Facilities

	Other	Latino	African American	White
Public Order	9	11	57	8
Drug	2	13	48	1
Property	31	62	119	32
Violent	36	78	137	15
Total	80	166	373	59

Source: And Justice for Some. Rates are calculated per 100,000 youth age 10 to the upper age of juvenile court jurisdiction in each state.

4. Reducing Unnecessary Entry and Moving Deeper into the Juvenile Justice System

The third goal is to reduce unnecessary entry and penetration into the juvenile justice system by youth of color. This does not involve a comparison of white youth to youth of color, but, rather, an analysis of the reasons that youth of color are put into the juvenile justice system and why they move deeper into it, particularly with respect to secure detention. For example, zero-tolerance policies in schools often result in referrals of youth to police or juvenile court for typical adolescent behaviors such as horseplay and questioning authority figures: the "school to prison pipeline." Outside of the school context, many youth are taken into custody and locked up – sometimes for long periods – for minor misbehaviors such as "disorderly conduct," "criminal mischief," and technical violations of probation (e.g., missing appointments with a probation officer).

These behaviors, in and of themselves, do not pose significant threats to the community that would justify incarceration. So one goal is to reduce the incidence of detention for these minor misbehaviors and prevent youth from moving deeper into the system. Reducing unnecessary detention is a worthwhile goal because once youth are detained, they are more likely to penetrate deeper into the system: more likely to have their cases referred to court for adjudication, have a formal disposition, and receive a more restrictive disposition.

The goal of efforts to reduce racial and ethnic disparities is to reduce *all three* types of disparities. However, measurable reduction of *any one* type of disparity is a significant achievement.

C. Research on Racial and Ethnic Bias in the Juvenile Justice System

1. Public Attitudes Toward Crime and Race

There has been a great deal of research on the *existence* of racial and ethnic disparities in the criminal and juvenile justice systems,[38] but the reasons why such bias exists remains unclear. In one important study on the underlying reasons for bias about race and crime, researchers showed subjects one of three versions of a local television newscast. One of the stories in the newscast involved a robbery at an ATM. In one version, there was no indication of the race of the suspect. In a second version, there was a close-up picture of the suspect, who was white. In the third version, the same picture was shown but the suspect's skin was darkened electronically so that he appeared to be African-American.

After giving the subjects other tasks to do, the researchers asked the subjects what they remembered about the newscast and the suspect. Among subjects who were shown the picture of the African-American suspect, 70 percent recalled seeing a picture of an African-American. Among subjects who were *not* shown a picture of the suspect, 60 percent recalled seeing a picture of the suspect, and 70 percent of those recalled seeing a picture of an African-American suspect. Even among test subjects who were shown a *white* suspect, 10 percent recalled seeing a picture of a black suspect.[39]

The researchers explained the results in terms of the way people "frame" experiences as a result of frequent exposure. For example, before we ever go into a restaurant, we know that we will be greeted by a person who will show us to a table and give us a menu, that a waiter will soon be around to ask if we want water, and that the waiter will come back to take our order. We have a "frame" for the dining situation in light of our prior experiences.

Similarly, the researchers explained that, as a result of regular local television news coverage and other media, we have a "frame" for stories about crime. Key components of that frame are that crime is often violent and usually involves an African-American perpetrator.[40] We see those stories time and again on the news. Accordingly, when the information we receive in a newscast confirms that frame, a high percentage of people remember the information, e.g., the suspect's race. When the information provided leaves a gap in the story, the "frame" for stories about crime fills in the missing information. Even when people are given explicit information that contradicts the frame (i.e., a white suspect), the frame is so deeply embedded that some people remember the stereotype rather than the actual suspect.

2. Implicit Bias and White Preference

The gold standard for assessing implicit bias is the Implicit Association Test (IAT). The test is administered by computer and asks subjects to make associations between words ("white," "black," "good," "bad"), pictures of faces, and other images, and measures the amount of time subjects take to make the associations. More than four and a half million people have taken the test, and hundreds of studies using the test have been published.

Researchers have consistently found implicit (i.e., unconscious) bias and a strong "white preference" among white subjects.[41] Thus, white subjects more quickly associate white faces with positive words and more slowly associate white faces with negative words. Conversely, white subjects are slower to associate African-American faces with positive words and quicker to associate those faces with negative words. African-American test subjects show mixed results: some show a "black preference"

and some show a "white preference." The "white preference" has been demonstrated in people from all walks of life, including attorneys who regularly represent black defendants in death penalty cases.[42]

3. Research on Key Decision Makers

Some research has focused directly on implicit bias among key decision makers in the juvenile justice system.

Police. Several studies have found that race impacts how law enforcement officers perceive young people.[43] In one recent study, participants were asked to estimate the age of young people charged with crimes. The study found that members of the general public perceived young African-American felony suspects as 4.53 years older than they actually were (white and Latino youth were perceived as 2-3 years older). They also perceived African-American youth as more culpable for their behavior (i.e., more blameworthy) than Latino youth, and perceived Latino youth as more culpable than white youth. The study also found that law enforcement officers rated African-American felony suspects as 4.59 years older than they actually were. Thus, a boy who was thirteen and a half would be perceived by police – incorrectly – as an adult.[44]

Probation Officers. In an early and influential study,[45] researchers analyzed the content of pre-disposition reports from probation officers and compared reports about white youth with reports about African-American youth who were charged with similar crimes and had similar offense histories. They found that reports on African-American youth were significantly more likely to contain negative internal attributions (i.e., the youth had negative personal values or personality characteristics) than reports on white youth. Reports on white youth were significantly more likely to contain negative *external* attributions (i.e., the youth was influenced by peers or a bad environment) than reports on African-American youth. The probation reports had important consequences. White youth were considered less likely to reoffend if they were removed from bad settings or delinquent peers. African-American youth were considered more likely to re-offend because of their personal traits, and moving them to a different environment would not change that. Consequently, African-American youth were given longer or more restrictive dispositions than white youth charged with similar offenses and with similar prior histories.

Judges. There has been little rigorous research on implicit bias by judges, but one study is instructive.[46] Researchers worked with 133 trial court judges from three jurisdictions in different parts of the country. They gave the judges several tasks and didn't tell them the purpose of the study. Among other tests, they gave them the Implicit Association Test. They also gave the judges a series of evidence summaries from hypothetical trials and asked how they would decide the cases. The

hypotheticals contained facts to support a verdict for or against the defendants. In some hypotheticals the race of the defendant was explicit, in others it was not. The researchers reported three findings. First, the IAT results showed that the judges carry implicit biases similar to the general population: white judges generally showed a "white preference" and African-American judges showed a mixed picture. Second, the implicit biases affected the judges' decisions: there was a significant correlation between the defendant's race and their decisions. Third, when judges were aware of the need to monitor their biases and were motivated to do so, they were able to overcome those biases. This happened when some of the judges figured out the purpose of the study and became more careful about their responses. After that point, they stopped showing racial bias in their decisions.

4. Decisions and Decision Makers

The research suggests that many decision makers in the juvenile justice system, perhaps most, carry implicit racial and ethnic biases. This has important implications for how decisions are made in the system. First, each decision maker – from police officer to defense counsel to district attorney to probation officer to judge – should be aware that they may carry unconscious biases. They should guard against stereotypes in their perceptions of young people of color and in their decisions about those young people.

Second, each decision maker should be aware that *many of the other* decision makers in the system, perhaps most, also may carry implicit biases. Thus, when intake staff receive information about youth from arresting officers, when prosecutors receive information from investigators, when judges receive information from probation officers, they should be aware that those providing the information may have their own unconscious biases.

Racial and ethnic biases are prevalent in the juvenile justice system because so many people have them. The research on judges, however, suggests that when decision makers make efforts to identify and monitor biases, they can overcome them and ensure fairness.

D. Why Reform Efforts Fail

Efforts to reduce racial and ethnic disparities in the juvenile justice system fail for many reasons. Three are most prominent. The first is that, on a system level, stakeholders don't address the issues. They either cannot or will not deal with the existence of bias in their jurisdiction. The second reason is that race is a particularly difficult thing for people to talk about. This section offers some strategies for talking

about race. The third reason is stakeholders don't understand what they need to do, in practical and concrete terms, to reduce disparities. The later sections of this Practice Manual will provide practical, concrete strategies to analyze what needs to be done and to implement effective reforms.

Avoidance. Some stakeholders avoid the issue by redirecting the discussion to big social issues and seeking to put off the discussion of race until the other problems are solved. For example, some people say, "This is not about race, it's about poverty. If we can address poverty, racial differences will diminish or disappear." Programs to alleviate poverty are certainly worthwhile, but the problem is that poverty is not going to be solved in the foreseeable future. Efforts to reduce racial and ethnic disparities should focus on making measurable improvements in policies and practices in planned amounts of time. Making the discussion about poverty and the distant future is a way of avoiding discussion of race and ethnicity in the present.

Denial. Some stakeholders deny that there is any bias in the system. A typical comment is, "I look at each case individually, so there can't be any bias." It may well be true that stakeholders look at each case individually, but unconscious bias may nevertheless affect the decisions that they make. When data analysis shows a pattern of overrepresentation of youth of color at a key decision point, for example, an effective strategy is to dig deeper into the data and learn more about what criteria are used and how

> ## Why Reform Efforts Fail on the System Level
>
> *Avoidance*: "This isn't about race, it's about poverty."
>
> *Denial*: "I look at each case individually, so there can't be any bias."
>
> *Defensiveness*: "You just want to collect data to use it against me."
>
> *Distraction*: "The Committee for ..."
>
> *The Blame Game*: "Adolescent offending happens because of parents, video games, the media, gangsta rap, etc."
>
> *The Culture of Politeness*: Everyone steers clear of difficult problems and solutions because no one wants to say anything that may offend someone else.
>
> *Motion without Movement*: Genuine concern for racial disparities and determined, but unfocused efforts "to do something."
>
> *Data without Direction*: Collecting data at key decision points, but lack of knowledge on how to use data strategically.

decisions are made at that decision point.

Defensiveness. Some stakeholders perceive any effort to reduce racial and ethnic disparities as a potential attack on them. They are concerned that data showing over-representation at a specific decision point will lead to charges of racism against them. A typical comment is, "You just want to collect data to use it against me." To address this concern, efforts to reduce racial and ethnic disparities should avoid judgments about past decisions by key stakeholders, focus on the future, and use data collection and analysis to improve the effectiveness and efficiency of the system. Sometimes this problem is exacerbated when champions of reform are themselves not sure how to talk about race effectively. Some suggestions are included in the section below, "How to Talk About Race."

Distraction. Some reform efforts get sidetracked on peripheral issues. One group of stakeholders who came together to address disparities spent months deciding on the *name* for the group: "The Committee for …." Some members thought the name should not include the word "race" because that might offend someone. Others thought that civil rights laws might prohibit the use of certain words.

The Blame Game. A particular form of distraction is blaming some person or entity for adolescent offending – parents, video games, the media, gangsta rap – and bemoaning that influence on young people. While there may well be legitimate grounds for complaint, playing the Blame Game does not get a jurisdiction closer to reform. Instead, it diverts efforts into activities and denunciations that may feel good for some but don't lead to planned strategies for measurable change.

The Culture of Politeness. The W. Haywood Burns Institute has long noted the "culture of politeness" that governs many discussions about racial and ethnic disparities.[47] Since race is such a sensitive issue in American society, no one wants to say anything that may offend someone else at the meeting. As a result, everyone steers clear of difficult problems and nothing gets accomplished.

Motion without Movement. The Burns Institute also warns of "motion without movement," i.e., genuine concern for racial disparities and determined but unfocused efforts "to do something." Reform efforts must be strategic. A sense of outrage at racial disparities can be a good motivator for stakeholders, but the energy coming out of that outrage should be channeled into effective strategies that will lead to measurable change.

Data without Direction. Many jurisdictions have received the message that it is necessary to collect data at key decision points in order to move forward with reforms (e.g., referring agency, charged offense, other reason for incarceration, race,

ethnicity, gender, residence, and location of offense). However, once the data collection is accomplished, many stakeholders don't know how to use the data strategically to analyze where key decisions are made that create disparities and to plan remedial efforts.

E. How to Talk About Race

Talking about race is difficult, especially when speaking about racial inequity. There are several strategies that can make the process more productive.[48]

Recognize the dominant model of thinking about race in the United States. The dominant model of thinking about race in the U.S. has several elements: (1) "the United States has made a lot of progress on the issue of race," (2) "if anyone is favored, it is African-Americans (and people of color generally)," (3) "individuals are entirely in control of their accomplishments," and (4) "if there is any racial inequality, it is the result of the failure of individuals to follow American values such as hard work and personal responsibility."[49] Research in juvenile justice and other areas disproves these assumptions, but that is beside the point. This model guides the thinking of the majority of people in this country.

Don't try to change individuals' values or beliefs (even if they are rooted in the "dominant model"). Values and beliefs are deeply-held and usually developed early in life. Efforts to change them are unlikely to be successful.

Direct frustrations toward the shortcomings of policies and practices, not individuals. The reform effort should be directed toward changing policies and practices that allow or encourage bias. Policies and practices *can* be changed, which can lead to

> **Strategies for Talking About Race on a Personal Level**
>
> 1) Recognize the dominant model of thinking about race in the United States.
> 2) Don't try to change individual's values or beliefs (even if they are rooted in the "dominant model").
> 3) Direct frustrations toward the shortcomings of policies and practices, not individuals.
> 4) Emphasize values that unite rather than stressing differences.
> 5) Avoid blaming.
> 6) Use data and narratives to support the discussion.
> 7) Use scenarios that could happen to anyone.
> 8) Clarify terms to avoid misunderstanding.
> 9) Address people's emotional response to the issue.

changes in the behavior of stakeholders in the system. It's important to attack the problem, not the person.

Emphasize values that unite rather than stressing differences. Root the discussion in goals of the reform effort that everyone can agree with: *accountability* of all youth for their misbehavior, *fairness* for all youth in the juvenile justice process, and *equal opportunity* for all youth to become productive members of the community.

Think about your own comfort or discomfort in talking about race. Individuals responsible for leading discussions about race among juvenile justice stakeholders should first think about their own level of comfort or discomfort in such discussions.

Avoid blaming. Finger-pointing at specific individuals, accusations, and lecturing quickly polarize a discussion. No one wants to participate in a meeting if they are going to be called a racist. Instead, it is better to focus on the future, toward efforts such as collection of new data to dig deeper into a problem, addition of new community-based programs as alternatives to detention, or modification of existing agency policies or court orders. At the same time, when an agency or key stakeholder has a consistent pattern of abusing discretion to the detriment of youth of color, they need to be held accountable. The guidelines in this section suggest a variety of ways to move toward accountability without blowing up the discussion.

Use data and narratives to support the discussion. Data anchor the discussion in the real world, but statistics by themselves can leave people glassy-eyed. Research shows that "narrative trumps numbers."[50] Combine data with narratives for persuasive presentations, either by telling individual stories of youth of color impacted by bias in the juvenile justice system or by describing what the data mean in practical terms for specific groups of young people (e.g., youth of color who misbehave in school and are arrested, or youth charged with low-risk offenses who are held in detention).

Use scenarios that could happen to anyone. For example, talk about a son or daughter getting caught smoking marijuana, or a child getting into a fight at school and getting referred to the police. These examples can promote empathy and engagement. Stakeholders are more likely to think through a problem if they see that it can affect a member of their own family.
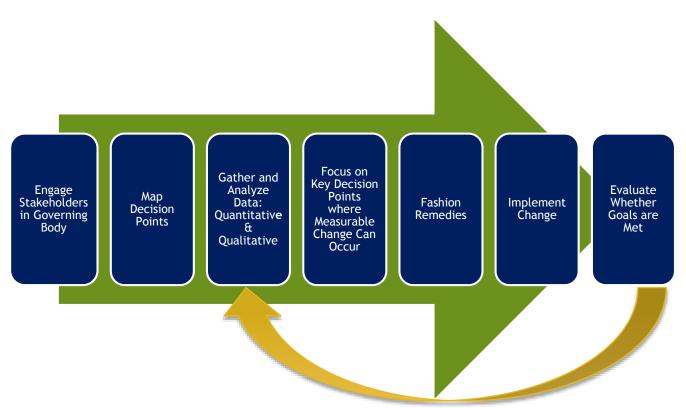
Clarify terms to avoid misunderstanding. Words like "race," "ethnic," "bias," and "discrimination" are potent in discussions, but may mean different things to different people. Defining terms early can reduce confusion and keep the discussion focused.

Address people's emotional responses to the issue. Recognize that this is an issue that brings up strong emotions for many people. Allow enough time to talk about and work through the issues. Ensure that facilitators have appropriate skills and training to handle the emotions that are likely to arise.

IV. Effective Strategies to Reduce Racial and Ethnic Disparities

This section introduces key strategies for reform. Each strategy will be discussed in more detail in later parts of this chapter or in later chapters.

Model for Reducing Racial and Ethnic Disparities

Engage Stakeholders in Governing Body

Map Decision Points

Gather and Analyze Data: Quantitative & Qualitative

Focus on Key Decision Points where Measurable Change Can Occur

Fashion Remedies

Implement Change

Evaluate Whether Goals are Met

A. Leadership by Collaboratives that Include All Stakeholders

Because racial and ethnic disparities are so firmly entrenched in our psyches and our society, and because there is so much resistance to addressing the issues directly,

strong leadership is required for effective reform. In jurisdictions that have successfully reduced disparities, that leadership is provided by a governing committee or collaborative that oversees the reform effort. The membership of the collaborative usually includes the juvenile court judge, chief probation officer, chief prosecutor in juvenile court, chief juvenile court public defender, law enforcement, school officials, and child welfare officials, as well as parents whose children have been through the system, leaders of community organizations, and other representatives of the community. The governing collaborative provides guidance, monitoring, accountability, and evaluation.

B. Regular Collection, Analysis, and Monitoring of Key Data

Reform efforts must be data-driven. As noted above, many attempts to address this issue get derailed by avoidance, denial, defensiveness, and other distractions, including anecdotal accounts of one person or another's bad experience with a youth in the system. Relying on data about which youth enter the system and why, and what happens to them while they are in the system, provides a solid anchor for reform efforts. It enables the governing collaborative to talk about what *actually* happens in the system, rather than the subjective impressions of people inside or outside the system. With a clear picture of what happens in the system, the collaborative can then identify appropriate interventions and reforms.

C. Local Focus

The overwhelming majority of successful efforts to reduce racial and ethnic disparities in the juvenile justice system have occurred at the local level.[51] The reason is that most of the key decision makers are local officials: police, prosecutors, judges, probation officers.

Even in states where there are "state-centered" juvenile justice systems, such as Maryland, many of the key decision makers are local. In Maryland probation officers work for the state Department of Juvenile Services, but the police, prosecutors, and judges are all local. Reform efforts need to collect data and other information on the policies and practices of these local officials and tailor recommendations accordingly.[52]

D. Objective Criteria and Decision Making Tools at All Key Decision Points

Racial and ethnic disparities occur, in part, because decision makers have sufficient discretion that stereotypes and subjective perceptions are able to affect their decisions. One way to counter that is to establish objective criteria and decision

making guidelines. The most common example of objective criteria is the use of "risk assessment instruments" (or "detention screening instruments") at detention intake. These tools utilize a number of race-neutral objective measures to determine which youth are unlikely to appear at court hearings and which youth are likely to re-offend before their disposition hearing. The instruments score youth on factors such as seriousness of the current offense, prior delinquencies, and escapes from custody. Youth with high-range scores are detained, those with medium-range scores are sent to community-based alternative-to-detention programs or otherwise supervised in the community, and youth with low scores are released to parents or guardians. Detention screening instruments are discussed in more detail in Chapter 4.

Objective criteria and guidelines are also used in many jurisdictions to determine which youth are eligible for diversion; which youth are kept in school rather than being suspended, expelled, or referred to juvenile court; and which responses should be used when a youth violates the terms of probation. Diversion and other school-based efforts are discussed in Chapter 3. Responses to violations of probation are discussed in Chapter 5.

E. Continuum of Diversion and Alternative-to-Detention Programs

One goal of racial and ethnic reform efforts is to reduce unnecessary incarceration of youth of color. Youth in the juvenile justice system have a wide variety of needs. This includes needs for varying levels of supervision that can keep them under watchful eyes while allowing them to remain in the community. Jurisdictions with effective reform efforts have a continuum of programs and services to meet the different levels of supervision required by different youth. The goal is to provide the least restrictive level of supervision that will ensure that the youth is no longer a danger to the community.

As a result of JDAI and Models for Change, there is a lot of information available on various types of alternative-to-detention (ATD) programs and services.[53] At the front end of the system, for example, a good continuum usually includes – in ascending order of restrictiveness – electronic or GPS monitoring (ankle bracelet), intensive probation (regular contacts with probation officer), evening reporting centers (usually during after-school hours until early evening), home detention (often with electronic monitoring), group homes, and staff secure programs. Alternatives to secure detention are discussed in more detail in Chapter 4.

Alternative to Detention Programs

Electronic or GPS Monitoring → Intensive Probation → Evening Reporting Centers → Home Detention → Group Homes → Staff Secure Programs

F. Cultural Responsiveness and Linguistic Competence

As noted above, "cultural responsiveness" means that the policies, practices, and programs in the juvenile justice system are aware of the particular challenges faced by Latino youth and families and those of other cultures, and seek to address them. Responsiveness may involve training program staff on the particular challenges facing the racial or ethnic group; hiring bilingual and bicultural staff in agencies and programs; looking for resources within the Latino or other ethnic community; and including families and community representatives of the cultural group in policy making committees. It also involves recognizing the strengths of Latino and other youth and families, such as close family structure, commitment to hard work, and strong religious affiliations.

For members of Latino families with limited English proficiency (LEP), the juvenile justice system presents many challenges. "Linguistic competency" includes translating all relevant court-, probation-, and incarceration-related documents into Spanish; providing interpreters at all court hearings; and having bilingual staff or translation services available at all times.

G. Family and Community Engagement

Family members and community representatives have an important role to play in collaboratives that govern racial justice reform efforts. They often have very different experiences with the juvenile justice system than the judges, probation officers, police, and others who work in the system. For parents and guardians of youth involved in the system, that experience frequently involves bewilderment and frustration. They often feel overwhelmed and incapable of navigating the complexities of the system. Many also feel that the system is unfair and stacked against them. Community leaders can readily identify with the needs of families, and

are concerned with the impact of reforms on broader needs of the community that are beyond an individual's family door. Family members and community representatives bring an important sense of urgency to reform efforts. They bring a different perspective from juvenile justice professionals on the impact of the system on their youth and where the system breaks down or is ineffective. In addition, families and community members are often aware of community resources such as church and neighborhood programs that are not used by the system but could be beneficial.

Equally important, family members have a key role to play in supporting their children while they are in the system and afterwards. Family engagement is a meaningful partnership between families and agencies at every level of the juvenile justice system.[54] Several organizations of families of incarcerated youth have conducted research on the experiences of families with children in the system and made extensive recommendations to improve family engagement.[55]

Family engagement helps to reduce racial and ethnic disparities for youth in the juvenile justice system by improving outcomes for youth. Family engagement is a key component of the most effective evidence-based practices for youth in the juvenile justice system.[56] Family engagement also provides an opportunity to build on family expertise and strengths. Moreover, family and social supports are critical to youths' success inside the juvenile justice system and after they leave the system.

H. Cross-System Collaboration, Especially with Child Welfare and Education Systems

The education and child welfare systems are often feeders for the juvenile justice system. Many young people who misbehave in school are referred directly to the juvenile justice system and enter the school-to-prison pipeline. Many youth in the child welfare system commit delinquent acts. Research shows that youth in foster care are more likely to be held in secure detention than youth not in foster care, either because of child welfare agency action (or inaction) or because foster parents cannot or will not continue to provide care.[57] In addition, youth who abscond from court-ordered child welfare placements, such as in group homes, are often charged with violating court orders. They may also be arrested in those placements for engaging in fights or other disruptive behavior. As with other parts of the system, youth of color are disproportionately likely to go deeper into the system as a result of problems in school or in child welfare settings. Concerted efforts across systems are required to utilize alternatives to juvenile justice referrals and to plan for effective supervision and care of these youth.[58] These issues are discussed in more detail in Chapter 3.

I. Intentional Focus, Careful Planning, and Regular Monitoring

Reduction of racial and ethnic disparities requires intentional efforts, i.e., deliberate implementation of the reform strategies described above. Some jurisdictions say that they will "incorporate" racial justice into other ongoing reforms, but that usually means that the focus and energy goes elsewhere, and the effort is usually unsuccessful at reducing disparities. Instead, reform efforts should include specific actions to reduce disparities such as achieving stakeholder participation that includes families and community representatives, using objective screening tools for key decisions, creating or enhancing alternatives to incarceration, and collecting data disaggregated by race, ethnicity, gender, geography, and offense or reason for incarceration.

Careful planning goes along with intentional focus. Reducing racial disparities is difficult to accomplish, for many reasons, and effective efforts require coordination among stakeholders inside and outside of the system as well as several agencies. Careful planning is a good investment in the success of the endeavor. Planning should include consideration of how the effective strategies for reform efforts, discussed above, will be carried out. Thus, planning should include identifying resources to support the effort (staff, funds for travel), determining who will collect and report data, deciding how the governing collaborative will be recruited and maintained, and how those involved in the reform effort will learn about best practices in the field.

Regular monitoring of data is a central aspect of data-driven strategies. A basic purpose of collecting and analyzing data is to make it possible to determine whether reform efforts are working, and if not, where improvement is needed. Many public officials and agency directors invest taxpayer dollars in programs without any effort to learn whether the programs actually deliver what they promise. Regular monitoring of data is a way of ensuring accountability for the reform effort and key parts of the juvenile justice system.

V. Structuring the Work

A. Identifying Champions and Developing Leadership for Reform

Reforms need champions.[59] Within the collaborative governing the reform effort, it is critical to have several individuals who are deeply and personally committed to the success of the effort. These are the people who bring passion and energy to the effort, who regularly push the effort forward, who look for outcomes rather than processes, who translate their impatience into action.
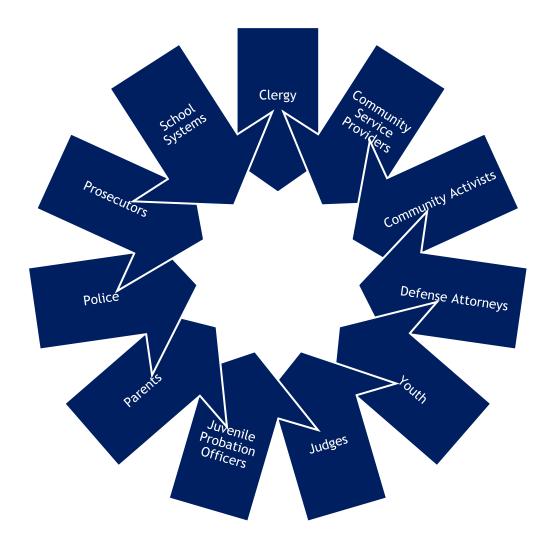
Who should be the champions? In many jurisdictions, the champions are leaders of color. Indeed, in many racial reform efforts there is an expectation that the champions will be people of color, on the grounds they have the most direct interest in the effort succeeding. But white people can and should be leaders in efforts to reduce racial and ethnic disparities as well. They may be equally effective or even more effective messengers for some audiences. They may also serve as models for white colleagues to move from passivity to activism.[60]

To be effective, champions must have respect, responsibility, and power, i.e., authority, or "juice."[61] Not surprisingly, in many juvenile justice reforms, the leaders have been judges, at least in the early stages.[62] Chief probation officers have also been leaders in many jurisdictions. Leadership authority may come from other sources. It may come from high position in the system (e.g., judges, chief probation officers, police chiefs), or from constituents (elected officials), or from the moral authority of peoples' efforts (civil rights leaders).

Leadership development is particularly important because, at some point, leaders move on. Judges get moved out of juvenile court, elected officials do not get re-elected, and others, after many productive years, retire. A juvenile justice reform effort should plan for such foreseeable transitions by identifying emerging leaders, engaging them in juvenile justice reform early in the initiative, and nurturing their careers. The Annie E. Casey Foundation's Applied Leadership Network[63] and the National Juvenile Justice Network's Youth Justice Leadership Institute[64] are good examples of programs that identify and support emerging leaders in juvenile justice reform.

Champions with authority build collaboratives with authority. The collaborative must have authority if it is to plan and implement changes effectively.[65]

B. Building a Diverse Stakeholder Collaborative

1. Key Partners

The collaborative should include those who hold high positions in the juvenile justice system: the chief judge of the juvenile court, chief juvenile probation officer, senior prosecutor in juvenile court, senior public defender in juvenile court, and police captain or lieutenant in charge of juvenile cases.[66] It should also include nontraditional stakeholders (i.e., individuals with an interest in racial equity from a perspective of their own lived experience and their role in the community). These should be identified from community-level leadership, such as directors of community organizations and civil rights groups, child advocates, and parent advocates. The collaborative should also include parents and young people who have had direct

experience with the juvenile justice system.[67] The diversity of interests and viewpoints may make the meetings contentious at the outset, but will provide strength and integrity to the process in the long run. Members of the collaborative who don't work in the juvenile justice system will need information and coaching (including a glossary of all technical terms and abbreviated names of agencies) in order to provide meaningful input.

2. Approaching the Topic of Race in the Collaborative

The above sections on "Why Reform Efforts Fail" and "How to Talk about Race" provide examples of pitfalls to avoid and positive steps to take in approaching the topic of race in the collaborative. Data can be particularly helpful in framing the issue for members of the collaborative because they provide an objective and understandable way of articulating the problems and describing them to others. The statement, "Data show that African-American students at Garfield High School are three times as likely as white students to be suspended for talking back to a teacher," accompanied by a bar graph showing the differences in suspensions, is likely to be more effective in promoting change than the statement, "African-American youth in this county are subject to discrimination in the schools." Such data-based statements also point directly to actions to be taken (e.g., further data research, or review of school policies, or discussions with school administrators), and provide convenient and understandable measures of improvement (such as reduced suspension rates).

3. Managing Defensiveness

Steps can be taken to reduce potential defensiveness among members of the governing collaborative. First, the group should explicitly adopt a rule of no finger-pointing. If stakeholders such as police or prosecutors feel that data will be used to second-guess decisions they made in the past, they are not likely to engage in the reform effort. Instead, the focus should be on policies and practices to be implemented in the future that will reduce bias in the system. An environment of respect for each person in the collaborative will support this process.

Second, the emphasis should be on common goals among the stakeholders. By the nature of the juvenile justice system, different stakeholders represent varying interests in an adversarial setting. However, all stakeholders want the system to be fair, the community to be safe, and for all youth to have equal opportunities to become productive members of society.

4. Opportunities to Connect to Other Officials

An effective way to help key stakeholders buy in to the reform agenda is to introduce them to peers who have already gone through a similar effort. Judges are most aware of, and most concerned with, the challenges that judges face in implementing reforms. The same can be said of probation officers, law enforcement officials, prosecutors, and defense attorneys. Each group can benefit from talking to those in similar positions who have experienced frustrations and successes in reducing racial and ethnic disparities. Indeed, many *prefer* to talk with their peers, who best know the problems they face.

One effective way to connect stakeholders is by visits to jurisdictions that have achieved reforms. In JDAI, there are "model sites" that have embedded detention reforms in their policies and infrastructure. In these sites, changes in individual leaders, such as rotation of judges, does not set the reforms back. JDAI has long promoted visits by delegations from new sites to the "model sites" as an effective use of high-level officials' time to achieve buy-in to the reforms and understanding of the issues and solutions. Site visits are especially useful to facilitate peer-to-peer connections, especially for judges. In some model site visits, for example, it is common for the judges of the host site and of the visiting site to eat lunch together. Models for Change also utilized visits to sites that had successfully implemented specific strategies. Thus, several Models for Change site delegations in the DMC Action Network visited the excellent Evening Reporting Centers in Berks County, Pennsylvania, and Baltimore, Maryland.

There are other ways to arrange such connections. Models for Change and JDAI maintain extensive websites with information and links to publications on their successful work in states and counties, including public officials and agency administrators who were instrumental to their success. The W. Haywood Burns Institute and the Center for Children's Law and Policy have similar information on their websites. In addition, the MacArthur Foundation partners with several organizations for specific stakeholders that have launched their own initiatives to reduce disparities, including the National League of Cities, National Center for State Courts, National Association of Counties, and National Conference of State Legislatures.[68]

C. Coordinating a Racial and Ethnic Disparity Reduction Initiative

1. Identifying and Training a Site Coordinator

In many jurisdictions, the site coordinator staffs the governing collaborative, notifies members of meetings, sends out agendas and other documents, collects data for review at the meetings, and ensures that committee members and others carry out tasks between meetings. The best site coordinators do much more. They negotiate the complex relationships among the stakeholders, facilitate action-oriented discussions about reform issues, and provide leadership toward solving problems as they occur. The position is critical: a strong site coordinator can help drive the entire reform, while a weak coordinator can doom the effort. Site coordinators manage the integrity of the reform. Site coordinators need to have ready access to key stakeholders in the system, and sufficient time (e.g., .5 FTE at the outset) to accomplish their many tasks. Good site coordinators are able to commit the time to tasks and dialogues that a lead judge or probation chief does not have sufficient time to do themselves.

In juvenile justice reform efforts, people in a wide variety of positions serve as site coordinators: chief and deputy chief juvenile probation officers, probation supervisors, state and county juvenile justice agency staff, and people new to the system who are hired for the job. Thus, across the country, some site coordinators have lengthy experience in the field and some have none at all. Therefore, it is important for the leaders of the racial reform effort to ensure that the site coordinator is aware of all of his or her responsibilities and receives appropriate training to carry out those responsibilities. In JDAI, for example, site coordinators take part in the initial site training on the basics of JDAI and detention reform, and accompany site teams when they visit "model sites."

2. Organizing and Scheduling Effective Meetings

The collaborative should meet frequently enough to provide continuing oversight for reform efforts, usually every month or every other month. If the collaborative meets less frequently than that, then members often forget about the issues between meetings and only "gear up" the day before the next meeting. Since a key to success is ongoing and informed oversight, collaborative members should be involved between meetings, when, for example, the work of key subcommittees gets done.

For family members and community representatives to be effective members of the governing collaborative, they may need coaching. They may not be familiar with all of the processes in the system, or with the myriad agencies, programs, and acronyms

that are a common part of discussions among juvenile justice professionals. Accordingly, the site coordinator or another person should be responsible for ensuring that family and community members are fully prepared for the discussions that will take place in collaborative meetings. Additionally, officials should be careful to schedule meetings at a time that allows those family members and community members who have full-time jobs to attend. This may mean having meetings in the late afternoon or in the evening.

3. Developing an Effective Work Plan

The work plan is a statement of the priorities for reform in the site and a road map to how the site will address those priorities over the coming year. The work plan provides accountability as the effort moves forward. The work plan also enables the collaborative to keep its focus on the goals of the initiative when side issues offer distractions.

The work plan should identify key goals and, for each goal, the challenges or barriers to reaching the goal, the next steps or tasks to be carried out to overcome the challenges, the person responsible for each task, a completion date for each task, and objective measures to show when the task is done.

There are several things to keep in mind in developing work plans. The work plan will be more effective if it is data-based, i.e., if the goals are based on analysis of site data about racial and ethnic disparities in the system and if there are measurable indicators when tasks have been completed and goals have been reached. Tasks should be assigned to individuals whenever possible, not simply to "the committee" so that committee members can hold people accountable for their promised actions. Also, the timeframe for completing each task should involve an actual date. "Ongoing" is not a timeframe. If "ongoing" is listed as the completion date, it becomes very difficult to hold anyone accountable, and the tendency by everyone is to lose focus on the task because "someone" will take care of it in the future. If an activity will occur regularly during the period of the work plan, such as meetings of the Data Subcommittee, the work plan should reflect goals of the activity (e.g., development of a monthly data report for the governing collaborative) and a completion date. In general, work plans should include an ambitious but realistic number of goals, usually three or four. An encyclopedic work plan with fifteen goals, which no one will have time to achieve, will leave stakeholders overwhelmed and frustrated.

4. Subcommittees and Using "Out of Meeting" Time Effectively

Collaborative meetings should be used for reviewing data and actions taken since the last meeting, discussing priority issues, and making decisions that require the full collaborative. The work necessary to support the collaborative takes place between the meetings. Most jurisdictions have subcommittees to do this work. There are usually subcommittees on issues such as data, diversion, the detention screening instrument, alternatives to detention or incarceration, and graduated responses to violations of probation or other court orders.

5. Visiting Other Jurisdictions that have Effectively Reduced Racial and Ethnic Disparities

Just as individual stakeholders may benefit from connecting to their counterparts in other jurisdictions, members of a governing collaborative may find it useful to visit other jurisdictions that have achieved success in racial reforms. In the MacArthur Foundation's Models for Change initiative, several teams from sites visited other sites, often with a particular goal. For example, a team from Berks County visited Baltimore to see the city's exemplary PACT (Pre-Adjudication Coordination and Training) evening reporting center (ERC). Berks County then developed its own evening reporting center, which became a central component in its effort to reduce unnecessary detention of youth of color. The Berks ERC was so successful that the county reduced the detention population to single digits and eventually closed its juvenile detention center completely. The Pennsylvania legislature was so impressed with the results that it provided state money for other counties to develop their own evening reporting centers.[69]

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[12] Juvenile Justice and Delinquency Prevention Act, 42 USC §5601 et seq (1992).

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Chapter 2: Using Data Strategically to Reduce Racial and Ethnic Disparities

Center for Children's Law and Policy

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Using Data Strategically to Reduce Racial and Ethnic Disparities

Strategic collection and analysis of data is a necessary component of any successful effort to reduce racial and ethnic disparities. "Strategic" means that the data collection and analysis have a clear and useful purpose. All data collections and analyses are not created equal, and a boatload of data is no guarantee of effective reforms. The data *collection* should focus on significant characteristics of young people in the system (race, ethnicity, gender, home location), why they go into the system (new offense, violation of probation, warrant for failure to appear in court), how deeply they go into the system (arrest, referral to court, detention, adjudication), and what happens to them afterwards (diversion, release, probation, commitment). The data *analysis* should aim to reveal patterns in the process as they relate to the demographics. Are African-American boys more likely to be arrested for drug possession than white boys? Are Latino girls more likely to be referred to juvenile court for school disturbances than white girls? Are black youth less likely than white youth to be offered diversion for low-level offenses? Do youth of color spend more time incarcerated than white youth when charged with the same offenses?

This issue is important for two reasons. First, when they begin reform efforts, many jurisdictions do not have the capacity to collect and analyze data on key indicators. They need to address the issue up front, either by revising the way they mine the data they currently collect or by increasing their overall capacity to collect and analyze data. Without adequate data capacity, a reform effort is doomed at the outset. Second, many jurisdictions collect a great deal of data and believe *that* is the goal. In truth, data collection and analysis are the means to an end. The end is actual reduction of racial and ethnic disparities: the data piece is one of several critical components of the effort to achieve that goal.

When properly collected, disaggregated, and analyzed, data enable the governing collaborative to talk about what *actually* happens in the juvenile justice system rather than what people inside or outside the system *think* is going on. Everyone has their own subjective impression of how the system works – data anchor the discussion in the real world.

Data also make it possible to determine whether reform efforts are working, and if not, where improvement is needed. Thus, regular monitoring of data is a way of ensuring accountability for the reform effort and key parts of the juvenile justice

system. In addition, data provide an objective and understandable way of articulating the racial and ethnic disparity problems and the impact of reforms.

I.   Initial Data Collection

A. Mapping Decision Points

For data collection purposes, it is useful to view the juvenile justice system as a series of decision points. At each decision point, there is a key person or key people – law enforcement officers, probation officers, detention intake staff, prosecutors, judges – who determine what happens to a youth at that point in the system. The decision points have two important characteristics. First, at each point the key decision makers have considerable discretion. Second, at every key decision point, there are pathways for the youth to exit or move to the "shallow end" of the system. The graphic below shows the key decision points and those pathways to exit or to move to the shallow end of the system.

The Juvenile Justice Process:
Key Decision Points and Pathways Out

5

To understand how a juvenile justice system works in a jurisdiction, it is necessary to collect data about what happens at the decision points: the characteristics of youth who arrive at the decision point, the reasons they get there, what happens to them there, and where they go next. To put it another way, the data illustrate how decision makers at each point use their discretion. Racial and ethnic disparities occur, in part, because decision makers have sufficient discretion that racial stereotypes and subjective perceptions are able to affect their decisions. Thus, the data make it possible to understand how bias may impact youth in the system.

B. Gathering Decision Point Data

The most basic data needed at each decision point for each youth is on race, ethnicity, gender, geography, and offense. "Geography" may be location of the offense or residence of the youth. "Offense" is the delinquency offense with which the youth is charged, or another reason the youth is at the decision point (e.g., for violation of probation or for a warrant for failure to appear in court). The W. Haywood Burns Institute refers to this data set as REGGO.

Geographic data on location of offense make it possible to see if many youth are arrested at a particular spot such as a high school or housing project. In communities of color, that is often the case. If so, then the reform effort can dig deeper into the data

Basic Data Needed at Each Decision Point: REGGO

Race

Ethnicity

Gender

Geography

Offense

to learn why so many youth are arrested there, and determine if there are strategies to reduce the arrests. For example, in Sedgwick County, Kansas, a Models for Change DMC Action Network site, juvenile arrest data demonstrated that shoplifting was the most common arrest offense for African-American youth in the county, and 58% of youth arrested were girls. Geographic data showed that most arrests occurred at two

shopping malls. With this information, county officials developed a multi-prong strategy to reduce the thefts, including an anti-shoplifting campaign in the mall, enhanced diversion options for shoplifting, and a "girl empowerment" program with research-supported shoplifting interventions. As a result, shoplifting thefts by young people were reduced by 27% in one year (including 26% for African-American youth and 18% for Latino youth).

Geographic data on residence of youth enable probation departments and others to locate community-based alternative-to-incarceration programs so that they are in neighborhoods where most youth in the system live. This is important for the programs to operate effectively. Young people need to be able to get to community supervision programs. Programs located across town carry built-in challenges for attendance. Programs in the neighborhood may be more likely to succeed.

The data on offense or other reason for involvement provide information on how many youth are in the system for new offenses and how many for violation of probation or other court orders. For new offenses, the data indicate the type of offense (crimes against persons, property crimes, drug offenses, or public order offenses) and seriousness of the offense (misdemeanor or felony).

The next level of data that is useful includes age and referring agency (i.e., law enforcement, schools, or probation). The data on age may be helpful in understanding why youth enter the juvenile justice system and in planning alternative to incarceration programs that are developmentally appropriate. This may be particularly important in looking at school-based arrests and referrals to the juvenile court. Research has demonstrated racial disparities in school discipline and referrals to court in a number of jurisdictions. In some communities, pre-teens (i.e., youth in middle school) are referred to the juvenile court. Age data is equally important for planning community-based alternatives. A program designed for 13-year-olds may not be very effective for 17-year-olds.

The data on referring agency, particularly at arrest, are helpful to see how youth are coming into contact with the system. Referrals for new offenses are usually made by the police. Referrals for violations of probation or other court orders are usually made by probation officers. If crossover youth – who are in both the child welfare and juvenile justice systems – act out or run away from court-ordered group homes, they may be referred to court by their social workers. Data on referral by agency provide an opportunity to focus on potential disparities in an agency's policies or practices, and on the need for specialized programs in the agency.

At particular decision points, there also may be specific information to gather. For example, in the Juvenile Detention Alternatives Initiative (JDAI), which focuses on the detention decision point, participating sites collect data on three key indicators of

detention use: admissions, average daily population (ADP), and average length of stay (ALOS). These are useful because the population of a juvenile detention facility is a function of (a) the number of youth admitted to the facility and (b) how long they stay at the facility. Reducing either the number of youth admitted *or* the average length of stay will reduce average daily population. Reducing both provides double benefits in terms of the number of youth detained. As a strategy to reduce racial and ethnic disparities, reduction of ADP is notably effective in jurisdictions in which the majority of youth in detention are youth of color.

The data described above should be collected and reported to the governing collaborative on a regular basis – ideally on a monthly basis, but at least bi-monthly or quarterly. JDAI also does a one-time data collection, called the Detention Utilization Study or DUS, at the very beginning of work in a new site. The DUS includes three types of data: (1) trend data such as population and juvenile arrest trends over the past five years, (2) snapshot data on the detention population on one day in the county juvenile detention facility, and (3) detailed data on a sample of 250 youth held in detention recently. The detailed data on the 250 youth include demographic information (including age), arrest date, date detained, primary reason for detention, most serious offense for which the youth was detained, type of most serious current offense (violent, weapon, drug, property; misdemeanor, felony, or violation of probation), number of current charges, prior offenses, previous detentions, supervision status, other factors related to detention (e.g., parent/caregiver availability), date of release from detention, and person or program to whom the youth was released.[1] The resulting report provides a wealth of information on detention usage in the county and is very helpful in setting priorities for reform in the site. The DUS is discussed in more detail in Chapter 4 of this Practice Manual, and there are several examples of Detention Utilization Studies on the JDAI Helpdesk.[2]

> ## Public Sources of Data on the Youth Population
>
> - Federal Census
> - Annie E. Casey Foundation's KIDS COUNT
> - Public School Enrollment

In addition to gathering the data outlined above for each major decision point in the juvenile justice system, officials should also obtain the most current overall youth demographic data for the jurisdiction. Most jurisdictions gather data for youth age 10 through 17 as the age range of youth who are most likely to come into contact with the juvenile justice system. Federal Census data,[3] the Annie E. Casey Foundation's

KIDS COUNT,[4] and public school enrollment data may be helpful in compiling this information.

C. Accessing Quantitative Data

A good data system has important benefits for reducing racial and ethnic disparities. It enables analyses of where disparities occur in the system. It helps to monitor the impact (or lack of impact) of strategies designed to reduce those disparities. It can reveal new, emerging trends (e.g., in law enforcement or school policies) that may disparately impact youth of color. And it provides information to continually engage stakeholders in the effort by looking at what is actually going on in the system, rather than relying on anecdotes.

Nevertheless, accessing the data is often time-consuming and frustrating. Few data systems contain all of the information needed. Arrest information is usually only available from law enforcement agencies, which means separate police departments and sheriffs' agencies. Petition information (i.e., which cases prosecutors decide to prosecute and which they decline) is often available only from prosecutors' offices. Detention data may be kept by the juvenile court, or by the probation department, or by the juvenile detention facility. Juvenile court records may be kept by the court or the probation department. Often these data systems are not connected, and in some cases they are incompatible. Many jurisdictions do not collect any data on the use of alternatives to detention or alternatives to incarceration, or the effectiveness of existing programs. In addition, although data reports used in racial justice reforms present only aggregate (i.e., non-identifiable) information, there are often difficulties accessing the individual records that make up the aggregates because juvenile court information is confidential under state laws, and school and child welfare records are confidential under state and federal laws.[5]

Nevertheless, many jurisdictions are able to access the necessary data. This may require coordination by information technology (IT) specialists in several agencies, and modification of data collection programs in the agencies. Pennsylvania, for example, which has participated in both Models for Change and JDAI, has recently modified its statewide data system, the Juvenile Court Management System (JCMS), to include all of the data described above.[6] There are also national databases. The National Center for Juvenile Justice is a repository for juvenile court data from states throughout the country.[7] The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has extensive juvenile justice data on every state.[8] The Burns Institute has data on racial and ethnic disparities in every state.[9]

To collect the data to be used for reform, it is often necessary to work with each agency in or connected to the system: police, sheriffs, prosecutors, juvenile court,

probation department, schools, child welfare, and mental health. For this complex work, many jurisdictions turn to local universities as partners.[10] In addition, local and state juvenile justice advocacy organizations often collect portions of this data to support their efforts.[11] As part of Models for Change, the Juvenile Law Center and the Robert F. Kennedy National Resource Center for Juvenile Justice have developed an interactive Information Sharing Toolkit designed to help jurisdictions coordinate their data collection and reporting efforts.[12] The Center for Juvenile Justice Reform at Georgetown University also offers an Information Sharing Certificate Program that allows officials to travel to Washington, DC to learn about effective data sharing strategies, collaborate on action plans, and receive technical assistance to overcome barriers.[13]

If all of the desired data is not readily available, or is not available electronically, the effort to collect data is still worthwhile. As long as a jurisdiction can regularly collect basic data (race, ethnicity, gender, geography, offense) at key decision points, it can identify problem areas and monitor reform efforts.

D. Data Collection Templates and Software

Several organizations have developed templates for collecting and reporting data on racial and ethnic disparities. As part of Models for Change, the Center for Children's Law and Policy and the Burns Institute developed a data collection template for the initiative's DMC Action Network, which you can download by following this link. JDAI has templates for both quarterly reports and annual reports on utilization of detention and alternatives to detention.[14] A sample quarterly report is available for download by clicking this link. You can also download an expanded JDAI report from Baltimore City by clicking here.

JDAI has also developed software for JDAI sites to use in collecting data on detention and alternatives. The Quarterly Reporting Spreadsheet, or QRS, collects and analyzes basic data and JDAI's key indicators, and displays the data in easy-to-read bar graphs. There is a library of training videos on the QRS available through the JDAI Helpdesk.[15]

E. Collecting Data on Ethnicity Separate from Race

Race and ethnicity are different. The word "race" is used in many ways in the juvenile justice system and other areas of society, often with political or sociological overtones. A discussion of the complexities of defining race is beyond the scope of this Practice Manual.[16] As a practical matter, the federal government has identified

five races for the purposes of collecting information for the decennial census and reporting information to government agencies. Those are (1) American Indian or Alaska Native, (2) Asian, (3) Black or African American, (4) Native Hawaiian or Other Pacific Islander, and (5) White.[17]

"Ethnicity" is often used as a synonym for "culture," i.e., shared values, attitudes, beliefs, customs, history, traditions, norms, and language among a group of people. In the juvenile justice system, the most common ethnicity is Latino or Hispanic. The federal government has identified Hispanic or Latino ethnicity as meaning a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.[18]

Many state and local law enforcement and juvenile justice agencies do not collect accurate information on Latino youth because they either don't ask the youth any questions about ethnicity, they rely on a law enforcement officer's or probation staff's visual assessment of a youth's ethnicity, or they count "Latino" as a race. These methods result in an undercount of Latino youth in the system and a corresponding over-count of white youth.[19] The undercount may be very significant.[20]

To remedy this problem, the White House Office of Management and Budget (OMB) issued guidelines to federal agencies to collect information on ethnicity and race separately through two questions.[21] The Census Bureau follows those guidelines. Thus, the preferred method for collecting ethnicity and race information is to ask an initial question, "Are you Hispanic or Latino?" The second question is, "What is your race?" Pennsylvania has adopted this procedure in collecting juvenile justice data and has issued guidelines to agency staff and others.[22]

Question 1: Are you Hispanic or Latino?	• Yes • No
Question 2: What race do you most closely identify with?	• Asian • White • Black • Other • Multiracial • American Indian or Alaska Native • Native Hawaiian or Other Pacific Islander

F. Capturing Information on Multiracial Youth

The youth population in the United States is becoming increasingly multiracial. However, capturing information on multiracial youth is difficult. One obvious method is to have an option in records, in addition to the five races identified by the federal government, for youth to identify as "multiracial." The benefit of this option is that it reports the number of youth who belong to more than one race. The disadvantage is that it doesn't allow for accurate reporting of the number of youth who identify with each race. If a youth has a white mother and a black father, should the youth be counted twice, once for white and once for black? Or should the youth be counted once for "multiracial," and not for either white or black? Either way is problematic.

OJJDP recommends that juvenile justice systems follow the data collection guidelines set forth for all federal agencies by OMB. The guidelines direct agencies to ask separate questions about ethnicity and race, with a third optional question for youth to report any other country of origin, ancestry, or tribe with which they identify. OJJDP recommends self-identification as the primary method for answering the questions. OJJDP also recommends that jurisdictions collect data on the English language proficiency of youth and their families as well as data on other family characteristics such as national origin and household composition, to help systems better provide culturally and linguistically competent interventions.[23] Some sample questions appear on the following page.

Sample Questions on Language Proficiency of Youth and Family Members

I feel most comfortable speaking . . . .

[ ] English, [ ] Spanish, [ ] Other _____

I prefer speaking . . . with my friends.

[ ] English, [ ] Spanish, [ ] Other _____

I prefer speaking . . . with my parents/caregiver.

[ ] English, [ ] Spanish, [ ] Other _____

My parents / caregiver feel most comfortable speaking . . .

[ ] English, [ ] Spanish, [ ] Other _____

My parents / caregiver prefer speaking . . . with me.

[ ] English, [ ] Spanish, [ ] Other _____

I need a translator to help me understand what is happening in my case.

[ ] Yes, [ ] No

My parents / caregiver need a translator to help them understand what is happening with my case.

[ ] Yes, [ ] No

G. Gathering Qualitative Data

Quantitative data is not the only useful information for understanding how a juvenile justice system works and how it affects youth of color. Qualitative information gathered through interviews, focus groups, examinations of policies and procedures, and reviews of narrative reports, is also data. Qualitative data presents the stories behind the numbers. It provides background, analysis, perspective, nuance, and opinion. Qualitative data shows the effects of racial and ethnic disparities in human terms. For many stakeholders, individual stories are more powerful motivators for reform than even the best quantitative analysis.

Gathering Qualitative Data

- Interview stakeholders
- Conduct focus groups
- Use surveys

Quantitative data and qualitative data are most useful when used together. Quantitative data provide a "hard" look at operation of the system – "just the facts" – while qualitative data provide context that can explain the facts.

There are several effective ways to gather qualitative data. One is to interview key stakeholders in the system: judges, probation staff, prosecutors, juvenile defenders, law enforcement officers, school administrators, child welfare officials, youth who have been in the system, parents, and community representatives. Each has valuable information derived from their role in the system. Many reform efforts use checklists of questions for interviews. For example, JDAI's "System Assessment" of new sites uses checklists of questions for each of JDAI's core strategies.

Equally valuable is comparing how different stakeholders answer the same questions. Do school officials use school-based programs before referring youth to the police for misbehavior? School officials and law enforcement officers often differ in their opinions. Are white youth more likely to be offered diversion programs? Prosecutors and public defenders may disagree. Are alternatives to secure detention equally available for all youth charged with low- and medium-risk offenses? Judges, probation officers, and parents may have different responses.

Another way to gather qualitative data is through focus groups. Focus groups are often more effective – i.e., participants are more likely to give honest answers -- when they consist of people in similar roles, such as groups of school resource officers or probation officers or parents. In the Models for Change effort to reduce racial and ethnic disparities in Berks County (Reading), Pennsylvania, focus groups of Latino

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parents were conducted by a CCLP staff member in Spanish. Surveys are another way to collect information about observations and perceptions of the juvenile justice system.

Another source of data, in many communities, is reports by state or local agencies or advocacy groups about racial or ethnic disparities in the jurisdiction. These reports may give the reform effort a running start by providing a preliminary analysis of where and why disparities occur. They often generate interest in the issue in ways, and with language, that are different from that used by traditional stakeholders. They may also point to specific problems in policies and practices that are appropriate for further, more systemic investigation.

H. Identifying and Filling Gaps in Availability of Information

1. Data Improvements

Where important quantitative data is not available, it may be necessary to modify computer programs to include the missing information. Often this can be done by adding one or more fields to the programs. Planning and consultation with IT specialists is necessary to ensure that the modifications provide all of the new data needed without making unnecessary changes in the programs. Modifying computer programs can be expensive. Where data is collected in Excel-type programs, modifications may not be difficult. However, many jurisdictions use proprietary software developed by private companies, and each change a jurisdiction wants to make in the software will increase the costs.

2. File Reviews

File reviews may be used for one-time data collections such as the JDAI Detention Utilization Studies, or for digging deeper into data such as analyzing racial differences in the filing of probation violations. File reviews involve the development of a specific list of questions to be answered or data to be collected, selection of a sufficient number of files to provide a valid finding (usually in consultation with a researcher), and training of the individuals collecting the data to ensure inter-rater reliability. Files reviews can be very advantageous because they can provide data on critical questions about racial and ethnic disparities, and they don't have to be conducted by professional researchers as long as those collecting the data are trained to interpret and answer the research questions consistently.

II. Data Quality

A. Assessing the Accuracy of Data

Several problems commonly arise regarding accuracy of data. First, in many jurisdictions it is difficult to obtain accurate data on ethnicity, i.e., whether a youth is Latino or Hispanic. The federal government, through the Federal Bureau of Investigation (FBI), does not require states to report ethnicity data on arrests in its Uniform Crime Reports (UCR) or its National Incident-Based Reporting System (NIBRS).[24] Because the federal government does not require the information to be reported, many states do not collect ethnicity information on arrests or require local jurisdictions to collect such data. After arrest, juvenile courts and probation departments vary widely in their data-collection practices. Some do not ask the youth about ethnicity, or rely on probation staff's visual assessment of a youth's ethnicity, or count "Latino" as a race. These methods result in an undercount of Latino youth in the system. Research has shown that the undercount may be very significant.[25]

Second, and more generally, aggregate data are often inaccurate because agency staff do not consistently provide answers to questions on questionnaires. If the box on "race" (or "offense" or "source of referral") is not filled in for a substantial number of youth, the aggregate data will not reflect accurate information for the population as a whole.

A third source of inaccuracy is inadequate training of agency staff who collect the data. If staff members do not understand that *every* question must be answered, or if staff are unclear on how questions should be interpreted, the resulting data will be inconsistent and compromised.

B. Reliability and Validity

These terms usually apply to screening and assessment tools such as detention screening instruments (also known as Risk Assessment Instruments or RAIs) and comprehensive youth risk and needs assessments such as the Youth Level of Services/Case Management Inventory (YLS/CMI) and the Structured Assessment of Violence Risk in Youth (SAVRY).[26] For the tools to be useful in supplying data on youth in the system, they should be free from bias and distortion. Reliability and validity are core components of scientific method, designed to reduce inaccuracy.

"Reliability" means that the instrument provides consistent results. A detention RAI is intended to measure the risk that a youth who is arrested will appear in court at hearings and will not re-offend before his or her disposition hearing. The instrument measures the risk by assessing points for various factors such as current offense, prior adjudications, and history of failures to appear in court. Then, based on the resulting score, the instrument categorizes the risk as high, medium, or low. The level of the risk score determines the level of supervision the youth receives, i.e., whether the youth will be detained (high risk), released to a community-based program or under supervision (medium risk), or released to parent or guardian (low risk). Reliability means that if detention intake staff administer a RAI to a particular youth who is arrested, the instrument will produce the same score whether the county chief of juvenile probation or a recently hired probation officer administers the tool.

Key Concepts: Reliability and Validity

- *Reliability:* The instrument provides consistent results

- *Validity:* The instrument measures what it purports to measure.

"Validity" means that the instrument actually measures what it purports to measure. A detention RAI is valid if a low score actually means low risk, e.g., if youth with low scores who are released to parents show up at all of their detention hearings and do not re-offend while awaiting their court proceedings. To *validate* their detention screening instrument, jurisdictions compare the level of RAI scores for a sample of youth with how the youth actually behaved.[27]

An instrument can be reliable without being valid. For example, if a screening instrument scored every youth charged with a drug offense as "high risk" (and therefore needing to be detained until adjudication), it would be reliable (i.e., consistent) but not valid, since youth charged with possession of marijuana, for example, do not pose a significant threat to the community.

III. Analyzing and Using Data to Identify and Support Reform Strategies

A. Using Different Types of Analyses – Trends, Snapshots, Baselines, and Headlines

Several types of analyses are helpful in efforts to reduce racial and ethnic disparities. *Trend data* provide a picture of the jurisdiction over a period of time. The most common trend data analyses are increases or decreases in youth population in the jurisdiction, youth of color population, youth arrests, and youth admissions to detention. In the JDAI Detention Utilization Study, for example, trends are reported and analyzed over a five-year period.[28] Trend data may be used to identify particular issues for further study. For example, the data may show a significant decrease in overall detention admissions over a five-year period, but little decrease in detentions of youth of color. Stakeholders will want to learn the reasons for that.

> ### Different Types of Analyses
>
> - *Trend Data*: A picture of the jurisdiction over time.
>
> - *Snapshots*: Report on data at a particular point in time.
>
> - *Baseline Data*: Initial data about a jurisdiction *before* initiating reforms.
>
> - *Headlines*: Selected data findings that are relevant to a reform effort or encapsulate the impact of a reform effort.

Snapshots are the opposite of trend data: they report on data at a particular point in time. Thus, a snapshot of the youth in detention on January 1, 2015, might include the number of youth in the facility on that day; the number of those youth who identify as Latino; the number of youth who consider themselves white, African-American, Asian, and Native American; the number of boys and girls; the number who live in each zip code in the county; and the number charged with crimes against persons, property crimes, drug offenses, public order offenses, status offenses, and violations of probation or other court orders. The JDAI Detention Utilization Study also calls for a one-day snapshot of the detention center population in the new JDAI site.[29] Snapshots provide a quick look at a particular decision point. Like trend data, they may suggest potential lines of inquiry. For example, if a jurisdiction has a Latino population of 10% and a snapshot shows that

35% of the youth detained on a particular day were Latino, then the snapshot data point to a topic for further investigation.

Baseline data provide initial data about a jurisdiction *before* reforms are introduced. Baselines make it possible to measure the amount of change that occurs. For example, if youth of color are three times as likely as white youth to be detained during the baseline year of 2014, and 1.5 times as likely as white youth to be detained after detention reforms are put in place in 2015, then there has been a reduction in racial disparities. Comparisons of baseline data with current data that demonstrate success at reducing disparities can bolster the efforts of champions of the reforms and sustain the commitment of the governing collaborative.

Juvenile justice stakeholders often are not interested in *every* possible analysis of collected data. *Headlines* are selected data findings that are especially relevant to the reform effort or that encapsulate the impact of reform efforts. Headlines are often the most effective means of summarizing the progress of reform for audiences that do not need to know the background and details. This is particularly important when working with non-traditional stakeholders in a reform initiative. They are less familiar with complex explanations of data findings, and headlines provide the most succinct statements about what is happening in a jurisdiction.

B. Establishing Regular Collection and Reporting of Data

The collaborative or committee that governs the racial justice reform effort should meet on a regular basis: either monthly, bi-monthly, or quarterly. At each meeting, review of data should be one of the first items on the agenda. Prior to the meeting, the site coordinator, IT specialist or on-site researcher should prepare an update on data at the decision points that are the focus of the reform effort. The update should include data on the youth moving through those decision points, disaggregated by REGGO. Ideally, the coordinator should share this information with collaborative members prior to the meeting so that people will have time to review the information and prepare any questions they may have.

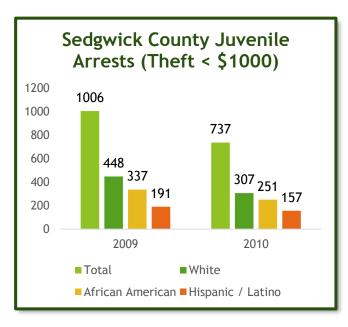## C. Digging Deeper into the Data

Often the data collected reveal the *existence* of racial or ethnic disparities, but do not reveal the *reasons* for the disparities. An example of data that reveal the existence of disparities is the Relative Rate Index (RRI) data that OJJDP requires states to report. The RRI compares the rate of white youth at a particular decision

point with the rate of another group, such as African-American youth, at the same decision point. This is usually represented as a fraction, with the rate of white youth as the denominator and the rate of the other group as the numerator. An RRI greater than 1.0 indicates over-representation. Thus, if the RRI for Native American youth at the arrest decision point is 3.6, then Native youth are arrested 3.6 times as often as white youth. That is over-representation at the arrest decision point. However, the RRI does not indicate *why* that over-representation occurs.

In order to get to the *reasons* for disparities, it is necessary to dig more deeply into the data, a process sometimes known as "peeling the onion" (i.e., layer by layer). For example, an analysis of data on detention in Peoria, Illinois, reported that a substantial number of African-American youth were detained for aggravated assault or battery.[30] Upon deeper analysis, the jurisdiction learned that a majority of the incidents were school fights and the detentions resulted from zero-tolerance school discipline policies. With this data, the reform collaborative worked with school authorities to develop ways to handle student conflicts in school rather than by referral to the police. Once new policies and new programs such as Peace Circles were implemented in the schools, school referrals to detention dropped by 35%, and referrals for African-American youth fell by 43%.[31]

As another example, an analysis in Sedgwick County (Wichita), Kansas, reported that the most common arrest offense for African-American youth in 2008 was theft of items valued at less than $1,000. Further analysis revealed that girls constituted about three-fifths of those arrested for the thefts, compared to girls constituting less than a quarter of arrests for all other offenses.

Digging deeper, the jurisdiction learned that 54% of the arrests in a sample took place at the two large malls in the county. Armed with this data, the reform collaborative developed a multi-pronged approach. They created a Community Anti-Shoplifting Campaign that emphasized theft deterrence and controlling peer influence, using local girls as "ambassadors" to other youth inside the malls. They also created enhanced diversion policies to target youth charged with shoplifting. Finally, they revised and enhanced an existing Girl Empowerment Program to incorporate research-supported shoplifting interventions.

Sedgwick County Juvenile Arrests (Theft < $1000)

Year	Total	White	African American	Hispanic / Latino
2009	1006	448	337	191
2010	737	307	251	157

As a result of these interventions, juvenile arrests for theft under $1,000 in the county during 2009-2010 declined almost 20% for African-American youth, and 26% for Hispanic-Latino youth.[32]

D. Presenting Data Effectively

There are several principles to keep in mind in presenting data to audiences such as governing collaboratives. First, as in modern architecture, *less is more*.[33] Most people cannot take in a lot of data at one time. If they perceive visual overload, they shut down. Therefore, in presenting data, it is important to select the most important pieces of information and highlight them.

A corollary principle is that *simple is better than complex*. Although it is possible to combine a great deal of information into one image or PowerPoint slide,[34] the result is more likely to be confusing than helpful.
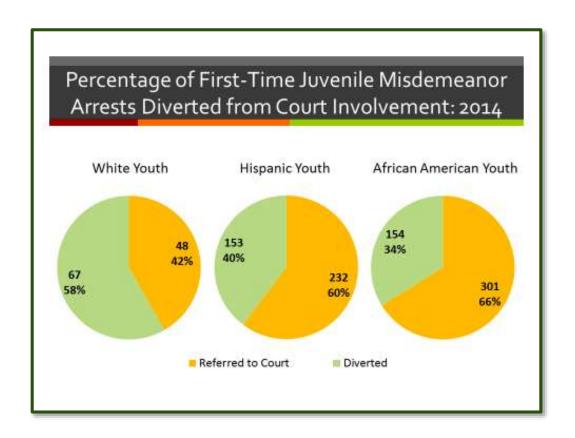
In addition, *visual is better than written*. Most people understand a data point much more easily if it is presented in graphic form. Also, most people respond more quickly to visual illustrations than to reading information in a narrative.

Bar graphs and pie charts are better than tables of numbers. Most people are intimidated by tables of numbers. Bar graphs, on the other hand, are particularly useful for making comparisons, e.g., the rate of arrest of African-American youth vs. the rate of arrest of white youth. Pie charts are most helpful for looking at entire data set (such as all youth held in detention in the site over the past year) and highlighting specific "slices" of the pie (white youth held in detention, Latino youth held in detention, African-American youth held in detention).

Tips for Presenting Data Effectively

- Less is more

- Simple is better than complex

- Visual is better than written

- Bar graphs and pie charts are better than tables of numbers

- Colors help to draw distinctions

Colors help to draw distinctions. Colors add vibrancy to a presentation. Contrasting colors on a bar graph, as in the figure below, help to distinguish data on different groups.

Percentage of First-Time Juvenile Misdemeanor Arrests Diverted from Court Involvement: 2014

Qualitative information is more difficult to present than quantitative information. However, the same principles apply. A PowerPoint slide with a full paragraph of text is analogous to a table of numbers. Bullet points, on the other hand, are analogous to bars on a bar graph. The goal should be to present the information in digestible pieces, focusing on the essential points and avoiding distractions.

Presenters should take care, before presenting data, to anticipate some of the barriers to discussing race that are identified in Chapter 1 of this Practice Manual. For example, if a data finding suggests disparate treatment by a particular agency or group, the presenter should be prepared to facilitate the discussion among members of the audience (e.g., the governing collaborative) so as to prevent finger-pointing and instead to emphasize useful strategies for reducing the disparate treatment.

E. Using Data to Develop a Work Plan

The work plan is a statement of the priorities for reform in the site and a road map to how the site will address those priorities over the coming six months or year. The

work plan provides accountability as the effort moves forward. The work plan also enables the collaborative to keep its focus on the goals of the initiative.

The work plan should identify key goals and, for each goal, the challenges or barriers to reaching the goal, the next steps or tasks to be carried out to overcome the challenges, the person responsible for each task, a completion date for each task, and objective measures to show when the task is done.

Data are particularly important for two components of the work plan: the goals and objectives, and the performance measures. The goals and objectives of the work plan should come out of the data collection and analysis of racial and ethnic disparities at key decision points in the juvenile justice system. For example, if the analysis shows that Latino youth are significantly overrepresented at the detention decision point, then the goals and objectives will be about learning why that overrepresentation occurs and how it can be reduced.

The performance measures provide feedback and accountability about progress in the reform initiative. If the goal is to reduce detention of Latino youth and the reduction from Year 1 to Year 2 is only 3%, then the reform effort has not made much progress. If the goal is to reduce referrals to law enforcement of youth of color from the county's schools and the reduction from Year 3 to Year 4 is 40%, then the reform effort has made substantial progress. In developing the work plan, it is important to identify data-based performance measures for each activity in the plan.

F. Identifying Low-Hanging Fruit

When the data collection and analysis of a site is completed, some areas of disparities are like low-hanging fruit: they are waiting to be picked. In most jurisdictions, disparities are likely to occur at arrest, detention, transfer, and commitment to secure facilities. At arrest, for example, disparities are often the result of zero-tolerance policies in schools. The "school-to-prison pipeline" has received enormous attention, and there are now a variety of strategies for reducing that pipeline, including mediation, Peace Circles, enhanced teacher training, Positive Behavioral Interventions and Supports (PBIS) programs, in-school suspension, and alternative sanctions such as required school activities on weekends.[35] Many jurisdictions have found that coordinated attention to this problem can quickly lead to significant reductions in racial and ethnic disparities in school discipline. Other likely "low-hanging fruit" in racial justice reforms are a shortage of diversion programs for youth charged with low-level offenses, a need for additional community-based alternative to detention programs, and the absence of graduated sanctions and incentives for

youth who violate probation or other court orders. In all of these areas, it may be possible to achieve substantial reductions in disparities in reasonably short time periods.

Jurisdictions should reap these reductions as soon as possible and celebrate their successes. They represent quick victories in an area where progress is often hard to find. Significant and measurable changes in policies and practices are a triple benefit: they bolster the governing collaborative to continue its work, confirm the effectiveness of data-driven solutions, and promote expansion of racial and ethnic justice reforms.

[1] National Council on Crime and Delinquency, *Planning for juvenile detention reform: Data collection handbook*. (2003). Baltimore, MD: The Annie E. Casey Foundation.

[2] JDAI helpdesk. (n.d.) *Best practices: Detention utilization study (DUS)*.

[3] United States Census Bureau. (n.d.) *Data tools and apps*.

[4] KIDS COUNT. (n.d.) *KIDS COUNT data center: A project of the Annie E. Casey Foundation*.

[5] U.S. Department of Education. (n.d.). *Federal educational rights and privacy act (FERPA)*.

[6] Juvenile Court Judges' Commission (n.d.).PaJCMS/PaJCRS.

[7] *National Center for Juvenile Justice.* (n.d.).

[8] Office of Juvenile Justice and Delinquency Prevention. (n.d.) *Statistical Briefing Book*.

[9] The W. Haywood Burns Institute for Juvenile Justice Fairness & Equity. (n.d.). *Unbalanced juvenile justice*.

[10] For example, the JDAI site in Shelby County, TN, had their detention risk assessment instrument validated by a team from the University of Memphis. The Philadelphia Probation Department works with a research professor from Drexel University on data collection and analysis for detention reform.

[11] See, e.g., *Juvenile justice initiative*. (n.d.); and National Juvenile Justice Network. (n.d.). *Fiscal policy center*.

[12] Juvenile Law Center & Robert F. Kennedy National Resource Center for Juvenile Justice. (n.d.) *Information sharing tool kit: Improving outcomes for youth in the juvenile justice system through responsible information sharing*.

[13] Center for Juvenile Justice Reform (n.d.) *Information sharing certificate program*.

[14] JDAI helpdesk. (n.d.) *Best practices: Quarterly reports*..

[15] The QRS training videos are also available through the JDAI Helpdesk, www.jdaihelpdesk.org.

[16] For example, the questionnaire used in the 2000 census listed 15 choices for race, even though Federal standards for promulgated by the White House Office of Management and Budget in 1997 listed only five race categories. Torbet, P., Hurst, Jr., H., & Soler, M. (2006). *Guidelines for collecting and recording the race and ethnicity of juveniles in conjunction with juvenile delinquency disposition reporting to the Juvenile Court Judge's Commission*. Pittsburgh, PA: National Center for Juvenile Justice, 3 [hereinafter, *Guidelines*].

[17] 62 Federal Register No. 210 (1997).

[18] 62 Federal Register No. 210 (1997).

[19] Villarruel, F.A., and Walker, N.E. (n.d). *Dondeesta la justicia? A call to action on behalf of Latino and Latina youth in the U.S. justice system*. Washington, DC: Building Blocks for Youth, 47.

[20] Holman, B. (2001). *Masking the divide: How officially reported prison statistics distort the racial and ethnic realities of prison growth*. Alexandria, VA: National Center on Institutions and Alternatives [hereinafter, *Masking the divide*].

[21] Office of Management and Budget. (1997). *Revisions to the standards for the classification of federal data on race and ethnicity*.

[22] Guidelines.

[23]Ramiu, M.F., and Shoenberg, D. (2009). Strategies for serving Hispanic youth. In *DMC technical assistance manual* (4th ed.). Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
[24]Federal Bureau of Investigation. (n.d.) *Uniform crime reports*.
[25]*Masking the divide*.
[26]Vincent, G.M., Guy, L.S., and Grisso, T. (2012). *Risk assessment in juvenile justice: A guidebook for implementation*. Chicago: John D. and Catherine T. MacArthur Foundation, Models for Change.
[27]See, e.g., Dedel, K., and Davies, G. (2007). *Validating Multnomah County's juvenile detention risk assessment instrument*. Portland, OR: Multnomah County Department of Community Justice. See, generally, Steinhart, D. (2006). *Juvenile detention risk assessment: A practice guide to juvenile detention reform*. Baltimore, MD: The Annie E. Casey Foundation.
[28]National Council on Crime and Delinquency. (2003). *Planning for juvenile detention reform: Data collection handbook*. Baltimore, MD: The Annie E. Casey Foundation, 17.
[30]Id.
[30]Bell, J., Ridolfi, L.J., and Brown, L. (2009). *Collecting and Analyzing Data on Racial and Ethnic Disparities: The Peoria Pilot Project*. Chicago: Models for Change.
[31]Id.
[32]*Getting results: How Sedgewick County, Kansas, slashed arrest rates for youth of color*. DMC Action Network eNews, 22, 1.
[33]German architect Ludwig Mies van der Rohe, one of the giants of modern architecture, popularized the phrase "less is more."
[34]The most famous example is a graphic of Napoleon's march into Russia, drawn by Charles Joseph Minard, a French engineer, in 1869. It depicts six variables about the march, including the changing size of the army, it's location at different times, the direction of the army's movement, and temperatures on various dates during the retreat from Moscow. Tufte, E. (2001). *The visual display of quantitative information*. (2nd ed.) Cheshire, CT: Graphics Press. It is a remarkable illustration, but not a good model for juvenile justice reform initiatives.
[35]U.S. Department of Education and Department of Justice have issued a guidance package for schools on school climate and school discipline to promote safety and fairness. U.S. Department of Education. (n.d). *School climate and discipline*.

RED
PRACTICE
MANUAL

Chapter 3: Reducing Racial and Ethnic Disparities at Arrest

Children's
Law *and* Policy

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Table of Contents

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Reducing Racial and Ethnic Disparities at Arrest

I.   The Issue

Arrest by law enforcement officers is a primary pathway for youth to enter the juvenile justice system. As noted by the National Center for Juvenile Justice (NCJJ), in 2010, 83% of referrals to the juvenile justice system originated from law enforcement agencies.[1] NCJJ data demonstrate that arrest by law enforcement officers is also a significant point of overrepresentation for youth of color.[2] As reflected in the table below, law enforcement officers arrested Black youth at more than twice the rate of their white counterparts.[3] Thus, arrest is a critically important target for reforms to prevent unnecessary entry into the juvenile justice system for youth of color.

2012 Case Processing Summary Rates for Delinquency Offenses

RATE	All	White	Minority	Black	AIAN*	AHPI**
Juvenile arrests per 1,000 persons in population	37.6	32.0	55.3	73.2	28.7	11.0
Cases referred per 100 juvenile arrests	91.7	89.4	95.9	96.6	106.1	74.4
Cases diverted per 100 cases referred	27.4	30.3	22.2	22.0	23.4	27.7
Cases detained per 100 cases referred	19.9	18.1	22.9	22.8	26.5	20.7
Cases petitioned per 100 cases referred	54.1	51.0	59.4	59.6	57.1	56.5
Cases adjudicated per 100 cases petitioned	56.7	58.7	53.7	53.0	67.0	54.8
Probation cases per 100 adjudicated cases	63.4	64.8	61.3	60.7	63.1	73.2
Placement cases per 100 adjudicated cases	24.9	23.3	27.6	28.0	24.8	19.0
Cases judicially waived per 100 cases petitioned	0.7	0.6	0.9	0.9	0.8	0.4

* AIAN: American Indian or Alaskan Native.
** AHPI: Asian, Hawaiian, or Pacific Islander.

A young person is "considered to be arrested when law enforcement agencies apprehend, stop or otherwise contact them and suspect them of having committed a delinquent act."[4] However, there is growing evidence that contact between law enforcement and youth of color can have harmful effects even if no arrest occurs. A 2013 report[5] in *Crime and Delinquency* found that simply being stopped by the police

can have negative effects on a young person's development and can amplify, rather than deter, the risk of developing delinquent attitudes and behaviors. These findings held true even in cases where an arrest and formal processing did not occur. The report found that, while aggressive policing policies that target youth and communities of color may appear to be effective solutions to crime in the short term, they may produce negative unintended consequences in the long term.

As noted in the Introduction to this Practice Manual, over the past two years the deaths of a number of African-Americans during arrests by white police officers or in police custody have raised new levels of public concern about racial bias and the system of justice in this country. Several events were recorded on video, either on police car dashboard cameras or by witnesses with smartphones, and the videos have been seen on the internet by millions of people all over the world. These events have heightened awareness about the impact of racial and ethnic bias in the system. They have also spurred public officials, policymakers, parents, and community leaders to look with greater determination for effective strategies and programs to reduce the impact of racial and ethnic bias at key decision points in the juvenile justice system and in the structures of our society, beginning with arrest.

We charge law enforcement agencies and their officers with the difficult task of protecting public safety. To do their job effectively, they need resources, training, and the discretion and flexibility to handle a wide variety of situations. However, when implicit racial bias combines with broad discretion in the field, the results can be tragic. The urgency of addressing racial and ethnic disparities at the arrest decision point is clear.

In December of 2014, President Barack Obama established the President's Task Force on 21st Century Policing (Task Force) to examine how law enforcement agencies can best ensure public safety while also building trust and legitimacy with the communities they serve. In its interim report,[6] the Task Force acknowledged the disparate and negative impact of policing on communities of color and recommended that law enforcement agencies recognize the role of "policing in past and present injustice and discrimination and how it is a hurdle to the promotion of community trust."[7] The Task Force also noted the particular impact that policing practices had on children and youth and implored law enforcement agencies to reduce the use of aggressive tactics that stigmatize and marginalize at-risk youth.

II.   Factors that Contribute to Disparities at Arrest

A. Law Enforcement Deployment Patterns and Policing Strategies

Many factors contribute to disparate rates of contact with law enforcement officers and unnecessary arrests of youth of color. In their efforts to respond effectively to crime patterns within in a community, law enforcement agencies often focus resources on low-income, urban communities of color. Many common deployment and policing strategies are considered effective practices within law enforcement. While increased police presence in these communities may appear necessary and in line with the interests of public safety, it also leads to more frequent contact between police and youth of color.

1. Hot Spot Policing

Hot spot policing is an approach to crime reduction that focuses on the fact that crime tends to cluster in small areas, or "hot spots," within a larger community. The hot spot policing approach assumes that major crime takes hold in a community when minor crimes and public disorder go unanswered. These hot spots, which are often in urban communities with large populations of youth of color, become the targets of aggressive enforcement activities, including increased pedestrian and traffic stops, thereby increasing the likelihood of police contact and arrest for youth of color.

2. Drug Enforcement

Drug enforcement activities tend to target street-level drug trade in urban communities, which is readily visible to police on patrol, as opposed to the drug trade occurring in homes in suburban and rural communities. While rates of drug use and involvement in the trade of illegal drugs are comparable across racial groups, law enforcement officers stop, search, and arrest youth of color at significantly higher rates for drug-related offenses than their white counterparts. According the 2013 Youth Risk Behavior Surveillance Report,[8] marijuana use is only slightly higher among black (28.9%) and Hispanic (27.6%) students than it is for white (20.4%) students. While these data do reflect a slightly higher incidence of marijuana use among Black and Latino youth, they do not account for the fact that, according to National Center for Juvenile Justice's (NCJJ) 2011 National DMC Databook, Black youth are almost 40% more likely to be arrested for a drug law violations than their white counterparts.[9]
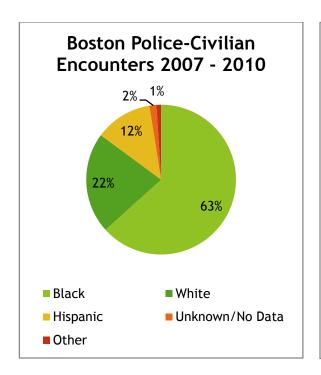
3. Gang Suppression

Law enforcement efforts targeted toward the suppression and dismantling of gangs can also have a disparate impact on levels of police contact and subsequent arrests. As noted in the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Disproportionate Minority Contact Technical Assistance Manual, many law enforcement policies and strategies that "treat gang activity more seriously than comparable activity by non-gang members may place minorities at a disadvantage based on greater likelihood they will be perceived as gang involved."[10] Youth of color dressed in certain styles and engaging in typical interactions with peers in their communities can easily fit into these "gang" profiles, which can make them targets for surveillance and enforcement efforts, even when they are not engaging in criminal activity. The definitions of "gang member" are often applied to typical adolescent behavior.[11] Law enforcement mandates to address gang activity and sweeping definitions of gang involvement can result in significantly increased involvement of youth of color in the justice system.
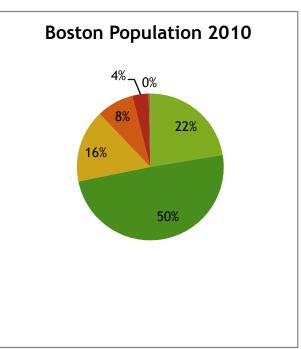
Common Colors and Styles as Gang Indicators: Examples of Gang Policies and Definitions

From the Chicago Police Department: "All street gangs utilize one or more visible indicators. These identifiers are as varied as the imagination and ingenuity that the members have. Typically gang members use graffiti, hand signs, tattoos, and colors to signify their membership in a gang, and to communicate their gang affiliation to others."

From the Los Angeles Police Department: The uniform of Hispanic gangs is standard and easily recognizable. Most gang members adopt a basic style that includes white T-shirts, thin belts, baggy pants with split cuffs, a black or blue knit cap (beanie) or a bandana tied around the forehead similar to a sweat band. Black gang members are individualistic in their dress. Black gangs tend to identify themselves by adopting certain colors. The 'Crips' identify themselves with the colors of blue or black or a combination of the two. 'Blood' gangs generally use red accessories, such as caps or bandanas, to identify themselves. While clothing alone cannot positively determine membership in a street gang, color and style serve to identify each gang. Green can either mean the gang member is declaring neutrality for the moment or is a drug dealer. Black is worn by some Hispanic gangs and Heavy Metal Anglo gangs. Other common gang colors include brown or purple."

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There is certainly a role for geographically-based law enforcement strategies. However, the need for police agencies to base enforcement on crime patterns does not fully explain the disparities seen in arrests for people of color.[12] For example, a 2014 report on stop-and-frisk practices in Boston, Massachusetts, revealed that between 2007 and 2010, officers in the Boston Police Department (BPD) targeted African Americans for 63% of police encounters even though they only account for about 25% of Boston's population.

Boston Police-Civilian Encounters 2007 - 2010

Boston Population 2010

Statistical analyses revealed that, even after controlling for crime rates and other factors, Boston police officers were more likely to initiate police encounters in black neighborhoods.[13] BPD officers were also more likely to initiate encounters with black people within those neighborhoods.[14] Moreover, the researchers found that few encounters led to finding criminal activity requiring an arrest, and only 2.5 % of the encounters led to the seizure of contraband. Based upon these findings, the researchers concluded that "race was a significant factor driving the BPD's stop-and-frisk practices," even beyond the influence of other more factors such as crime trends, gang affiliation, and arrest history.[15]

B. Bias and Differential Decision-Making

Despite the goal of a colorblind justice system, there is growing evidence that biases influence the thinking and behavior of key decision-makers and practitioners within the juvenile justice system, including police officers.[16] These biases can contribute to

arrest disparities for youth of color. Studies have found that race significantly influences how police officers judge criminality and culpability.[17] For example, one study found that when explicitly instructed to make judgments about criminality based solely on a facial photograph, police officers were more likely to judge black faces as criminal over white faces.[18] Moreover, the higher a face was rated on "stereotypicality" for the black race, the more likely officers were to rate the face as criminal. In other words, the more "black" a face appeared, the more likely police were to consider the person a criminal.[19]

Excerpt of FBI Director James Comey's Speech on Law Enforcement and Race Relations in America

On February 12, 2015, in the wake of several high-profile killings of unarmed Black males by police officers, Federal Bureau of Investigations Director James Comey delivered a speech at Georgetown University. During the speech, Director Comey described a series of "hard truths" about the state of law enforcement and race relations in America.[1]

"Much research points to the widespread existence of unconscious bias. Many people in our white-majority culture have unconscious racial biases and react differently to a white face than a black face. In fact, we all, white and black, carry various biases around with us. I am reminded of the song from the Broadway hit, Avenue Q: 'Everyone's a Little Bit Racist.' Part of it goes like this:

Look around and you will find
No one's really color blind.
Maybe it's a fact
We all should face
Everyone makes judgments
Based on race…

But if we can't help our latent biases, we can help our behavior in response to those instinctive reactions, which is why we work to design systems and processes that overcome that very human part of us all. Although the research may be unsettling, it is what we do next that matters most."

Another report found implicit bias among police officers specific to perceptions of culpability among youth.[20] In this study, police officers who were unconsciously primed with stimuli associated with the black race were more likely to judge a youthful offender as more adult-like and, therefore, more culpable and deserving of harsher punishments than those primed with neutral stimuli.[21] The researchers also found that the officers' conscious beliefs about race did not mediate these effects: that is, their underlying biases were stronger than their conscious beliefs.[22] Similarly, another study found that police officers rated young African-American felony suspects as almost five years older than their actual age. Officers also rated black youth as more culpable than Latino youth, and Latino youth as more culpable than their white counterparts.[23]
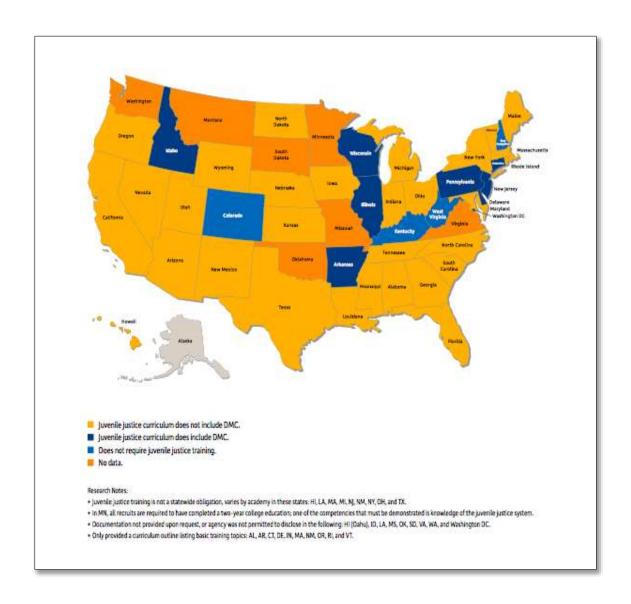
C. Limited Training on Youth Development and Racial and Ethnic Disparities

In 2012, U.S. law enforcement officers arrested 1,249,500 youth. The vast majority of those arrests were for low-level offenses.[24] Despite the high volume of youth arrests, most training opportunities for officers are inadequate. Although a 2011 survey found that 44 states required juvenile justice training in their law enforcement academies (six states have no requirement whatsoever for juvenile content),[25] the academies spend an average of just six hours on topics related to youth, or about 1% of the 600 hour average training course.[26] Of the states that provide juvenile justice training, the vast majority limit topics to juvenile law.

Few law enforcement agencies offer training on adolescent development. Yet officers should know the three primary differences between adolescents and adults which have been cited by the U.S. Supreme Court and which often explain adolescent misbehavior: "lack of maturity and an underdeveloped sense of responsibility," which often result in "ill-considered behavior;" vulnerability and susceptibility to "negative influences and outside pressures, including peer pressure;" and the fact that adolescents' personalities are still forming.[27] Similarly, officers should be aware of the pathway of adolescent development in a variety of domains: physical, cognitive, moral, social, and the development of identity. Officers should receive training on how these areas of development affect adolescent behavior on the street, e.g., that youth may engage in dangerous behavior as a result of peer pressure and a desire to be part of a group, and that adolescent resistance toward authority figures is a normal part of development and not a personal attack on the officer.[28]

There is also little training on racial and ethnic disparities. While 35% of 2012 arrests were of youth of color,[29] only seven states have law enforcement training content specific to racial and ethnic disparities.[30]

Inclusion of Racial and Ethnic Disparities in Juvenile Justice Curricula and Training

Source: Thurau, L.H. (2013, February). If not now, when?: A survey of juvenile justice training in America's police academies. *Strategies for Youth*.

III. Collaboration: Working with Law Enforcement

As noted earlier, the cornerstone of any successful juvenile justice reform effort is effective collaboration among key juvenile justice partners. In order to achieve meaningful reform and measurable reductions in racial and ethnic disparities at the arrest stage, law enforcement agencies should partner with other juvenile justice stakeholders at the local level to identify disparities and implement strategies to ensure equitable treatment for youth of color.

Achieving this type of collaborative partnership among law enforcement and other juvenile justice agencies is often easier said than done. There is often a disconnect between law enforcement and other juvenile justice agencies. In 2013, the [International Association of Chiefs of Police](#) (IACP), commissioned a [national survey of law enforcement leaders](#) to assess attitudes, knowledge, and experiences dealing with youth and collaborating with juvenile justice system partners.[31] While 79% of the leaders believed that they have a significant role to play in juvenile justice system reform, only 22% of the law enforcement leaders indicated that they serve on juvenile justice advisory groups, and just over one-third of the respondents indicated that others in their departments served on such groups. Similarly, only about one in six law enforcement leaders indicated that juvenile justice agencies or community groups *often* seek input on juvenile justice matters from their department (71% said they are consulted occasionally).

A. Strategies for Successful Partnerships with Law Enforcement

Engaging law enforcement leaders in juvenile justice reform can be a challenge, particularly when the focus of the reform effort is on addressing racial and ethnic disparities. Some law enforcement officials may be reluctant to participate out of concern that they will be blamed for racial and ethnic disparities in the juvenile justice systems. Others may not be aware of disparities in their communities or within their own agencies, and don't consider the issue a priority. Still others believe that participating in a disparity reduction effort is futile because there are few effective solutions. Other common challenges are described below, along with strategies to address them.

1. Problem: Competing Priorities

Law enforcement agencies have to address many responsibilities: protecting public safety, addressing the needs of many communities, respecting the civil and constitutional rights of members of the public, responding to inquiries or pressure from politicians, avoiding the appearance of being "soft on crime," and using their limited resources in the most effective ways. As the most visible public face of the

juvenile and criminal justice systems, law enforcement agencies are often the target of the public's frustration and anger when things go wrong.

a. Solution: Developing Strategic Coalitions

Effective partnerships with law enforcement require strategic coalition building. Agencies and individuals championing racial equity reform at the local level should work to develop broad-based partnerships. This collaborative can help to frame the local conversation around public safety, law enforcement, juvenile delinquency, and racial and ethnic disparities.

Although juvenile justice leaders and advocates are the individuals most likely to carry the banner for racial and ethnic disparities reform, elected officials, community leaders, and media partners can often be important allies in framing the public discourse. They can disseminate information and research that effective, community-based diversion and alternative programs will benefit public safety and enhance equity in the juvenile justice system. Juvenile justice partners should find frequent

opportunities to engage law enforcement agencies in public forums about reform as a show of solidarity and mutual support.

In Alachua County Florida, one of CCLP's Racial and Ethnic Disparities Reduction Project sites, Gainesville Police Department (GPD) Chief Tony Jones developed such a coalition. The local, broad-based community group originally convened to address high rates of crime within Gainesville's African American communities. By fostering an ongoing partnership with this group and by aligning GPD's goals for addressing RED with the coalition's focus on public safety, Chief Jones was able to bolster support for reform, both within his department and among other juvenile justice stakeholders.

2. Problem: Bridging the Divide

A significant gap often exists between law enforcement agencies and other organizations that comprise a local juvenile justice system. Depending on the state, the constellation of agencies and actors that comprise the juvenile justice system can operate at the state, county, or municipal levels; within the executive or judicial branches of government or non-governmental organizations; and with multifaceted lines of authority and a complex arrangement of relationships between them.

While courts, probation, public defenders, prosecutors and juvenile justice service providers have regular involvement in the juvenile justice process, law enforcement agencies usually have less engagement in the system. They often have a limited understanding of what happens after they drop a youth at intake. For example, if they don't know about detention reforms in the jurisdiction, they may be puzzled and frustrated when they arrest a youth for a non-violent offense, take the youth to intake, and see the youth quickly released on the basis of a low score on the detention screening instrument.

These gaps in understanding can be significant barriers to racial and ethnic disparities reform. Law enforcement agencies may not understand why they are asked for data on race, ethnicity, gender, geography, and offense, or why other agencies are asked for similar data.

a. Solution: Information Sharing

Collaboration for racial and ethnic disparities reform can create opportunities for child-serving agencies to share information on internal and cross-agency policies and practices that affect how youth of color move through the juvenile justice system. The process of information sharing can lead to a better collective understanding of system functioning and enhance opportunities for stakeholders to identify policies and practices that drive disparities. Many local collaboratives find it useful to develop a map of the key decision points in the process, the primary decision makers at each

point, and the options for youth to move out of the process through diversion, dismissal, or community supervision. A generic map of the juvenile justice process is below. Through Models for Change, organizations such as the Juvenile Law Center and others have developed a series of resources to assist agencies in sharing information.[32]

The Juvenile Justice Process:
Key Decision Points and Pathways Out

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Transfer to adult court

Arrest:
Law enforcement
Schools
Probation
Child welfare

Referral:
Intake staff

Detention:
Judge

Petition:
Prosecutor

Adjudication:
Judge

Disposition:
Judge

- Diversion
- Community service
- Youth court

- Diversion
- Informal process
- Consent decree

- Diversion
- Release home
- Alternative to detention

- Diversion
- Informal process
- Dismissal

- Diversion
- Post-adjud
- ATD
- Dismissal

- Probation
- Non-secure placement
- Non-residential treatment

b. Problem: Multiple Law Enforcement Agencies

In many counties across the country, there are several law enforcement agencies, including city police departments and the county sheriff's office. This situation can complicate efforts to identify and address racial and ethnic disparities as they pertain to the collaborative process and using data to drive reforms. It may be challenging enough to achieve effective collaboration with one law enforcement agency, let alone several.

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a. Solution: Identifying the Primary Law Enforcement Agency

It is perfectly reasonable, and often necessary, to identify one law enforcement agency as the primary partner at the outset of the racial and ethnic disparities reduction effort. Data should drive this decision. The collaborative should extend an invitation to all agencies, but the law enforcement agency with the most extensive jurisdiction over communities with the majority of arrests for youth of color should be the primary target for outreach and engagement activities. This agency should be a key member of the collaborative group.

Law enforcement agencies should also look to the recommendations of national law enforcement associations, such as the International Association of Chiefs of Police (IACP), for guidance and support in engaging law enforcement partners. In 2013, the IACP convened a multidisciplinary group of 90 juvenile justice stakeholders from across the country for its National Summit on Law Enforcement Leadership in Juvenile Justice. The purpose of this convening was to develop strategies to elevate the role of law enforcement executives and agencies in juvenile justice reform.

The summit report, *Law Enforcement's Leadership Role in Juvenile Justice Reform: Actionable Recommendations for Practice & Policy*,[33] yielded 33 recommendations that law enforcement leaders can pursue in collaboration with local, state, and national partners to ensure a more efficient and effective juvenile justice system. Among others, the report emphasizes the importance of prioritizing juvenile justice reform, achieving effective collaboration, and addressing racial and ethnic disparities.[34]

IV. Using Data to Identify Disparities and Plan Reforms

A. Qualitative Data Collection

1. Mapping the Arrest, Referral, and Diversion Continuum

Collecting qualitative data means gathering information on policies and practices that affect the process of arrest, referral, and diversion. Jurisdictions should understand what happens at the point of police contact and arrest. The analysis should include options are available to law enforcement officers when they encounter

> **Phases of Arrest Mapping**
>
> - Information Collecting
>
> - System Mapping
>
> - Generating the System Map

youth, how and when officers exercise those options, and the directives (laws, policies, administrative guidelines) that govern officers' decision making.

To conduct an arrest mapping process, local juvenile justice stakeholders should move through several phases of structured activity.
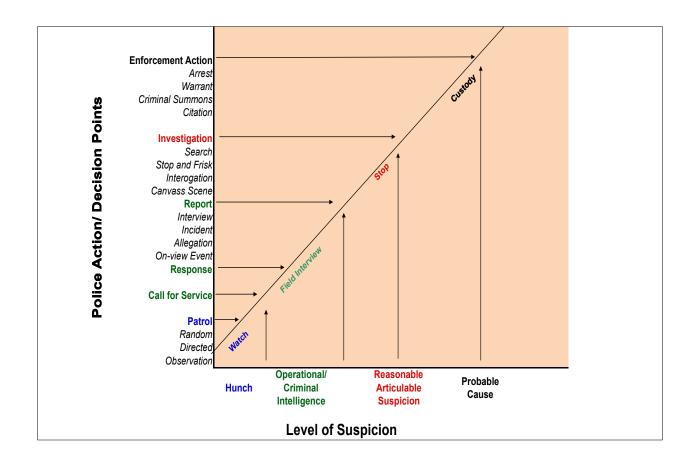
> *Information Collection*: Police and partner agencies should compile information on how each is involved in juvenile arrests, which legal and policy documents govern the process, and what practices are standard at the arrest decision point.
>
> *System Mapping*: Stakeholders should participate in a mapping session in which each agency shares information about how they handle juvenile delinquency cases. Often, agency personnel have inadequate information or misinformation about how other agencies work. Through this process, stakeholders can begin to identify how policies and practices within their agencies, and interactions between agencies, might contribute to racial and ethnic disparities at arrest.
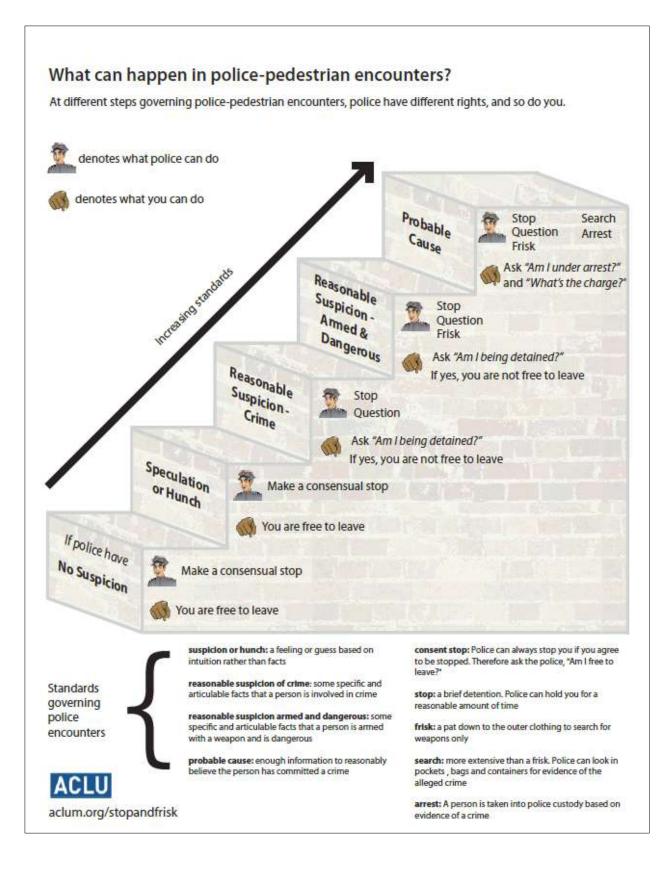>
> *Generating a System Map*: Stakeholders should use the information they gathered to document the juvenile justice process in both visual and narrative form. Stakeholders can then use the map to inform the collection of quantitative data to identify racial and ethnic disparities, identify potential causes for disparities, and guide the implementation of interventions that will produce measurable disparity reductions.

2. Mapping Law Enforcement Decisions

Just as law enforcement agencies should participate in decision point mapping with other partner agencies, they should also engage in the same process within their departments. The agencies will gain a better understanding of how their officers make decisions. Law enforcement officers make many of their key decisions about arrest and diversion in contexts that that are outside the scope of direct supervision. Additionally, officers do not routinely document their decisions. The mapping process will help law enforcement leaders understand how well current policies and protocols align with actual arrest and diversion practices. It will also begin to highlight areas where there could be improvement in policies and procedures.

Police Action/ Decision Points (y-axis)

- Enforcement Action
  - *Arrest*
  - *Warrant*
  - *Criminal Summons*
  - *Citation*
- **Investigation**
  - *Search*
  - *Stop and Frisk*
  - *Interogation*
  - *Canvass Scene*
- **Report**
  - *Interview*
  - *Incident*
  - *Allegation*
  - *On-view Event*
- **Response**
- **Call for Service**
- **Patrol**
  - *Random*
  - *Directed*
  - *Observation*

Diagonal labels: *Watch*, *Field Interview*, *Stop*, *Custody*

Level of Suspicion (x-axis): **Hunch** — **Operational/ Criminal Intelligence** — **Reasonable Articulable Suspicion** — **Probable Cause**

The diagram above, from the Baltimore Police Department, depicts the multiple decision points that occur when a police officer encounters a youth in the community.[35] Police leaders should consider how current laws and administrative guidelines influence these decision points in practice. Vague policies that lack clear guidance on how officers should engage with young people at the decision points create opportunities for bias to enter the decision-making process, which can result in the disparate treatment of youth of color. The diagram on the next page, from the ACLU of Massachusetts, is a different depiction of the same issue.

What can happen in police-pedestrian encounters?

At different steps governing police-pedestrian encounters, police have different rights, and so do you.

denotes what police can do

denotes what you can do

Increasing standards

Probable Cause

Stop
Question
Frisk

Search
Arrest

Ask *"Am I under arrest?"* and *"What's the charge?"*

Reasonable Suspicion - Armed & Dangerous

Stop
Question
Frisk

Ask *"Am I being detained?"*
If yes, you are not free to leave

Reasonable Suspicion - Crime

Stop
Question

Ask *"Am I being detained?"*
If yes, you are not free to leave

Speculation or Hunch

Make a consensual stop

You are free to leave

If police have No Suspicion

Make a consensual stop

You are free to leave

Standards governing police encounters {

suspicion or hunch: a feeling or guess based on intuition rather than facts

reasonable suspicion of crime: some specific and articulable facts that a person is involved in crime

reasonable suspicion armed and dangerous: some specific and articulable facts that a person is armed with a weapon and is dangerous

probable cause: enough information to reasonably believe the person has committed a crime

consent stop: Police can always stop you if you agree to be stopped. Therefore ask the police, "Am I free to leave?"

stop: a brief detention. Police can hold you for a reasonable amount of time

frisk: a pat down to the outer clothing to search for weapons only

search: more extensive than a frisk. Police can look in pockets, bags and containers for evidence of the alleged crime

arrest: A person is taken into police custody based on evidence of a crime

ACLU

aclum.org/stopandfrisk

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B. Quantitative Data Collection

The success of any effort to reduce racial and ethnic disparities at arrest requires the collection and targeted analysis of quantitative population and law enforcement data. Effective data analyses allow system stakeholders to accurately identify overrepresentation and disparities at the arrest decision point. Stakeholders will also understand whether youth of color are unnecessarily entering the juvenile justice system through contact with law enforcement, and if so, how many are entering and for what reasons. From these analyses, system decision-makers will be better equipped to develop and implement data-informed policy, practice, and program strategies.

While sophisticated statistical analysis may yield insights into the causes and correlates of racial and ethnic disparities, practice-driven data analysis should be the focus of arrest data collection. In other words, quantitative data analysis should focus on yielding concrete strategies to address the disparities as opposed to studying and restudying the problem.

Inquiry at the arrest decision point should begin with the collection and analysis of aggregate data. In order to diagnose whether disparities exist, stakeholders should first define the target population and develop a demographic profile of the youth within the jurisdiction who are at risk of contacting the juvenile justice system.[36] Stakeholders should use this profile for comparison with aggregate baseline police contact and arrest data to identify disparities. OJJDP's Easy Access to Juvenile Populations online tool provides access to national, state, and county level population profiles disaggregated by age, sex, race, and ethnicity. OJJDP based these profiles on U.S. Census data and routine population estimate updates. Stakeholders who are beginning their racial and ethnic disparities data inquiry can use this tool to create detailed demographic profiles.[37]

The table below, generated by OJJDP's online tool, reflects national population estimates for youth ages 10-17, by race and ethnicity, for 2014.[38] Juvenile justice stakeholders can use the tool to generate population profiles at the state and local levels. In addition to race and ethnicity, the tool also allows disaggregation of several other variables that are essential to RED analysis.

United States: Race by Ethnicity Population Estimates

Count	Non Hispanic	Hispanic	Total
White	18,427,847	6,776,952	25,204,799
Black	4,996,324	441,420	5,437,744
American Indian	333,243	266,195	599,438
Asian	1,802,862	142,326	1,945,188
Total	25,560,276	7,626,893	33,187,169

Suggested Citation: Puzzanchera, C., Sladky, A. and Kang, W. (2015). "Easy Access to Juvenile Populations: 1990-2014." Online. Available:
http://www.ojjdp.gov/ojstatbb/ezapop/

Collecting aggregate data on police contacts and arrests by race and ethnicity across agencies can be challenging. The federal government requires law enforcement agencies to collect arrest data for the FBI's Uniform Crime Reporting System (UCR). These data are useful for compiling juvenile arrest data across law enforcement agencies because the different departments collect uniform data. However, UCR data has limited utility when identifying racial and ethnic disparities at arrest because the data do not disaggregate race from Hispanic or Latino ethnicity.

One source of aggregate data that jurisdictions can access is the Relative Rate Index (RRI), which each state receiving Juvenile Justice and Delinquency Prevention Act funds must report to the Office of Juvenile Justice and Delinquency Prevention. States are required to provide population data for youth at risk for involvement with the juvenile court, as well as aggregate arrest data, disaggregated by race and ethnicity. The RRI also compares the arrest rate for white youth with the arrest rate for youth of color.

Stakeholders can review national RRI information and the raw numbers used to generate the RRI online using OJJDP's National Disproportionate Minority Contact Databook. This website also provides guidance on how to generate the RRI and direct links to sources of data necessary to complete the RRI matrix. The Bureau of Justice Assistance offers an Arrest Data Analysis Tool that stakeholders can use to generate agency-level arrest data for youth by age, gender, and race. Stakeholders should be able to access similar or more detailed juvenile arrest data from their state or local law enforcement agencies.

2013 Case Processing Summary: by race
Counts for Delinquency Offenses

DECISION POINTS	All	White	Minority	Black	AIAN**	AHPI***
Population at risk (ages 10-17)	33,147,200	25,234,700	7,912,500	5,430,600	597,000	1,884,900
Juvenile arrests	1,249,500	811,500	438,000	400,700	17,200	20,200
Cases referred to juvenile court	1,058,500	654,200	404,300	374,100	17,000	13,200
Cases diverted	283,900	195,200	88,600	81,000	4,000	3,500
Cases detained	221,600	121,600	99,900	93,000	4,100	2,800
Cases petitioned	582,800	338,600	244,200	227,200	9,400	7,700
Cases adjudicated	323,300	196,700	126,600	116,200	6,100	4,300
Adjudicated cases resulting in probation	205,300	127,400	77,900	71,000	3,700	3,200
Adjudicated cases resulting in placement	78,700	44,800	33,800	31,600	1,500	800
Cases judicially waived	4,000	2,100	1,900	1,800	100	<50

** AIAN: American Indian or Alaskan Native.
*** AHPI: Asian, Hawaiian, or Pacific Islander.
NOTE: At the time of our latest update, 2013 national arrest estimates were not available. As such, 2012 arrest estimates are also being used for 2013.

Suggested Citation: Puzzanchera, C. and Hockenberry, S. (2015). National Disproportionate Minority Contact Databook. Developed by the National Center for Juvenile Justice for the Office of Juvenile Justice and Delinquency Prevention. Online. Available: http://www.ojjdp.gov/ojstatbb/dmcdb/

2013 Case Processing Summary: by race
Relative Rate Indices[1] for Delinquency Offenses

	RELATIVE RATES	Minority	Black	AIAN**	AHPI***
trends	Arrest rate	1.7	2.3	0.9	0.3
trends	Referral rate	1.1	1.2	1.2	0.8
trends	Diversion rate	0.7	0.7	0.8	0.9
trends	Detention rate	1.3	1.3	1.3	1.1
trends	Petitioned rate	1.2	1.2	1.1	1.1
trends	Adjudicated rate	0.9	0.9	1.1	1.0
trends	Probation rate	1.0	0.9	0.9	1.1
trends	Placement rate	1.2	1.2	1.1	0.8
trends	Waiver rate	1.3	1.3	1.4	*0.6

[1] All RRI's are relative to whites.
* Interpret data with caution; rates and RRI's are based a small number of cases.
** AIAN: American Indian or Alaskan Native.
*** AHPI: Asian, Hawaiian, or Pacific Islander.
NOTE: At the time of our latest update, 2013 national arrest estimates were not available. As such, 2012 arrest estimates are also being used for 2013.

Suggested Citation: Puzzanchera, C. and Hockenberry, S. (2015). National Disproportionate Minority Contact Databook. Developed by the National Center for Juvenile Justice for the Office of Juvenile Justice and Delinquency Prevention. Online. Available: http://www.ojjdp.gov/ojstatbb/dmcdb/

As noted in the table above, the national RRI for black youth at the arrest decision point was 2.3 in 2013. This means that black youth were more than two times as likely to be arrested as their white peers. Calculating the RRI for arrest at the state or local level will provide a broad indicator of whether youth of color are arrested at greater rates than white youth.

While this basic indicator can help to identify disparate rates of arrest for youth or color, stakeholders must engage in a deeper analysis to guide reforms that will be effective. One strategy for digging deeper into the data is to generate arrest RRIs by offense or offense type. While the RRI for all arrests can help stakeholders see the overrepresentation of youth of color at arrest, offense-specific RRIs can shed light on which offenses are driving the overarching trends.

The W. Haywood Burns Institute developed the Burns Level One Data instrument as a guide for collecting aggregate data to inform and monitor racial and ethnic disparities reduction efforts. In partnership with the Burns Institute, CCLP expanded this data tool for use by jurisdictions involved in the Models for Change DMC Action Network. The tool contains a template specific to arrest and diversion and templates for subsequent decision points in the juvenile justice process. You can download the template by clicking here.

The arrest data template provides a structure for cross-tabulating arrest data by race and ethnicity. Since Latino youth can be of any race, stakeholders should disaggregate race and ethnicity data for reporting and analyzing their juvenile arrests. If the capacity does not already exist, law enforcement agencies should update their data systems to capture race and ethnicity information separately. However, many jurisdictions currently working to address disparities do not currently disaggregate their race and ethnicity data in this manner. Therefore, CCLP created an alternative version of the template to match the current data capabilities of jurisdictions working in the field. You can download that template by clicking here.

> ## Key Data Points for Analyzing Arrest Data
>
> Jurisdictions should collect data at several key data points to paint a comprehensive picture of racial and ethnic disparities at arrest, referral, and diversion. Stakeholders should collect each data point by race, ethnicity, gender, geography and offense to effectively identify disparities.
>
> - Law Enforcement Contact
> - Law Enforcement Arrest
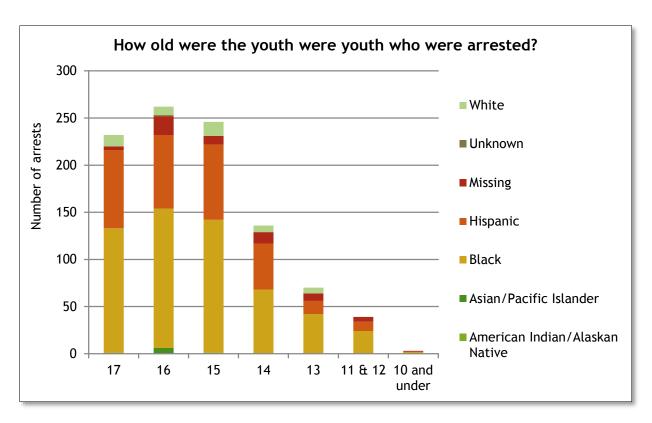> - Diversion and Court Referral

In jurisdictions where the police have the option of issuing a citation to a youth instead of making an arrest, stakeholders should collect data on citations in the same format as arrest data. They should analyze the civil citation data and compare it to arrest data to identify relevant trends and points of disparity for youth of color. Similarly, stakeholders should include diversion data in their analyses.
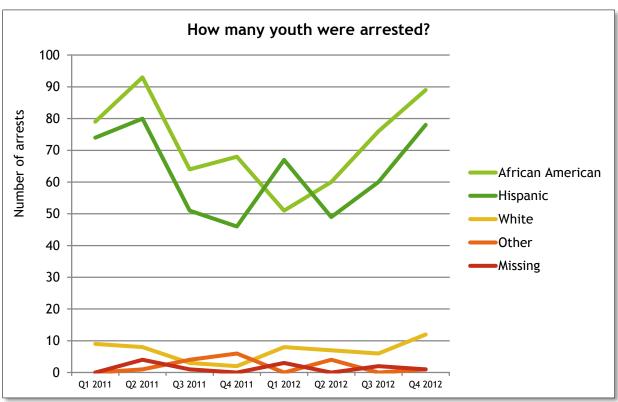
C. Using Quantitative Data to Drive Reforms

Once available, how can stakeholders translate aggregate arrest data into meaningful reforms? When data is too voluminous, or when its presentation is not easily digestible, reform efforts are not likely to yield results. Effective presentation of data is necessary to drive reforms.

The following are examples of useful ways to analyze and present arrest data. The charts should cover a specific time period. You can right click on the charts and select "Edit data" to enter your jurisdiction's information, or copy and paste the charts into a document or PowerPoint and edit them there.

How old were the youth were youth who were arrested?

Legend:
- White
- Unknown
- Missing
- Hispanic
- Black
- Asian/Pacific Islander
- American Indian/Alaskan Native

Y-axis: Number of arrests

X-axis: 17, 16, 15, 14, 13, 11 & 12, 10 and under

How many youth were arrested?

Legend:
- African American
- Hispanic
- White
- Other
- Missing

Y-axis: Number of arrests

X-axis: Q1 2011, Q2 2011, Q3 2011, Q4 2011, Q1 2012, Q2 2012, Q3 2012, Q4 2012

Questions to Keep in Mind When Preparing Charts

- Do the arrests reflect the types of offenses that are threats to public safety?

- Are there arrests for minor offenses that may be candidates for diversion or community-based intervention (e.g., shoplifting)?

- Are specific racial and ethnic groups overrepresented in arrests when compared to their representation in the general youth population?

- Are youth of particular racial and ethnic groups more likely to be arrested for certain specific offenses?

- Are there gender differences in the types of arrests?

- Are there changes in the list of top 10 offenses over time?

- Are there trends in the volume of referrals over time? Is the increase attributable to referrals for particular offenses?

- By cross-referencing school-based referral information, what percentage of total referrals come from incidents at school?

Evaluating aggregate arrest data, as outlined above, can help stakeholders identify particular points of disparity for youth of color. Stakeholders should use this data to identify target populations for alternative handling through policy, practice and program reform.

V. Strategic Approaches for Addressing Racial and Ethnic Disparities at Arrest

By using data, stakeholders should identify points of disparity for youth of color at arrest and pinpoint the subpopulations they will target for alternative handling. Law enforcement leaders should shift departmental culture towards a developmentally appropriate and culturally responsive approach to policing that balances public safety with the commitment to equitable treatment of all youth. Some examples of effective strategies are discussed below.

A. Establish Supervisory and Centralized Review of Arrest and Diversion Decisions

Reforms must be monitored. A law enforcement agency can promulgate new policies to address racial or ethnic disparities in arrests, but officers on the street need flexibility and discretion in carrying out their duties. Because implicit or explicit racial bias by officers may influence the exercise of such discretion, law enforcement leaders should establish supervisory review of arrest and diversion decisions. This review will ensure that officers apply policies equitably, e.g., access to pre- and post-arrest diversion opportunities that is comparable to their white counterparts. In instances where officer arrest and diversion decisions depart from policy, agency leaders should require police officers to provide reasons for the differences.

There are a number of ways to achieve appropriate oversight. In Gainesville, Florida, one of CCLP's Racial and Ethnic Disparities Reduction sites, the Gainesville Police Department decided to modify its juvenile diversion policy for first-time misdemeanor offenses. Instead of arrest and transport to intake, the youth receives a civil citation and release. The Department implemented a review process requiring that the arresting officer's immediate supervisor review all juvenile arrest decisions. When an arrest is inconsistent with policy, the sergeant and others in the chain of command provide verbal counseling to the officer. If there is a pattern of departure from department policy, supervisors can provide additional training and, if necessary, departmental discipline.

Law enforcement agencies can also conduct a centralized review of all juvenile arrest records. In Bridgeport, Connecticut, officers forward all juvenile arrest reports to a centralized location, which is the police department's Youth Bureau. The unit's sergeant screens the reports for eligibility for the local Juvenile Review Board (JRB), a community-based diversion program, before forwarding the case to juvenile court intake. If a line officer fails to make an appropriate referral to the JRB, this centralized review creates a second opportunity to divert the case before referral to

court. Following the implementation of this centralized screening protocol in January of 2012, police referrals to the Juvenile Review Board went from 3 per month in December 2011 to 13 per month by May of the following year. This and other reforms contributed to a 31% overall reduction in court referrals for youth of color between 2011 and 2014.

In Maryland, the Baltimore County Police Department enhanced centralized diversion with its Juvenile Offenders in Need of Supervision (JOINS). In this collaborative diversion model, a designated officer from each precinct teams up with a case manager from the Maryland Department of Juvenile Justice, which performs the juvenile court intake function. Together they screen arrest reports and diversion-eligible cases before an official referral moves forward to intake. Of the 836 youth who participated in JOINS during 2013, 61.8% were youth of color.[39]

B. Enhancing Officers' Knowledge and Skills to Ensure Effective Interactions with Youth of Color

Contacts between law enforcement officers and young people carry a high potential for misunderstanding and unnecessary escalation. Officers may interpret normal adolescent behavior – such as resistance to authority, impulsivity, risk-taking, and inability to see future consequences – as disrespectful, suspicious, uncooperative, challenging, and aggressive. Law enforcement officers, like most other people in our society, also carry implicit (i.e., unconscious) racial biases.

Many youth of color, on the other hand, believe that police officers are only interested in harassing them and arresting them on some charge. Such beliefs are bolstered, in many communities, by a long history of mistrust and animosity between members of the community and the police.

One way to address this issue is for law enforcement agencies to offer specific training on adolescent development, implicit bias, and the juvenile justice system. Training curricula that bring together law enforcement officers and young people, to discuss their attitudes toward each other, have been particularly effective. There are several law enforcement training programs used around the country.

> *Effective Police Interactions with Youth Training Curriculum*, offered by Connecticut's Office of Policy Management, provides patrol officers with information to better understand youth behavior and practical strategies for interacting with young people in positive ways. The training aims to reduce the likelihood that interactions between police and young people will result in police action or arrest, particularly for youth of color. Certified police trainers teach officers about racial and ethnic disparities and the key role that they

play in helping to eliminate the problem of racial and ethnic disparities. Officers learn why adolescents tend to have difficulty controlling impulses and making sound judgments. They also learn why young people test boundaries and challenge authority and work to adopt skills for communicating more effectively with youth.

Pennsylvania DMC Youth/Law Enforcement Curriculum is a one-day training for police academy cadets and seasoned law enforcement officers and youth. The training, originally developed through Philadelphia's efforts during Models for Change, provides officers with information about adolescent brain development and the distinctive characteristics of race, ethnicity, and youth culture that can influence interactions between youth of color and police. Officers learn about the environmental and physiological reasons that teenagers think and behave differently from adults and specific skills to respond to these behaviors in the field. In a separate session, youth learn to identify how adolescent development and environmental influences can affect their behavior with police and discuss options that can contribute to safe and positive interactions. Youth and police also join together in facilitated discussions designed to break down stereotypes and enhance understanding between the two groups, and in role-play sessions that allow both police and youth to practice new skills that they've learned.

Policing the Teen Brain is a training program offered by Strategies for Youth that provides officers with the information and skills they need to interact effectively with youth. This two-day training translates adolescent brain research into practical skills for officers to improve interactions with children and youth. These trainings are targeted for patrol officers as well as specialized units, such as school resource officers. Officers learn strategies to assert authority effectively with youth, thereby making interactions with youth easier, faster, and less contentious. This training arms officers with new knowledge and skills intended to reduce reliance on force and arrest.

C. Key Components of Youth Training Curricula for Law Enforcement

Normal Adolescent Development: Understanding the cognitive, biological, moral, and social development of adolescents, including structural developments in the adolescent brain that affect perception, processing, and response.

Recognizing Behavior of Compromised Teens: Recognizing and responding appropriately to the most prevalent behavioral health issues among teens.

Understanding Trauma and Traumatized Responses to Police: Review sources of trauma and their impact on brain structure, the psyche, and behavior, and the best strategies for working with traumatized youth.

Working Effectively with Learning and Language Disabled: Demonstrate differences in learning/language disabled youths' ability to perceive, and adults' inability to see different perceptions and capacities of youth. Tactics for recognizing and responding appropriately to youth of different abilities.

Trying it for Size: Officers have an opportunity to participate in dialogues and role- plays with youth to explore the responses and perceptions of both groups.

Showcasing Youth Serving Community Based Organizations: Introduce officers to local organizations that work with youth, alternatives to arrest and referral processes.

Experiential Learning: Officers spend 7 to 14 hours working directly with youth in a community setting and visit local detention and training schools

Juvenile Law for Law Enforcement: Review of juvenile law and court decisions. Review of options to arrest or divert, informed by state data on juvenile court case dismissal rates. Review collateral consequences of arrest and system involvement on youths' life chances

Demographic Factors that Influence Youth Behavior: Review of data on socio-economic risk and protective factors that affect youth delinquency, including child welfare involvement.

Cultural Factors that Influence Youth Behavior: Review of cultural influences on how youth interact and respond to the assertion of authority.

Bias and Reducing Racial and Ethnic Disparities: Review of mental processes related to implicit bias and methods of "self-checking" for personal bias. Review of data on racial, ethnic, gender and sexual orientation disparities in the juvenile justice system.

Asserting Authority Effectively: Review of triggers that escalate incidents and understanding the connection between procedural justice and police department relations with the community.

* This list is adapted from [If Not Now, When? A Survey of Juvenile Justice Training in America's Police Academies](), Strategies for Youth, 2013.

VI. School-Based Arrests

A. The Issue

In 1994, in response to concerns about increasing levels of gun violence in schools, Congress passed the Gun-Free Schools Act. The law required local educational agencies to have in effect a policy that required expulsion, for a period of not less than one year, of any student who brought a weapon, including a firearm, to school. As passed, the statute imposed a zero tolerance policy for violations.[40]

The Gun-Free Schools Act became the model for zero tolerance policies in schools across the country. Over time, school administrators and other public officials expanded the definition of "weapon" to include a wide variety of items that *could* pose a danger to students or faculty. Some administrators extended the prohibition to replicas, toys, and even images or written descriptions of objects that could be considered weapons. When combined with federal and state prohibitions on possession of alcohol and drugs in schools, the laws provided school administrators with powerful tools to remove misbehaving students from their schools.

B. The Problem

In many communities around the country, zero tolerance policies have resulted in the criminalization of many forms of normal adolescent behavior and marked racial disparities in enforcement. Zero tolerance laws have provided the basis for the "school-to-prison pipeline." Harsh disciplinary procedures, mandatory reporting of minor behavioral incidents, and the use of school exclusion as a punishment for misbehavior have become common in many areas.[41]

Racial differences in school discipline are widely reported, and black students across the United States are more than three times as likely as their white peers to be suspended or expelled.[42] Under zero tolerance policies, students of color are more likely to be placed out of schools and into the juvenile justice system.[43] In 2006, one in every fourteen students was suspended at least once during the academic year. In the same year, according to the NAACP Legal Defense Fund, African-American students represented 17% of public school students in the country, but accounted for 37% of school suspensions and 38% of school expulsions nationwide.[44]

In addition to unnecessary suspensions and expulsions, and over-representation of youth of color in school discipline, referral to the juvenile court carries significant negative consequences. Many youth referred to court are held in secure detention. The "dangers of detention" are well-documented, including interruption of education,

difficulty in re-enrolling in school, separation from family, and the trauma of incarceration.[45]

This section of the Practice Manual provides examples of effective alternatives to school-based arrests.

C. The Solutions: Alternatives to Zero Tolerance Policies and School-Based Arrests

The goal of an effective school disciplinary system is to ensure a safe school environment while avoiding practices that unnecessarily suspend or expel students or impose disproportionate punishment on students of color. Several jurisdictions have led the way in developing effective reforms.

Many of these efforts are based on principles of restorative justice. School-based restorative justice programs in the United States have grown significantly in recent years. Within the school context, restorative justice is an approach to discipline engaging all parties in a balanced effort to bring together all people impacted by an issue or behavior. In system reform initiatives, school-based restorative justice efforts allow schools, communities, and courts to work together to resolve conflict, promote academic achievement, and address school safety in a fair and equitable way.[46]

1. Clayton County, Georgia

Recognizing the large numbers of low-risk youth referred to his court by the local school system, Family Court Judge Steven Teske partnered with schools, law enforcement, juvenile justice officials, and service providers to develop an agreement to curb the trend. The Memorandum of Understanding, reached in 2004, aimed to limit the role of law enforcement officers on school campuses and ensure that misdemeanor offenses like fighting and disorderly conduct in schools did not result in a referral to the juvenile justice system. Following the implementation of the protocol, school-based referrals to the Clayton County Juvenile Court fell by 70% between 2003 and 2010. Many of the reductions have been for African American youth.[47]

2. Chicago, Illinois

After many years of conflict over zero tolerance policies in city schools, the Chicago Board of Education issued a Student Code of Conduct to address concerns. The Code of Conduct specifically provides for the use of peacemaking circles, or circles of understanding, as well as community service, peer juries, restorative group conferencing, victim impact panels, and victim offender conferencing.[48]

3. Philadelphia, Pennsylvania

In Philadelphia, efforts to decrease school-based arrests led to a 54% reduction in school-based arrests during the 2014-2015 school year. The implementation of the School-Based Diversion Program, which prohibits police officers from arresting students for minor offenses, decreased school-based arrests from 1,582 to 724. A total of 486 students were diverted from arrest to targeted services. Only six diverted youth (1.2%) have since been arrested for other offenses in school or in the community. The program is cited in the *Final Report of the Presidential Task Force on 21st Century Policing*[49] and in the ACLU report, *Beyond Zero Tolerance*.[50]

4. Memphis, Tennessee

The School House Adjustment Program Enterprise (SHAPE) began in 2007 with a pilot grant from the Tennessee Commission and Youth. The goal of the program is to reduce the number of Shelby County (Memphis) students sent to Juvenile Court for minor infractions. Students charged with criminal trespassing, disorderly conduct, simple assault with no injuries, and gambling are eligible for the SHAPE program. SHAPE provides immediate consequences for misbehavior (e.g., community service or restitution) and a convenient resolution for the victim, while avoiding the stigma of a juvenile court record. The SHAPE curriculum consists of homework assistance, tutoring, mentoring, counseling, and social and life skills training. Students stay in the program for 90 days. In the 2012-2013 school year, 68 percent of students (173 out of 255) completed the program successfully.

5. Positive Behavioral Interventions and Supports (PBIS)

Positive Behavioral Interventions and Supports, also known as School Wide Positive Behavior Supports, is a three-tiered prevention model focused on prevention, multi-tiered support, and data-based decision making. According to Jeffrey R. Sprague and Robert H. Horner from the University of Oregon, the evidence shows that Positive Behavioral Interventions and Supports can change the trajectory of at-risk-children engaging in harmful behavior, and prevent the onset of risky behavior in other children. Most importantly, the goal is to ensure a safe and effective learning environment by emphasizing appropriate student behavior and simultaneously working to reduce punitive disciplinary measures while keeping children in school.[51]

6. Federal Efforts to Improve School Discipline and Reduce School-Based Arrests

On July 21, 2011, during a meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention, U.S. Attorney General Eric Holder and Secretary of

Education Arne Duncan announced the launch of the Supportive School Discipline Initiative (SSDI). SSDI encourages effective disciplinary practices that ensure safe, supportive, and productive learning environments and promotes evidence-based practices that keep students in schools and out of the courts. The initiative provided for coordination with the efforts of nonprofits and philanthropic communities seeking to reduce the use of zero tolerance policies. The goals of the initiative are to build census for action among federal, state, and local education stakeholders; collaborate on research and data collection to be well informed in decision making; develop guidance for effective and equitable school discipline policies and practices; comply with the nation's civil rights laws; promote positive disciplinary options to keep kids in schools; improve the climate for learning; and promote awareness, knowledge, and intentionality surrounding evidence-based, promising policies and practices among educators and justice stakeholders.[52]

D. Practice Tips

Dismantling the school-to-prison pipeline and implementing alternatives to zero tolerance policies take time and commitment. However, if law enforcement and school districts make a concerted effort to implement the aforementioned strategies, and community advocates and parents keep schools accountable, schools can prepare all students to succeed.

- ✓ Use data to better understand the consequences that zero tolerance approaches have on youth of color.

- ✓ Review the mandated policies and procedures for school discipline at the federal, state, and local levels.

- ✓ Gather a diverse group of stakeholders to assist in the review and development of fair and equitable school discipline approaches, law enforcement responses, and court involvement.

- ✓ Stakeholder groups should include school administrators, law enforcement, prosecutors, public defenders, court personnel, community service providers, parents and youth advocates.

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[2] Puzzanchera, C. & Hockenberry, S. (2015, February). National disproportionate minority contact databook. *National Center for Juvenile Justice*.

[3] Data on Hispanic youth are not shown because the arrest data displayed were collected as part of the FBI's Uniform Crime Report effort and reflect the FBI's racial designations White, Black, American Indian or Alaskan Native, and Asian or Pacific Islander. Data on Hispanic ethnicity are not captured. It is important to note that many Hispanic youth may have been counted as white, which could significantly deflate or underestimate the disparity gap between rates for white youth and those for youth of color.

[4] Office of Juvenile Justice and Delinquency Prevention, (2009, July). *Disproportional minority contact technical assistance manual*.

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[7] Id.

[8] Kann, L., Kinchmen, S., Flint, K.H., Hawkins, J., Harris, W.A., Lowry, R., et al. (2014). Youth Risk Behavior Surveillance Report for 2013. 63, 4.

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[20] Graham, S. & Lowery, B.S. (2004). Priming unconscious racial stereotypes about adolescent offenders. *Law and Human Behavior*, 28(5), 483-504.

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[22] Kirwan Institute for the Study of Race and Ethnicity. (2013). *Implicit bias review 2013*.

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[27] Roper v. Simmons, 543 U.S. 551, 568-570 (2005).

[28] National Juvenile Defender Center and Juvenile Law Center. (2009). *Toward developmentally appropriate practice: A juvenile court training curriculum. Adolescent development: Module 1* (Washington, DC: National Juvenile Defender Center).

[29] Puzzanchera, C. & Hockenberry, S. (2015, February). National disproportionate minority contact databook. *National Center for Juvenile Justice.*

[30] Id.

[31] Casanova, M., Daugirda, R., Kurash, A., & Rhudy, K. (2013, September). *Law enforcement's leadership role in the advancement of promising practices in juvenile justice.*

[32] Models for Change: http://www.modelsforchange.net/searchresults.aspx?q=information+sharing.

[33] Casanova, M., Daugirda, R., Kurash, A., & Rhudy, K. (2013, September). *Law enforcement's leadership role in the advancement of promising practices in juvenile justice.*

[34] Id.

[35] Adapted from an internal document from Baltimore Police Department Training and Education Department (2013).

[36] The population will vary from state to state based on the age of juvenile court jurisdiction as established by state law.

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Chapter 4: Reducing Racial and Ethnic Disparities at Detention

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To download the RED Practice Manual, visit http://cclp.org/practicemanual.php. For questions or more information about the RED Practice Manual or its contents, please

contact Tiana Davis, Policy Director for Equity and Justice, at tdavis@cclp.org or 202-637-0377, extension 103.

This publication was last updated on December 14, 2015. To sign up to receive updates to the RED Practice Manual, please visit http://cclp.org/practicemanual.php.

Reducing Racial and Ethnic Disparities at Detention

I.   Introduction

Studies of self-reported behavior indicate that 80% to 90% of American teenagers have committed an illegal act that would qualify them for time behind bars.[1] Most young people avoid contact with the juvenile justice system for these behaviors, and most youth grow out of delinquent behavior as they get older.[2] Yet while youth of color comprise approximately one-third of the adolescents in the United States, they represent 60% of the youth detained in juvenile detention facilities.[3]

This Chapter outlines the reasons why youth of color are overrepresented and subject to disparate treatment at the detention decision point. It also outlines the analyses that officials should undertake to determine the cause of racial and ethnic disparities in their jurisdictions, as well as interventions that can lead to measureable improvements for youth of color.

II.   The Problems

Youth of color are more likely than white youth to be detained for engaging in similar behavior.[4] A leading study found that African American youth were more likely to be detained than white youth across all categories of offenses, as illustrated in the chart on the following page.[5] For example, African American youth were more than twice as likely as white youth to be detained for drug offenses.[6]

Broad discretion when determining which youth should be detained allows for bias to enter into that determination. Additionally, a lack of accessible and culturally responsive alternatives to detention deprives youth of color of the chance to be supervised safely in their own communities.

Percent of Delinquency Cases Involving Detention by Race, 2003

Percent of Delinquency Cases Involving Detention by Race, 2003

Category	African American	White
Person	28%	23%
Property	21%	15%
Drug	31%	15%
Public Order	25%	21%
Total	25%	18%

The Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) has served as the leading national effort focused on reducing the unnecessary and inappropriate use of detention throughout the country for more than twenty years. It now operates in more than 250 jurisdictions in 39 states. JDAI has eight core strategies for successful detention reform, one of which is reducing racial and ethnic disparities at the point of detention. Many of the tools and resources developed as part of JDAI can be helpful in work to reduce racial and ethnic disparities, as described below.

III. Understanding the Pathways to Detention for Youth of Color

To address racial and ethnic disparities, stakeholders must have a clear understanding of the ways youth of color arrive at the door of detention. Jurisdictions use detention for many reasons in addition to those prescribed in state statutes. When asked why youth are placed in secure detention, stakeholders often cite reasons such as "teaching the youth a lesson," holding the youth because the parent or guardian is unwilling or unable to take the youth home, providing access to medical or mental health services for the youth, making the youth accessible to law enforcement agencies while they conduct an investigation, holding the youth until a program or service is available, using the detention center because "there is nowhere else" to put the youth, and punishing the youth for violating a probation order or other order of the court.

> ### Reasons Jurisdictions Use Detention
>
> - Teaching youth a lesson
>
> - Parent(s) unable or unwilling to pick a child up
>
> - Access to medical or mental health services
>
> - Holding youth until a program or service is available
>
> - Punishing youth for violating probation orders or other court orders

Many of these reasons are incompatible with the language of the governing statutes describing the purposes of the juvenile justice system. They also depart from the intent expressed in many statutes to serve youth in the "least restrictive setting" and use incarceration only "as a last resort."

Some of these reasons may reflect explicit or implicit biases against youth of color and their families. For example, officials may assume that a parent's inability to pick up his or her child signals a desire to have a child locked up or an admission that the parent cannot adequately supervise his or her child. In reality, there are a host of reasons why a parent may not be able to pick up a child, including a lack of transportation or lack of childcare for other children in the home.

One strategy for understanding the pathways of youth of color into detention is to discuss the purpose of detention in that community. Stakeholders in most jurisdictions have not had this type of group discussion. To reach consensus, judges, law enforcement agencies, prosecutors, juvenile defenders, probation officials, and school administrators should be involved, as those officials often control one or more

of the different pathways into detention. As part of the DMC Action Network, CCLP helped prepare a summary of stakeholder engagement strategies that may be helpful when initiating conversations with these officials about the use of detention.

Youth, family members, and community members must also be at the table. Including the insights and perspectives of those who have had direct experience with detention helps develop a more complete picture of how detention is actually used. It can also help dispel myths and misconceptions and generate new ideas about potential alternatives to detention.

One strategy for reaching consensus is to start with an anonymous survey of stakeholders. The survey asks stakeholders about how often detention is actually used in the jurisdiction, listing the different reasons that it might be used. The survey also asks how that individual thinks detention *should* be used in the jurisdiction. A sample survey that can be edited for use in a particular jurisdiction is available by following this link. Surveys of stakeholders often reveal significant differences between how participants estimate detention is actually used in the jurisdiction and how they feel detention should be used. The survey results, when coupled with the quantitative data discussed below, can help focus a committee's work on what can be done to reduce overrepresentation and disparate treatment of youth of color at detention.

Another way of learning more about the pathways of youth of color into detention is to conduct a Detention Utilization Study (DUS), which is discussed in detail below. The DUS provides aggregate data on overall detention utilization. It also provides information on the characteristics of youth who are referred to detention. By disaggregating data by race and ethnicity, the DUS can help identify areas of focus for work to reduce racial and ethnic disparities.

IV. Using Data to Reduce Racial and Ethnic Disparities at Detention

Regular data collection and analysis is a necessary component of successful efforts to address racial and ethnic disparities. At the point of detention, data are necessary to (1) understand how detention is used, (2) identify and implement improvement strategies, and (3) track the outcomes of policy and practice changes.

Stakeholders may have a general sense that there are racial and ethnic disparities at the detention decision point. However, many jurisdictions do not have the capacity to collect, analyze and report on key data elements. In some jurisdictions, officials may capture information on detention admissions using a different data system than the

database used to capture information on youth at other points in the system. This can make it difficult to follow youth as they move through the system. Additionally, if detention officials are capturing race and ethnicity differently than probation intake staff – for example, by not tracking ethnicity separate from race – it may create to additional problems comparing data sets.

Chapter 2 of the Practice Manual contains tools and information on ensuring accurate and reliable data collection across the juvenile justice system. The sections below outline the key indicators to review for youth of color at the point of detention.

A. Key Indicators of Detention Utilization

There are three key indicators of detention utilization: admissions, average daily population (ADP), and average length of stay (ALOS). These indicators have two great strengths in work to reduce racial and ethnic disparities.

First, when disaggregated by race, ethnicity, and gender, and grouped by type of offense (felony and misdemeanor person, property, drug, public order), the data produce a useful picture of detention utilization for youth of color.

Second, the data are relatively easy to collect. All detention facilities keep track of the number of youth admitted. Average length of stay (i.e., the statistical mean) takes more effort to calculate, but is very manageable. It is also worthwhile to calculate the *median* length of stay – i.e., the middle number when all individual lengths of stay are listed numerically. The median is less affected than the mean by unusually long lengths of stay, such as those of youth transferred to the adult system who may remain in detention for months awaiting trial.

When a jurisdiction collects admissions and length of stay data, it can calculate ADP. To calculate ADP, divide the total number of days all youth spent in detention in a specified period and divide by the number of days in that period. Because the number of youth admitted to detention and their length of stay drive average daily population, reducing either admissions or length of stay of youth of color will reduce the number of youth of color in detention on a given day.

B. Detention Utilization Study

As mentioned above, a Detention Utilization Study, or DUS, provides detailed data on youth of color in detention. This information can help highlight opportunities to reduce racial and ethnic disparities at detention.

JDAI sites conduct a DUS at the beginning of their involvement with the initiative. The DUS includes three different types of data collection: aggregate trend data, a one-day snapshot of youth in detention, and a detailed case-level review of a sample of detention admissions.

The case-level review is likely to be most helpful to a committee's work to reduce racial and ethnic disparities. The case-level reviews draws upon a sample of 250 detention admissions during the previous year. The data collected for each admission includes, among other things, youth demographics (age, gender, race, ethnicity), reason for the current detention, length of stay, placement after release from detention, nature and number of prior offenses, and whether the youth is currently under supervision by the juvenile court or child welfare system.

The detailed data generated by the DUS's case-level review can present a more complete picture of the pathways of youth of color into detention and the areas where youth of color appear to be overrepresented or treated more harshly than white youth. For example, in 2012, the Maryland Department of Juvenile Services prepared a report entitled "The Doors to Detention," which used the DUS framework to better understand detention utilization in Baltimore City. Although nearly all of the youth in the study were African American, the analysis helped reveal opportunities to prevent unnecessary incarceration of youth of color entering detention through specific pathways.

JDAI provides extensive guidance on how DUS data should be collected, analyzed, and presented.[7] Conducting a DUS from the lens of race and ethnicity can provide officials with a solid understanding of current trends in their detention facility.

C. Detention Utilization in Practice

Jurisdictions should always disaggregate key indicators – admissions, ALOS, and ADP – by race and ethnicity. In the examples below, Ruby County has tracked average length of stay in detention.

Ruby County – Average Length of Stay in Detention

Year	Days
2013	32.2
2014	23.5
2015	30.6

Ruby County – Average Length of Stay in Detention by Race and Ethnicity

Race/Ethnicity	Days
White Non-Hispanic	20.9
White Hispanic	30.7
African American Non-Hispanic	44.9
African American Hispanic	25.8

The chart on the left shows that the average length of stay in detention for all youth in 2015 was 30.6 days. The table on the right shows the same data disaggregated by race and ethnicity. Ruby County officials then see that African-American non-Hispanic youth stay an average of 44.9 days, or 24 days longer than white non-Hispanic youth.

In this instance, stakeholders need more information to determine why lengths of stay are significantly longer for African-American non-Hispanic youth. Some of the questions might include:

- What efforts, if any, were made to step youth of color down to an alternative to detention?

- Are youth of color in detention longer because of a lack of success in an alternative to detention?

- Are youth detained for fixed time periods (e.g., two weeks between reviews)? If so, is there a way to expedite reviews of cases?

- Where do youth of color go after their release from detention? Are delays related to waitlists for services?

- Are long lengths of stay related to the time it takes to complete evaluations or assessments? Are there ways of expediting these for youth in custody?

- Are continuances driving lengths of stay? If so, what are the reasons for those continuances?

These key indicators of detention utilization also provide a baseline from which to measure progress after reforms are implemented.

D. Complementing Quantitative Data with Qualitative Information

In addition to gathering quantitative data about detention use, it is also helpful to understand the perspectives and experiences of a wide range of individuals involved in the system. As part of JDAI, officials use a System Assessment to conduct structured interviews about the use of detention in a community. A portion of the interview focuses on leaders' perceptions of racial and ethnic disparities in their system.[8] Gathering this qualitative information can help generate a more complete understanding of needed reforms.

V.   Making Objective Detention Decisions

A. Detention Risk Assessment Instruments (DRAIs)

Disparity Drivers in Detention Risk Assessment Instruments (DRAIs)

- Mandatory detention criteria
- Aggravating and mitigating factors
- Override reasons
- Inconsistent application of the DRAI

Most state statutes that guide detention decisions afford decisionmakers broad discretion. Typically, statutes do not define what behavior constitutes risk to public safety or risk of flight. Under these vague criteria, officials can justify placing almost any child in secure detention. In addition, some statutes permit detention to "protect" youth, broadening this authority even more. Wide discretion creates an opportunity for explicit and implicit biases to enter into the decisionmaking process, which can lead to the overrepresentation of youth of color in detention.

One key component of reducing racial and ethnic disparities at detention depends on the use of an objective, standardized instrument to determine which youth should be detained. These tools, known as detention risk assessment instruments (DRAIs),[9] assign point values to factors related to a youth's likelihood of committing a new

offense prior to adjudication or their likelihood of failing to appear in court. Many DRAIs also add points for aggravating factors and deduct points for mitigating factors. A low score on the DRAI means that the youth may be released to a parent or guardian, a middle-range score means the youth can be released under some type of supervision (such as home detention), and a high score means the youth should be detained.

Making initial detention decisions guided by a DRAI is increasingly widespread. DRAIs increase objectivity, which in turn can improve fairness and equity in detention decisions. Yet while the implementation of a DRAI often results in an overall reduction in detention admissions, it is not a given that the tool will reduce racial and ethnic disparities. Overrides, for example, are sometimes used in disparate ways. This is especially true where override criteria have not been clearly defined, allowing for subjectivity to enter into what should be an objective tool. In addition, some items in the instrument itself may disproportionately impact youth of color. The next section of this Chapter identifies the common drivers of disparities in DRAIs and strategies to correct them.

B. Drivers of Disparities in Objective Screening Tools

Eliminating racial and ethnic bias in standardized tools requires an intentional initial effort and ongoing, data-driven monitoring. Whether a jurisdiction is using a long-standing DRAI or developing a new one, officials should evaluate the tool for unintended negative impacts on youth of color.[10] Three areas warrant particular attention: the use of mandatory detention criteria, the use of aggravating and mitigating factors, and the use of overrides.

1. Mandatory Detention Criteria

Most jurisdictions mandate detention of some youth. Mandatory detention means that, regardless of a youth's score on the instrument, the youth must be detained as a matter of state law or local policy. Common mandatory detention reasons found on DRAIs include circumstances where (1) a court already ordered detention for a youth, (2) the court issued an arrest warrant for the youth, (3), a youth failed to complete a detention alternative, (4) another jurisdiction has asked the facility to hold the youth, or (5) the youth's charges are of a type that requires detention for public safety.[11]

Mandatory detention criteria may unfairly impact certain populations of children, especially children of color. In order to minimize the impact of mandatory detention criteria on disparities, jurisdictions should ensure that the criteria are well-defined, and limit the criteria to those directly related to either public safety risk, risk of flight, or requirements in state law.

Questions about Mandatory Detention Criteria

- Are mandatory detention criteria directly related to public safety risk or to risk of flight?

- Are the mandatory detention criteria non-discretionary?

- Do mandatory detention criteria have some basis in state law?

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2. Aggravating and Mitigating Factors

Many DRAIs contain aggravating factors that can raise a youth's risk score or mitigating factors that can lower a youth's risk score.[12]

There is debate as to whether including aggregating and mitigating factors on a DRAI is helpful. There are two main arguments against using them from the perspective of racial and ethnic fairness. First, their predictive value may not be established. Second, many of these criteria are highly discretionary.

For example, including "Parent unable to provide appropriate supervision" as an aggravating factor leaves significant opportunity subjectivity to enter into the decisionmaking process. How do staff determine that a parent is unable to provide adequate supervision? Without guidelines, the decision is vulnerable to influence by implicit or explicit biases. Similar concerns arise with items such as "Offense more serious than indicated by charge," "Suspected gang affiliation" (without any type of verification or confirmation), and "Disrespectful during arrest/intake."

Additionally, some instruments list the same factor as both aggravating and mitigating. This creates the potential for factors to be used differently for different groups of youth. For example "Identified mental health need" may often be used as a mitigating factor for white youth, but an aggravating factor for youth of color.

Jurisdictions using a DRAI that includes aggravating and mitigating factors should evaluate the effects of these factors on racial and ethnic disparities. Jurisdictions should determine whether aggravating factors are used disproportionately on youth of color, and whether that is contributing to higher rates of detention. If so, jurisdictions should use the data to revise the tool, either by removing or changing the items that are contribute to racial and ethnic disparities.

For example, in Multnomah County (Portland), Oregon, the DRAI originally included "no known community ties" as an aggravating factor. This single item earned a youth 7 points in an instrument where 12 points made a youth eligible for detention. County juvenile justice personnel realized that factor had a disproportionately negative effect on Latino youth who were reluctant to disclose information about undocumented family members. Multnomah County ultimately retained this aggravating factor but lowered it to 3 points and continued to monitor its effect on racial and ethnic disparities.[13]

> ### Aggravating and Mitigating Risk Factors That May Inject Bias into DRAIs
>
> #### Aggravating Factors
>
> - Parent unable to provide appropriate supervision
>
> - Offense is more serious than indicated by charge
>
> - Suspected gang involvement
>
> - Disrespectful during arrest/intake
>
> - Other aggravating factor
>
> #### Mitigating Factors
>
> - Offense is less serious than indicated by charge
>
> - Youth marginally involved in the offense
>
> - Youth has substance abuse/mental health needs
>
> - Youth has strong family/community supports

The following strategies can help jurisdictions address racial and ethnic disparities in the use of aggravating and mitigating factors.

- ***Ensure that the criteria are objective, not subjective***. For example, if an aggravating or mitigating factor requires a decisionmaker to use broad

discretion in its application, consider removing the item from the list or re-wording it to clearly define the aspects of the aggravation or mitigation a decisionmaker must consider.

- *Ensure that the same factor is not listed as both an aggravating factor and a mitigating factor*. Jurisdictions should eliminate such duplication and more clearly define when a situation would fall into the aggravation or mitigation category.

- *As a general rule, ensure that the total possible number of points earned for mitigation is equal to the total possible points earned for aggravation*. DRAIs often include a long list of aggravating factors and only a few mitigating factors. The number of aggravating factors should roughly equal the number of mitigating factors. In addition, the tools should allow for the same total possible points for aggravating and mitigating factors. For example, if a tool includes five mitigating factors, each worth one point, the maximum total aggravating score is five. The mitigating factors' maximum total score should also equal five. Many instruments fail to adequately incorporate the strengths of a youth and his or her family, and the other supports that could be part of a plan to safely supervise the youth in the community.

3. Overrides

An override occurs when the actual detention decision does not align with the recommendation of the DRAI. For example, an override to detain occurs when the intake officer decides to detain a youth despite a score on the DRAI that qualifies the child for release. An override to release occurs when the intake officer decides to release a youth, either outright or to a detention alternative, despite a score that qualifies the child for detention.[14]

A high override-to-detain rate (generally 15% or higher) means that the tool is not guiding initial detention decisions as originally intended. When many jurisdictions examine their override rates, youth of color are subject to higher rates of overrides up into detention than white youth, and they experience lower rates of overrides down to a detention alternative or home.

For example, one common set of override reasons into detention stem from a decisionmaker's perception that there is a lack of supervision in the home, that a parent is unavailable to take the child home, or that the parent is unwilling to take the child home.

As mentioned above, these reasons can inject bias into the use of a DRAI. Officials may be making assumptions about a caregiver's ability or willingness to supervise their child when a parent may be unavailable because they are working a second job or need to supervise younger children in the home.

Tracking the specific reasons for overrides into detention overall and for youth of color specifically is a crucial part of ongoing monitoring of the use of detention. Closely tracking override reasons and rates for youth of color also provides jurisdictions with information that can help develop the continuum of detention alternatives. For example, if youth of color have a high override rate because a family member is unavailable to pick up a child who is eligible for release, then implementation of a program to provide transportation might reduce detention admissions of youth of color.

> **Questions to Consider to Eliminate Racial and Ethnic Bias in the Use of Overrides**
>
> - Are we collecting override data by race and ethnicity to determine whether children are being overridden in a disparate manner?
>
> - What are the override criteria? Why are they necessary from a public safety or flight risk perspective?
>
> - What are the reasons given for overrides? Do they vary by race and ethnicity?

In 2005, Baltimore officials identified parent unavailability and unwillingness to take custody of their child as one of the primary drivers of low- and medium-risk youth of color into detention. In response, officials developed the Parent and Youth Empowerment Program, operated by the East Baltimore Community Corporation, in partnership with the Maryland Department of Juvenile Services and the Family League of Baltimore.[15] The program is designed to provide support for parents so that they can take custody of their children. For example, the program will provide transportation for family members if there are barriers to picking up their child. PYEP staff also connect parents with services and supports in the community, using a strengths-based model, to empower parents who feel that they cannot supervise their child at home.

The PYEP is an example of a successful program that targeted unnecessary detention of youth of color. In Fiscal Year 2013, the program received 212 referrals. Of those youth referred, 69% were released to a parent or guardian, 26% were placed in a

shelter, and just 5% were placed in detention.[16] Almost all youth served by the PYEP are youth of color.

C. Ensuring Consistency and Equity in the Application of the DRAI

> ### Aggregated and Disaggregated DRAI Data
>
> - Numbers and percentages of youth detained, released to alternatives, and released home
>
> - Frequency and type of overrides
>
> - Use of aggravating and mitigating factors
>
> - Use of mandatory detention holds

A DRAI is a living document. Ongoing data collection and analysis is critical to ensure that the tool guides detention decisions using objective criteria.

Selecting the right staff to complete the tool is as important as tracking outcomes. In order to reduce potential barriers to returning a child home, jurisdictions should assign intake staff who speak and understand the language spoken by the children and families they serve. Staff should be well trained in, and committed to, the philosophy behind use of a DRAI: saving detention for only those youth for whom detention is necessary to avoid reoffending and ensure appearance in court pending adjudication.

VI. Reducing Racial and Ethnic Disparities through Detention Alternatives

Adopting a DRAI is one important strategy to prevent the unnecessary detention of youth of color at the front door. Developing culturally responsive alternatives to detention for youth who can be supervised safely in the community is another.

A. Understanding the Purpose of Detention Alternatives

Detention alternatives provide a continuum of supervision in the community to ensure that youth appear in court and remain crime-free pending the disposition of their cases. A continuum of detention alternatives includes three basic program models: (1)

home or community detention, which permit youth to live at home but require periodic contact with case managers, electronically or in person; (2) day or evening reporting centers, where youth report for several hours each day but return home at night; and (3) shelter or foster care, which are non-secure residential programs. Within each model there can be a range of levels of supervision.[17] The chart on the following pages outlines the common types of detention alternatives.

If data reveal that youth of color are entering detention when they could be safely supervised in the community with additional services or supports, the creation or enhancement of detention alternatives can reduce racial and ethnic disparities. Moreover, even though many jurisdictions employ at least one alternative to detention, few agencies have analyzed whether youth of color have equal access to these programs. Fewer still have assessed whether these programs are as effective for youth of color as they are for white youth. The next sections of this Chapter describe how to expand alternatives to detention from the lens of racial and ethnic fairness.

The first step in designing or enhancing detention alternatives for youth of color is identifying a target population that currently enters detention but that could be supervised safely in the community. Using the data described above, the stakeholders can identify which youth could be released to an alternative if the right ones existed. Once implemented, detention alternatives must be monitored to ensure that they are achieving positive outcomes for youth of color.

Alternative to Detention Programs

Placement Coordination

- Typically occurs prior to detention hearings to identify youth who can safely be released with an appropriate detention alternative
- Staffing includes placement coordinator or expeditor, defender, prosecutor, and others who can help develop a release plan

Home or Community Detention

- A form of community-based supervision that can involve monitoring by telephone or in person
- Can serve as a lower level alternative in a continuum

Reception Centers

- Usually operate 24 hours a day, 7 days a week to screen youth who do not meet the criteria for detention
- Law enforcement can release arrested youth to the reception center staff who typically are trained social workers and whose main role is to work to reunify youth with a parent or guardian, connect families with community services, and offer counseling, if appropriate

Day and Evening Reporting Centers

- Provide youth with supervision and programing during the day, evening, or both
- Usually community-based and operated by a local service provider

Short-Term Respite or Crisis Beds

- Reserved for those youth who do not need to be securely detained but who cannot return home at that time

Electronic Monitoring/GPS

- Electronic monitoring is often used for surveillance of house arrest and curfew conditions, as well as keeping youth away from victims and co-defendants

B. Using Data to Develop or Enhance Alternatives to Detention

1. Using Detention Alternative Programming to Reduce Racial and Ethnic Disparities in Detention: The Berks County Story

Berks County, Pennsylvania used a data-driven process to develop and expand community-based alternatives to secure detention as a way of reducing the overrepresentation of youth of color in detention.[18] After reviewing detention utilization data, officials identified a group of youth who would not have to be detained if a suitable alternative existed: youth who were struggling to meet the terms of probation and youth whose charges were serious enough to warrant enhanced supervision, particularly during the evening hours when youth arrest rates were at their highest.

After researching various types of detention alternative programs and visiting programs in other jurisdictions as part of Models for Change, the stakeholders chose to implement an evening reporting center (ERC). By working closely with a well-respected community service provider, the Children's Home of Reading, the probation department established an ERC in a neighborhood in which many detained youth lived. Berks County officials have taken special care to ensure that the ERC employs staff who reflect the population of youth being served, who are almost entirely youth of color.[19] You can view a video that describes the ERC by [following this link.](#)

Berks County officials have tracked outcomes from the ERC. In the four years following its opening in December 2008, all youth who participated in the program had attended every scheduled court appearance, and over 96% avoided committing a new offense while in the program.[20] The ERC, coupled with other reforms in Berks County, helped reduce the county's annual detention population by more than 60% without compromising public safety. In 2012, on any given day there were an average of 16 fewer Latino youth and 5 fewer African American youth in secure detention than in 2007.[21]

Detention population reductions initially led the County to permanently remove 24 beds from its secure detention program, altering the space to expand non-secure programming. As the population continued to fall, the County Board of Commissioners decided to close the detention center, opting to contract with a local provider in a neighboring county for a limited number of secure beds. The implementation of the ERC, along with other strategies, also helped the county reduce its reliance on costly out-of-home placements by 67% between 2007 and 2012. This saved the county about $2 million per year.[22]

2. Detention Alternative Program Utilization and Outcomes

Collecting and analyzing data on the use of detention alternatives and their outcomes, disaggregated by race and ethnicity, is necessary to ensure that youth of color have access to those programs to the same degree as white youth. For example, does a lack of bilingual staff at a shelter mean that Latino youth with limited English proficiency are not eligible for that alternative?

Of equal importance is the capacity to track program outcomes by race and ethnicity. Officials must know if detention alternatives are as effective for youth of color as they are for white youth. That is to say, do the detention alternatives succeed at ensuring that youth appear in court and avoid committing a new offense prior to adjudication? If outcomes are worse for youth of color, officials must determine why. Officials should also assess whether youth of color are ejected from alternatives at higher rates than white youth. Again, understanding the reasons why is the first step to crafting an appropriate intervention.

The data elements at the right can help officials understand more about the use and effectiveness of detention alternatives for youth of color in their communities.

Outcome Measures, Disaggregated by Race and Ethnicity

- Program referrals (number of youth and percentage of eligible youth)

- Successful program completions

- Unsuccessful program completions:
  - Failures to appear
  - Re-arrests
  - Terminations/Ejections

The Baltimore City Pre-Adjudication Coordination and Transition Center

The Pre-Adjudication Coordination and Transition Center (PACT Center) opened in 2007 in Baltimore as a community-based alternative to detention. The program, run by the Mayor's Office of Employment Development with funding from the Maryland State Advisory Group and assistance from the Family League of Baltimore, focused on those youth who would otherwise be detained because of a lack of success in less intensive alternatives to detention.

Located in West Baltimore, the program provides support services to youth to ensure that they attend scheduled court hearings, avoid re-arrest, and appear in court with an individualized plan that is designed to identify community resources that will help the youth avoid future offending.

An independent evaluation of the program's effectiveness showed that this strategy for reducing racial and ethnic disparities in detention made sense from a public safety perspective. Specifically, the evaluation found that, of the more than 400 youth served by the program, 98% appeared for their scheduled court hearings and 92% did not reoffend while participating in the program. Almost all (99%) of the youth that served at the PACT Center were African American. You can read more about the PACT Center and its outcomes by clicking here.

C. Drivers of Disparities in Alternatives to Detention

Alternatives to detention can help prevent the unnecessary incarceration of youth of color. However, certain aspects of their use may actually increase the overrepresentation or disparate treatment of youth of color. The three primary concerns are net widening, excessive amounts of time in alternative to detention programs, and a lack of cultural responsiveness of these programs.

1. Net Widening

Detention alternatives should be reserved for youth who would otherwise be detained. Many jurisdictions have trouble implementing this principle. Some officials send youth to alternatives because they think they might benefit from treatment and programming, even if it is not determined to be needed by the DRAI. Without clear eligibility criteria and control of who gets referred to alternatives, youth of color may end up inappropriately placed in restrictive programs. There, they may violate program rules, which can mean that a youth who was never eligible for secure detention in the first place ultimately lands in detention.[23]

Net widening squanders scarce public resources and can lead to unintended negative consequences for youth of color. Officials must set clear eligibility criteria for alternatives, ensure that those criteria are followed, and monitor data to ensure that net widening does not occur.

2. Excessive Amounts of Time in Alternative to Detention Programs

The longer a child stays in one alternative, the higher the likelihood of violation. This is particularly true of highly restrictive alternatives, such as GPS and electronic monitoring.

Many jurisdictions have not undertaken an analysis of lengths of stay in alternative to detention programs to assess whether racial and ethnic disparities exist. However, as with net widening, a lack of criteria about how long youth should remain in alternative to detention programs can open decisions up to subjectivity and bias. This can lead to longer stays for youth of color and, as a result, higher rates of violations.

Generally, the length of stay on any one alternative should not exceed 30 days. Decision-makers should set clear limits on the amount of time a youth should remain in each alternative. This is especially true for electronic monitoring, due to the highly intrusive nature of this type of supervision and the stigma it creates because of the public display of the youth's involvement in the justice system. Limiting length of stay in alternatives may mean having to look at case processing times more generally. Quicker timelines for handling cases mean that youth spend less time awaiting adjudication, thereby requiring less time in an alternative to detention.

3. Lack of Cultural Responsiveness

Cultural responsiveness in detention alternatives means that programs (1) value diversity, (2) have the capacity for cultural self-assessment, (3) acquire and institutionalize cultural knowledge, and (4) continuously adapt to the diversity and the cultural contexts present in the communities they serve.[24]

Considerations for Developing Culturally Responsive and Linguistically Competent Alternative to Detention Programs

- Hire program staff who have the skills and values that reflect youth's cultural and linguistic backgrounds

- Ensure that materials used in the program are translated into the native languages of youth and family members served by the program

- Situate programs in the neighborhoods where youth and families reside, both for ease of participation and to build the capacity within communities

- Partner with community-based organizations and draw upon youth's natural neighborhood and family supports

Linguistic competency in detention alternatives requires providers to communicate effectively with youth and families, including those with limited English proficiency.[25] The importance of linguistic competency cannot be overstated. In Santa Cruz, California, a Probation Department assessment revealed that the lack of Spanish-speaking intake staff and case managers made it difficult to release youth to family members, even if it was appropriate to do so. Staff were unable to speak with parents, and parents were unable to ask questions. In response, the Probation Department made it a goal to have Spanish-speaking staff at every stage in the juvenile justice process, at a minimum in proportion to the percentage of Latino youth in the detention center. The Probation Department made staff assignments and hired new staff accordingly.[26]

Additionally, alternative to detention programs should draw upon a youth's existing community and family supports. When asked, families generally report feeling excluded and disrespected.[27] Jurisdictions that are intentionally focused on including families as partners take advantage of a valuable resource to increase youth's chance of success.

[1] Scott, E. & Steinberg, L. (2008). Adolescent development and the regulation of youth crime. *Future of Children: Juvenile Justice. 18*, 15-35 [hereinafter, Adolescent development]; Mulvey, E.P. (2006, December). *Growing up and growing straight: Understanding why many adolescent offenders age out of crime*. (Report # 89). Pittsburgh, PA: University of Pittsburgh, Office of Child Development [hereinafter, *Growing up and growing straight*]; and Bernstein, N. (2014). *Burning down the house: The end of juvenile incarceration*. New York, NY: The New Press [hereinafter, *Burning down the house*].

[2] Adolescent development; *Growing up and growing straight*; and *Burning down the house*.

[3] Office of Juvenile Justice and Delinquency Prevention, Survey of Youth in Residential Placement, *available at* https://syrp.org/online_analysis.html.

[4] National Council on Crime and Delinquency. (2007). *And justice for some: Differential treatment of youth of color in the juvenile justice system*. Oakland, CA: National Council on Crime and Delinquency [hereinafter, *And justice for some*].

[5] Id.

[6] Id.

[7] National Council on Crime and Delinquency. (2003). *Planning for juvenile detention reform: Data collection handbook*. Baltimore, MD: The Annie E. Casey Foundation.

[8] Id.

[9] The term Detention Risk Assessment Instrument (DRAI) is most commonly used throughout the literature, and therefore is the term used in the Practice Manual. Note that a tool designed to guide initial detention decisions is operationally used more as a screen than a deep assessment of risks and needs typically associated with the term "assessment."

[10] JDAI Helpdesk. (n.d.). *Reducing racial and ethnic disparities*.

[11] Steinhart, D. (2006). *Juvenile detention risk assessment: A practice guide to juvenile detention reform*. (pp. 43). Baltimore, MD: Annie E. Casey Foundation [hereinafter, *Juvenile detention risk assessment*].

[12] Id. at 37.

[13] Id. at 48.

[14] Id. at 44.

[15] The PYEP originally began in 2005 as the Community and Family Resource Center (CFRC). When funding for the CFRC dried up because of the 2009 budget crisis, the center closed. Immediately thereafter, the juvenile detention population spiked. Officials worked to identify other funding streams to reconstitute the parent outreach elements of the CFRC as a new program, which became the Parent and Youth Empowerment Project.

[16] East Baltimore Community Corporation, Parent and Youth Empowerment Program, http://ebcconline.org/programs/parent-empowerment-program/ (last visited Dec. 9, 2015).

[17] Id. at 15.

[18] Szanyi, J. (2010, March). Leading the way: How Berks County, PA is pioneering an alternative to detention as a model for statewide reform. *DMC Action Network News, 10*.

[19] Dana Shoenberg, Reducing the Incarceration of Youth of Color in Berks County through Structured Decision-Making and Community-Based Alternatives (2012), *available at* http://www.modelsforchange.net/publications/686.

[20] Id.

[21] Id.

[22] Dana Shoenberg, Models for Change Innovation Brief: Reducing Racial and Ethnic Disparities in Pennsylvania, *available at* http://cclp.org/documents/DMC/Innovation_Brief_Reducing_Racial_and_Ethnic_Disparities_in_Pennsylvania.pdf.

[23] *Consider the alternatives* at 13.

[24] National Council of La Raza (2007). *A fair juvenile justice system: The importance of linguistic and cultural competency* [hereinafter, *A fair juvenile justice system*].

[25] Id.

[26] Hoytt, E.H., Schiraldi, V., Smith, B.V., & Ziedenberg, J. (2002). *Reducing racial and ethnic disparities in juvenile detention*. (pp. 47). (Pathways # 8). Baltimore, MD: Annie E. Casey Foundation; *A fair juvenile justice system*.

[27] Justice for Families: Families Unlocking Futures. (n.d.). *Our work*. (n.d.).

Chapter 5: Reducing Racial and Ethnic Disparities at Disposition

Center for Children's Law and Policy

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Reducing Racial and Ethnic Disparities at Disposition

I.   Introduction

One effective way to reduce racial and ethnic disparities is to identify or strengthen early pathways out of the juvenile justice system for youth of color. Many of the strategies discussed in this Practice Manual focus on doing just that. However, in many juvenile justice systems the most significant point of racial and ethnic disparities is not at the front end of the system. Rather, it is at the "deep end" – the point at which youth have either been adjudicated delinquent or pled to a charge and are awaiting the disposition of their case.

For some youth, disposition can mean a short time on probation. For others, it can mean a lengthy stay in a secure facility, followed by months or years of supervision and services. State data suggest that youth of color disproportionately see their cases end with an out-of-home placement or incarceration in a secure facility (see figure 1 below). And federal data reveal that while youth of color represent only one-third of the youth population in the country, they represent two-thirds of the youth confined in out-of-home placements.[1] This means that youth of color are more likely to experience the negative outcomes associated with incarceration than white youth: severed connections with family members and other supportive relationships, higher recidivism rates, reduced education and employment prospects, and exposure to opportunities for abuse by other youth or staff.[2]

For example, a 2015 report on juvenile justice reform in Texas found that youth who had been incarcerated in state institutions were 21% more likely to be re-arrested within one year of their release than youth of similar backgrounds who were placed under county probation supervision. Additionally, those youth released from state institutions were three times more likely to be arrested for felony charges than youth under county probation supervision.[3] A study in Illinois just a few years earlier reported similar findings: even after controlling for a range of demographic and background characteristics such as history of prior offending, youth who were confined in an out-of-home placement were 13% less likely to graduate from high school and 22% more likely to be incarcerated as an adult than youth who had not been so confined.[4]

Why are youth of color more likely to end up in out-of-home placements or confined in secure facilities at disposition? Some believe that it is because youth of color are charged with more serious crimes than white youth. However, studies of racial and

ethnic disparities that control for severity of the offense and other factors still find differences between white youth and youth of color in the outcomes of their cases.[5] Systemic biases can lead to the development of policies and practices that have a disparate impact on youth of color. The reality is that disparities can exist for a number of reasons ranging from a lack of diversion opportunities earlier in the juvenile justice process to inadequate or ineffective community-based programming to biases within the dispositional decision-making process.

Figure 1 – Source: W. Haywood Burns Institute, National Data Map

The range of potential causes of racial and ethnic disparities at disposition might suggest that the work to level the playing field at this stage is too complex or challenging to tackle. However, by beginning with a careful analysis of the data and understanding some of the most common contributors to overrepresentation and disparate treatment at this decision point, officials can implement policies and practices that provide opportunities to youth of color that are equitable with those available to white youth.
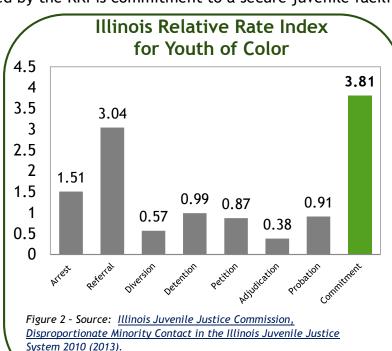
A. Starting with the Data

In order to begin effective work to reduce racial and ethnic disparities at disposition,

stakeholders must first gather the data – both quantitative and qualitative – that allows them to diagnose the problems that may be contributing to overrepresentation, disparate treatment, or unnecessary movement of youth of color deeper into the system.
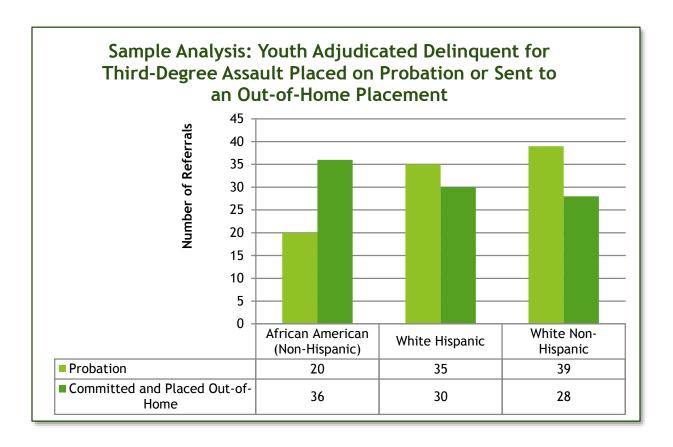
1. Gathering and Analyzing Quantitative Data

Officials may already have some sense of racial and ethnic disparities at the disposition decision point. Many jurisdictions regularly produce Relative Rate Index (RRI) data to a state agency for federal reporting purposes under the Juvenile Justice and Delinquency Prevention Act (JJDPA). In some places, such as Illinois, the point of greatest disparity as measured by the RRI is commitment to a secure juvenile facility.

Although the RRI is one aggregate measure of overrepresentation, there are a number of other data points that can provide more useful information about the scope and nature of racial and ethnic disparities in a jurisdiction. One of the most helpful data points is disposition outcomes for similarly situated youth. For example, of youth adjudicated delinquent for assault, what were the dispositions of those cases broken down by race and ethnicity, gender, and geography (e.g., location of the youth's residence)?

Illinois Relative Rate Index for Youth of Color

Arrest: 1.51
Referral: 3.04
Diversion: 0.57
Detention: 0.99
Petition: 0.87
Adjudication: 0.38
Probation: 0.91
Commitment: 3.81

Figure 2 – Source: Illinois Juvenile Justice Commission, Disproportionate Minority Contact in the Illinois Juvenile Justice System 2010 (2013).

If officials find that a majority of African American youth spend time in an out-of-home placement for this reason whereas most white youth simply serve a term of probation as the chart below with hypothetical data demonstrates, the data suggest that this should be a target population that officials should investigate more closely.

Sample Analysis: Youth Adjudicated Delinquent for Third-Degree Assault Placed on Probation or Sent to an Out-of-Home Placement

	African American (Non-Hispanic)	White Hispanic	White Non-Hispanic
■ Probation	20	35	39
■ Committed and Placed Out-of-Home	36	30	28

Number of Referrals (y-axis: 0, 5, 10, 15, 20, 25, 30, 35, 40, 45)

If faced with the data above, some questions to ask could include:

- Who makes recommendations about whether a youth should be placed on probation or committed? What is the process for arriving at those recommendations? Do family members have input in these recommendations?

- If tools are used to make recommendations at dispositions, have they been validated for youth of different races and ethnicities, as well as by gender? Are there questions or factors in those tools that may make it more likely that youth of color receive a recommendation for an out-of-home placement?

- How often are recommendations made by objective tools overridden, why, and for which youth?

- Do youth of color have the same access to community-based services that other youth have while on probation?

- If youth of color who are committed and placed out of home were previously unsuccessful on probation, what led them to be unsuccessful? Do the reasons suggest necessary adjustments to the process of referring youth to services or the services themselves?

Other dispositional decision points that may be useful to analyze by race and ethnicity include:
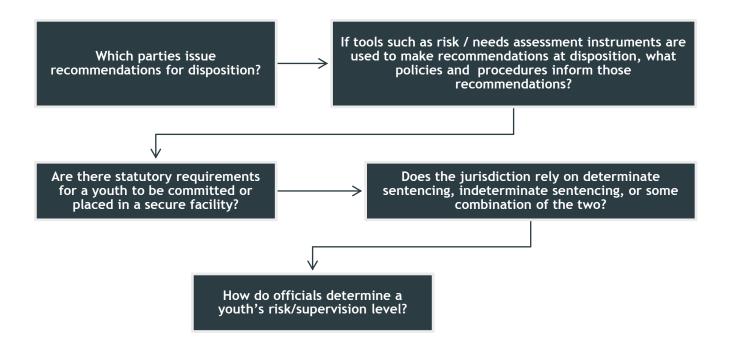
- **Supervision and Risk Levels**. Of youth adjudicated delinquent, how many youth are classified as low, medium, or high risk? Similarly, how many youth are assigned to low, medium, or high intensity supervision? Disparities may suggest a need to standardize how officials make determinations. It may also indicate that certain components of the instrument lead to biased outcomes for youth of color. This is a particular concern if the instrument has not been validated for youth of different races and ethnicities.

- **Focusing on Risk vs. Identifying Needs.** Another related question is whether a tool or instrument focuses more on a youth's needs as opposed to the risk factors or behaviors related to the youth's underlying offense. Tools that attempt to inventory all of the areas of a youth's life that might warrant attention run the risk of driving all youth – especially youth of color – deeper into the system, as officials attempt to address what may be many different challenges in a youth's life. Youth who are noncompliant with services put in place and designed to meet all of these needs may end up in an out-of-home placement for violations, when they should not have been eligible placement to begin with based on the underlying charge.

- **Length of Supervision and Commitment**. Of youth who are committed, what is the average amount of time that white youth and youth of color spend under supervision? If youth of color spend longer amounts of time under supervision than similarly situated white youth, this could suggest the need for more structured dispositional planning. Longer terms of supervision make it more likely that youth will, at some point, violate the terms of their supervision, which can result in movement deeper into the juvenile justice system.

- **Referrals to, and Successful Completion of, Community-Based Services.** Access to effective and culturally responsive community-based services allow youth to be supervised close to their home while building the skills to become successful members of the community. However, if youth of color are underrepresented in referrals to such programs or less likely to engage with or complete these services, these youth and their families may see higher rates of placement in out-of-home settings.

Data may not be readily accessible for one or more of the decision points described above. In that case, officials should plan to conduct a file review of a representative sample of cases using a standardized set of questions. Alternatively, officials can gather data prospectively for a period of time to help obtain some information about these trends. The drawback on prospective data collection is that it can delay reform work while the data is gathered. Officials should consider how to obtain assistance with data collection and analysis activities that may be burdensome for those who already have full-time jobs. For example, some sites have relied on student interns or collaborations with graduate students at academic institutions for such assistance. Individual sections within this chapter of the Practice Manual contain additional suggestions on data collection analysis that can inform stakeholders' activities in these areas.

2. Gathering and Analyzing Qualitative Data

Dispositional decisions are not made in a vacuum. Officials should gather qualitative data on the decision-making process to understand how certain policies or practices may contribute to overrepresentation, disparate treatment, or unnecessary movement through the system. Stakeholders can begin by asking the basic questions included in the diagram below to help understand what documents they may need to gather and whom they need to interview.

Officials may also want to explore additional details with respect to particular aspects of disposition. If stakeholders have identified probation violations leading to out-of-home placement as an area of significant overrepresentation of youth of color, it would be helpful to know how a youth's terms and conditions are developed. Are they boilerplate (i.e., the same for all youth) or tailored to an individual youth's needs? Moreover, can youth and families understand them? Are there terms or conditions that youth and families commonly struggle with, and if so, why? What is the length of time that youth are under supervision for different types of offenses or risk levels?

| Which parties issue recommendations for disposition? | → | If tools such as risk / needs assessment instruments are used to make recommendations at disposition, what policies and procedures inform those recommendations? |

| Are there statutory requirements for a youth to be committed or placed in a secure facility? | → | Does the jurisdiction rely on determinate sentencing, indeterminate sentencing, or some combination of the two? |

| How do officials determine a youth's risk/supervision level? |

Understanding the jurisdiction's continuum of alternatives to out-of-home placement is also important to determining the causes of, and solutions to, racial and ethnic disparities at disposition. For example, what services are available as alternatives to out-of-home placement? Are they located in communities of color or are they a significant distance away from most youth and families? Are the services culturally and linguistically responsive to their clients? Do the programs have eligibility criteria? Do they have the ability to reject referrals? Do stakeholders know about all of these resources? Are certain resources under- or over-used? What evidence do stakeholders have of these programs' effectiveness? Has the jurisdiction invested in building community capacity to reduce out-of-home placements?

These questions are meant to be a starting point for a qualitative analysis of key considerations at disposition. Other factors may be relevant depending on how dispositional decision-making occurs in a particular jurisdiction. Regardless of the process, though, officials should take the time to undertake a qualitative analysis that will complement the quantitative data collected and place it in the appropriate context.

B. The Issues

The subsequent sections of this chapter outline some of the strategies that can help reduce or eliminate racial and ethnic disparities at disposition.

- **Making Objective Disposition Decisions.** Youth of color are often overrepresented in secure facilities or other out-of-home placements, and many of these youth

have not been adjudicated for the types of offenses that would necessarily warrant placement in these types of settings. Standardizing the way jurisdictions make disposition decisions can help reduce disparities and reserve incarceration for the cases for which it is truly necessary.

- **Ensuring Access to and Availability of Alternatives to Out-of-Home Placement.** Youth at the "deep end" of the juvenile justice system are those who are at the highest risk of out-of-home placement. Ensuring that all youth, particularly youth of color, have access to effective and culturally responsive alternatives to out-of-home placement is another strategy that can help agencies limit the use of incarceration and residential facilities as a dispositional outcome. However, many jurisdictions have yet to invest fully in communities of color in a thoughtful and intentional way.

- **Tailoring Terms and Conditions.** In many juvenile justice systems, officials apply a set of standard terms and conditions to all youth who come into contact with the system – drug testing, curfew, no unexcused absences from school, etc. – regardless of whether those areas were responsible for the youth's contact with the system. These requirements often reflect a certain set of values and beliefs that create opportunities for bias against youth of color and their families. Narrowly tailoring terms and conditions to address the most significant contributors to delinquent behavior can help avoid this problem.

- **Developing an Effective Graduated Responses System.** A major reason for incarceration of young people in this country, particularly youth of color, is to sanction the youth for violating probation or other court orders. This section outlines how a strong system of graduated responses – both sanctions for negative behavior and incentives for positive behavior – can help reduce racial and ethnic disparities stemming from violations of probation.

II. Making Objective Disposition Decisions

A. The Issue

Ask any juvenile justice professional when he or she thinks it is appropriate to send youth to a secure or out-of-home placement as a disposition, and the response will almost always be "only in cases involving very serious offenses," or "only as a last resort after we've tried everything else." This stems from a belief that officials should reserve the most restrictive and resource-intensive options for the small number of youth who warrant extended involvement with the juvenile justice system.

Although these views may be widely held among juvenile justice officials, the data tell us that they may not always drive disposition decisions. A 2013 federal survey of youth in residential placement revealed that juvenile facilities were holding over 9,300 youth for technical violations during a single day that year.[6] In many jurisdictions, youth of color are overrepresented among the group of youth incarcerated for these reasons.

The number of youth in out-of-home placement is a concern in and of itself. Removal of a youth from his or her home represents the most disruptive and extreme intervention into a youth's life and the life of his or her family. Placement in residential settings also severs positive connections with supportive individuals and organizations in a youth's community. Juvenile justice officials often recognize these consequences, but they see them as relatively short-term costs that are outweighed by longer-term benefits to public safety and an increased likelihood of helping youth avoid future involvement with the justice system.

However, a large body of research documents significant and negative long-term consequences of out-of-home placement and incarceration. Youth who are placed in out-of-home secure settings commit more offenses after their release than similarly situated youth who receive community-based services.[7] Other studies demonstrate that incarceration worsens outcomes most significantly for low- and medium-risk youth,[8] highlighting the dangers of overreliance on out-of-home placements as a disposition. There is also evidence that secure out-of-home placements may worsen outcomes more significantly than other types of out-of-home placements. A 2015 study of juvenile justice reform in Texas found that youth incarcerated in state-run secure facilities had a higher one-year re-arrest rate (41%) than youth who were placed in non-secure programs (35%) or youth supervised in the community and connected with a skill-based program (27%).[9]

Recent research also reveals the harmful impact of incarceration on a youth's education and employment prospects. A 2013 study of 35,000 youth in Chicago found that incarceration as a youth decreased the likelihood of graduating from high school

by 13 percent and increased the likelihood of incarceration as an adult by 22 percent, even after controlling for a range of demographic and other factors.[10] On one level, these studies suggest that incarceration of youth does not help public safety in the long term. For this reason, many jurisdictions have worked successfully to reduce their overall use of incarceration and out-of-home placements.[11] Advocates and juvenile justice officials rightfully view these reductions as significant achievements.

Few jurisdictions have made reducing racial and ethnic disparities an explicit priority of these reform efforts. As a result, youth of color continue to be overrepresented in secure facilities and other out-of-home placements. In some cases, the overrepresentation of youth of color may have actually *increased* after implementation of reforms, even though the total number of youth in these facilities has fallen.

This ongoing overrepresentation underscores a second important takeaway from the studies on the harms of incarceration. It is youth of color who are most likely to bear the burden of the negative effects of incarceration on education, employment, and likelihood of future involvement in the criminal justice system, as they are the youth who are most likely to be sent to these placements. This fact has profoundly negative and long-lasting implications for the ability of youth of color to become successful and productive citizens.

B. The Problems

Understanding how systems determine which youth require incarceration – and under what circumstances – is crucial to understanding why youth of color are overrepresented in out-of-home placements and secure juvenile facilities. In most jurisdictions, dispositional decisions rest on a combination of factors, including a youth's current and prior offenses, his or her family situation and social history, and recommendations from a number of different parties in juvenile court. In theory, this decision making process could benefit youth by allowing judges and juvenile justice professionals to consider a range of mitigating and protective factors instead of rigidly applying a disposition based on the type of offense involved. In practice, though, this process has led to racial and ethnic disparities.

Why do youth of color continue to remain overrepresented in out-of-home placements in spite of significant overall reductions in the use of those placements? The first problem is that some jurisdictions do not place clear and consistent limits on the types of dispositions that youth may receive. Even if a majority of officials share the belief that out-of-home placement and incarceration should be reserved for a small number of situations, a lack of limits in law or policy allows stakeholders to make decisions that are contrary to this belief. This wide degree of discretion can lead to the overrepresentation of youth of color in out-of-home placements. Conversely, statutes or policies that *require* an out-of-home placement for certain offenses or

that call for a fixed amount of time away from home may also disproportionately impact on youth of color and should receive careful analysis.

Another problem relates to the type of information used to make a decision about the disposition of a youth's case. In many jurisdictions, multiple stakeholders make recommendations to the judge, who then decides on an appropriate intervention. Often times, the recommendation of a particular party, such as a probation officer or case manager, will carry substantial weight. However, in some jurisdictions, probation officers or case managers may not rely on the same set of factors when generating their recommendations. They may describe similar crimes in a different way, or they may assign the same factors a different level of importance among different youth.

Researchers George Bridges and Sara Steen examined written probation pre-disposition reports from three different jurisdictions, analyzing trends in the probation officers' descriptions of youth and their recommendations to the court.[12] They found marked differences in these reports depending on the youth's race and ethnicity, even when they matched reports to the youth's background characteristics and his or her charges.

Bridges and Steen provided examples of pre-disposition reports for two 17-year-old boys. Both youth were charged with first-degree robbery with a firearm. Neither incident involved any injury to a victim, and neither youth had any prior history of involvement with the juvenile or criminal court. The only difference was that one youth was African American and the other was white. Read the descriptions below, which came from actual case files, and decide which youth is African American and which youth is white.

Ed

"This robbery was very dangerous as Ed confronted the victim with a loaded shotgun . . . In talking with Ed, what was evident was the relaxed and open way he discussed his lifestyle. There didn't seem to be any desire to change. There was no expression of remorse from the young man. There was no moral content to his comment."

Lou

"Lou is the victim of a broken home. He is trying to be his own man, but . . . is seemingly easily misled and follows other delinquents against his better judgment. Lou is a tall, emaciated little boy who is terrified by his present predicament. It appears that he is in need of drug/alcohol evaluation and treatment."

If you are like most readers, you will have immediately identified Ed as the African American youth and Lou as the white youth. Why?

The researchers found marked differences in reports between white youth and youth of color. Bridges and Steen found that probation officers were more likely to describe offending behavior as a product of a youth's innate, personal characteristics when making recommendations for African American youth (Ed), but they were more likely to describe that same offending behavior as a product of external factors, such as a youth's home situation or peer group, when making recommendations for white youth (Lou). This translated into probation officers assigning African American youth a much higher risk of reoffending and recommendations for harsher and longer dispositions for youth of color than for white youth charged with the same offenses.

The research reinforces the point that, absent objective decision making criteria, individuals can draw sharply different conclusions even when presented with the same information. These differences may stem from explicit or implicit biases against youth of color, the application of stereotypes to individual cases, or the imposition of a specific set of personal beliefs of values. Readers can question why they were able to determine the race of Ed and Lou so quickly and think about whether the same patterns would appear in their own case files.

Some of the key questions raised by this research are: (1) How can we structure dispositional decisions to determine which youth require an out-of-home placement so that they are fair, objective, and consistent with a philosophy that out-of-home placement should be used as a last resort?, and (2) Regardless of the disposition, how can we build upon a youth's strengths and criminogenic needs in a way that will give youth the supports and services that are most likely to help them stay out of trouble in the future? A number of jurisdictions have implemented reforms that help strike that balance by placing limits on the use of secure confinement as a dispositional option and adopting research-based risk and needs assessment instruments.

C. The Solutions

Officials have recognized that variability in dispositions -- based on a youth's race and ethnicity, where the youth lives, or his or her judge -- undercuts the juvenile justice system's cardinal tenet of fair treatment. In an effort to standardize disposition decisions and limit the use of out-of-home placements and secure confinement, jurisdictions have pursued two types of reforms that can help to reduce racial and ethnic disparities at disposition.

1. Placing Limits on Commitment and the Use of Secure Confinement

In recent years, several states have taken steps to codify in their state codes the belief that commitment and out-of-home placement should be a last resort. Reforms in two jurisdictions – Georgia and Illinois – illustrate two alternatives to this approach.

In Georgia, advocates, officials, and lawmakers reviewed data on commitments to the state's Department of Juvenile Justice and out-of-home placements. The numbers revealed a high number of low risk youth in out-of-home placements: almost one in four youth had been adjudicated for a low-level offense such as a status offense or misdemeanor, and approximately 40% were judged to be a low risk to reoffend.[13]

The Special Council on Criminal Justice Reform for Georgians, a multidisciplinary task force charged with making recommendations for the state's juvenile justice system, reviewed these data and recommended limits on the use of commitment as a dispositional option to address these trends. The Council recommended prohibiting out-of-home placement for all status offenders and misdemeanor offenders who did not have at least four prior adjudications, at least one of which was for a felony. This proposal, which was part of a major overhaul of Georgia's juvenile code, earned the support of a broad range of stakeholders within the state. These included the Prosecuting Attorneys' Council of Georgia, the Georgia Association of Criminal Defense Lawyers, and the Council of Juvenile Court Judges of Georgia. The Georgia General Assembly lowered the minimum number or prior adjudications from four to three, but unanimously accepted the modified limit. Georgia Governor Nathan Deal signed the requirement into law on May 2, 2013.[14]

Officials in the state of Illinois took a slightly different approach to limiting the use of commitment and secure confinement. There, a coalition of advocacy groups marshaled research showing that out-of-home placements had no advantage over community-based services and supervision in reducing rates of re-arrest or self-reported reoffending behavior. Advocates drew upon findings from the Pathways to Desistance study, a long-term evaluation of more than 1,300 juvenile justice-involved youth.[15] Funded by the MacArthur Foundation, the Pathways to Desistance study is the largest longitudinal study of youth who have committed serious offenses.

The Illinois law, which was signed into law in 2012, incorporates these findings from the research by permitting commitment only when "it is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement."[16] The law's goal was to ensure that judges consider treatment opportunities in a youth's own community before resorting to commitment to the state.

The law also requires judges to make written findings describing the reasons why secure confinement is necessary after considering a range of individualized factors. These include the results of behavioral assessments using a standardized assessment

tool; the youth's educational background, including any assessment of learning disabilities; the physical, mental, and emotional health of the youth; the youth's history of involvement with the juvenile court; and whether the state can provide the services necessary to meet the needs of the youth.[17]

This requirement for written justification of a commitment decision is more than just a formality. It ensures that judges have to consider the range of factors that are likely to suggest that a youth is more likely to succeed in a community-based placement. As Illinois Representative Karen Yarbrough, the chief sponsor of the Illinois law, noted, "removing children from their homes and committing them to the custody of the [state] is a serious decision with far-reaching ramifications, which is why it is critical that our justice system better examine other alternatives."[18]

The reforms in Georgia and Illinois add objectivity to decisions to send youth to out-of-home placements. In doing so, they reduced the opportunity for bias of any kind to influence the decision about whether to commit youth or send them to a secure facility. Although officials in Georgia and Illinois adopted these limits as part of state law, cities and counties can adopt the same type of limits as a matter of local court or juvenile justice agency policy or administrative rules.

2. Adopting Objective Risk and Needs Assessments to Guide Dispositional Decisionmaking

Juvenile justice officials want to identify the most effective services and supports to help youth succeed and avoid future involvement with the criminal justice system. Yet the many competing demands placed upon professionals can make it difficult for individuals to spend the time necessary to assess the strengths and needs of each youth and his or her family.

Under this pressure, professionals may make assumptions based on past experiences with other clients to help inform case planning. Drawing upon this history may not seem like a problem in and of itself. After all, the juvenile justice field – as any other profession – values experience. However, letting intuition or gut feeling drive case planning presents an opportunity for bias to enter the decision making process. Not only that, research shows that implicit biases are more likely to impact decision making when individuals are overburdened and do not have adequate time or resources to complete a task.[19] Even in small jurisdictions, a lack of structure around dispositional planning can lead to wide variability among staff in terms of recommendations. Without a common set of objective criteria, staff may inject their own personal biases, values, and beliefs into the process, which can undercut the fairness of the process.

Fortunately, researchers have recognized the need to develop tools that can help guide decisions about needed services and supports. A number of evidence-based instruments, known generally as "risk assessment instruments" or "risk and needs assessments," exist to help juvenile justice professionals apply objective, research-

based criteria to make evidence-based case planning decisions. They do so by examining the likelihood of reoffending or engaging in continued delinquent acts over a period of time. The instruments use a standardized set of questions that have been shown to have a demonstrated relationship to engaging in or avoiding future delinquency.[20]

Because risk assessments rely on the same set of factors for all youth, they represent an important opportunity to make disposition decisions more equitable. To be clear, these tools do not remove all discretion from the decision making process. They do, however, try to ensure that juvenile justice officials rely on the same set of information – and inferences about that information – for all youth.

Risk assessments also guard against a tendency to include items unrelated to future offending into dispositional decision making. Some juvenile justice officials are tempted to use the juvenile justice system to meet all of the many needs that a youth and his or her family may have. These may be real needs, but they are often unrelated or tangentially related to the underlying cause or causes of offending behavior. The desire to try to "fix" everything that is wrong with a youth's life, while often the product of good intentions, often results in more extensive involvement with the juvenile justice system than is actually necessary (*see also* "Tailoring Terms and Conditions").

For all of the advantages of risk assessment tools, not all such instruments are created equal. Just because an instrument contains a list of standard questions does not mean that it will eliminate racial and ethnic disparities. To the contrary, some tools may include factors or considerations that are not evidence-based, and some of those factors may actually exacerbate racial and ethnic disparities. For example, one instrument from a jurisdiction that participated in the Models for Change initiative relied on a tool that increased a youth's risk level if he or she had unrealistic career aspirations. The instrument noted that an interest in a future career in rap or hip-hop music constituted an unrealistic career aspiration. This item, with a questionable relationship to any criminogenic or protective factors, could be used to assign youth of color higher risk levels than their peers.

Other tools may rely heavily on factors or items that officials know will reflect racial and ethnic disparities. For example, a tool that assigns great weight to prior law enforcement contacts may generate biased recommendations for youth of color, particularly where youth of color are significantly overrepresented in arrests in school and in the community (as is the case in many jurisdictions).

Although researchers have validated most major risk assessments, officials should ensure that the instrument has been validated by race, ethnicity, gender, and age. One popular instrument, the Youth Level of Service/Case Management Inventory (YLS/CMI) contains norm tables specifically for African American youth. Officials must be careful to ensure that experts have examined validated instruments from the lens of race and ethnicity. Some validated instruments rely heavily on variables that may

be somewhat predictive of future offending but that may result in youth of color receiving higher risk levels (e.g., number of prior referrals to juvenile court).

Additionally, some instruments focus solely or more heavily on criminogenic risk factors, whereas other instruments balance those risk factors with protective factors. One example of an instrument that focuses on both risk and protective factors is the Youth Assessment and Screening Instrument (YASI). The YASI identifies a youth's strengths and weaknesses, allowing probation officers to focus on specific factors underlying risky behavior. The instrument generates written recommendations, as well as visual representations, shown below, to help case managers and probation officers more easily identify areas of concern.

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Rock County, Wisconsin, a DMC Action Network site, implemented the YASI in 2008 as a way of helping standardize case planning decisions and implement strengths-based decision making. Rock County's juvenile justice officials saw the YASI as one important component of their work to reduce racial and ethnic disparities in violations of probation and placement for those violations. Lance Horozewski, Director of the Rock County Department of Human Services, notes that the YASI transformed case planning in his jurisdiction.

Previously, all youth would receive substance abuse services regardless of whether they had demonstrated any need for them. Now, we're looking at each youth and developing plans that put resources where they are needed most. Staff target the underlying factors driving delinquent behavior, such as antisocial thinking or anger management problems, instead of just trying to correct the delinquent behavior itself.

-- Lance Horozewski

Implementation of the YASI, along with the development of a system of graduated responses for youth on probation (*see also* "Implementing an Effective Graduated Responses System") and a broader array of community-based services, helped lead to a 30% reduction in the average daily population of African American youth in secure detention and a 35% reduction in the number of adjudicated youth of color admitted to detention for probation violations.[21] These reforms also contributed to a more than 80% drop in placements in state-run secure juvenile facilities from 2007 to 2010.[22]

Risk assessment instruments, while useful tools, work best when juvenile justice officials think about how they fit within the broader process of dispositional planning. What type of training is necessary to ensure that officials are able to accurately administer and interpret results from the instrument? How will the tool's recommendations match available services and supports? How will probation officers and case managers tailor case plans to recommendations?

Fortunately, as part of the Models for Change initiative, experts from the field developed the first comprehensive guidebook on implementation of risk assessment instruments in juvenile justice systems. In the publication, *Risk Assessment in Juvenile Justice: A Guidebook for Implementation*, Drs. Gina Vincent, Laura Guy, and Thomas Grisso of the National Youth Screening and Assessment Project provide a step-by-step roadmap to selecting, implementing, and refining practices related to risk assessment.[23] This document should be the starting point for any official looking to implement a tool in his or her jurisdiction.

In recent years, many jurisdictions have reduced their overall reliance on out-of-home placements for youth in the juvenile justice system. That is a significant achievement. However, in many communities, youth of color continue to remain overrepresented in these placements – and in some cases, are even more overrepresented following those reform efforts. Implementing objective disposition decision making practices such as the ones outlined above can help ensure that youth of color receive the same opportunity as white youth to benefit from alternatives to out-of-home placement.

D. Practice Tips

✓ Analyze data on whether similarly situated youth of different races and ethnicities receive different dispositional outcomes. For example, are youth of color committed and sent to out-of-home placements more frequently than white youth with similar offense histories? Do youth of color stay longer in those placements than similarly situated white youth?

✓ Identify the different parties that make dispositional recommendations to the court and the tools that they rely upon to generate those recommendations.

✓ Examine existing risk assessment instruments for items that may have a disproportionately negative impact on youth of color and eliminate or adjust items that do not relate to factors identified in the research as predictive of future offending behavior.

✓ Adopt an evidence-based risk assessment instrument that researchers have validated for youth of color. When considering different risk assessment tools, ask specifically about predictive validity for youth of different races and ethnicities, as well as gender and age.

✓ Consider how the introduction of a risk assessment instrument will fit within the broader context of an agency's culture and the case planning process. Consult the Models for Change Practice Guide Risk Assessment in Juvenile Justice: A Guidebook for Implementation for clear, step-by-step guidance.

✓ Adopt limits on the use of commitment and secure confinement through the use of objective criteria, either through state law or local court or agency policy.

E. Resources

National Juvenile Justice Network and the Texas Public Policy Foundation, The Comeback States: Reducing Youth Incarceration in the United States (2013).
This report examines reforms in nine states that have led to a significant decrease in youth incarceration, contributing to a 40% nationwide drop in youth incarceration from 2000 to 2010.

Gina Vincent et al., John D. and Catherine T. MacArthur Foundation Models for Change Initiative, Risk Assessment in Juvenile Justice: A Guidebook for Implementation (2012).
The primary purpose of this comprehensive guide is to provide a structure for jurisdictions, juvenile probation or centralized statewide agencies striving to implement risk assessment or to improve their current risk assessment practices.

Gina Vincent & Laura Guy, John D. and Catherine T. MacArthur Foundation Models for Change Initiative, Innovation Brief: Using Risk Assessment to Meet Needs and Reduce Recidivism (2012).
This issue brief describes how most of the county-based juvenile probation offices in Pennsylvania adopted the Youth Level of Service/Case Management Inventory (YLS) in order to evaluate a youth's risk of reoffending and match services to his or her specific risk factors. The near-statewide adoption was a significant accomplishment in a state without a centralized juvenile probation system.

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III. Tailoring Terms and Conditions

A. The Issue

At disposition, juvenile justice officials make a number of decisions of great importance for a youth and his or her family. How long will the youth be under the supervision of the juvenile justice system? Will a youth remain in the home or be sent to an out-of-home placement? The answers to these questions can depend on many factors – a youth's prior involvement with the juvenile justice system, the nature of the current charges, the results of assessments and social histories, and the advocacy of different parties appearing before the court. One thing is certain, however: all youth will leave their disposition hearing with a set of rules to follow and expectations to meet.

Working with youth on ways to avoid the things that got them into trouble is certainly a worthwhile goal. For example, if a youth is charged with domestic assault, helping that youth develop anger management skills can help defuse situations that might otherwise lead to a call to the police. Thus, it may be reasonable to require that youth attend anger management sessions as part of the terms of his or her disposition. In a world of limited resources, focusing time and energy on developing this type of skill makes sense and fits with the juvenile court's mandate to provide rehabilitative programs and services.

In some juvenile justice systems, however, key decision makers have expanded this mandate beyond addressing what led to the youth's involvement with juvenile court. In such situations, officials see the youth's contact with the system as an opportunity to examine all of the dynamics in a youth's life – family, peer group, progress in school, ability to find a job – and attempt to "fix" anything perceived to be deficient or problematic in all of these areas. A common practice is to apply a set of standard terms and conditions – drug testing, curfew, no unexcused absences from school, stay away from "negative peers" – to all youth who come into the system, regardless of whether those areas were directly involved with the youth's delinquent behavior.

Many of these terms and conditions bear little relationship to public safety. Instead, they often reflect the beliefs and values of a particular decision maker or set of decision makers as to what youth should be doing and how families should be raising their children. Decision makers may not have considered whether and how the imposition of these terms and conditions will impact communities of color. However, these requirements can drive youth deeper into the system and ultimately are counter-productive. This is particularly true when terms and conditions are vague, complicated, confusing, or simply unrealistic.

The weight of these terms and conditions falls disproportionately on youth charged with low level offenses and youth of color. As described elsewhere in this chapter, recent federal surveys have found that only 25% of youth in residential facilities are

there for violent felonies.[24] The majority of youth are in out-of-home placements for other reasons, such as misdemeanor offenses and probation violations. And although youth of color represent only one-third of the youth population in the United States, they represent two-thirds of the youth confined in out-of-home placements.[25]

The terms and conditions that officials set for youth should be meaningful, understandable, achievable, and related to public safety and the youth's underlying offense. This is important in reducing overrepresentation of youth of color for technical violations of probation or other court orders (i.e., where there is no new delinquency charge) and for ensuring that jurisdictions reserve incarceration and out-of-home placement for the small number of cases where it is truly necessary.

B. The Problems

To understand some of the main drivers of high incarceration rates for technical violations of probation, it is helpful to start by looking at probation orders or case plans for youth under the supervision of the juvenile justice system.

Common Standard Terms and Conditions

- ✓ Abide by a curfew.
- ✓ Follow all rules of the house.
- ✓ Attend school every day.
- ✓ Do not break any school rules.
- ✓ Do not use illegal drugs and submit to drug testing every 2 weeks.
- ✓ Do not associate with negative peers.
- ✓ Obey all laws, ordinances, and regulations of the jurisdiction.

Many jurisdictions include some or all of the requirements in list at the left in every supervision order, regardless of a youth's risk or supervision level. Violation of any single term or condition is grounds for removing the youth from placement and returning the youth to lockup. A youth who is referred to court for an altercation with a peer at school may be required to attend anger management classes once a week and stay away from the other party involved in the incident. Following those two directives will hopefully help the youth avoid future involvement with the system, as they are related to the reason for involvement with juvenile court. However, the youth must also do the seven other things listed.

Anyone who has spent time with adolescents (or who has ever been an adolescent) knows that youth test limits, challenge authority, and occasionally break the rules. By applying so many different terms and conditions that do not relate to the underlying issues that officials are hoping to address, officials may very well be setting youth up to fail. And in the juvenile justice system, failure to comply often leads to longer or more extensive involvement with probation or the courts.

Setting an extensive list of terms and conditions can also have unintended consequences. Family members may perceive an order with extensive terms and conditions as an attempt to usurp the parents and assume their role. Consequently, family members may feel alienated, or may disengage from the process because they feel that probation and the court have taken over.

A related question is whether youth and family members can understand the expectations and obligations that have been set for them. In many jurisdictions, court orders and probation case plans use overly complex and formal language to convey simple ideas. A court order may require a youth to "complete a urinalysis on a biweekly schedule and randomly upon the directive of the probation officer or a judicial official" or "adhere to all rules surrounding the use of an electronic monitor and maintain the device in proper functioning condition."

> ### Examples of Overly Complex, Formal Language
>
> *"complete a urinalysis on a biweekly schedule and randomly upon the directive of the probation officer or a judicial official"*
>
> *"adhere to all rules surrounding the use of an electronic monitor and maintain the device in proper functioning condition"*

Other terms may be so vague or broad that youth and family members do not know -- or cannot know -- what they mean. As an example, what is meant by the term "obey all rules at home"? Does this mean that a youth can be violated for not cleaning up his or her room or for failing to take out the trash? Such terms and conditions may be interpreted differently, and inconsistently, by different judges and probation officers. They may also lead to court involvement in matters that are not appropriate. Officials in many jurisdictions have raised concerns that some parents, out of frustration, begin to rely on probation officers to enforce house rules: "He won't listen to me. Go ahead and teach him a lesson." That approach is unlikely to resolve underlying issues or to promote effective parental supervision over their children.

For youth or family members with limited literacy, the wording of these terms and conditions may be very difficult to understand. Individuals with limited English proficiency may struggle to understand both the literal terms and the underlying expectations, particularly where the language in the order is poorly translated or not translated at all.

> ### How to Limit Standard Terms and Conditions
>
> ✓ Use individualized, targeted terms and conditions relevant to behavior change and skill development.
> ✓ Recognize the challenges of the youth and families involved in the juvenile justice system.
> ✓ Consider intermediate goals that are achievable.
> ✓ Convene a committee of stakeholders to review court orders and case plans.

Further, in many jurisdictions terms and conditions only focus on avoiding negative behaviors and the consequences for failing to abide by the rules. For example: failure to abide by curfew will lead to a hearing before the judge and the possibility of a weekend in detention. However, research makes clear that individuals learn best when officials use a combination of incentives for positive behaviors alongside sanctions for negative behaviors.[26] The following chapter on developing a system of graduated responses outlines how best to integrate positive goals into terms of supervision and case plans.

Finally, probation officers also struggle with vague or over-inclusive terms and conditions. They are responsible for monitoring a host of different issues for each client. Instead of being able to focus on the ones that matter most for the individual youth, they have to look out for every possible violation of the order. Tracking, documenting, and reporting compliance and non-compliance in so many different areas makes the probation officer's job very difficult, if not impossible, to do well.

C. The Solutions

Although the problems outlined above are common, officials can pursue a number of strategies to address them. The strategies listed below will help juvenile justice professionals set understandable and meaningful expectations for youth and family members while avoiding unnecessary incarceration.

1. Limit Standard Terms and Conditions

No youth should receive a free pass for flouting court orders or probation directives. Just the opposite: youth should be held accountable when they do not meet reasonable expectations. However, officials are best served by focusing on the terms and conditions that matter for individual youth.

For example, for a youth referred to court for an assault who otherwise screens as low risk, probation may require the youth to attend anger management classes and stay away from the other youth involved in the altercation. However, if the youth has no history of illegal drug use and there is no information that substance abuse

contributed to the fight, requiring bi-weekly drug tests may not be the best use of the juvenile justice system's resources. The same applies to terms and conditions related to school attendance, so long as truancy was not a cause of the altercation. Similarly, setting a curfew may be unnecessary if there is no issue of a youth engaging in illegal or dangerous activities in the evenings. Requiring a youth to be home at an early hour just because it is standard practice will simply create new opportunities for violations that can drive the youth deeper into the system.

Focusing on a smaller number of terms and conditions can also help youth to understand the things that matter most in terms of behaviors to avoid and skills to build. Overloading youth with a large number of requirements can lead youth to forget the reason for their original involvement with the juvenile justice system, which can be counterproductive to officials' efforts at rehabilitation.

Finally, extensive and unrelated terms and conditions ignore the challenges faced by youth and families involved in the juvenile justice system. Poor school attendance may be the product of a youth's dislike of school, a bully at school who the youth seeks to avoid, a parent's difficulty providing consistent transportation to school, a youth's responsibility to provide supervision to other children in the family if a parent is unavailable, a school's failure to identify educational disabilities and provide special education services, or a parent whose own mental health or substance abuse problems prevents them from providing adequate supervision of their children. Officials may assume that poor school attendance is a choice made by the youth or family when there are many reasons why a youth may not want to – or cannot – attend school consistently.

It is unlikely that simply requiring a youth to attend school every day without incident will change his or her behavior any time soon, particularly if that youth has not attended school consistently in the past for any of the reasons listed above. In these situations, it may make more sense to set intermediate goals that are more achievable – for example, requiring consistent attendance for a set period of time, such as a week, with review after that period. Making school attendance mandatory as a standard term or condition removes this flexibility and almost certainly sets some youth up for violations.

Juvenile court and probation officials should convene a committee of stakeholders to review standard terms and conditions, individualized court orders with special terms and conditions, and case plans. Committee members should review these documents with the goal of either limiting the number of standard terms and conditions to a narrower range of requirements, or establishing a process for selecting which terms and conditions should apply in certain kinds of cases. Connecticut's juvenile probation order, reproduced in the Appendix, does not include drug testing or curfew as required terms and conditions.

2. Set Expectations that Youth and Family Members Understand and Confirm That They Understand Them

Court orders and case plans outline expectations that juvenile justice officials have for youth and families. However, these documents often contain complex language and legal terms that have no significance to those who do not work in the system. In many cases, the drafters of these documents have not considered the limited literacy skills of youth and family members. In short, the way these documents are written often reduces the chance that individuals will know what is expected of them and be able to comply.

As part of Models for Change, Washington State officials recognized this limitation and did something about it. As part of what was known as the "Washington Judicial Colloquies Project," juvenile justice stakeholders from Benton and Franklin Counties examined existing disposition orders and colloquies (i.e., the exchanges between judges and youth about rules and expectations).[27] Officials learned that disposition orders and the outline for colloquies were written at a college graduate reading level. Unsurprisingly, surveys of youth revealed that youth failed to recall numerous terms and conditions, even when questioned immediately after their hearings.

Washington State officials also conducted focus groups with youth. Through these conversations, they learned that youth often misunderstood language that stakeholders had taken for granted as having a clear meaning. For example, youth believed that the phrase "shall appear in court as required" meant that they should come to court dressed in nice clothes. When officials told them that the language meant that youth had to come to court, the youth responded with "Well, why don't you just say that then?"

As a result of these activities and others, stakeholders developed model colloquies and disposition orders that use simple, concrete language and straightforward verbs. The working group also developed a simple checklist of "Dos and Don'ts" for youth, pictured below. As the judge reads through the conditions that apply to a youth's case, the youth checks off each requirement after confirming that he or she knows what is expected. The checklist also serves as a simple, easy-to-follow reminder of these requirements after the hearing. Surveys of youth after the implementation of the new materials revealed a significant increase in comprehension following hearings.[28]

Washington State officials developed a report that describes the process that they undertook to develop and revise materials that youth and families would be more likely to understand.[29] The report provides a useful starting point for jurisdictions that want to undertake a similar analysis of their own court orders, forms, and case plans. Any such effort should include a determination of whether reforms actually improved comprehension, such as through post-hearing focus groups or surveys.

Jurisdictions such as Cook County, Illinois, have thought not only about the message when explaining terms and conditions to youth, but the messenger as well. Officials there created a Juvenile Advisory Council, which is a collaboration between probation staff and former system-involved youth.[30] The Juvenile Advisory Council holds youth-led orientation sessions for youth and family members on the last Saturday of each month. The program reinforces expectations and outlines strategies to overcome problems and challenges, but it does so from the perspective of youth who have successfully exited the system. The Juvenile Advisory Council also holds focus groups with family members exiting care to obtain feedback about their experience and make recommendations to probation to improve policies and practices. Many jurisdictions already do orientation sessions or have surveys at the time of case closure, but Cook County's experience has been that having youth as the voice has enhanced understanding and buy-in.

Release Do's		Release Don'ts	
❏ 1	I will come to court and go to all hearings scheduled by the court for my case(s). My next hearing is: _____ at _____ a.m./p.m. and will take place at the Juvenile Court, 1212 W. 1st Place Street, Suite 100, Thistown, WA 99111. 8 I	❏ 8	**Immediate Supervision:** I will **NOT** leave my house unless a court-approved adult listed in # 4 is able to go along and see me all the time.
		❏ 8A	I am allowed to attend school, work, or other activities approved by my probation counselor.
		❏ 8B	But, I will **NOT** go anywhere else without my court-approved adult. I will NOT leave the house by myself. I will have an approved adult drive me to and from school or work
❏ 2	I will call my lawyer _____ . Phone # _____	❏ 9	I will NOT travel outside of Thistown County without permission from my probation counselor.
❏ 3	I will attend all meetings scheduled by my probation counselor and call as directed. My probation counselor is _____ and the phone # is (000) 555-1212.	❏ 10	I will NOT drink or have alcohol. I will NOT use or have drugs unless they have been given to me by my doctor.
		❏ 11	I will NOT commit any crimes or get arrested. I will not do anything illegal that will get me arrested.
❏ 4	I will live with _____ at the following address: _____ Phone #: _____. I will obey all their rules. Other adults the court has approved to supervise me are: _____	❏ 12	I will have NO CONTACT with the people listed here: a._____ DOB: _____ b._____ DOB: _____ c._____ DOB: _____ This means I will NOT talk to or send messages by mail, phone, email, text messages, or through the internet, other persons, or by any other way.
❏ 5	House Arrest: I will stay home. I am only allowed to leave the house to come to court.	❏ 13	I will NOT be alone with children 3 or more years younger than me. If I am around children I MUST have a parent or approved adult who knows about what I have been accused of. The parent or adult most know the rules the judge gave me. The parent or adult must be able to see me at all times when children are around me.
	❏ 5A	I will always have one of the court-approved adults referenced in item # 4 with me at home.	
	❏ 5B	I will get permission from my probation counselor each time I want to leave the house.	
		❏ 14	I will NOT have, look at or listen to anything that shows or describes any sexual acts. I will NOT have or look at anything that shows or describes the uncovered private parts of the human body.
❏ 6	I will follow Curfew and be home and stay there: ≤ Every night from ____pm until ____am. ≤ Sunday to Thursday from ____pm until ____am. ≤ Saturday and Sunday from ____pm until ____am.	❏ 15	I will NOT have or use any guns, knives, or other weapons.
❏ 7	Other:	❏ 16	Other

I understand that if I break any of rules that the Judge reviewed with me, I may have to return to Detention and have a Court hearing to address the violations.

Signature: _____   Date: _____

Distrust of the juvenile justice system may run deep in certain communities. Officials who take the time to consider how to make terms and conditions more meaningful and understandable for youth and families of color are more likely to build effective channels of communication between clients and agency staff. That will also mean that family members and youth are more likely to be partners in the juvenile justice process and less likely to see the system as adversarial or inherently critical of them.

3. Involve Youth and Families When Developing Supervision Plans

Effective work to reduce racial and ethnic disparities incorporates feedback and insights from youth and family members. This is, in part, because youth and families are "consumers" of the juvenile justice system's services and have a valuable perspective that is different from those who work inside the system. It turns out that involving youth and families in disposition planning can also strengthen outcomes. A report from the Office of Juvenile Justice and Delinquency Prevention noted that, as part of a pilot project, a jurisdiction that assigned youth to family group conferencing had a 23% lower re-arrest rate than youth and families who did not participate in such a process, even when controlling for a range of other variables.[31]

In many juvenile justice systems, probation officers and judges set terms and conditions for a youth based on prior experience and recommendations of a number of different parties in court – individuals who conducted assessments of the youth, the prosecutor, probation staff, and the youth's lawyer. Family members may not have an opportunity to make recommendations in the same way. A common practice is for juvenile justice personnel to arrive at their recommendations first, and then turn to family members and ask if the plan sounds acceptable to them. This ignores the fact that family members often have some of the best insights about what will or will not work for their child and relegates the family's perspective to an afterthought.

Effective family engagement begins at the start of the juvenile court process. For this reason, jurisdictions such as Santa Cruz, California, a Juvenile Detention Alternatives Initiative (JDAI) "model site," inform parents about the many different ways that they can involve themselves in their child's case. Santa Cruz officials developed a video that includes clips of parents and caregivers talking about the ways that they had an impact on the process. The video plays on a continuous loop in the lobby of the probation office.[32] The officials made the video in part because, in focus groups, family members revealed that they didn't engage with the process because they thought their input would have no real impact on what would happen in court

Santa Cruz also took their family engagement a step further at the dispositional planning phase. Officials developed a Placement Prevention Assessment Conference Team, a form of family group conferencing for cases that had the highest chance for out-of-home placement.[33] As part of this process, families begin with a conversation with juvenile justice officials about their strengths and needs, and recommendations for supervision. Families play a central role by proposing important elements of a

supervision plan. After that occurs, probation staff review the proposal with family members and make suggestions and recommendations.

Santa Cruz officials believe that this process gives youth and family members more of a stake in supervision plans, and officials there report that it leads to greater compliance with terms and conditions and higher success rates with services.[34] Probation officers also report that family-driven plans are actually more comprehensive and help lessen the "us vs. them" dynamic that sometimes occurs between family members and juvenile justice officials.

D. Practice Tips

✓ Examine standard terms and conditions in court orders and case plans. Reduce the number of standard terms and consider applying others on a case-by-case basis, depending on each youth's individual strengths and challenges.

✓ Set achievable requirements and milestones. Recognize that standard terms and conditions hold all youth to the same high standard even though youth and families may need to work over an extended period to address certain problems. Setting a high bar right at the outset sets youth up for failure and deeper involvement with the justice system.

✓ Examine court orders, case plans, and other written documents through the lens of youth and families who may have limited literacy or limited English proficiency. Recruit youth and family members to provide insights about concepts and phrases that are unclear, and replace complex or legal terms with simple, easy-to-understand language.

✓ Focus on the terms and conditions that matter for an individual youth. Helping youth and families focus on a small number of key requirements is more likely to be successful than painting with a broad brush across a dozen or more requirements.

✓ Identify ways to engage youth and families in the juvenile justice process at the very outset, and identify ways of incorporating their insights into supervision and service plans.

E. Resources

TeamChild and the Juvenile Indigent Defense Action Network, The Washington Judicial Colloquies Project: A Guide for Improving Communication and Understanding in Court
This report, prepared as part of Models for Change, outlines how officials in Washington State re-examined the way that they communicated with youth and families in court. The document identifies the ways that stakeholders made written

materials and in-court discussions more understandable for youth and their families and includes the written products from those efforts.

Santa Cruz County Probation Department, Continuum of Juvenile Services
This publication of the Santa Cruz County Probation Department outlines the resources available to youth involved in the juvenile justice system. It outlines the planning process and resources available to youth who are at the highest risk for out-of-home placement.

F. For More Information

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G. Appendix – Connecticut Judicial Branch Juvenile Order of Probation

ORDER OF PROBATION
JD-JM-116 Rev. 7-12
C.G.S. §§ 46b-140, 46b-141a, 46b-141d

STATE OF CONNECTICUT
SUPERIOR COURT
JUVENILE MATTERS
www.jud.ct.gov

Address of Court		CMIS Client number	Docket number
Name of child			Date of birth
Address			Probation officer
Parent/Guardian		Address (if different from child)	
Period of probation	Detention/lockup time credit earned		Probation until (Date)

Having been convicted as a delinquent, the child is placed on probation until the date shown above and must obey the following orders:

1. Do not violate any Federal, State or Municipal law or ordinance.
2. Remain drug and alcohol free.
3. Reside with ☐ Parent/Guardian or ☐ _____ and obey the rules of the residence.
4. Do not leave the state of Connecticut without notifying and obtaining permission to leave from your probation officer.
5. Notify your probation officer of any change of address or phone number within 48 hours.
6. Keep all appointments scheduled by the probation officer, evaluators or therapists.
7. ☐ Attend school and class on a regular basis and follow school policies on student conduct and discipline.
   ☐ Seek and obtain employment, work study, or alternative education program.
8. Obey any graduated responses ordered by your probation officer.
9. **Other Conditions**
   ☐ Cooperate with Department of Children and Families placement and/or programs.
   ☐ Counseling (type) _____
   ☐ Submit to periodic alcohol and drug testing and assessment and treatment (Community or in-patient) for substance abuse as deemed necessary by the probation officer.
   ☐ Initiate no contact with victim(s)
   ☐ Curfew _____ (time)   ☐ Electronic Monitoring from: _____ until: _____
                              ☐ House Arrest from: _____ until: _____
   ☐ Submit a sincere letter of apology to Probation by _____ (date)
   ☐ _____ Hours of Community Service to be completed by _____ (date)
   ☐ Pay restitution in the amount of _____ payable to CSSD, Restitution Unit, 936 Silas Deane Hwy,
      Wethersfield, CT 06109, by bank check or money order by _____ (date)
☐ Special conditions:

Notice: At any time during the period of probation, the court may modify or add conditions, whether originally imposed by the court under this section or otherwise and may extend the period as the court deems appropriate after hearing and for good cause shown. The Probation Officer may inform the police of these conditions.

Name of Judge (Print or type)		
Signed (Judge/Clerk)	Date of order	Date signed

I have read and understand the above orders. If I do not obey these orders, I can be placed in detention, convicted as delinquent and committed to the Department of Children and Families for out-of-home placement, including a secure out of home placement.

Child	Date signed
Parent/Guardian/Witness	Date signed
Probation Officer	Date signed

IV. Ensuring Access to and Availability of Alternatives to Out-of-Home Placement

A. The Issue

The early sections of this practice manual have focused on ensuring that youth of color have the same opportunities to be diverted away from the juvenile justice system as white youth at the point of arrest. Subsequent sections have outlined how to ensure that youth of color benefit equally from policies, practices, and programs designed to create pathways away from deeper involvement with the juvenile justice system – for example, through alternatives to formal court referrals or the creation of culturally responsive alternatives to secure detention.

All of these efforts can help ensure that the juvenile justice system focuses its most intensive and restrictive interventions on the small number of youth for whom those interventions are appropriate. Many communities have successfully reduced or, in some cases, eliminated disparities at earlier decision points in the juvenile justice system. However, in many communities, racial and ethnic disparities at later stages of the juvenile justice system persist or even become larger. This includes disparities at the point of commitment to state custody and placement out of home – what some refer to as the "deep end" of the juvenile justice system.

Examining racial and ethnic disparities at the "deep end" of the juvenile justice system may not seem like an area where much progress can be made. Some have the perception that youth who have made it to this point are either ineligible for less restrictive options because of the nature of their offense or history with the court, or that they have failed to take advantage of community-based services, making out-of-home placement the only remaining option.

As mentioned in the introduction to this chapter, though, recent research suggests just the opposite. Recent federal surveys have found that only 25% of youth in residential facilities are there for violent felonies.[35] The majority of youth are in out-of-home placements for other reasons, such as misdemeanor offenses and probation violations. And although youth of color represent only one-third of the youth population, they represent two-thirds of the youth confined in out-of-home placements.[36] One of the most comprehensive and rigorous analyses of juvenile justice reforms conducted to date, released in 2015, found that youth incarcerated in out-of-home state placements "look[ed] no different than many of those who are kept in their communities."[37]

These studies suggest that many youth may have been able to benefit from a more robust continuum of alternatives to out-of-home placement. The fact that youth of color are overrepresented in out-of-home placements may also suggest that those alternatives that do exist are not always as effective for youth of color as they are for white youth. Indeed, researchers find that youth and families of color are less likely to receive community-based services and are more likely to terminate those services prematurely.[38]
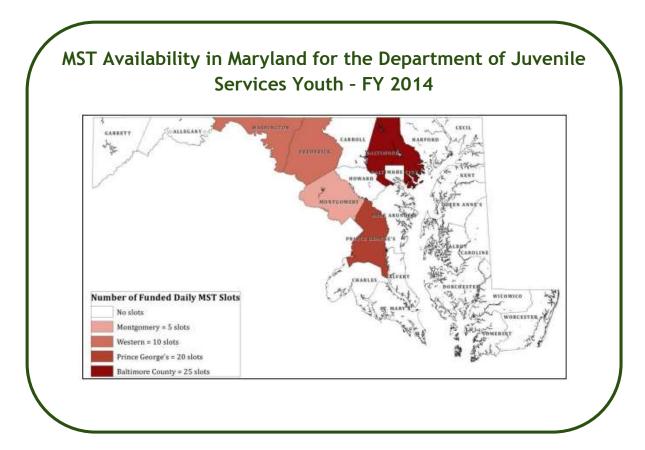
Although communities may have struggled in the past to develop a robust continuum of community-based and culturally-responsive disposition alternatives, disparities in access to and success with these programs often stems from a small number of problems. New resources and approaches from the field can help officials re-examine existing options from the lens of racial and ethnic fairness and explore the possibility of new programs and services for youth and families of color. This section focuses on making sure youth of color at the deep end of the juvenile justice system have opportunities to avoid incarceration and out-of-home placement through culturally-responsive, community-based alternatives.

B. The Problems

When examining the issue of racial and ethnic disparities in out-of-home placements, asking three key questions can help officials understand what the problems are so that stakeholders can work toward potential solutions.

1. Are Alternatives to Out-of-Home Placement Available?

Jurisdictions vary widely in terms of the availability of alternatives to out-of-home placement. In some situations, this is a matter of population density. Urban locations generally have greater resource availability than suburban or rural areas. As the map below illustrates, youth who live in more densely populated areas of Maryland have greater access to Multisystemic Therapy than youth who live in other parts of the state.

MST Availability in Maryland for the Department of Juvenile Services Youth – FY 2014

Source: [Maryland Department of Juvenile Services Residential and Community-Based Services Gap Analysis (2013)](#).

However, there may also be systemic barriers to the creation of community-based alternatives to out-of-home placement. In most states, counties and states share responsibility for the juvenile justice system's operation. Generally, county officials fund contracted services for youth at the front end of the system: intake, diversion, pre-adjudication detention, and probation supervision. State officials bear all or most of the cost of those youth who are committed to the juvenile justice system, including the cost of housing youth in out-of-home placements.

One problem with this arrangement is that it does not create incentives for counties to develop alternatives to out-of-home placement in their own communities. To the contrary, these arrangements may actually encourage counties to commit youth who have the most significant risk factors or the highest need for particular treatment.

This dynamic may not reflect any malicious intent on the part of county officials, who are often stretching tight budgets across a range of different programs. But it can have the unfortunate effect of limiting the development of local resources to serve as effective alternatives to out-of-home placements. Additionally, this arrangement can

mean that counties do not have an incentive to implement programs that may have a higher start-up cost than some other county-based programming, such as Multisystemic Therapy, even though they can be significantly less expensive than the cost of out-of-home placements and can achieve significantly better results in terms of reductions in recidivism.

An underlying issue is how jurisdictions decided on their continuum of alternatives to out-of-home placement to begin with. Have officials chosen to fund programs based on demonstrated need for such services, demonstrated positive outcomes associated with those services, and an ability to provide culturally responsive treatment? Or are programs funded based on anecdotal information on the benefits that they offer? In some jurisdictions, the programs that are offered may not be rooted in actual needs, and they may not have been evaluated to see if they are having their intended impact.

Officials should work with service providers and other stakeholders to analyze and evaluate programs and services from these lenses.

2. Are Existing Alternatives to Out-of-Home Placement Accessible to Youth and Families of Color?

Even if juvenile justice professionals are able to access services that can serve as alternatives to out-of-home placement, youth and families of color may have difficulties participating in those services for a variety of reasons. Some programs may be in locations that are far from communities of color where youth and family members live. Youth and their family members may lack transportation to and from these locations, which can make consistent attendance difficult or impossible.

> **Potential Barriers to Accessing Alternatives to Out-of-Home Placement for Families of Color**
>
> - Location
> - Eligibility criteria
> - Offense history

A separate issue is whether there are barriers surrounding eligibility for alternatives that make it less likely that youth of color will successfully engage with services, even if they are technically available. Without a structured referral process and set of clear criteria about which youth are eligible for specific programs, providers may use their discretion to reject certain groups of youth as being "too difficult to work with" or "a poor fit for the therapeutic milieu."

Jurisdictions may also exclude from programs youth who have a history of certain charges (e.g., "violent offenses"). That type of restriction, on its face, may seem like an objective, race-neutral limitation. However, if it is youth of color who are more frequently petitioned for offenses such as aggravated assault, the limitation may disproportionately negatively impact youth of color.

3. Are Existing Alternatives to Out-of-Home Placement Culturally Responsive To, and Effective for, Youth and Families of Color?

The availability and accessibility of alternatives to out-of-home placements, although important, do not guarantee that such alternatives are culturally responsive to the individuals they serve. Some have raised concerns that well-established evidence-based practices that serve as alternatives to out-of-home placement, such as Functional Family Therapy and Multisystemic Therapy, are not designed for youth of color or administered in a manner that acknowledges cultural differences.

> **Barriers to Developing Culturally Responsive Alternatives to Out-of-Home Placement for Families of Color**
>
> - Misinterpretation of cultural differences
> - Failure to recruit staff from communities of color
> - Failure to align services with changing demographics

Those raising these concerns cite studies finding higher rates of early termination among youth and families of color,[39] as well as literature suggesting that providers may misinterpret cultural differences as deficiencies or risk factors.[40] For example, a provider may not know that it is frowned upon to openly challenge one's parents. That provider may interpret a youth's reservations to speak up about problems at home as a refusal to participate. Some research also suggests that providers may not always recognize cultural differences in family and community supports, which can serve as important protective factors against future offending.[41]

One Models for Change site that examined racial and ethnic disparities in engagement with Functional Family Therapy uncovered evidence suggesting that these types of concerns might be generating lower success rates for certain groups. Juvenile justice professionals in Pierce County, Washington, learned that less than half of African-American youth assigned to Functional Family Therapy engaged with the service.[42] There are many jurisdictions that never have examined engagement or success rates of youth of different races and ethnicities with alternatives to out-of-home placement, but Pierce County made the analysis and next steps part of their work

plan. Fortunately, juvenile justice officials took steps to address and correct the problem – steps that are described in more detail later in this section.

A lack of cultural responsiveness may stem from a number of different problems. For one, providers may not always recruit and hire professionals from communities of color or the communities where youth and families are most likely to live. This is not to say that youth and therapists have to be of the same race and ethnicity in order for services to be successful. Indeed, some studies have found that matching the race or ethnicity to a provider does have a beneficial effect,[43] whereas others have not found any effect of this type of matching.[44]

Nevertheless, providers who do not have connections to the communities they serve, or meaningful understanding of those communities, may not be welcomed or trusted to the same degree as providers that are located in, and actively recruit from, communities of color. Additionally, some jurisdictions may not have aligned their current services with the changing demographics in their communities and may be struggling to catch up. Others may have attempted to reach out to recruit a diverse range of providers and not made much progress in the past. These are not problems with easy solutions, but there are short- and long-term strategies that can help jurisdictions work toward a culturally responsive continuum of community-based services.

C. The Solutions

Although the problems outlined above can stem from different causes, there are a number of strategies that help ensure that youth and families of color have equal access to programs that avoid the need for out-of-home placement.

1. Creating Incentives to Develop Programs in Communities of Color

Current financial arrangements may not create the right incentives for communities to develop their own alternatives to out-of-home placement, but a number of states have moved towards changing those incentives through policy changes and legislation. In 2005, officials in Illinois launched a program known as "Redeploy Illinois." Originally introduced in the state as a pilot project in three counties, Redeploy Illinois provides funding to counties to help develop a county-based continuum of care. Counties receive

Results of Redeploy Illinois

- 51% reduction in incarceration of committed youth
- 14.2% re-incarceration rate for pilot counties versus 57.4% re-incarceration rate for other counties
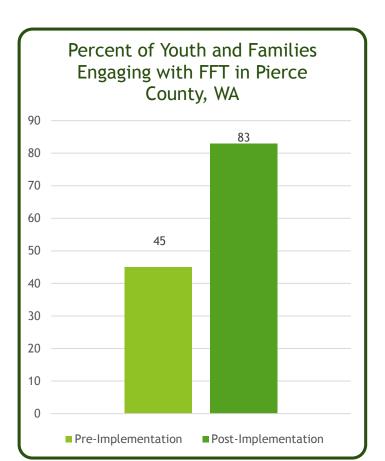- $40 million in savings

this funding in exchange for a promise to work toward a 25% reduction in youth committed to state facilities.

The arrangement, which allows the state to save money on expensive bed space in state-run facilities, also allows youth and families to benefit from services with better outcomes that are closer to their own homes. The results demonstrate that the program, which has now expanded to 28 counties as a permanent initiative, is a success. Participating counties have seen a 51% reduction in incarceration of committed youth. Additionally, juvenile justice-involved youth in participating counties have a 14.2% re-incarceration rate as compared with a 57.4% re-incarceration rate in counties that do not participate in the program. All of this benefits youth, families, and county officials. It also benefits the state, which has saved an estimated $40 million from the reduced reliance on incarceration.[45]

Illinois is not alone in trying to realign incentives and develop a continuum of services in the communities where youth are most at risk for removal from their homes. Ohio and Wayne County, Michigan, are two other jurisdictions that have worked on changing policies and practices to strengthen community-based services with significant success.[46] Examining these different approaches to incentivizing effective community-based programs can help officials determine which reforms may be possible in their jurisdictions.

2. Examining the Reasons for Failure to Engage with Services

When analyzing engagement or successful completion rates for evidence-based programs, officials may find lower rates among certain racial and ethnic groups. In some communities, officials may chalk up lower rates to a lack of interest among communities of color in

Percent of Youth and Families Engaging with FFT in Pierce County, WA

Pre-Implementation	Post-Implementation

intensive home- or family-based therapy. That belief, in addition to being rooted in anecdotes or misconceptions, can undercut officials' willingness to dig more deeply into the reasons for those lower rates.

In Pierce County, Washington, a Models for Change DMC Action Network site, juvenile justice professionals recognized this difference in rates as a problem and took action to understand its causes. Pierce County had a wide array of evidence-based practices available to youth involved in the juvenile justice system, including programs with substantial evidence of effectiveness such as Functional Family Therapy. However, officials discovered that less than half of African American youth and families who were referred to Functional Family Therapy engaged with the service.

Instead of simply accepting this figure, Pierce County's stakeholders went to work. Officials questioned what led African American youth and families not to engage with the Functional Family Therapy program. Through these conversations, they learned that it was the lack of the therapists' knowledge of, and familiarity with, the communities in which they were working. This was more than a matter of matching the provider's race and ethnicity to the race and ethnicity of the youth and families, as the County had recruited and used African American therapists in the past.

The solution? The County worked diligently to identify a masters-level psychotherapist with a broad range of experiences who could connect with youth and families from the parts of Pierce County where African American youth were at the highest risk for out-of-home placement. The therapist carried a small, specialized case load so that he could make himself available to youth and families with referrals from these communities. This change helped to almost double engagement rates, something that the County saw as a significant success. In addition to his work with individual clients, the therapist also provided cultural responsiveness training and support to probation officers within the Pierce County Juvenile Court. This had the added benefit

Key Questions for Service Providers

- How are programs staffed?
  - Does the program have a staff that reflects the diversity of youth and family members?
  - Do staff have ties with the communities served or life experiences that help them relate to youth?
- What reputation do providers have with communities of color in your jurisdiction? Who has evaluated that reputation and how?
- Are there language barriers?
  - Are there bilingual staff who can speak with families about logistics and administer services?
  - Are brochures, websites, and forms translated using the language(s) that the community uses?

of help building the skills and knowledge of the individuals who were working with youth from these communities in a different capacity.

Recruiting mental health professionals and therapists from the communities from which youth and families are most likely to reside may seem like a tall order. Officials must be prepared to work at this goal over time, however, for it to have any chance at success. Simply posting job announcements with a note that the County is seeking "applicants of color" is not, on its own, likely to be enough to help create a workforce that has knowledge of the communities in which youth and families live. Targeted outreach to social work and mental health programs and job fairs at local colleges and universities can help raise awareness of the benefits of working with juvenile justice-involved youth.

Another strategy is to speak to community organizations with strong connections to groups that are underrepresented about any resources or strategies that they think could help recruit a diverse workforce. These groups may have suggestions for particular individuals or organizations with qualifications to apply. In the long-term, officials may need to increase salary and benefits for positions in order to be able to attract and retain desired professionals if stakeholders identify that as a barrier. That may not be possible right away, but if officials do not start the conversations and planning needed to make this change, they cannot expect to see much improvement.

Officials should also be sensitive to language barriers that may lead to lower engagement rates among certain groups. In one Models for Change jurisdiction with a growing Latino population, data revealed significantly lower successful completion rates for Functional Family Therapy among Latino youth as compared with African American and white youth. When discussing the issue, officials recognized that they had difficulties recruiting and retaining Latino therapists and, in fact, had no Spanish-speaking therapists on contract to provide such services at the time of the analysis. Recruiting and retaining Spanish-speaking therapists can be a challenge, but it calls for a short- and long-term corrective action plan to help ensure that all youth have the same opportunities to benefit from the most effective services that are available.

Jurisdictions such as Santa Cruz County, California, a Juvenile Detention Alternatives Initiative (JDAI) Model Site, are well-known for their work on strategies to improve linguistic and cultural responsiveness. Officials working in this area can contact representatives there to learn more about the policies and practices that have supported the county's work.[47] The county, which has a sizeable and growing Latino population, uses a set of "Standards of Latino Accessibility" to evaluate the cultural responsiveness of services in a number of different areas.[48] Jurisdictions can adapt or apply these standards to providers to determine areas of need or concern and then develop work plans to address them.

3. Implementing Culturally-Appropriate Adaptations to Evidence-Based Programs

Evidence-based programs such as Functional Family Therapy and Multisystemic Therapy are held out as "best practices" in the juvenile justice world because of rigorous evaluation and documented effectiveness, an ability to replicate results using a standardized model, and documented of ongoing positive effects after the completion of the program.

In a Models for Change Innovation Brief on cultural adaptations to evidence-based practices, University of Washington researcher Sarah Walker notes that the programs' defining characteristics can lead some to view evidence-based practices as inflexible and unable to accommodate any adjustments for work with different racial and ethnic communities.[49]

In response to these concerns, the University of Washington's Division of Public Behavioral Health and Justice Policy developed a Cultural Enhancement Model to help agencies and practitioners incorporate culturally-relevant strategies into evidence-based programs. Although a detailed description of the model is beyond the scope of this Practice Manual, the approach relies on creating a stakeholder group that identifies needed modifications based on feedback from providers, youth, and family members who have used these services. The researchers suggest areas where modifications may be appropriate, such as additional training for providers on use of conversational language, cultural sensitivity, and working effectively with a translator; improving family engagement by ensuring that providers have information on relevant community resources; and describing therapeutic concepts and strategies using more concrete language and culturally relevant references specific to the populations in that jurisdiction.

The Cultural Enhancement Model

Policy

- This can include making changes to funding streams or contract language to ensure that providers prioritize cultural responsiveness in service provision or meet certain agreed-upon standards of cultural responsiveness.

Training

- Changes might include adding or enhancing content on the traditions of specific racial and ethnic groups and how they can impact work with youth and families.

Conceptual Translation

- Modifications in this area focus on the ways that providers present and explain concepts to youth and families, including the incorporation of culturally-appropriate metaphors.

Washington State officials used the Cultural Enhancement Model to make changes to the Family Integrated Transitions (FIT) program, which is a set of three evidence-based practices targeted at youth re-entering the community from out-of-home placements. Because Latino youth and families represented a growing share of the state's population, juvenile justice professionals identified a need to ensure that existing programs worked well with all populations. Some of the recommendations that followed from the use of the Cultural Enhancement Model were including additional training on conversational Spanish and providing therapists with information on relevant community-based resources that focused on serving Latino families.

When officials surveyed providers about how well trainings prepared them to work with Latino youth and families, providers averaged a response of 4.1 out of 5 (5 being the highest rating) following implementation of the Cultural Enhancement Model, as compared with a rating of 1.7 prior to the reforms. Officials who are interested in exploring the use of the Cultural Enhancement Model can find more information in the related Innovation Brief[50] and Toolkit,[51] prepared with the support of the Models for

Change initiative. Officials should be sensitive to differences within racial and ethnic groups as they use these tools. For example, not all Latinos or Hispanic people are the same – different groups, such as Mexicans and Puerto Ricans, have their own cultural references, languages, and values that must be considered.

D. Practice Tips

✓ Realign incentives so that localities have the resources to build alternatives to out-of-home placement in communities of color that do not already have them. Consider lessons from states that have successfully reduced the use of incarceration using this approach.

✓ Identify barriers to accessing community-based services and consider ways of addressing them. Can a therapist provide services from a school or other convenient location as opposed to his or her own office, which may not be easily accessible for youth and families of color?

✓ Assess engagement and successful completion rates for existing alternatives to out-of-home placements. If differences exist by race and ethnicity, dig deeper to determine the underlying reasons for the trends and use the data to inform interventions. Lower engagement rates among Latino youth may suggest the need to recruit bilingual and bicultural staff.

✓ Consider whether culturally appropriate enhancements to evidence-based program curricula will improve outcomes for youth and families of color by using the Cultural Enhancement Model implementation toolkit, which is available on the Models for Change website, www.modelsforchange.net.

E. Resources

National Juvenile Justice Network and the Texas Public Policy Foundation, The Comeback States: Reducing Juvenile Incarceration in the United States
This 2013 report outlines success stories of a number of states that have safely reduced their reliance on incarceration and out-of-home placement by strengthening community-based programs and providing incentives to localities to work with youth and family members closer to their homes. The descriptions can provide juvenile justice officials with ideas about how to realign incentives to develop or enhance alternatives to placement in communities of color that currently lack such programs.

Sarah Walker, Models for Change Innovation Brief: The Cultural Enhancement Model for Evidence-Based Practice
Interest in developing and testing cultural adaptations has grown in proportion to the widespread adoption of policies to support the implementation of evidence-based practice (EBPs). One significant challenge for EBP dissemination is the perception that EBPs are not responsive to cultural needs and preferences and thus conflict with standards of culturally competent best practice. The University of Washington Division of Public Behavioral Health & Justice Policy developed the Cultural Enhancement Model to provide feasible guidance to agencies and practitioners for how to incorporate culturally-relevant strategies into evidence-based practice to improve both community and client-level engagement. The Innovation Brief also contains links to a toolkit to help communities apply the model to their own services.

Griffen, J. P. & Miller, E., (2007). A researcher practitioner's perspective on culturally relevant prevention: Scientific and practical consideration for community-based programs. *The Counseling Psychologist*, *35*, 850.
This publication contains a review of the research literature surrounding the cultural responsiveness of evidence- and community-based programs. It also contains a number of recommendations about steps that practitioners can take to examine and improve the cultural responsiveness of such services.

F. For More Information

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V.   Implementing an Effective Graduated Responses System

A. The Issue

A significant portion of youth incarceration in the juvenile justice system today results from violations of probation or other court orders. A 2013 federal survey of youth in residential placement revealed that juvenile facilities were holding over 9,300 youth for technical violations during a single day that year.[52] Much of this incarceration is not necessary to protect the safety of the community. Instead, many courts respond to "technical" violations of probation -- such as missing appointments with probation officers, skipping school, or staying out past curfew -- by relying on detention and out of home placement as a means of holding youth accountable for their actions.

Youth *should* be held accountable for their actions. However, there are other sanctions that can be effective in teaching youth to follow rules but that do not involve incarceration and removal of youth from family, school, and the community. Moreover, research demonstrates what every parent knows: the best way to promote compliance with rules and encourage progress toward goals is to use incentives for good behavior as well as responses for misbehavior. Where youth of color are disproportionately detained or placed for probation violations, a strong system of "graduated responses" – combining sanctions for violations and incentives for continued progress – can help reduce racial and ethnic disparities. Effective approaches for youth on probation employ objective decision making to sanction youth who misbehave while under supervision and reward youth who comply. These systems limit unnecessary incarceration for behaviors that do not present a risk to public safety. They also help youth develop positive and developmentally appropriate skills by recognizing and providing proportionate positive incentives for youths' accomplishments.

B. The Problems

Juvenile courts and probation officials want to ensure that youth comply with the terms of probation and other court orders. That is certainly appropriate. But when youth violate those orders, probation officers often refer them to court, and judges often order them to be locked up as a way to hold them accountable for their actions. In many cases, such a response is unnecessary to enforce compliance because lesser responses could hold youth accountable without removing them from their homes and supports.

This is not a small problem. As mentioned above, there are many thousands of young people locked up in detention facilities in this country for violating probation rules or court orders. In many jurisdictions, youth of color are overrepresented among the group of youth incarcerated for these reasons.

The goal is to ensure that youth do not engage in behavior that jeopardizes their safety or the safety of the community while under probation supervision, while avoiding unnecessary confinement and its longer-term effects.

One challenge for the system is maintaining proportionality and fairness. It is a cardinal tenet of our justice system that the punishment should be proportional to the offending behavior. When probation officers and judges use secure detention to sanction youth for technical violations, they are imposing the most severe sanction for behavior that, on its own, would not warrant confinement at all. This can fill detention and placement beds, the most expensive resources in the system, with youth who pose no significant threat to the community. Moreover, it undermines respect for the system and leads youth to feel that they have been treated unfairly. When overly severe sanctions are combined with a disproportionate impact on youth of color, the whole juvenile justice system suffers.

The Challenges

- Maintaining proportionality and fairness across youth
- Holding youth accountable in a timely manner in a meaningful way
- A lack of positive incentives that youth are motivated to work toward

A second challenge has to do with accountability and getting the attention of youth who misbehave. Accountability does not necessarily require incarceration, and it is possible to get a youth's attention without locking him or her up. In general, intensity of supervision should be increased before the ultimate sanction of incarceration is used. Many jurisdictions have developed non-confinement sanctions that youth find onerous and that convey a clear message that they should obey probation and court orders. These sanctions are matched to the seriousness of the violation and the risk level of the youth. Sanctions may include, at the lowest level, a verbal warning from the probation officer or requiring the youth to write a letter of apology. At the intermediate level, sanctions may also include electronic home monitoring and more frequent drug testing. At the highest level, they may additionally include community service work, required attendance at

an after-school program, and, ultimately, filing of a notice of probation violation in court.

A third challenge in many jurisdictions is the absence of positive incentives. Officials should not just sanction youth when they violate orders and rules. They should also reward youth for making progress and successfully meeting the requirements of those directives. These two objectives are closely related. The more youth are motivated by positive incentives to comply with the terms of probation, the less likely they are to engage in behaviors that violate the rules. Unfortunately, few jurisdictions seize the opportunity to set positive goals that will help youth develop skills to protect against future offending behavior. Even in jurisdictions that do try to make such efforts, positive goals are often missing from supervision plans or are relegated to secondary concerns.

The lack of a structured approach to responding to the behavior of youth on probation, coupled with an over-reliance on incarceration and a lack of consideration of a youth's strengths, are leading contributors to the racial and ethnic disparities described above.

C. Graduated Responses – A Solution

To address the problems outlined above, juvenile justice agencies have begun to rely on a structured system of graduated incentives for youth to comply with community supervision and graduated sanctions to respond to youth misbehavior. Together these are referred to as "graduated responses." Sanctions take into account the seriousness of a specific probation violation – in terms of danger to self or others – and the youth's level of risk to reoffend. Incentives emphasize the importance of rewarding youth for meeting short- and long-term goals as a way of helping them develop positive skills.

1. What is the Evidence for the Use of Graduated Responses?

Research from human behavioral studies, drug courts, school climate reforms, and adult parole and probation suggests that a combination of sanctions and incentives best promotes compliance with rules and progress toward goals. Studies have shown that rewarding substance abusers for compliance with rules made them more likely to stay in treatment, whereas those who were just punished were more likely to drop out.[53] Additionally, many schools have turned to the use of positive behavioral interventions and supports (PBIS), recognizing the importance of promoting and recognizing positive behaviors in managing student conduct.[54]

Graduated rewards and sanctions are more effective than static ones. In one study of smoking habits, participants who received incentives in response to achieving particular milestones achieved greater levels of abstinence than participants who simply received reinforcements at fixed intervals of time regardless of their behavior.[55] Other studies have shown that increasing the level of punishment is not the best way to improve compliance. For example, increasing the severity of sanctions for noncompliance with drug court provisions did not add an additional deterrent impact on use illegal substances, so long as sanctions were swift and certain.[56]

In 2012, the American Probation and Parole Association, the Pew Charitable Trusts, and the National Center for State Courts examined the most up-to-date research on effective probation and parole practices. The review found that "[t]he use of incentives is equally important (and often not sufficiently considered) in probation and parole supervision" and that "sanctions and incentives should be used in conjunction with one another to promote compliance and positive behavior."[57]

In one study, researchers found that while both the number of sanctions and the number of incentives were related to the likelihood of successful completion of probation or parole, the number of rewards was the better predictor of program success.[58] In fact, the number of rewards applied had almost twice as strong a relationship to success as the number of sanctions. The researchers also noted that incentives and sanctions worked best when used together, and that applying incentives at a ratio of four rewards to every one sanction continued to increase the chances of successful completion (**see figure below**). For these reasons, the National Institute of Corrections also notes that the use of incentives alongside sanctions "is affirmed in the 'what works' literature."[59]

The use of graduated responses provides an alternative for jurisdictions that wish to save incarceration and other out-of-home placements for youth who pose significant risks to public safety. Rock County, Wisconsin, a Models for Change DMC Action Network site, developed and implemented a graduated sanctions and incentives system for youth on probation in 2008 in response to high rates of incarceration and placement of youth for probation violations. The agency also implemented a new risk and needs assessment that helped probation officers hone in on strengths and concerns for individual youth, as well as a number of other reforms. As of March 2011, Rock County officials reported a 35% reduction in youth of color sanctioned to secure detention for probation violations, with the largest reduction reported for African-American youth.

2. What Makes a System of Graduated Responses Effective?

Research shows that a system of graduated responses should be:

- **Certain**. If youth know that a negative consequence will automatically follow a particular behavior, they will be less likely to engage in that behavior than if enforcement is erratic. Similarly, if youth know that they will definitely receive a reward for engaging in particular actions, they are more likely to pursue positive behaviors.

- **Immediate**. Youth must be able to see a direct and close relationship between their behavior and a sanction or incentive. Sanctions and incentives administered long after a behavior occurs lose their impact.

- **Proportionate**. Administering sanctions that do not correspond with the severity of the violation can lead to feelings of anger and resentment. Disproportionately harsh sanctions for minor misconduct can undermine other attempts at behavior change by leading youth to feel helpless to control their future. Youth of color may have already experienced negative interactions with public officials, and they may see overly severe sanctions as a continuation of that experience.

- **Fair.** Juvenile justice officials should apply similar sanctions for similarly-situated youth. Perceived unfairness undercuts the value of the graduated response system in eliciting behavior change.

- **Tailored to individual youth.** Certain sanctions or incentives will be more effective for individual youth depending on their individual circumstances. The goal of graduated responses is not to eliminate discretion in decision-making, but rather to give juvenile justice professionals a broad range of tools – within ranges that ensure proportionality – in order to motivate youth to succeed.

D. Steps for Creating or Strengthening an Effective Graduated Responses System

The Center for Children's Law and Policy has prepared a comprehensive toolkit designed to help jurisdictions develop or improve upon an existing system of graduated responses. It is the most comprehensive publicly available resource on the use of graduated responses in juvenile probation to date, containing a comprehensive set of tools, guidance materials, and sample materials. The information below summarizes some of highlights from the toolkit, but officials undertaking this work should download and review the toolkit publication in full.

1. Define the Purpose(s) of Implementing a Graduated Responses Practice for Your Jurisdiction

As jurisdictions prepare to develop a graduated response system for youth on probation, key stakeholders should discuss the outcomes they hope to achieve. Is the jurisdiction interested in reducing the number of technical violations referred to court? Reducing the number of youth placed in secure detention as a result of probation violations? Reducing the proportion of probation violations filed against youth of color?

2. Gather Data on Youth Under Supervision and Youth Sanctioned for Violations of Probation and Other Court Orders

To accomplish any of these goals, it is important to collect and analyze data on youth on probation and otherwise under supervision, as well as youth who have received sanctions for violations of probation and other court orders. There are four reasons for this. First, it is necessary to establish a baseline of the use of sanctions prior to

reforms. Unless a jurisdiction tracks baseline data, it will not be able to determine if the reforms have improved the situation, had no effect, or made it worse.

Second, it is necessary to look at the relative effectiveness or ineffectiveness of current policies. Do current sanctions actually reduce offending behavior? Are some more effective than others? Is it possible to determine why some sanctions are more effective?

Third, it is important to look at whether current policies have been applied consistently. If there is inconsistency in applying sanctions, that fact may help to explain why sanctions have been ineffective.

> ## Why Gather Data About Youth Under Supervision?
>
> - Establish baseline data
> - Review effectiveness of current policies
> - Determine level of consistency in application of policies
> - Ascertain whether there are racial and ethnic disparities when sanctioning youth

Fourth, a jurisdiction should assess whether there are racial or ethnic disparities in the ways that sanctions have been applied. Research has demonstrated that probation reports can be affected by implicit racial bias on the part of probation officers, with powerful consequences for young people before the court.[60]

To conduct the appropriate analyses, a jurisdiction should collect data on basic demographics such as age, race, ethnicity, gender, as well as underlying offense, behavior that violated the probation rules or court order, sanctions applied (including secure confinement), and subsequent behavior of the youth such as successful completion of probation or additional probation violations, whether youth were detained or sent to placement as a result of their violations, and how long they stayed if detained or placed.

Jurisdictions vary in their ability to collect and analyze data. Where a jurisdiction collects data electronically in Excel or similar programs, the analysis can be relatively straightforward. But it does not require a university researcher with a graduate degree

> ## What Data, at a Minimum, Should a Jurisdiction Collect?
>
> - Race
> - Age
> - Ethnicity
> - Gender
> - Underlying Offense
> - Violation
> - Sanctions
> - Resulting Behavior
> - Whether youth are detained or placed out of home for their violations
> - How long youth stayed if detained or placed

and a state-of-the-art computer system to obtain valuable information. A jurisdiction can conduct a study of a sample of the population on probation, such as 50 or 100 cases, using a simple set of questions to collect needed data directly from case files.

Moreover, reforms are about changing the behavior of adults who run the juvenile justice system as well as youth who are in the system. Collecting data on probation violations is a way of looking at implementation of system policies at the ground level. It allows those responsible for supervision of youth to make informed decisions about how to make that supervision more effective.

3. Interview a Variety of Individuals to Understand the Strengths and Weaknesses of the Supervision of Youth in the Community

By conducting focus groups with probation officers, supervisors, parents, and youth, those responsible for developing a graduated responses system will obtain valuable information about supervision. Although agency officials often hold the formal authority for responding to youth behavior, many other stakeholders have valuable insights about the strengths and weaknesses of supervision practices and the range of programmatic options available to support youth and their families during the period of supervision. Officials should take time to interview judges, prosecutors, public defenders, community-based service providers, youth, and family members. In addition to surfacing issues that will help guide the creation of a graduated responses system, the interviews are an opportunity to present the relevant research and reasons for using graduated sanctions and incentives. This will improve the chance that stakeholders will support the reforms rather than resist them.

4. Form a Committee to Develop the Graduated Responses System

Creating a committee to help develop a system of graduated responses offers a number of benefits. For one, the committee structure provides an important opportunity to obtain consensus on how and when to reward and sanction specific behaviors, as individuals within an agency will have a range of perspectives. Additionally, the committee can ensure that policies and procedures reflect the perspective of line staff. System staff with particular responsibilities, such as management of an electronic monitoring program or specialized caseload, will also have important perspectives. If the jurisdiction wishes to increase the range of rewards or sanctions available, potential community partners who could provide those services or opportunities may be valuable participants. Other potential committee members include prosecutors, public defenders, current service providers, youth, and family members.

5. Create a List of Behaviors and Skills to Promote Among Youth Under Supervision

Juvenile justice professionals can use supervision as an opportunity to encourage youth to develop positive life skills and community connections that will help them succeed after their supervision ends. Officials should think broadly about the types of behaviors that probation officers or case managers can promote across a range of areas, including education, family relationships, peer relationships, community engagement, workforce development, health and mental health, and creative self-expression.

In a Coalition for Juvenile Justice report, Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development, Dr. Jeffrey Butts and his colleagues describe how services for juvenile justice-involved youth can incorporate strength-based principles, such as connecting youth with community-based supports and building upon a youth's unique skills and interests. By creating an extensive menu of desired behaviors, the graduated responses system will give probation officers and case managers the flexibility to identify the most appropriate goals for their individual clients.

Officials should consider dividing behaviors into short-term and long-term goals to enable juvenile justice professionals to acknowledge important steps toward bigger accomplishments. A case manager could reward youth for meeting with a guidance counselor about vocational goals or consistently attending school for a set period of time, which are important behaviors of a short duration. The case manager can also provide a more significant reward for obtaining a high school diploma or GED, which requires a more sustained commitment. The District of Columbia's Department of Youth Rehabilitation Services adopted this approach when developing its list of goals.

When developing this list, officials should not view this as an opportunity to "fix" everything that they believe may not be working well in an individual youth's life. Rather, the focus should be on identifying a range of culturally appropriate and achievable skills that will help youth of color succeed in the community.

6. Identify a List of Incentives to Reward Youth for Meeting Particular Goals

Committees should consider the types of incentives that agencies will provide when youth make progress toward goals. Officials will need to consider whether the agency will provide tangible incentives such as gift cards or sports tickets, and whether some incentives will require a parent's approval. When thinking through possible rewards, it may be useful to speak with youth, family members, service providers, and community-based youth programs about what they think would be the best

motivators. [The Center for Children's Law and Policy has developed an extensive list of possible incentives](#) that groups can work from when deciding which incentives could be offered to youth right away, and which incentives an agency would like to develop or obtain in the future. Agencies can also consider incentives that they can provide to parents to help recognize when youth are following behaviors at home.

Even if funding is not available for incentives, agencies can develop non-monetary incentives such as letters of recognition, awards ceremonies, extended curfew, or requests to the judge to terminate probation early. In addition, jurisdictions may be able to secure donations from local business that can serve as motivators. Examples include apparel from local colleges, meal vouchers for a youth and his or her family, and tuxedo or dress rentals for school dances.

In developing these lists, jurisdictions should determine which incentives are more appropriate for short-term accomplishments and which should be saved for achieving longer-term goals. This approach will structure decision-making to limit variability among probation officers.

Through this process, officials should be careful not to treat services that an agency would provide anyway as incentives that are only provided upon good behavior. Doing so would undercut the agency's mission and the goal of a graduated responses system.

7. Develop a List of Negative Behaviors and Categorize them as Low-, Medium-, or High-Severity

When identifying the range of negative behaviors that youth may exhibit under supervision, committee members should categorize actions that require a response based on the risk that they pose to public safety and to the youth. Showing up 15 minutes late to school may represent a low-severity behavior, whereas cutting off an electronic monitor may represent a high-severity behavior. Officials should also consider whether there is variability in severity within certain categories of negative behaviors, such as curfew violations. For example, missing curfew once in a week but not staying out overnight could be a low-severity behavior, while missing curfew more than once a week but not staying out overnight could be a medium-severity behavior, and missing curfew by staying out overnight with whereabouts unknown could be a high-severity behavior.
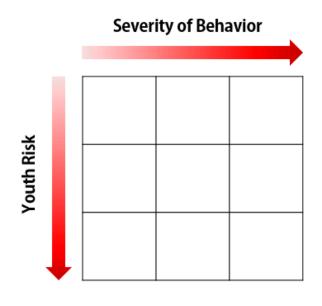
When generating this list, officials should be aware that not all violations of probation indicate negative intentions by youth. If a youth fails to make appointments, the problem may be that the parent doesn't own a car and there is no available public transportation. If a youth fails to engage with a particular treatment, the problem may be that the treatment provider is not well-matched to the needs of the youth

and family. If a youth is suspended or expelled from school, it may be that a minor misbehavior escalated into a major conflict, in part due to "zero tolerance" policies that disproportionately impact youth of color. Relatedly, school discipline policies vary widely across individual schools or districts. For these reasons, the State of Connecticut's Court Support Services Division (CSSD) decided to remove suspensions and expulsions from its matrix of negative behaviors. CSSD's graduated responses policy requires that probation officers look to the facts of the incident, rather than the action taken by school officials, to determine whether it warrants a sanction by probation staff.

Officials should be sure to examine negative behaviors from the lens of race and ethnicity as well as public safety. For example, are there certain behaviors that are more prevalent among youth of color than white youth? If so, what is the risk that these behaviors pose to public safety?

8. Identify Possible Sanctions and Match them to Specific Behaviors for Youth Assigned as Low-, Medium-, or High-Risk

Officials should identify ways of holding youth accountable by listing sanctions that are available at that time and discussing which are effective and which are not. Then officials should outline sanctions that the agency *would like to have* but have not yet developed. These may include assigning youth community service hours or requiring youth to attend a day or evening reporting center. The sample agency policies listed at the end of the chapter contain a variety of sanctions.

After developing a range of sanctions, officials should determine two things: first, which sanctions are appropriate for low-, medium-, and high-severity behaviors that violate probation or other court orders. Second, they should determine which sanctions are appropriate for low-, medium-, and high-risk youth, based on their original offense or their likelihood for reoffending. They can then plot those determinations on a three-by-three grid. The left or vertical axis can be severity of behaviors that violate probation (low, medium, high), and the horizontal axis can be general risk level of the youth (low, medium, high). The end result is a

matrix of possible responses that probation officers or case managers can employ for youth who violate probation or court orders, from low-low all the way to high-high. Examples of such graduated sanction matrixes are available in the Graduated Responses Implementation Toolkit mentioned earlier in this chapter.

Three considerations are particularly important when developing a sanctions matrix. First, research suggests that increasing the severity of sanctions for the same type of behavior does not add any additional deterrent effect, so long as officials apply sanctions in a swift and certain manner each time.[61] Increasing sanctions for a second curfew violation from 5 hours of community service to 20 hours may be no more effective than applying another 5-hour sanction, since youth often learn by repetition.

Second, the impact and severity of a sanction may vary among youth. Imposing an after-school curfew for two weeks may have much more negative consequences for a youth on the basketball team (who might lose his or her spot for the season) than a youth who hangs out with friends after school. Officials should also take care to ensure that sanctions (and incentives) are culturally appropriate. Having a range of potential options that reflect the backgrounds of youth under supervision is important.

> **Three Important Considerations When Developing a Sanctions Response Grid**
>
> 1. Increasing the severity of sanctions for the same type of behavior does not add additional deterrent effect.
> 2. The impact and severity of the sanction will vary among youth, which is why individualized responses are crucial.
> 3. Removal of services or treatment should not be used as a sanction.

Finally, agency officials should be careful not to include the removal of services or treatment opportunities as a possible sanction. Doing so would undercut the overall goal of a system of graduated responses, which is to help youth avoid future involvement with the juvenile justice system.

9. Develop Data Capacity to Track the Effectiveness of the System

Officials should consider how existing data systems can be used or modified to track the data necessary to evaluate a graduated responses system before they implement the system. Asking certain questions, such as those in the box below, can be helpful in framing data collection and analysis.

> ### Questions to Consider When Developing Data Capacity to Track Effectiveness
>
> - How will the agency gather information on whether probation officers or case managers are administering sanctions and incentives consistently and in a timely manner?
> - How often and why do case managers depart from the matrix of approved sanctions?
> - How will the agency measure whether the reform has achieved its goal(s)?

10.   Train Staff and Develop Appropriate Practice Materials

Staff training should stress that implementation of graduated responses aims to equip case managers with more options to manage youths' behavior, not to reduce their discretion. When training staff, administrators should consider including line staff who participated in the development of the graduated responses system. Doing so can help reinforce the collaborative nature of the system's development and increase buy-in from other staff.

A graduated responses system cannot achieve its intended result unless parents, youth, probation officers, and case managers have a common understanding of the behaviors that will lead to incentives and sanctions. As part of the training, officials should clearly outline how juvenile justice professionals should communicate expectations to youth and family members. This includes how incentives will be incorporated into the case planning process. Agencies may need to modify case plans or other materials to better align with a focus on positive behaviors, and to ensure that youth and their families receive sufficient notice of expectations and potential rewards and consequences.

Finally, any policies or practice materials should reinforce the elements of effective graduated responses systems, which are outlined above. Policies should require quick verification of violations and administration of sanctions for negative behaviors, as the effectiveness of sanctions diminishes over time. These materials should also emphasize that any departures from the graduated sanctions matrix should be the exception to the rule, and that staff must secure supervisor approval for any deviations. The case manager manual developed by the District of Columbia's Department of Youth Rehabilitation Services captures these principles.

Officials should consider making use of the graduated responses system a component of regular employee evaluations to promote and ensure its use.

11. Gather Data, Evaluate Implementation, and Make Adjustments

After piloting or implementing the graduated responses system, officials should gather data and evaluate whether the reforms are having their intended impact. Soliciting feedback on the system from youth, family members, and other system stakeholders can help inform any necessary refinements.

E. Practice Tips

✓ Counter perceptions that graduated responses will eliminate discretion by framing the reform as an opportunity to give juvenile justice professionals more tools in the toolbox to respond to youth behavior.

✓ Develop a matrix of positive behaviors and rewards before developing a sanctions matrix and ensure that they are equally robust in order to emphasize the importance of a strength-based approach to supervision and service delivery.

✓ Do not include the removal of services or treatment opportunities as a possible sanction.

✓ Do not convert services and treatment opportunities that an agency would otherwise be obligated to provide into incentives for good behavior.

✓ Ensure that sanctions and incentives included in the graduated responses system are available and accessible to staff. Otherwise, the system may not be perceived as a practical approach to supervision.

✓ Clarify that juvenile justice professionals should not use the failure to make progress toward positive goals as another avenue for sanctioning or detaining youth.

✓ Think carefully about how juvenile justice professionals will communicate expectations and possible rewards and consequences to youth and family members.

✓ Track data to monitor the impact of reforms.

F. Resources

Center for Children's Law and Policy, Making Graduated Responses Work for Youth: Tools to Help Juvenile Justice Officials Use Incentives and Sanctions to Promote Success of Youth on Probation (2015).
This toolkit, prepared by the Center for Children's Law and Policy with the support of the Public Welfare Foundation, contains a comprehensive set of tools, guidance materials, and sample materials to help a jurisdiction develop or improve upon an existing system of graduated responses. It is the most comprehensive publicly available resource on the use of graduated responses in juvenile probation to date.

Jeffrey Butts et al., Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development (2010).
In this report published by the Coalition for Juvenile Justice, Dr. Jeffrey Butts and his colleagues outline how adapting principles of positive youth development to services can improve outcomes for youth involved in the juvenile justice system. The guide can provide a helpful framework as officials consider how to establish goals for youth to achieve beyond basic compliance with the terms of probation or a court order.

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Chapter 6: Reducing Racial and Ethnic Disparities Post-Disposition

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Reducing Racial and Ethnic Disparities Post-Disposition

Addressing racial and ethnic disparities at the deepest points in the system is a challenge few jurisdictions have taken on. As a result, there are far fewer success stories in this area than in others. Nevertheless, this is the decision point where overrepresentation of youth of color is often the greatest, in part because of the cumulative effects of disproportionality at previous decision points. For that reason, this section of the Practice Manual outlines suggestions for data analysis and strategies that may be able to reduce disparities. Readers should see this as an opportunity – a chance to identify needs for change that can make real differences in the ways youth experience the system and to break new ground with innovative approaches. This section discusses disparities in placement experiences, re-entry, and violations of the terms of a youth's post-commitment release, sometimes called parole or aftercare.

I.　Placement Experiences

A. Overview

In many jurisdictions, youth of color are disproportionately represented in out-of-home placement. At this stage of the juvenile justice system, as at earlier stages, it is important to measure and analyze differences in the way youth are treated while in placement – differences that can have a profound effect on youths' opportunities for rehabilitation and abilities to exit the system in a timely way. Jurisdictions interested in identifying these disparities should gather and examine their data for key indicators in the chart below. As with data collection at other decision points, jurisdictions should examine these data points disaggregated by race, ethnicity, gender, and reason for placement problem, along with age and placement type.

Data Collection for Disparities in Placement Experience

Rates of Unsuccessful Returns from Placement

- What are the reasons for unsuccessful exits from placement?
- Who is ejected before finishing a program and why?
- Are there differences in unsuccessful exits by race or ethnicity?
- Are there explcit critieria for program ejection that are used by providers?

Length of Stay in Placement

- Do some youth stay longer than others for similar conduct?
- Do the reasons for extended stays differ by race or ethnicity?
- If a private provider can extend a youth's stay, do some providers do so more than others?

Rates of Facility-Based Discipline

- Do some youth experience restraint, room confinement, and other serious sanctions more frequently than others?

New Charges for Offenses During Placement

- Are some youth charged with assault, harm to property or other offenses in programs that are supposed to be helping address those behaviors?
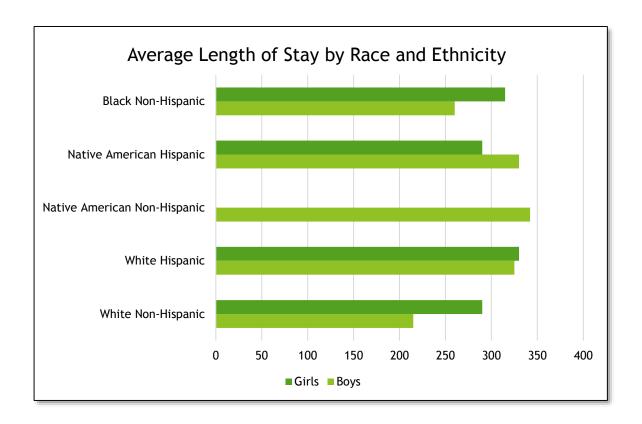
Referrals for Mental Health Services

- Are there differences in which youth are identified as needing mental health services?
- Are youth of different races or ethnicities disciplined or referred to mental health at different rates for the same behaviors?

B. What to Do If the Data Identify Disparities in Placement Experiences

As with all aspects of racial and ethnic disparity reduction, good data lead to more good questions. In order to understand and address differences in placement, discipline and experience, a look at a combination of policy, practice, training, and contracting may be helpful.

For example, in the graph below, the length of stay in placement is highest for Native American and Hispanic/Latino boys and Black and Hispanic/Latina girls.

Average Length of Stay by Race and Ethnicity

Race and Ethnicity	Girls	Boys
Black Non-Hispanic	~315	~260
Native American Hispanic	~290	~330
Native American Non-Hispanic		~340
White Hispanic	~330	~325
White Non-Hispanic	~290	~215

These data help to identify the disparities, but they don't tell what is necessary to reduce them. In order to get closer to identifying opportunities for reform, a jurisdiction needs to gather additional data and information to guide further action. The questions on the following page will help identify those opportunities. For example, if there is no policy that governs length of stay, and if lengths vary significantly by placement location, it may be that the placements have legitimately different programs, or it may be that the goals of the program and rules for determining completion have not been sufficiently defined. In such a situation, the agency could work with the providers and other stakeholders to agree on identified objectives and means of program completion and establish policy to standardize how providers determine that programs have been completed.

Because girls of color are a growing section of the female population in detention and placement facilities,[1] communities should pay special attention to the intersection of race, ethnicity and gender when examining differences in placement experiences. In

our work at CCLP, we have seen examples of placement facilities where differences in access to resources, treatment, or other opportunities have led to disparate outcomes for youth.

For example, in some facilities where there are fewer girls than boys, and where girls and boys are kept separate for security reasons, girls do not have the same level of access to programming such as computer lab or gym time. A smaller population of girls than boys generally means that girls are lumped in one or two classrooms with wider variation in academic level, so teachers are stretched to teach to multiple levels at once. These circumstances can limit educational progress and, where education achievement is tied to program completion, could contribute to different lengths of stay.

Data and Policy Inquiries

- Is there a policy or curriculum that guides length of stay?

- Who decides how long youth stay?

- Are there differences in how private providers treat white youth versus youth of color?

- What gender-responsive elements are there to the program and to staff training?

- Do girls have access to the same opportunities for program completion and success as boys?

- Is there a family engagement element to the program? How are families supported in order to be able to participate? Does family participation affect length of stay?

- Where do youth go after placement? Is the process for planning youths' re-entry and housing impacting program departure time frames?

Another example of potential causes of disparity lies in differences in access to mental health services for youth in the juvenile justice system. Studies reveal that youth of color are only one- third to one-half as likely to receive mental health care as white youth.[2] Contributors to this disparity include poverty, lack of insurance coverage, and limited availability of services.[3] The shortage of mental health professionals with adequate understanding of the culture, language, values and experiences of their young clientele can limit the willingness of families to engage in care.[4]

For those who do access care, such cultural differences may contribute to differences in diagnosis. For example, African American youth tend to be diagnosed with more severe disorders, including disorders less amenable to treatment.[5] They are also labeled with behavioral disorders such as conduct disorder more often than white youth.[6] Youth of color in the juvenile justice system may in fact have higher mental health needs but nevertheless be among the least likely to be served.[7]
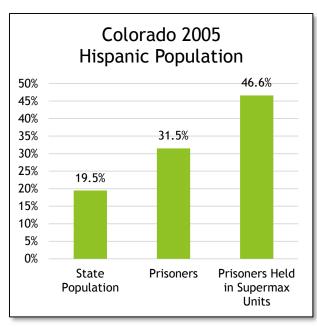
A youth with untreated mental illness trying to succeed in a juvenile justice placement program may find it difficult to conform his or her behavior to the expectations of the program. That can mean more setbacks working toward behavior goals, or more time in room confinement or restraints. In addition, untreated mental illness can make it harder for youth to engage in the cognitive treatment strategies of many juvenile justice interventions, making it harder to complete the programs. And, of course, youth with disabilities that interfere with learning often find themselves less able to perform in school without behavior incidents, which can both set back educational achievement and result in discipline.
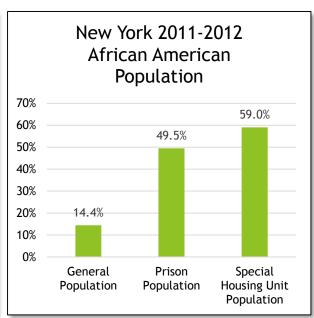
Stakeholders who identify disparities in identification of mental health needs in placement or overrepresentation of mentally ill youth of color in discipline can work with their systems to institute reforms in access to care, quality of screening and assessment, training of professionals, and collaboration with mental health agencies. Many resources are available through the National Center on Mental Health and Juvenile Justice.

C. Disparities in Use of Restraints and Solitary Room Confinement

As communities grow more aware of the dangers of solitary confinement and some restraint practices, an analysis of post-disposition disparities provides an opportunity to take a hard look at these dangerous practices through a racial justice lens. While

we do not have national data about solitary confinement of youth disaggregated by race and ethnicity in juvenile facilities, we do have evidence that disparities exist for use of solitary in the adult system. In eight states where race and ethnicity data were available for high security solitary confinement units of state prisons, four of the states showed significant disproportionate representation of prisoners. For example, in Colorado in 2005, Hispanic individuals were 19.5% of the state population, but they made up 31.5% of prisoners in Colorado and 46.6% of prisoners held in the Colorado State Penitentiary supermax units.

Colorado 2005 Hispanic Population — State Population: 19.5%, Prisoners: 31.5%, Prisoners Held in Supermax Units: 46.6%

New York 2011-2012 African American Population — General Population: 14.4%, Prison Population: 49.5%, Special Housing Unit Population: 59.0%

In New York, in 2011-12, black individuals were 14.4% of the state population but 49.5% of the prison population. During that period, 59% of prisoners held in Special Housing Units across the state were black.[8] Such data for juvenile facilities would provide valuable insights into youth's experiences in placement, but they have not been available publicly. Jurisdictions may learn a lot about youths' experiences in placement by examining data on room confinement or restraints and the reasons for their use.

D. What Can My Jurisdiction Do if it Identifies Disparities in Room Confinement or Restraint?

A number of policy, practice, and resource questions should be addressed, identified in the text box below. Resources for addressing unnecessary use of room confinement, restraint and other aspects of conditions of confinement may be found through the Juvenile Detention Alternatives Initiative (JDAI) Conditions of Confinement resources page.

Policy, Practice, and Resource Questions

- Do youth of color experience restraint, room confinement, and other serious sanctions more frequently than white youth?

- Has the department clearly articulated standards and followed up with training regarding appropriate use of restraint or solitary room confinement?

- Is there sufficient oversight of the facility's conditions?

- Does the facility have adequate staffing, training, programming, and mental health services for its population?

- What are the mechanisms for imposing discipline? Are youth represented by counsel or otherwise assisted by staff? Do they have the opportunity for appeal? Is there an effective behavior management program that is adequately explained and impartially administered?

- Does anyone regularly review data on the use of discipline, disaggregated by race, ethnicity and gender?

II. Disparities in Unsuccessful Program Exits

Questions to Consider in Addressing Disparities in Unsuccessful Placement Returns

- Are youth of color charged with assault, harm to property or other offenses in programs more frequently than white youth?

- Does the contract allow programs to reject or later eject youth who are difficult to serve?

- Are there clear rules about when it is appropriate to charge youth with a new crime? What guidance is provided to avoid disparate use of discretion in deciding when to report or charge a youth?

- What requirements are in place to promote cultural and linguistic competence? Gender-responsiveness?

- What oversight structures are in place for contractors or facility conditions as a whole? How active or engaged are those oversight mechanisms, and are they sensitive to race, ethnicity and gender-specific considerations?

A look at program completion data might also show differences in the rates at which youth are returned from programs before completing them, sometimes called unsuccessful program exits. A youth might be ejected from a program because he had a fight with another youth or staff, broke too many rules, or refused to engage in treatment. While all of these behaviors present challenges for programs, disparate rates of unsuccessful discharges can be signals of underlying systemic problems.

These problems could include lack of appropriate criteria or care in initial program selection, insufficient protections for youth in programs' contract terms, or insufficient identification of youths' needs. In some systems, youth of color are sent across the state to placements with only white staff and communities, which can limit cultural competence of the program and reduce engagement of youth. In other states, residential treatment facilities are allowed to "cream" referrals, accepting only those youth likely to have success in their programs. Youth of color from communities with more intensive policing, higher crime, and less successful school systems are more likely to be rejected from programs that are allowed to engage

in creaming because they are more likely to have experienced more police contacts and lower educational achievement. Therefore they may have fewer options for effective programs that meet their needs.

Finally, some states have contracts with treatment programs that make unsuccessful discharge more likely. For example, we can expect that youth sent to rehabilitative treatment for aggression might get in a fight in placement. Some facilities will arrange to have youth charged with new crimes in the event of an assault. Others will send them to a secure facility to await a new placement. But some systems have no-eject rules that require contract service providers to work with challenging youth rather than throwing up their hands. For example, Alabama's Department of Youth Services engaged in reforms beginning in 2006 that led to a dramatic decrease in commitments and improvements in quality of services. Part of the reform involved establishing "no-eject, no-reject" policies in its requests for proposals for placement contracts for the youth who remained under DYS care.[9]

Stakeholders who identify disparities in unsuccessful placement returns could raise several questions for further analysis, highlighted in the text box above. In most cases, changes to policy, training, practice and sometimes contracting can follow from the answers to these questions.[10]

For counties in decentralized systems where local governments may contract with a variety of programs and services for committed youth, getting leverage with programs that may only hold a few youth each year from a given county poses some additional challenges. Certainly counties can stop using programs that seem to reflect disparities or excessive use of restraint or isolation for all youth, but how else can they achieve change? In order to build their leverage, counties may need to collaborate to create legislation that promotes improvements, work with licensing entities, or establish new standards and oversight for juvenile justice placement programs.

A. Adding Evidence-Based to Data Driven

The approach described above provides a framework for states and localities to examine data that could identify where youth of differing races and ethnicities experience placement differently. Those data can guide further inquiry and policy or practice changes. For jurisdictions that have the capacity for a deeper dive, the Standardized Program Evaluation Protocol (SPEP) provides an opportunity to examine the extent to which programs are likely to be effective at reducing recidivism.

Mark Lipsey and his colleagues conducted a meta-analysis of 548 programs for which there was available data on recidivism. They have identified the characteristics that make the programs effective at recidivism reduction.[11] Through the SPEP, jurisdictions can score their individual service programs to determine the extent to which the programs share characteristics with the effective programs in the study.[12] Such a process provides the basis to encourage improvement of lower-scoring programs and greater use of higher-scoring programs.[13] Jurisdictions can also conduct recidivism studies themselves to determine how actual outcomes compare with expected outcomes based on the SPEP.[14]

The SPEP approach can be useful for RED reduction in a number of ways. First, jurisdictions can assess whether youth of color are getting equitable opportunities to access the highest scoring (and presumably most effective) programs. Disparities can be identified and work done to eliminate differences in program access.

Second, Lipsey and his colleagues' research identifies some key elements to effective programming for delinquency reduction. Their research indicates that jurisdictions will see better recidivism outcomes when they avoid using fear-based, external control types of programs that focus on surveillance and instilling discipline. Such programs tend to increase recidivism, while more therapeutic approaches have higher rates of success.[15] The research also finds that programs should be targeted at high-level offenders, since low-risk offenders have little likelihood of recidivism.[16] Finally, dosage matters: youth who receive 3 months of a program designed for 6 months will not see a benefit.[17] Problems can also arise if youth stay longer than the recommended length of time: drawing out a placement can be frustrating to youth and raises the likelihood that a youth will eventually violate his or her terms or conditions. Jurisdictions that incorporate effective practices into the programs that they design and choose may see recidivism reduction.[18]

> **Elements of Effective Programming for Delinquency Reduction**
>
> - Avoid using fear-based, external control types of programs that focus on surveillance and instilling discipline
>
> - Target programs at high-level offenders
>
> - Dosage matters – youth should only be in programs for the time necessary for treatment

Berks County, Pennsylvania, was chosen as one of four pilot sites to use the SPEP as participants in the [Juvenile Justice System Improvement Project](#) through [Georgetown University's Center for Juvenile Justice Reform](#). Building upon its commitment to data-driven reforms, the County embarked on the project with the goal of system performance improvement. The County conducted extensive interviews with its providers, learning about their services in enough detail to determine the type of services being delivered, the quality of service delivery, the amount of service being provided, and the risk level of the youth served. The County reports that the experience has helped the juvenile probation staff understand more about the services being provided to clients and their families, as well as the appropriate risk level of youth to send to various programs and how long they should be there. A benefit has been shared responsibility for and ownership of the results for youth. The probation office and providers have jointly developed performance improvement plans, and programs will be rescored in 6 to 24 months. Four other pilot counties in Pennsylvania are now participating in this process.[19]

B. Transfer from One Facility to Another

In 2011, Maryland found that many youth who had been ejected from commitment programs were languishing for long periods of time in juvenile detention centers while they awaited new placements. Youth who were detained "pending placement" made up close to 50% of the detention population in the state, 35% of whom were youth who had been ejected from commitment programs.

To address this issue, in 2012 the Maryland legislature passed SB 245, which provided that, when necessary to administer the commitment of a child, and upon approval of the Director of Behavioral Health, the Department of Juvenile Services (DJS) could transfer a youth committed for residential placement from one facility to another facility with a similar or higher level of security. Under the statue, DJS must notify the court, the youth's counsel, the State's Attorney, and the parent of the youth prior to the transfer. The juvenile court may hold a hearing at any time for the purpose of reviewing the commitment order, but a hearing is not required prior to the transfer.

The legislation allows DJS to reduce the time that committed youth spend in juvenile detention facilities (where they do not receive treatment services), leverage current resources, and strengthen the Department's Continuum of Care by:

- Eliminating or reducing a youth's time in detention when a youth is ejected from a residential placement;

- Reducing the likelihood that a youth will be released from detention pending placement without a transfer to treatment services; and

- Decreasing the overall length of time youth stay in committed status with the Department by allowing the Department to swiftly address treatment concerns without long stays in detention.

As a result of the legislation, there has been a 66% reduction in the average daily population of pending placement youth in the state, from an average of 198 per day to 66. In addition, there has been a 41% reduction in the average length of stay for youth in detention pending placement, from an average of 42 days to an average of less than 25 days.[20]

III. Re-Entry and Aftercare

As youth return home following an out of home placement, the first few months of re-entry are critical to maintaining successful habits and skills learned in placement. An oft-heard refrain from juvenile probation officers and case managers is that the youth may have been helped by the placement, but they return to the same situation where they got in trouble before. Effective re-entry requires planning and development of new behavior skills in youth alongside development of supervision, communication and other parenting skills in their families.

Disproportionality and disparities may be evident in re-entry and parole data. A jurisdiction seeking to assess its re-entry and aftercare system for racial and ethnic disparities can look at a variety of data points for potential differences.

Two approaches to juvenile justice service delivery can address the problems of youth returning to the same circumstances they left. One option is to treat youth in the

> ### Data to Consider at Re-Entry and Aftercare
>
> - Parole or aftercare violations, revocations, and extensions
>
> - Recidivism rates
>
> - School return and dropout during aftercare

community wherever possible so that families and youth can develop new skills alongside one another rather than having to reintegrate later. For example, Cook County, Illinois, which includes Chicago, recently determined that its out of home placements were not producing sufficient results in youth to warrant continuing their widespread use. Instead, the Probation Department worked with local providers to create a broad network of service options for youth remaining in their homes. As of March 2015, the county had approximately 4,400 youth under court supervision, only one of whom was in an out of home placement.[21] While it is too soon for performance data, such a redirection of resources has certainly allowed the agency to avoid the challenges associated with re-entry, since youth are remaining in the community.
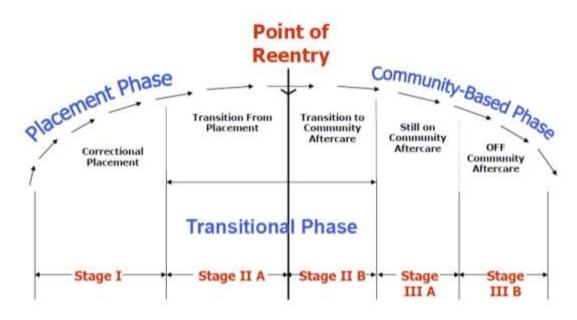
The second option for systems to consider, where placement is necessary, is careful re-entry planning and resource allocation combined with effective alternatives to re-incarceration for youth who violate their release conditions. This approach can also help systems avoid or reduce unnecessary disparities.

A. Principles of Effective Re-Entry

For re-entry programs to be effective, a number of key elements should be present. First, re-entry planning should begin when the youth first enters placement. Case management should be structured to require communication between the facility, probation, family, youth, potential community resources and the commitment program from the time the youth begins the placement program.

The diagram below, created by Dr. David M. Altschuler of the Institute for Policy Studies at John Hopkins University, illustrates that the process of re-entry takes place in several phases. Careful planning with stakeholders and providing key components at the various stages will promote effective re-entry.[22]

Reintegration Continuum

Source: David M. Altschuler, Institute for Policy Studies, John Hopkins University

Second, engaging families in decisions and supports of behavior change, thought process growth, and reinforcement of new skills from placement is essential in preparing for a youth's successful return home. Research indicates that intensive aftercare supervision alone does not reduce recidivism.[23] A recent study of Parenting with Love and Limits, a re-entry program in St. Joseph, Indiana, determined that family-focused re-entry treatment that starts early in the incarceration period (four months prior to release) and engages families can reduce length of juvenile justice involvement and recidivism.[24] In another study, youth participating in Washington State's Functional Family Parole program were less likely to be arrested in the nine months following release than those who did not receive the service, and were more likely to be employed and earn more than their counterparts who did not receive the service. In Functional Family Parole, aftercare case managers facilitate strength-based services based on Functional Family Therapy for youth.[25]

Encouraging visitation during placement is a key component of early family engagement. Contacts can include supported transportation and videoconferencing with the program as re-entry planning unfolds. Not only does it support the youth's eventual transition back home, but it also helps youths' performance while incarcerated. A study by the Vera Institute of Justice found that youth who received

visits while incarcerated had fewer behavioral incidents and higher grades in school than youth who did not have visits.[26]

Early findings from recent juvenile Second Chance Act grants suggest promising effects of Cognitive-Behavioral Interventions at the re-entry stage. For example, the Tidewater Reentry Program of the Tidewater Youth Services Commission (TYSC) in Virginia uses such interventions with moderate- to high-risk youth and young adults on parole. The services include several hours a week of direct contact from staff by phone or in person, graduated sanctions and rewards, and drug screening. Recent data illustrate that 90% of participants avoided reoffending, and 60% completed the program successfully. Nearly 30% were removed from the program due to technical violations.[27]

Another key ingredient is encouraging youth success through a positive youth development, strength-based approach. This includes encouraging youth to strengthen relationships with pro-social peers and adults, supporting their connections to school, work, community supports and positive activities, and ensuring effective transition to school. Effective transition includes careful reintegration planning and maximizing school credit transfers so that youth get full advantage of the work they put in while incarcerated.[28] As with racial and ethnic disparity reform efforts at other points in the juvenile justice system, stakeholders should consider systemic barriers to success. For example, biases in perceptions of youth of color and the complexities of aftercare planning for youth may result in practitioners focusing on deficits in pro-social attachments and activities in the community rather than strengths. Addressing these issues in trainings and agency staff discussions can help to neutralize their impact.

One effective way to reduce racial and ethnic disparities is to identify or strengthen early pathways out of the juvenile justice system for youth of color. Many of the strategies discussed in this Practice Manual focus on doing just that. However, in many juvenile justice systems the most significant point of racial and ethnic disparities is not at the front end of the system. Rather, it is at the "deep end" – the point at which youth have either been adjudicated delinquent or pled to a charge and are awaiting the disposition of their case.

For some youth, disposition can mean a short time on probation. For others, it can mean a lengthy stay in a secure facility, followed by months or years of supervision and services. State data suggest that youth of color disproportionately see their cases end with an out-of-home placement or incarceration in a secure facility. And federal data reveal that while youth of color represent only one-third of the youth population in the country, they represent two-thirds of the youth confined in out-of-home placements.[29] This means that youth of color are more likely to experience the negative outcomes associated with incarceration than white youth: severed connections with family members and other supportive relationships, higher

recidivism rates, reduced education and employment prospects, and exposure to opportunities for abuse by other youth or staff.[30]

For example, a 2015 report on juvenile justice reform in Texas found that youth who had been incarcerated in state institutions were 21% more likely to be re-arrested within one year of their release than youth of similar backgrounds who were placed under county probation supervision. Additionally, those youth released from state institutions were three times more likely to be arrested for felony charges than youth under county probation supervision.[31] A study in Illinois just a few years earlier reported similar findings: even after controlling for a range of demographic and background characteristics such as history of prior offending, youth who were confined in an out-of-home placement were 13% less likely to graduate from high school and 22% more likely to be incarcerated as an adult than youth who had not been so confined.[32]

Why are youth of color more likely to end up in out-of-home placements or confined in secure facilities at disposition? Some believe that it is because youth of color are charged with more serious crimes than white youth. However, studies of racial and ethnic disparities that control for severity of the offense and other factors still find differences between white youth and youth of color in the outcomes of their cases.[33] Systemic biases can lead to the development of policies and practices that have a disparate impact on youth of color. The reality is that disparities can exist for a number of reasons ranging from a lack of diversion opportunities earlier in the juvenile justice process to inadequate or ineffective community-based programming to biases within the dispositional decision-making process.

B. What If We Identify Disparities in Parole Revocations or Extensions?

Data indicating differences in parole revocations will not tell why those disparities exist, but additional questions may help unravel some explanations. Inquiries in the areas described in the box below may lead to new opportunities for reducing disparities in parole violations.

Questions to Consider When Analyzing Differences in Parole Revocations

- Are there racial and ethnic differences in which youth are identified as needing mental health services?

- Do requirements penalize youth for their neighborhood or family circumstances?

- Are there opportunities for discretion in revocations that would benefit from more structured decision making?

- Is there sufficient involvement of youth, families, and other supports in planning and decision making in order to create a workable re-entry plan?

- Are the programs and services culturally and linguistically competent?

C. Education Re-Entry

As described above, education reintegration is key to effective re-entry planning. More than half of youth in secure placements have not completed the eighth grade, and two thirds of those leaving custody do not return to school.[34] Impediments to youth's return to school after custody magnify the impact of the school-to-prison pipeline by impeding successful return to the community.[35] Research shows that when youth return from placements to school, recidivism is lower.[36]

Several states now have statutory schemes or agency structures to promote effective school reintegration. For example, Florida law establishes requirements both to provide for education quality in juvenile justice facilities and to ease the reintegration transition. Home school districts are required to maintain an academic record for youth in custody, to allow credits to transfer back to the home school, and to create a transition plan.[37] Virginia's statute requires similar structured planning prior to the youth's release, and the law makes clear that school districts may not presume that an alternative school is the correct placement upon re-entry.[38]

Pennsylvania has taken a practical approach to improve outcomes for education reintegration. The Education Law Center has created a toolkit and trained hundreds of juvenile probation officers across the state about youths' education rights. Some juvenile probation offices have assigned particular officers to serve as education reintegration specialists. The Pennsylvania Juvenile Court Judges' Commission "Aftercare Specialists" appointed by the Juvenile Court Judges' Commission, Pennsylvania Council of Chief Juvenile Probation Officers, and the Center for Juvenile Justice Training and Research support probation officers working on education reintegration and other aftercare challenges.[39]

On June 9, 2014, the U.S. Departments of Education and Justice sent a letter to each state education superintendent and attorney general about education for youth in juvenile justice facilities. In addition, they released a policy guidance package in December 2014, including guiding principles for education in secure care settings and "Dear Colleague" letters reinforcing jurisdictions' obligations regarding special education, access to Pell grants, and prevention of discrimination against students in juvenile justice residential facilities. The materials impress upon states the responsibilities of both educational and juvenile justice agencies to "ensure that youth who are already confined receive the services they need to meet their educational goals, obtain employment, and avoid recidivism."[40] The June letter also promised to launch a pilot of a youth aftercare education model in 2015, and reminded states that effective education re-entry begins with strong education programs in facilities, equipped with qualified staff and rigorous curricula.[41] This new resource may be useful to jurisdictions seeking to improve re-entry outcomes for youth of color in the years to come.

At these later decision points in the system, jurisdictions have a wealth of opportunities to explore their data, identify potential interventions, and create changes in policy and practice that can improve outcomes for youth of color. Because youth of color are significantly over-represented in the deep end of the system, any changes that improve successful program completion and outcomes will likely disproportionately benefit youth of color. Focused efforts to identify and address disparities at disposition present opportunities to impact youth of color substantially. We encourage stakeholders to consider RED reduction activities at these later points in the system.

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Chapter 7: Reducing Racial and Ethnic Disparities at Transfer

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Table of Contents

Reducing Disparities at Transfer

I.   Introduction

Nationally, <u>adult jails hold an estimated 4,600 youth daily</u>,[1] and an <u>estimated 1,200 youth may be found in prisons across the United States on a given day.</u>[2] While African American youth represent 16% of the youth population in the United States,[3] they represent 62% of youth prosecuted in the adult system.[4] Although the disparities are not as substantial for Latino youth, they are still 43% more likely to be transferred to the adult system than white youth and 40% more likely to be sent to adult prison.[5] Native youth are 1.5 times as likely as white youth to be transferred to adult court.[6] This decision point presents an opportunity to address significant disparities and prevent potential harms to youth when they are handled in the adult system.[7]

The harms of transfer have been widely documented. In many adult facilities, youth receive few, if any, rehabilitative services. Many adult facilities fail to provide the education required by state and federal laws.[8] And adult jails, especially smaller ones, are caught in a dilemma – they can either house youth with adult inmates, which may expose them to more experienced criminals or to abuses, or they may isolate youth to separate them from adult offenders. Isolation, however, carries with it known harms including deterioration of mental health such as depression, anxiety, suicide and psychosis,[9] and physical harms from lack of exercise, sleep disturbance, dizziness, joint pain, and other physical symptoms.[10]

> ## Harms of Transfer
>
> - Less access to rehabilitative services
>
> - Inadequate, or no, education opportunities as required by federal and state laws
>
> - Reliance on isolation to separate youth from adult inmates

The Justice Department's regulations implementing the <u>Prison Rape Elimination Act</u> seek to provide greater protections for youthful offenders housed in adult jails and prisons by requiring that youth be housed separately from adults. The regulations require facilities to make best efforts to avoid resorting to isolation of youth to accomplish this goal, but for smaller facilities there may be no other option.[11]

Research has shown that transfer does not have a deterrent effect on youth,[12] and, further, that most youth prosecuted in the adult system are *more* likely to recidivate than youth with similar backgrounds and charges who are prosecuted in the juvenile system.[13] Despite these findings and some legislative movement to roll back transfer provisions (described below), all states continue to maintain mechanisms to transfer youth to the adult system.

Addressing disparities at this decision point requires information from different sources and collaboration with a different collection of stakeholders than other decision points in the juvenile justice system, since youth are moving between two distinct court systems. In the past few years, states have begun to roll back some aspects of their transfer laws, but reductions in disparities have not been documented.

A. Mechanisms for Transfer

In most jurisdictions, youth under age 18 who commit acts that would be considered crimes if committed by an adult are handled in the juvenile justice system, with some possibility of transfer to the adult system for the most serious offenses. Generally, there are three ways a youth may be transferred to adult court: prosecutorial discretion, judicial waiver, or statutory exclusion.

Types of Transfer to Adult Court

Prosecutorial Discretion	Judicial Waiver	Statutory Exclusion
• Also called "direct file" or "concurrent jurisdiction." Under this type of transfer prosecutors have the option of filing charges against youth in either the juvenile or adult court.	• Under this type of transfer, a judge decides whether a case should be handled in juvenile or adult court, usually based on criteria such as whether the youth is amenable to treatment in the juvenile justice system.	• Under this type of transfer, certain crimes, if charged, may only be heard in adult court.

In some jurisdictions, "blended sentencing" schemes allow juvenile courts to impose both juvenile and adult sentences, which contribute to the adult system population of youth as well.[14] In a number of jurisdictions, once a youth is prosecuted (or in some cases convicted) in adult court once, he is always considered an adult for future charges.[15] In addition, a handful of states keep all youth of a certain age under the jurisdiction of the adult system. In New York and North Carolina, all 16 and 17 year olds are handled in the adult system. In Georgia, Louisiana, Michigan, Missouri, South Carolina, Texas, and Wisconsin, 17 year olds remain in the adult system for all offenses.[16]

Individuals wishing to examine disparities in transfer should begin by learning which mechanisms are available in their states and gathering data separately for each of the different mechanisms.

B. A Data Collection Example: Maryland

In Maryland, a state Commission on Juvenile Justice Jurisdiction found, as early 2001, that the state's exclusionary laws (those automatically charging youth in adult court for certain crimes) had a disproportionate effect on African-American youth.[17] While 50% of youth arrested in Maryland were African American, 80% of youth charged with excluded offenses were African American.[18]

The Commission recommended improvements to the state's data collection systems, improvements to case processing, dedication of more resources to those responsible for considering and processing transfer cases, and more study of the reasons for the disparities after improvement to the data systems. During the 2001 legislative session, the Maryland Legislature did adopt new provisions requiring a preliminary hearing within 15 days of the bail hearing and a transfer

Offenses Excluded from Juvenile Court Jurisdiction in Maryland

- Abduction
- Kidnapping
- Second-degree murder or attempted second-degree murder
- Voluntary manslaughter
- Second degree rape or attempted second-degree rape
- Robbery or attempted robbery
- Second and third degree sexual offenses
- Possessing, using, wearing, carrying, transporting, selling, or transferring a firearm
- Carjacking or armed carjacking
- Assault in the first degree

MD Code, Courts and Judicial Proceedings, §3-8A-03(d)

6

hearing within 30 days of charging.[19] However, the legislature did not make changes to the transfer law, nor did the state collect ongoing data or do further research as recommended by the commission over the decade following the report. [20]

Just Kids: Baltimore's Youth in the Adult Criminal Justice System - A Report of the Just Kids Partnership to End the Automatic Prosecution of Youth as Adults[1]

- 99% of youth held in the Baltimore City Detention Center were African American

- 68% of youth charged as adults were either transferred "back" to the juvenile system or their cases were dismissed

- On average, youth waited five months in jail for their hearings to determine whether they would be transferred to the juvenile system

- Only 10% of the youth charged as adults were sentenced to time in adult prisons

- 10% of youth in the study had been waiting more than 16 months in adult jail without trial or other resolution of their cases

The Just Kids Partnership came together to bring attention to Maryland's charging and housing of youth in the adult system as state officials were planning a new 180-bed jail for youth charged as adults in Baltimore, projected to cost more than $100 million. A new option for housing youth was necessary because conditions for youth in the Baltimore City Detention Center, the adult jail, were found by the U.S. Justice Department to be unconstitutional, and were also the subject of ongoing litigation.[21] The Partnership issued a report in October 2010 analyzing youth tried in the adult system in Baltimore City. It reported that 400 of the approximately 1,250 youth charged as adults in Maryland each year came from Baltimore City.[22] (Baltimore's youth population represents approximately 9% of Maryland's total youth population.[23]) The Partnership examined 135 cases of youth charged as adults in Baltimore City, all of whom were African-American. The study found that while African-American youth represented 29% of youth in Maryland, they were 60% of youth waived to criminal court and almost 80% of youth charged with offenses automatically handled in adult court.[24]

To further the analysis, Advocates for Children and Youth (ACY) gathered data on the youth charged in adult court between 2009 and 2011 in Baltimore City. They found

that 907 youth were sent to adult court during that time, and that 255 of those were subsequently transferred "back" to juvenile court for processing. Of those 255, ACY conducted a study of 100 youth, to see what their eventual case outcomes were. In a study published in 2013, ACY summarized the findings: 93% of the youth were African-American, and 3% were Latino. Of those 100 youth, 20% of the cases were dismissed, and 51% received a community-based disposition, suggesting that the courts found that the vast majority of these matters did not require a "deep end" response.[25] The powerful information from these two studies, along with bed space analyses conducted by the National Council on Crime and Delinquency,[26] convinced the state first to revise its plans down to 120 beds at a cost of $70 million and then later to scrap plans to build the facility, choosing to renovate a much smaller facility for the limited number of adult-charged youth who could not be kept in the Baltimore City Juvenile Justice Center (BCJJC), the city's juvenile detention center, which is operated by the Maryland Department of Juvenile Services (DJS).[27]

Effective Systems Reform Work – Transfer and Baltimore City

- 39% decline in the number of youth charged as adults statewide from 2011 to 2014

- Average daily population in jail and central booking declined from 55.4 to 24.4 from 2012 to 2014

- The Department of Juvenile Services, Department of Public Safety and Correctional Services, Circuit Court, State's Attorney, and Public Defender reached an agreement to house youth awaiting transfer at the Baltimore City Juvenile Justice Center in 2014

- State went from wanting to build a 180 bed, $100 million facility for Baltimore youth charged as adults to deciding not to build a new facility

- A 2015 state law requires most youth awaiting transfer hearings to be housed in juvenile facilities

Baltimore is now managing a significant portion of its former jail population of youth under 18 by housing them in the juvenile detention facility, BCJJC, even while they await their hearings to transfer to the juvenile justice system. This arrangement does not violate the "sight and sound separation" requirement of the federal Juvenile Justice and Delinquency Prevention Act.[28]

In July 2013, DJS, the Department of Public Safety and Correctional Services (DPSCS), the Circuit Court for Baltimore City, the Baltimore City State's Attorney, and the Public Defender reached an agreement regarding youth charged as adults in Baltimore City. They agreed that all youth charged as

adults who are eligible for a transfer to the juvenile system will be housed in the BCJJC while they wait for their transfer hearing.[29] The Public Defender's and State's Attorney's offices have agreed upon a joint motion that is filed at the time of the youth's bail hearing so that within 2 days of arrival at the Baltimore City Booking and Intake Center, youth are sent to the juvenile detention center to await their hearings.[30]

The effective systems reform work that Baltimore City has done to reduce the juvenile detention population, in part through the Juvenile Detention Alternatives Initiative (JDAI), opened the bed space in BCJJC for this option to be possible. In addition, the number of youth charged as adults who are held in adult jails has dropped across the state by 39% - from 760 admissions in 2011 to 467 in 2014.[31] Now, in Baltimore, while African American youth are still charged in the adult system, only those who are ineligible for transfer back to juvenile court, or who were denied transfer following a hearing, remain in the jail.[32] In 2014, the average daily population, including both the jail and the central booking facility, is 24.4 youth per day, down from 55.4 in 2012.[33]

The information and accompanying advocacy has also helped fuel a drive toward legislation to reduce the allowable circumstances for youth to be processed in adult court in Maryland. In 2013, a legislatively established Task Force on Juvenile Court Jurisdiction recommended that the legislature eliminate a law prohibiting youth in certain situations from being transferred back to juvenile court.[34] While the legislature did not eliminate the law, it did remove a provision that prevented youth who had been transferred back to juvenile court for previous charges from requesting such transfer again.[35]

> **Maryland Law Permits Housing Transferred Youth in Juvenile Facilities Unless**
>
> (1) They are released;
> (2) There is a finding that housing the youth in a juvenile facility would be dangerous to the youth or others; or
> (3) There is no room in the juvenile facility.

The task force also recommended further study of the feasibility of expanding juvenile court jurisdiction to remove grounds for transfer,[36] but a bill in the 2015 legislative session to require the study to be completed did not pass.[37] However, the agreement to allow Baltimore youth pending transfer to be housed in the juvenile detention facility set an example that did lead to legislative change in 2015. New changes to the law require that youth who were automatically excluded from juvenile jurisdiction be housed in juvenile facilities unless 1) they are released, 2) there is a finding that housing the youth in the juvenile facility would be dangerous to the youth

or others, or 3) that there is no room in a juvenile facility.[38] Maryland's slow move toward reversing its prosecution of youth in the adult system has been fueled by jurisdiction-specific data collection and committed advocacy. DJS now collects data regularly on race and ethnicity of youth charged in adult court who are housed in juvenile detention facilities.

C. How Can Systems Identify Whether Disparities Exist in Adult Court Transfer?: Missouri's Analysis

In Missouri, transfer ("certification" in Missouri) to adult court occurs pursuant to judicial hearing.[39] One of the ten factors to be considered by the judge is "Racial disparity in certification."[40] Through this provision, the legislature has acknowledged the existence of racial disparities in the transfer process. While overall rates of certification declined between 2009 and 2013 for all race categories, African American youth remain disproportionally represented in certifications. In 2013, African American youth were 63% of youth certified, despite being 15% of the youth population.[41] No reported decision has identified the findings that a court must make to consider this factor in a transfer hearing. Most judges appear to have determined that it is sufficient to make a finding that race was not a factor at any point in the certification decision.[42]

However, some court watchers argue that the consideration of this factor should be more significant. Former state representative Steve Gaw, who was one of the main sponsors of the bill that added this provision in 1995, says that "[r]equiring judges to take into account racial disparity in decisions of certification was intended to force judges to think about the issue in making the decision, evaluating the factors that might have resulted in different treatment of the individual before them, and hopefully leading to more results where race was not a deciding factor in the certification decision."[43] Professor Mae Quinn of Washington University's juvenile justice representation clinic argues that a meaningful assessment of racial disparities by juvenile court officers should include consideration of data on racial disparities in arrest, certification hearings, and approval of adult court prosecutions.[44]

In recognition of the growing certification disparities, Missouri engaged in a collaborative project to conduct a detailed analysis of its transferred youth in 2012 and 2013. The Missouri Juvenile Justice Advisory Group, the Office of State Courts Administrator, the Department of Public Safety, and the Missouri Juvenile Justice Association engaged a researcher to examine youth certified to adult court as well as comparable youth who were eligible for certification but remained in juvenile court. The research revealed that African American youth made up only 31% of the felonies

committed during the study period, but 62% of the certifications.[45] Five percent of African American youth with a felony were certified, while only one percent of white youth with a felony were certified.[46]

Further analysis helped reveal that African American youth had a higher representation among the most serious felonies and felonies against persons, helping to explain their overrepresentation among the certified group.[47] However, the research included regression analysis to determine which individual factors most predicted certification. While age and gender played more of a role in certification, race still remained the third most predictive demographic factor, with youth two times as likely to be certified if they are African American.[48] This type of analysis allows the conversation to move past guessing about causal factors, and to confirm not just overrepresentation but also impact of race on certification decisions.

Data Collection and Corresponding Questions to Identify Disparities at Transfer

- **Crucial Data Points**: Offense type, race, ethnicity, gender, location, and time of the offense.
  - Are there differences in the profile of transferred individuals?
  - Where transfer is discretionary, are there differences between the youth transferred and those who are not?

- **Dismissals, Pleas, and Verdicts**
  - Do outcomes look different by race or ethnicity? For example, do youth of color have charges that are more often dismissed by the time they get to court?
  - Do the initial charges and pleas to lesser charges suggest anything different about initial charging practices or handling of plea negotiations?
  - Does the opportunity for bail look different across racial lines?
  - Are acquittal rates at trial any different?
  - Do the lengths of time and types of facilities to which youth are sentenced differ along racial or ethnic lines?

- **Qualitative Data**
  - How do stakeholders experience the transfer process?
  - Do youth have the same access to representation regardless of race or ethnicity?
  - Does language ability of the youth or family become a factor in transfer decision-making?

II. What Can be Done About Disparities at Transfer?

A. Strategies

As described above, remedies to disparities at transfer require engagement of a different group of individuals from work at other decision points. Some of the most significant opportunities for reform are in the legislative arena. For example, laws may be changed to **expand juvenile court jurisdiction**, either by raising the age of general jurisdiction or by expanding the crimes that may be handled in juvenile court. Some jurisdictions have **moved transfer decisions** from prosecutors to judges, thus offering defendants the opportunity for a neutral arbiter to decide whether transfer is appropriate.

Over the past decade, states have begun to roll back their transfer of youth to adult court in a variety of ways. As the Campaign for Youth Justice has chronicled, the trends fall into four categories. Eleven states have passed laws limiting housing of youth in adult jails and prisons.[49] Five states have expanded juvenile court jurisdiction to include older youth who previously would have been tried as adults.[50] Fifteen states have established task forces to re-examine transfer or have changed

Trends in Rolling Back the Transfer of Youth to Adult Court

- Five states expanded juvenile court jurisdiction to include older youth (CT, IL, MS, MA, NH)

- Fifteen states changed their transfer laws to retain more youth in the juvenile justice system (AZ, CO, CT, DE, IL, NV, IN, UT, VA, WA, OH, MD, NE, NY, DC)

- Eleven states passed laws limiting housing youth in adult jails and prisons (CO, ID, IN, ME, NV, HA, VA, PA, TX, OR, OH)

- Twelve states changed their mandatory minimum sentencing laws to account for the developmental differences between youth and adults (CA, CO, GA, IN, TX, MO, OH, WA, FL, HA, WV, IA)

their transfer laws to retain more youth in the juvenile justice system.[51] Finally, twelve states have changed their mandatory minimum sentencing laws to account for developmental differences between youth and adults, provide for post-sentence review of youth sentenced to life without parole, or made similar changes.[52]

Thus, a community that finds disparities in rates of prosecutorial discretionary transfer could **seek legislatively to reduce the types of crimes** that can be transferred or **require a judicial hearing** prior to transfer rather than leaving the choice to prosecutorial discretion. Other opportunities for change beyond legislation are available at the local level as well. Individual communities can **negotiate with their local prosecutors about how transfer discretion is used**, establishing agreed-upon criteria for discretionary transfer. And whether most transfer decisions are left to prosecutors or judges, engaging in dialogue and **sharing information about the harms** associated with transfer **and any data** reflecting disparities can support re-examination of the practice. Similar efforts at judicial education could help to support increased "reverse waiver" as well.

In addition, ensuring that attorneys representing youth in transfer matters are equipped with the information, skills, time, and staff supports to represent youth effectively at this critical juncture of their cases can help ensure that these decisions are fair and based on all available evidence and arguments. When communities come together to discuss the ways in which adolescent development may contribute to hasty criminal acts and also to the opportunity for rehabilitation, there is an opportunity for rethinking transfer practices. As noted above, these efforts may be driven by external entities like the Just Kids Partnership and Advocates for Children and Youth in Maryland or by system insiders like the government agencies in Missouri.

Some legislatures have chosen to avoid the harms of adult prisons until conviction by **requiring that youth be housed in juvenile detention facilities** while they await trial in adult court. Virginia, for example, passed a law in 2010 requiring that youth charged in adult court be housed in juvenile detention centers unless a judge finds that the youth is a threat to security or safety in the detention center.[53] While such a scheme presents challenges to operators of juvenile detention facilities (youth awaiting adult charges usually stay much longer, and while not required, some facilities feel the need to keep adult-charged youth separate from juvenile system youth) the challenges are both manageable and preferable to leaving youth in dangerous adult settings. Other jurisdictions require that youth convicted in the adult system remain in a juvenile facility until reaching the age of eighteen.

B. Localities Do Not Have to Wait Until the State Changes the Law

While these developments are generally accomplished through state law changes, there are examples of localities making these changes on their own.

1. Multnomah County, Oregon

For example, Multnomah County, Oregon passed a resolution in 2008 allowing youth to be held pending adult court trial in the juvenile detention center. The County reports that, with modest programming changes to support youth with longer stays, they have maintained this population successfully and without increase in violence or other operational challenges. The County celebrates its ability to meet the developmental needs of these youth, offer age-appropriate education services, provide cognitive-behavioral skill-building programs and have staff who are trained in adolescent development work with the youth.[54] In addition, the state of Oregon has a law allowing youth sentenced to the Department of Corrections to serve the sentence in a youth correctional facility if the youth was under 18 at the time of the offense and is under 20 at the time of the sentencing.[55] In 2013, recognizing the harms that even a brief stay in prison can cause, the state adopted a new provision allowing youth to be moved straight to the Oregon Youth Authority (OYA) after sentencing, without first having to pass through a state prison.[56]

2. Outagamie County, Wisconsin

In Wisconsin, all 17 year olds charged with a crime are under the jurisdiction of the adult system. In Outagamie County, Wisconsin, local stakeholders reached an agreement to allow 17 year olds who haven't been charged with dangerous violent offenses to receive services in the juvenile system and avoid adult court prosecution. Through an agreement between the District Attorney's office and the juvenile probation department, a pilot began in August 2015 under which youth are offered the opportunity to accept and complete voluntary services from the juvenile probation department. If they complete the services successfully, the charges are never filed. The County has just begun to gather data on the youth completing the program, but this provides a promising example of opportunity to address transfer at the local level even where state law is fixed.[57]

III. Next Steps

The numbers of transfers in any individual community may not be large, but the opportunity to make meaningful change in the lives of youth facing adult court charges cannot be understated. Data collection, community conversation, establishment of local standards for limiting transfer, and development of options for alternative detention or sentencing are all steps that can lead to local reform. In combination with efforts to roll back aspects of transfer law in some states, there is real possibility for impacting youth through reform work at this decision point.

A. Practice Tips

- ✓ Gather data on transferred youth (see examples of data collection from Maryland and Missouri above).

- ✓ Expand juvenile court jurisdiction.

- ✓ Move transfer decisions from prosecutors to judges.

- ✓ Reduce the types of crimes that require mandatory transfer.

- ✓ Negotiate with prosecutors about how they use their transfer discretion.

- ✓ Share information about the harms associated with transfer.

- ✓ Disseminate data reflecting disparities in transfer.

- ✓ Require that all youth be housed in juvenile detention centers pending trial.

- ✓ Support zealous representation in transfer proceedings.

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