

Issue Brief

Opportunities Lost:

Racial Disparities in Juvenile Justice in Kentucky and Identified Needs for System Change

All youth benefit from strong families and communities that provide opportunities for learning and guidance on how to become productive citizens of our Commonwealth. When youth lack these supports and the opportunities they offer, some end up making mistakes that result in involvement with the juvenile justice system. Juvenile justice was developed separately from the adult system to focus on working with youth to learn from their mistakes and avoid initiating a path towards involvement with the criminal justice system. A rehabilitative approach not only benefits youth but society as a whole, as public safety increases when youth receive guidance towards the right path. This guidance has long term benefits to society, as youth are redirected to positive paths to adulthood.

All youth should have the same opportunity to pay for the mistakes they have made, and only face punishment that is proportionate to the seriousness of their offense. However, this is not the reality within juvenile justice systems. Though unintentional, the system of juvenile justice results in different vulnerabilities, treatment and outcomes for youth of color compared to White youth, even when they have engaged in the very same behaviors. Youth of color are more likely than White youth to receive harsh outcomes, such as detention.¹ To be sure, youth of color should not receive special treatment, but they should also not have to pay a higher price for actions similar to those of their White peers. The different treatment of youth of color results in lost educational opportunities and barriers to a successful transition to adulthood for a number of Kentucky youth. These limited opportunities in turn limit future work and earnings prospects. Specifically, being kept in secure detention can increase the chance of youth recidivism.² To strengthen and grow our economy, all children need to learn to become participating and productive members of society. Currently, we are cutting opportunities short for too many youth of color – despite few substantial differences in risk-taking behaviors between them and their White peers.³

While Kentucky may be no different from other states in facing these issues, we should aspire to be. Evidence-based research suggests that youth of color are disproportionately represented throughout juvenile justice systems nationwide. Disproportionate minority contact (DMC) in juvenile justice refers to youth of color coming into contact with the system at a higher rate than their White counterparts. No substantial differences exist among races in how often youth violate the law, yet youth of color are arrested, charged and incarcerated more than Whites for comparable offenses, and are overrepresented at every decision-making point in the juvenile justice system.⁴ Between 2002 and 2004, African-Americans made up 16 percent of all youth in the United States, but constituted 28 percent of youth arrests, 30 percent of referrals to juvenile court, 37 percent of detained youth, 34 percent of youth formally processed by juvenile court, 30 percent of youth adjudicated delinquent, 35 percent of youth judicially waived to criminal court, 38 percent of youth in residential placement, and 58 percent of youth sent to state adult prisons.⁵

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Background

Disparate treatment in the juvenile justice system became so unconscionable that legislation was passed to address it. The amended Juvenile Justice and Delinquency Prevention Act (JJDP A) of 1988 brought DMC to the national forefront, requiring states that receive federal funding through Formula Grants to determine whether the proportion of youth of color in confinement (incarceration) exceeds their proportion of the population and, if so, to develop corrective strategies.⁶ The reauthorized JJDP A of 2002 modified the DMC requirement of the act to include reducing racial and ethnic disparities in contact with the juvenile justice system.⁷ Thus, the 2002 Act broadened the scope of DMC from “confinement” to any “contact” with the system, in order to take into account disproportionality at all decision-making points in the juvenile justice system; and established DMC as a high priority area of concern. The JJDP A gives the Office of Juvenile Justice and Delinquency Prevention (OJJDP) authority to make sure states receiving federal funds (all states except Wyoming) follow the mandated guidelines.

Each state must report on its progress towards reducing DMC in its comprehensive 3-year plan and subsequent plan updates to OJJDP. In fact, any state that fails to address disproportionate minority contact in its juvenile justice system stands to lose 20 percent of its Formula Grants allocation for the year.⁸ Therefore, states possess a vital economic interest, as well as public safety obligations, in addressing the problem.

Understanding the Terms:

Disparity – when different racial/ethnic groups have unequal probabilities that certain outcomes will occur

Disproportionality – when the proportion of a certain population within a system exceeds its proportion in the general population

Factors Contributing to Disproportionate Minority Contact

Numerous factors contribute to disproportionate representation of youth of color in the juvenile justice system. These contributing factors can be found in law enforcement/judicial practices, prosecutorial discretion, jurisdictional procedures, or juvenile laws whenever practices are not specifically evaluated for the impact on different groups of youth. For example, decisions made by law enforcement departments about patrolling particular neighborhoods can lead to disparities in arrests and disproportionality in arrest data. National surveys show White youth use and sell drugs at higher rates than African-American youth, yet African-American youth are more likely to be arrested due to heavier police involvement in their neighborhoods.⁹ All neighborhoods should be protected from drug activity with appropriate levels of police presence.

Limited resources, such as lack of transportation or inability to retain private legal counsel, can also compound disparities by race. Youth without reliable transportation risk missing court appearances or other critical appointments. White youth are twice as likely to be able to retain private legal representation compared to youth of color, so youth of color are in turn more likely to receive representation by lawyers who bear high case loads with insufficient resources.¹⁰ Limited financial resources only explain a portion of the disparities that exist among youth of different races, because even when accounting for income levels, race disparities persist.

At every phase in the juvenile justice process, decisions must be made about how to proceed with a youth; these represent points of discretion where bias may unintentionally impact the decision. However unintentional, the consequences of bias alter lives. Thus, it is essential to the well-being of all youth to determine which points of discretion exhibit disproportionality and implement effective solutions. Juvenile justice jurisdictions need to use empirical evidence to generate rigorous, objective recommendations that address points of discretion producing disparate outcomes for youth of color. DMC reduction efforts are not attempts to excuse delinquent behavior by youth of color or accuse decision makers of racial bias. Instead, they are an attempt to alter policies and practices necessary to ensuring racial fairness within the juvenile justice system.¹¹

Disproportionate Minority Contact in Kentucky

A 2002 report analyzing Kentucky's juvenile justice system found DMC to be pervasive and present at every stage of juvenile processing. Qualitative analysis found variations in interpretation and implementation of laws, policies, and guidelines for the juvenile justice system throughout the state, increasing the chance of subjectivity and unintentional bias influencing decision-making.¹² The report identified seventeen points of discretion which span Kentucky's juvenile justice process from the filing of a formal complaint to confinement.¹³ For example, quantitative analysis suggested that rural counties with smaller population sizes demonstrate the greatest disparity between youth of color and White youth in determining eligibility for court diversion programs

compared to more densely populated rural and urban counties.¹⁴ This corresponds with national research suggesting the heightened visibility of people of color, when they represent small numbers in a geographic area, inhibits their chances for equitable treatment.^{15, 16}

Kentucky's system of juvenile justice has many decision-making points, and these warrant a current review for disproportionality. It is important to assess decision-making points at the front end of the system, because once youth of color enter the juvenile justice system not only do they encounter disparate treatment at each stage, but those disparities are compounded as they move further into the system.¹⁷ Due to this accumulated disadvantage, disproportionality can be the most severe at later stages in the system, therefore it is also imperative to review the harshest of possible outcomes, such as secure confinement.

Methods of Calculating Disproportionality

Relative Rate Index & Disproportionate Representation Index

- Compares the relative rate of activity (at a specific stage in the juvenile justice system) for other race/ethnicity groups with the rate of that activity for White youth
- Provides an index number indicating the extent to which the volume of that activity differs for youth of color and White youth (always 1.00 for White youth)
- Results greater than 1.00 represent harmful disproportionality, except for diversions and probation placements in which results less than 1.00 represent harmful disproportionality

Relative Rate Index

- Uses the number of youth involved at a preceding stage of the system as the denominator (if data for recommended preceding stage is unavailable the next preceding stage is used)
- Shows how contact with the juvenile justice system among a population of youth increases or decreases at each successive stage

Disproportionate Representation Index

- Uses a race or ethnicity group's proportion within the child population (ages 10-17) as the denominator
- Illustrates the cumulative effects of DMC across the many stages of the juvenile justice system

Source: Office of Juvenile Justice and Delinquency Prevention, *Disproportionate Minority Contact Technical Assistance Manual, 4th Edition*. Available at http://www.ncjrs.gov/html/ojjdp/dmc_ta_manual/index.html.

Measuring Disproportionality

OJJDP recommends assessing the number of cases by race at nine stages within the juvenile justice system for DMC.^{18,19}

Below is a list of the nine stages, what they represent, and what Kentucky data was currently available for use in this report.

- Arrests—the number of arrests of youth by law enforcement on suspicion of having committed a delinquent act. Kentucky arrest data by race was unavailable at the time of this report.
- Complaints against youth—the number of complaints against youth processed by the Court Designated Worker (CDW) program. This report uses the number of complaints (public and status offenses) sent to the CDW program for intake processing.
- Cases successfully diverted away from the filing of formal charges—the number of complaints that were successfully handled informally without the filing of formal charges, but not including complaints that were simply dismissed. This report uses the number of complaints filed with the CDW program in which youth were eligible to participate in and successfully completed a diversion program, thereby precluding the filing of formal charges.
- Cases petitioned to court for the filing of formal charges—the number of referrals sent to juvenile court to be charged and formally handled. This report uses the number of complaints sent to the CDW program that were referred on to juvenile court for formal court processing.
- Cases detained prior to disposition—the number of referrals in which youth spent any time in a secure detention facility prior to the juvenile court equivalent of sentencing. This report uses the number of bookings of youth into a secure detention facility at any point during the processing of their case. The current data collection methods in Kentucky do not distinguish between detention stays that occur pre-disposition and post-disposition.
- Cases adjudicated delinquent—the number of referrals that were sent to juvenile court for formal processing in which the youth was found to be responsible for the act. Kentucky data by race for this measure was unavailable at the time of this report.
- Adjudicated cases resulting in court-ordered probation—the number of referrals that were sent to juvenile court for formal processing, in which the youth was found to be responsible for the act and was ordered to a period of

probation. This report uses the number of cases in which youth were ordered to a period of probation supervised by the Department of Juvenile Justice.

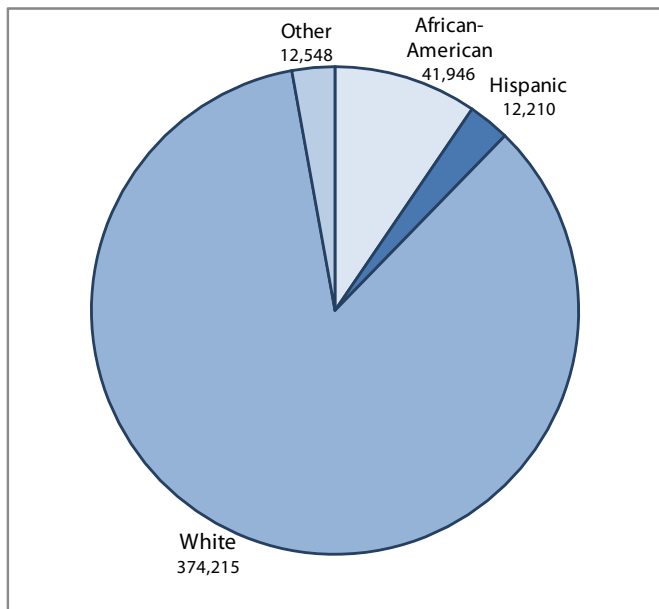
- Adjudicated cases resulting in secure confinement—the number of referrals that were sent to juvenile court for formal processing, in which the youth was found to be responsible for the act and was ordered to a period of secure confinement at a secured residential or correctional facility for youth. The current data collection methods in Kentucky do not allow counting of all youth securely confined post-disposition. This report uses the number of cases in which youth were committed to the Department of Juvenile Justice (DJJ) and then placed in a juvenile detention center or in boot camp.
- Cases transferred to adult court—the number of referrals that were sent to juvenile court but then judicially waived over to criminal court for processing as an adult. This report uses the number of cases that were transferred from Juvenile Court to Circuit Court to be treated as an adult case through judicial waiver or mandatory transfer.

For those measures in which relevant data by race was available, the Relative Rate Index and Disproportionate Representation Index were used to calculate whether and to what extent youth of color are disproportionately overrepresented within the juvenile justice system.

Kentucky's Youth Population

OJJDP recommends using population data for youth ages 10 to 17 when calculating Relative Rate Index or Disproportionate Representation Index, as this age range faces the greatest risk for involvement with the juvenile justice system.²⁰ Kentucky's youth population is primarily White, representing 84.9 percent of the youth population ages 10 to 17. African-American youth comprise another 9.5 percent, and Hispanic youth represent 2.8 percent of Kentucky youth ages 10 to 17 (see Figure 1). Other racial and ethnic groups each represent less than 1 percent of the population, and as such OJJDP recommends not calculating disproportionality for those groups on an individual basis.^{21,22} These populations include youth who are Asian, American Indian/Alaska Native, Native Hawaiian/Other Pacific Islander, and youth of two or more races. These groups have been aggregated into an "Other" category in Table 1.

Figure 1: Kentucky youth ages 10-17 by race, 2008



Source: U.S. Census Bureau Population Estimates, processed by Kentucky Population Research at the University of Louisville Urban Studies Institute.

Complaints Against Youth

When someone believes a youth has committed an offense, they can file a complaint with the Court Designated Worker (CDW) program, administered by the Administrative Office of the Courts. The CDW program handles all complaints to evaluate the cases for eligibility for informal processing before they proceed to juvenile court. This measure refers to the number of complaints (public and status offenses) sent to the CDW program for intake processing.

Court Designated Workers receive complaints against youth from a range of sources, including law enforcement, schools, parents and victims. In 2008, 36,436 complaints were filed with the CDW program. More than half of those complaints (54 percent) were filed by law enforcement. Another 23 percent were filed by schools.

Youth depend on equitable application of the law, yet complaints are filed more frequently for some populations of color. Unintended differences in which individuals arrested have charges dropped and are released from the custody of law enforcement versus those referred on to the local CDW office could contribute to this. Studies have also found significant racial differences in punishments meted out by schools, with African-American students being disciplined for behaviors that are less serious and more subjective than those of their

White peers. This disparate treatment persists even after controlling for socioeconomic status.²³

The Disproportionate Representation Index shows that African-American youth in Kentucky are more than twice as likely as their White peers to have complaints filed against them (see Table 1). Other non-Hispanic youth of color also face a higher likelihood (1.62 times as likely as Whites) to have complaints taken out on them. Hispanic youth, meanwhile, were less likely to have complaints filed against them. Relative Rate Index was not reported in Table 1 for this data point as the results would be the same as the Disproportionate Representation Index, because both use the same denominator for calculations since arrest data is unavailable.

The Disproportionate Representation Index for the lead sources of complaints identified above show African-American youth are three times more likely and other non-Hispanic youth of color are 1.5 times more likely to have a complaint filed by law enforcement than their White peers. These populations of youth were also more likely to have a complaint filed by schools; African-American youth were 1.5 times more likely and other non-Hispanic youth of color were 1.3 times as likely. Hispanic youth were slightly less likely than White youth to have a complaint filed by law enforcement or by a school.

Cases Successfully Diverted

The Court Designated Worker program evaluates all complaints for eligibility for informal processing. This informal processing, or diversion, allows youth to make amends for the offense, engage in counseling or treatment, and learn how to avoid making the same mistakes in the future. If a youth is eligible for and the diversion agreement is completed successfully, formal charges are not filed and no formal court record is created.

To successfully complete diversion, all youth need diversion agreements that are appropriate for the charge, culturally relevant and reflect the resources a youth has available. Reliable transportation is essential so diverted youth can attend their agreed upon workshops, appointments, or community service. Culturally appropriate programs increase the chance that prevention-focused education, a central component of diversion agreements, will be effective with youth.²⁴ The disproportionate impact of poverty among youth of color can also limit access to legal resources at early stages in the justice process, leaving the possibility that youth of color are not advised on the value of completing diversion and avoiding the formal court process.

Table 1: Racial Disproportionality at Points in the System of Juvenile Justice, 2008

	Relative Rate Index	Disproportionate Representation Index
Complaints against youth^{▼□}		
African-American	--	2.48*
Hispanic	--	0.82*
Other	--	1.62*
Cases successfully diverted[▼]		
African-American	0.56*	1.38*
Hispanic	0.78*	0.64*
Other	0.92	1.49*
Cases petitioned to court for the filing of formal charges[▼]		
African-American	1.32*	3.27*
Hispanic	1.10*	0.90*
Other	1.04	1.69*
Cases detained^{^+Δ}		
African-American	1.64*	4.07*
Other	0.53*	1.24*
Adjudicated cases resulting in court-ordered probation[^]		
African-American	0.96	3.12*
Hispanic	0.82	0.74
Other	1.59*	2.68*
Adjudicated cases committed to DJJ resulting in secure confinement^{^#}		
African-American	1.65*	5.38*
Hispanic	0.81	0.73
Other	1.94*	3.28*
Cases transferred to adult court^{▼○}		
African-American	4.38*	14.31*

▼ Source: Administrative Office of the Courts.

□ Approximately 1.5% of total complaints are duplications due to complaints containing both public and status offenses.

^ Source: Department of Juvenile Justice.

+ Source: Louisville Metro Youth Detention Services.

Δ Youth detained in DJJ facilities may be counted more than once if they were booked into the detention facility more than one time during case processing.

Data are for calendar year 2007.

○ 14% of the data were classified as "Race Unknown" and excluded from analysis.

* Rates are statistically significant at the level of $p=0.05$.

Data Note: Youth in the African-American and Other categories are non-Hispanic, except data on detention prior to disposition, which includes Hispanic youth in the Other category. For all other data, youth in the "Other" race category include non-Hispanic youth who are American Indian/Alaska Native, Asian, Native Hawaiian/other Pacific Islander, of two or more races, or identified as race unknown.

Successful diversion away from formal court processing (thereby not moving deeper into the system) is a positive outcome, meaning Relative Rate Indexes that are less than 1.00 at this stage represent harmful disproportionality. Among youth with complaints filed, all youth of color were less likely to have their case closed due to successful diversion than their White peers (see Table 1). The relative rate was lowest among African-American youth (0.56), followed by Hispanic youth (0.78). The rate for other youth of color (0.92) was only slightly lower than the rate for White youth.

Cases Petitioned to Court

There are a variety of reasons why a complaint may be referred to court for formal processing. Youth may not be eligible for diversion if they have already completed two diversion programs, had an adjudicated offense within the past 12 months, failed to appear for the preliminary inquiry interview required for diversion consideration, were charged with specified offenses, violated probation, were held in contempt of court, or meet the criteria of a youthful offender. Also, if a youth entered into a diversion agreement but did not successfully complete it their case will be sent to court. A complaint can also go to court for formal processing if the youth, the County Attorney, or the judge requests the case be heard in court, regardless of whether the youth is eligible for diversion. This measure refers to the number of complaints sent through the CDW program which were then petitioned for formal court processing due to one of the above reasons. Cases that were dismissed, or informally processed through diversion are not included in our count.

All youth deserve objective consideration of their case in determining whether the formal court process is necessary. However, eligibility for diversion can be overridden without having to provide a reason, thereby leaving room for disparate treatment. For example, County Attorneys and judges can request a youth's case go to court even if a youth is eligible for diversion. In some cases the decision to request formal processing is made based on a standing order of a County Attorney or judge to see all cases of some type in the court room. This practice could unintentionally impact more youth of color if standing orders pertain to charges that are more often levied against youth of color than White youth. This override can in turn limit future diversion eligibility should the youth have another charge filed, because youth are not eligible if they have had a case adjudicated within the past 12 months.

In Kentucky during 2008, African-American youth and Hispanic youth were significantly more likely to have their

case sent to court for formal handling (see Table 1). The top reasons for cases being petitioned to court include the CDW referring the case because it is not eligible for diversion, the County Attorney requesting formal court processing, and the judge requesting formal court processing. African-American youth were significantly more likely to be referred to formal court in all three cases, including 1.8 times more likely to be referred by County Attorneys than their White peers. Additionally, Hispanic youth were 1.3 times more likely to be referred for formal processing by judges.

Youth Placed in Secure Detention

Youth may be placed in secure detention at multiple points during the juvenile justice process. Though the OJJDP recommends assessing pre-adjudication detention for disproportionality, detention data in Kentucky is not available at that level of detail. The data reported include the number of bookings of youth into a secure detention facility at any point during formal court processing, including prior to the adjudication hearing, after adjudication, and after disposition, called sentencing in the adult court system.

Youth and the communities in which they live deserve an unbiased assessment of public safety and youth risk in determining whether or not a youth should be securely detained during court processing. However, many determinations on the use of secure detention are made with risk assessment instruments that have not been vetted for unintentional racial bias.

Kentucky data for 2008 show that African-American youth are significantly more likely to be detained during the juvenile justice process (1.64) than their White peers (see Table 1). Meanwhile, other youth of color (including Hispanic youth for this measure) were about half as likely to be detained (0.53). The Disproportionate Representation Index shows the cumulative effect of disparities in earlier stages. Compared to their proportion in the population, African-American youth are 4 times more likely and other youth of color (including Hispanic youth) are 1.2 times more likely than White youth to be detained.

Reducing unnecessary detention for all youth and specifically reducing disparities between populations is critical given the well documented consequences of detention on youth and their court cases. Youth placed in secure detention are more likely to have their case be petitioned to court, proceed through adjudication and disposition, and receive a formal disposition.²⁵ Additionally, being ordered to secure detention is a strong predictor of receiving a harsher disposition, such as placement in a secure facility. Since youth of color are

overly represented within the detention population, they consequently receive more severe dispositions than their White peers.²⁶

Adjudicated Cases Resulting in Probation

Probation is one disposition available to a judge when a youth is found responsible for an offense. Youth on probation live in their own communities but are supervised by a juvenile probation officer. In 2008, probation accounted for approximately 32 percent of case dispositions.²⁷

It is crucial that all youth are given equal consideration for probation for appropriate offenses, as probation allows youth to stay connected to their communities. Serving their “sentence” in the community allows youth to stay engaged with their families, school, and work. Staying connected to these support systems is integral to a successful transition from adolescence to adulthood.²⁸

In Kentucky, Hispanic and African-American youth are somewhat less likely than their White peers to have a disposition of probation, but the differences were not statistically significant (see Table 1). Youth of other non-Hispanic race categories, in contrast, were 1.59 times more likely to receive probation and remain in their community relative to White youth. The Disproportionate Representation Indexes show that African-American youth and youth of other non-Hispanic race categories are substantially overrepresented compared to the overall youth population, reflecting the cumulative effect of these youth being overrepresented at every earlier stage in the juvenile justice process.

Adjudicated Cases Committed to DJJ Resulting in Secure Confinement

Youth found to have committed an offense may be ordered by a judge to a period of secure confinement as punishment for the offense. Youth may also be placed in secure confinement if they are committed to the Department of Juvenile Justice at disposition, and then classified by DJJ as requiring placement in a secured facility. Due to limitations in Kentucky’s data systems, this report is only able to assess data for the latter category of youth in secure confinement. Secure confinement in Kentucky means a youth is placed in a juvenile detention center or in boot camp. DJJ runs all boot camps and secure juvenile detention centers in Kentucky, except the one located in Jefferson County.

All youth should have an objective determination made on whether or not they should be placed in secure confinement for their offenses. However, juvenile justice personnel may

take into consideration factors impacted by disparities present in early stages of the juvenile justice system, such as a youth’s prior arrest record. Because youth of color are overrepresented in arrests, which could be the result of unintentional bias, the use of prior arrests or adjudications as a legal factor in determining a youth’s placement can result in more restrictive placements for youth of color.²⁹

In 2007, African-American youth and other non-Hispanic youth of color were more likely to have been placed in a secure facility after commitment to DJJ than their White peers (see Table 1). Hispanic youth were less likely than White youth to be placed in a secure facility, but the difference was not significant. Accumulated disproportionality throughout the juvenile justice system results in significant disproportionality for some groups of youth compared to their percentage in the population. Relative to the youth population, the rate of commitments resulting in secure confinement (represented by the Disproportionate Representation Index) is more than five times higher for African-American youth and more than three times higher for youth in other non-Hispanic race groups. The Department of Juvenile Justice has recently begun implementing a new classification instrument, therefore future analysis is warranted in order to determine the impact of the new instrument on disproportionality.

Cases Transferred to Adult Court

While the juvenile court handles most cases involving youth under age 18, some cases are transferred to adult court. Judges may transfer a case to adult court in Kentucky when a youth meets at least one of the criteria for classification as a youthful offender:

- Child had attained age 14 at time of alleged commission of a Capital Offense or Class A or Class B Felony;
- Child had attained age 16 at time of alleged commission of Class C or Class D Felony and has been previously adjudicated a Public Offender for a Felony Offense on one prior separate occasion;
- Child is under age 18, presently charged with a Felony Offense, and has been previously convicted as a Youthful Offender; or
- Person is 18 or older and charged with a Felony Offense that occurred prior to age 18.³⁰

Additionally, cases are mandated for transfer in felony offenses involving a firearm when a youth is at least 14 years old and the judge has found probable cause that the youth committed the offense.³¹

Youth and the broader community depend on a fair and equitable system of juvenile justice that also promotes public

safety. Transfer of youth to adult court is the most serious way a juvenile case can be handled. Among transferred cases, national research shows African-American youth are less likely to be convicted than White youth when the case is transferred, indicating that cases brought against youth of color are not very substantial.³² Several studies of the impact of juvenile transfer laws have found that youth whose cases are transferred to adult court are more likely to reoffend, even when compared to youth with similar charges whose cases remain in juvenile court.^{33, 34}

In Kentucky, data show the greatest Relative Rate Indexes in the transfer of juvenile cases to adult court (see Table 1). African-American youth with petitions filed in court were more than four times as likely to have their case transferred to adult court than their White peers. The Disproportionate Representation Index shows the cumulative effect of disparate outcomes at each state of the juvenile justice process. Compared to the population, African-American youth are 14 times more likely to have a case transferred to adult court than White youth.

Current Efforts to Address Disproportionate Minority Contact

Kentucky has made efforts to reduce disproportionate minority contact. The Juvenile Justice and Delinquency Prevention Act requires governor-appointed advisory groups on juvenile justice in each state. Kentucky's State Advisory Group, the Juvenile Justice Advisory Board, has a Subcommittee on Equity and Justice for All Youth (SEJAY) which has been addressing disproportionate minority contact in a number of ways. SEJAY works to educate those in the juvenile justice system about DMC and encourage system players to use cultural awareness and sensitivity training within their agencies. SEJAY has also written a legal rights handbook for youth to be used across the state, and has engaged four targeted counties for DMC reduction efforts: Christian, Fayette, Jefferson, and Madison Counties. Concerned stakeholders and citizens in these counties have formed task forces focused on reducing DMC, using strategies that could potentially be adopted by other jurisdictions.

Fayette County DMC Committee

Within the past few years, the DMC Committee in Fayette County has advocated for and succeeded in revision of the local instrument used by District Court Judges to determine the appropriateness of detention; increased use of the local runaway and homeless shelter as an alternative to detention; and secured the passage of a resolution to address DMC

by the Council of the Lexington-Fayette Urban County Government.³⁵ Resolution 187-2009, passed in March 2009, acknowledges DMC in juvenile justice and advocates for increased community involvement in supporting the DMC Committee's efforts and the need for more positive youth development opportunities. The resolution also encourages all Fayette County law enforcement agencies to aggregate and report arrest and release data by race; supports the examination of whether funds for secure detention should be diverted to prevention and alternatives-to-detention; and agrees to encourage key decision-makers within the state to support prevention and alternatives-to-detention services and not cut funding for these programs.³⁶

Juvenile Justice Advisory Board Subcommittee on Equity and Justice for All Youth:

"The SEJAY Subcommittee advises the JJAB and the general public of the Commonwealth of Kentucky on the issue of disproportionate minority representation in the juvenile justice system, and its causes and remedies; advocates for the full implementation of the Juvenile Justice and Delinquency Prevention Act, especially the fourth [DMC] core requirement; develops policy and funding recommendations relating to this issue; and supports efforts to improve the quality of juvenile justice for all Kentucky citizens."

<http://www.jjab.ky.gov/about/subcommittees.htm>

Louisville Metro Disproportionate Minority Confinement Advisory Board

In 2008, the Louisville Metro DMC Advisory Board implemented a pilot project to evaluate the results of using a new objective risk assessment instrument in place of the current form for determining whether or not a youth should be detained prior to adjudication. While there were no significant changes in the proportion of detained youth of color compared to White youth, the new risk assessment instrument would significantly reduce the number of youth of all races detained before an adjudication hearing – potentially reducing DMC at later stages in the juvenile justice system since detention during court processing is associated with harsher disposition sentences.³⁷ The Advisory Board is working with the SEJAY Risk Assessment Instrument subcommittee to modify the form with the goal of statewide implementation.

Madison County DMC Project

The DMC Project in Madison County has conducted interviews with community leaders and a focus group of at-risk youth of color about DMC within the county, its possible causes, and potential solutions. Several interviewees felt that a lack of after-school activities for youth contributes to the problem as youth are more prone to get into trouble outside of structured activities, so the Madison County DMC Project and the Delinquency Prevention Council are advocating for the re-opening of the Richmond Teen Center, which would primarily provide after-school programming for youth of color. Also, nearly all interviewees felt that deeply engrained prejudices contribute to DMC and so in an effort to increase cultural awareness, understanding, and empathy between Whites and persons of color the DMC Project has begun efforts to bring a program called Study Circles on Race to the county. Study Circles on Race entails facilitated, frank, and open small-group discussions about race by community members of different races.³⁸

Administrative Office of the Courts

The Administrative Office of the Courts' Department of Family and Juvenile Services has been conducting an internal review of its 2007 and 2008 data on successful and unsuccessful diversion agreements in Campbell, Christian, Fayette, and Jefferson Counties. Management and field supervisors are assessing for signs of disproportionality within each of these areas in order to make sure they are achieving their goal of ensuring all youth are processed within diversion equally, regardless of race, gender, or sex.

Conclusions and Recommendations

Disparities in juvenile justice result in harsher treatment of youth of color for the same offenses as their White peers, cutting opportunities short for too many Kentucky youth. The measures of disproportionality outlined in this brief show that African-American youth and other non-Hispanic youth of color are clearly overrepresented at some of the key decision-making points within Kentucky's juvenile justice system. Kentucky is not alone in grappling with disproportionate minority contact—upon examining states' assessments of the present status of DMC, a survey showed that 32 of 44 states found evidence of ethnic or racial differences in juvenile justice system decision-making that was unaccounted for by differential criminal activity.³⁹

Kentucky needs a strong commitment towards exploring areas of disproportionate minority contact, identifying mechanisms contributing to DMC, and implementing solutions

specifically designed to reduce DMC. Rigorously following the recommendations below would set our Commonwealth on the path to achieving a juvenile justice system that truly provides equal justice for all.

- Assess all instruments and guidelines used throughout the juvenile justice process for unintentional bias against youth of color and their communities, and replace areas where potential for bias exists with standardized, objective criteria.⁴⁰
- Implement cultural diversity training for all actors at every level of the juvenile justice process as a way to increase sensitivity to the needs of youth of color in the system as a whole. Such training is only effective in reducing DMC if linked to helping actors realize the impact of their role in the process, how to guard against unintentional bias in decision-making, and the importance of changing policies, programs, and practices in ways that ensure fairness for all youth.⁴¹
- Increase racial and ethnic diversity among staff at all of the agencies that compromise the juvenile justice system by promoting the hiring of people of color, and utilize community-based organizations whose staff mirror the racial and ethnic composition of the youth they serve.
- Ensure that DMC reduction strategies are evidence-based approaches that have been proven to provide the desired results.⁴³ OJJDP's DMC Reduction Best Practices Database (http://www2.dsgonline.com/mpg/dmc_default.aspx) is a good place to start the search for effective interventions for direct service delivery, training and technical assistance, or system change efforts.
- Further data analysis and research of all points of discretion within the juvenile justice system is necessary in order to identify those policies or practices that are contributing to DMC. Efforts must pay special attention to evaluating decision-making points that constitute entry into the system, since the impact of those decisions is compounded as youth move through the system.
- Identify where in the system, data on race is not collected or collated and commit to collecting accurate data by race at each contact point in the juvenile justice system, as well as in related court proceedings in family court and child protection, so that the impact of agency policy and individual decision-making by stakeholders who exercise discretion can be carefully and accurately evaluated.

Endnotes

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