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The Federal Disproportionate Minority Contact Mandate: An Examination of Its  
Effectiveness in Reducing Racial Disparities in Juvenile Justice

An Honors Project for the Program of Africana Studies

By Hanna Leigh Wurgaft

Bowdoin College, 2014

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## CHAPTER 1

### Introduction

The United States juvenile justice system was originally viewed as a source of protection, redirection, and rehabilitation for troubled youth. Ideally, the system functions as a preventative measure to ensure youth stay out of trouble as adults, and live fulfilling lives in their communities. Today, the U.S. leads the world in incarceration rates, calling into question the juvenile justice system's success in redirecting youth.<sup>1</sup> When instituting sanctions and designing crime prevention programs, legislators may not have envisioned imprisoning massive numbers of adults and juveniles.

Unfortunately, today, the juvenile justice system appears to feed rather than prevent high rates of adult incarceration. Furthermore, the juvenile justice contributes to racial disparities that plague the criminal justice system. One in three black men are imprisoned in their lifetime, compared to one in seventeen white men.<sup>2</sup> Given that contact with the juvenile justice system greatly increases an individual's chance of coming into contact with the adult criminal justice system, these racial disparities pervade the entire criminal justice system. For example, while African-Americans comprise 14% of the youth population, they make up 40% of the incarcerated youth population.<sup>3</sup>

To remedy racial disparities in juvenile justice, in 1988, the Justice Department instituted a mandate entitled Disproportionate Minority Confinement, which required

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<sup>1</sup> The Sentencing Project, "Juvenile Justice," accessed May 13, 2014  
<<http://www.sentencingproject.org/template/page.cfm?id=184>>

<sup>2</sup> The Sentencing Project, "Racial Disparity," accessed May 14, 2014  
<<http://www.sentencingproject.org/template/page.cfm?id=122>>

<sup>3</sup> The Sentencing Project, "Policy Brief: Disproportionate Minority Contact," accessed May 14, 2014 <  
[http://sentencingproject.org/doc/publications/jj\\_Disproportionate%20Minority%20Contact.pdf](http://sentencingproject.org/doc/publications/jj_Disproportionate%20Minority%20Contact.pdf)>

states to address the overwhelming rates of imprisoned minority youth.<sup>4</sup> In 2002, the Justice Department expanded the mandate to include other instances of racial disparities in the system, including arrest rates, and findings of delinquency. Known as Disproportionate Minority Contact, this mandate continues to function today. In each instance, the federal government provided funding to states to research and remedy overrepresentation of minority youth in the juvenile justice system.

### **Historical Context: The OJJDP, Task Force on Juvenile Delinquency, and Disproportionate Minority Confinement**

In order to understand Disproportionate Minority Contact's legislative role today, we must first trace its legislative history. In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act. Although states possess the authority to establish independent juvenile court systems, the Act created an oversight organization in the Office of Juvenile Justice and Delinquency Prevention. The Office, also known as the OJJDP, institutes mandates, provides resources and information for improvement, and distributes funding, which is at least partly dependent on state compliance with federal regulations. In effect, the Office plays a roll in regulating state juvenile justice system practices and policies.<sup>5</sup>

In the late 1970's, the Justice Department created a Task Force to recommend additional organizational and structural changes to the evolving juvenile justice system. This Task Force, entitled the National Advisory Committee on Criminal Justice,

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<sup>4</sup> Coleman, Andrea R., "A Disproportionate Minority Contact (DMC) Chronology: 1988 to Date," accessed April 30, 2014 < <http://www.ojjdp.gov/dmc/chronology.html> >

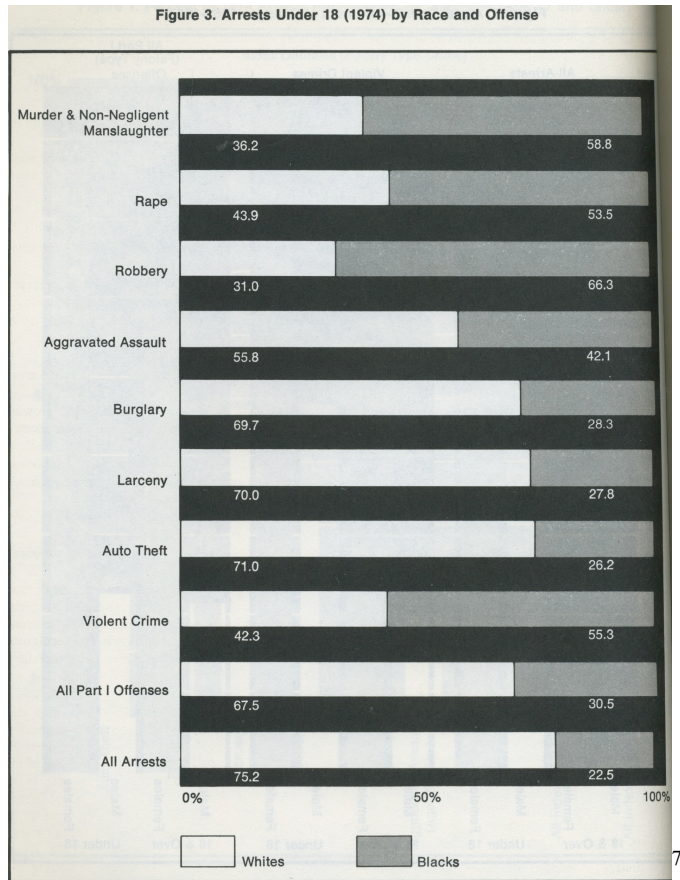
<sup>5</sup> Jones, Elizabeth N., "Disproportionate Representation of Minority Youth in the Juvenile Justice System: A Lack of Clarity and Too Much Disparity Among States 'Addressing' the Issue," *UC Davis J. Juv. L. & Pol'y* 155 (2012).

consolidated national perspective and opinion on current juvenile justice matters. Task Force committee members included state politicians, social workers, attorneys, and academics. Their report entitled, *Report of the Task Force on Juvenile Justice and Delinquency Prevention* contained over 800 pages, addressing both organizational and procedural matters. Organizational matters included community supervision of juveniles, intake services, and delinquency prevention programs. Procedural matters governed relationships between courts and community services, established guidelines for detention centers, and advised court structure. These recommendations ultimately served to facilitate greater uniformity among state juvenile justice systems.<sup>6</sup>

Concerns over racial disparities in juvenile delinquency surfaced in the late 1970's, with the Task Force's preliminary findings. Their report began with a general background on juvenile crime in America, suggesting explicit racial disparities. The authors discussed a recent upward trend in youth crime, where minority youth crime occurred in abundance. The following graph tracked juvenile arrests according to race and offense for the year 1974. Racial categories for this measurement include only "whites" and "blacks."

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<sup>6</sup> National Advisory Committee On Criminal Justice Standards and Goals. *Report of the Task Force on Juvenile Justice and Delinquency Prevention* (Washington, D.C: 1976), 1976.



According to the 1970 census, 87.5% of Americans identified as white, and 11.1% identified as black.<sup>8</sup> According to the data displayed above, white youth constituted 75.2% of total arrests, and black youth constituted 22.5% of arrests. At this time, black youth were arrested at twice the rate than their proportion in the general population. Even more troubling, black youth constituted 58.8% of murder and non-negligent manslaughter arrests, and 53.5% of arrests for rape.<sup>9</sup> These statistics suggest racial imbalances exist in

<sup>7</sup> Ibid, 4.

<sup>8</sup> U.S. Census Bureau, "Table 1. United States- Race and Hispanic Origin: 1790 to 1990," accessed April 30, 2014 (2002)

<<http://www.census.gov/population/www/documentation/twps0056/tab01.pdf>>

<sup>9</sup> Ibid.



minority youth offending patterns. However, this rather simplistic data set certainly calls for more detailed data gathering and population analysis.

To better understand statewide and national trends in crime, the report acknowledges the need for uniform research and evaluation methods. The authors write that ideally, the data analysis will reveal target populations that the justice system, along with community organizations, can work with to prevent future arrests, charges, and incarcerations. Increased analysis should enable law enforcement officials to better address the needs of youth, and in turn, take steps to prevent delinquency. The data should also analyze and chart the rates by which juveniles pass through the juvenile justice system. For example, the Task Force calls for specific data on the rates by which police arrest juveniles, judges find juveniles guilty of crimes, and detain those convicted, according to locality, gender, age, and race. Additionally, the report advises that states monitor overcrowding at juvenile detention facilities, track the length of detention sentences, and quantify the number of juveniles on probation. Ultimately, the Task Force argues that research and evaluation should comprise a normal function in the juvenile justice system budget. Age, sex, racial and ethnic categories anchor these various examinations.<sup>10</sup> Herein lie the seeds for Disproportionate Minority Contact, the legislation that emerged 14 years later.

In 1988, Congress passed amendments to the Juvenile Justice and Delinquency Prevention Act of 1974, establishing the Disproportionate Minority Confinement mandate, which required states to address disproportionality among detained or confined

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<sup>10</sup> National Advisory Committee On Criminal Justice Standards and Goals, *supra* note #5, 33-38.

minority juveniles. Disproportionality was identified by comparing the proportion of minorities in detention or confinement to their proportion in the general population.<sup>11</sup>

It is important to note that reducing racial disparities in juvenile confinement did not constitute the only initiative spearheaded by the OJJDP. When the Juvenile Justice and Delinquency Prevention Act originally passed in 1974, the bill carried two concrete policy initiatives or “core requirements.”<sup>12</sup> The first initiative sought to de-institutionalize status offenders. De-institutionalizing an individual involves removing that youth from a secure detention or correctional facility.<sup>13</sup> This requirement sought to limit contact between status offenders and youth involved in serious criminal activity, like those indicted for armed robbery, rape, and murder.<sup>14</sup> The term “status offenders” refers to youth charged with delinquencies that are not criminal adult acts. For example, youth considered status offenders include runaways and truants, or those found smoking cigarettes and consuming alcohol.<sup>15</sup> Confining these two youth populations together has serious implications for mental health, growth, and development, and may promote the criminality of rebellious teens.<sup>16</sup>

The second policy initiative established by the 1974 Act materialized in the “sight and sound” provision. This statute intended to keep adult prisoners and confined youth from interacting in secure facilities. Juveniles should not be able to see (sight) or hear

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<sup>11</sup> Coleman, Andrea R., supra note #3.

<sup>12</sup> Juvenile Justice and Delinquency Prevention Act of 1974 42 U.S.C 5601 note.

<sup>13</sup> American Institutes for Research. “About Deinstitutionalization of Status Offenders (DSO),” accessed November 24, 2013 <<http://www.juvenilejustice-tta.org/resources/dso/about-dso>>

<sup>14</sup> Jones, Elizabeth N., supra note #4, 160-162.

<sup>15</sup> Office of Juvenile Justice and Delinquency Prevention. “Glossary.” Accessed November 24, 2013. <<http://www.ojjdp.gov/ojstatbb/glossary.html>>

<sup>16</sup> Krisberg, Barry. *Juvenile Justice: Redeeming Our Children*. (California: Sage Publications: 2005).

(sound) adult prisoners at any time.<sup>17</sup> Policy makers believed sheltering youth from adult criminals would deter future criminality.

In 1980, legislators furthered the original sight and sound mandate by adding the “jail removal” provision as an amendment to the JJDP Act. This statute prohibited juveniles from being placed in adult jails and facilities altogether, sparking construction of detention centers exclusively for youth populations.<sup>18</sup>

The Juvenile Justice and Delinquency Prevention Act would not be revised again until 2002, when legislators shifted Disproportionate Minority Confinement to Disproportionate Minority Contact. The Contact mandate requires states to examine racial disparities at each level of the juvenile justice system, including arrests, delinquency findings, and transfers to adult court.<sup>19</sup>

### **Contemporary Analysis**

According to the Task Force Report on Juvenile Justice, in 1974, as we saw earlier, 75.2% of juveniles arrested identified as white, and 22.5% identified as black. In 2002, 71.5% of juveniles arrested identified as white, and 25.7% as black.<sup>20</sup> By 2012, 65.2% of juveniles arrested identified as white, and 32.2% as black.<sup>21</sup> Over the past 38 years, thus, African-American youth contact with the justice system has increased and become more disproportionate, despite the fact that the DMC mandate was in effect for 25 of these 38 years. Although Disproportionate Minority Contact may have a marginal

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<sup>17</sup> Jones, Elizabeth N., *supra* note #4, 161-162.

<sup>18</sup> *Ibid*, 160-162.

<sup>19</sup> These levels of the juvenile justice system, known formally as contact points, are explained in Chapter 2 of this project.

<sup>20</sup> FBI. “Crime in the U.S., 2002- Persons Arrested,” *Uniform Crime Reports* Accessed December 13, 2013.

<sup>21</sup> FBI. “Arrests by Race, 2012.” *Uniform Crime Reports*.

affect on minority contact with the juvenile justice system, the system continues to disproportionately impact minority communities.

So what's gone wrong? How exactly did politicians construct and change the original Disproportionate Minority Confinement mandate? How have states implemented the mandate? Why do racial disparities among juveniles entering the juvenile justice system persist, despite state efforts to track and combat these trends? Ultimately, how can we better understand the limits of federal legislation, particularly when directed to state and local juvenile justice systems to change the patterns of juvenile crime and contact with the criminal justice system? Answering these questions involves untangling a web of congressional debates, non-profit research, institutional data collection methods, contemporary state analysis, societal factors contributing to criminality, as well as the structure of the federal bureaucracy, justice system, and juvenile justice offices. The enormous scope of the Disproportionate Minority Contact mandate, considering varying state and local juvenile system and criminal justice structures, as well as racial disparities embedded in other state institutions, provides many challenges to states fulfilling the mandate.

Chapter 2 explores the legislative history behind Disproportionate Minority Confinement, and the transition to Disproportionate Minority Contact in 2002. Chapter 3 discusses contemporary state DMC studies, analyzing variations and problems associated with implementing the mandate. Chapter 4 examines the factors fueling racial disparities in juvenile delinquency, revealing the major failures of the Disproportionate Minority Contact mandate. Examining the troubles associated with constructing and implementing the mandate, coupled with the mandate's inability to target the roots of crime, provides an

important lens to analyze the limits of federal legislation in curbing racial disparities in juvenile justice.

## **CHAPTER 2**

### **The History of Disproportionate Minority Contact**

What exactly is the Disproportionate Minority Contact mandate, and how did it come about? This chapter provides the historical and legal background to two federal mandates: Disproportionate Minority Confinement and Disproportionate Minority Contact.

#### **Introduction**

In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act. This legislation created the Office of Juvenile Justice and Delinquency Prevention, providing oversight to the modern juvenile justice system.<sup>22</sup> This oversight included research into various policies and practices in local juvenile justice systems. Beginning in the late 1970's, some of that research by government and independent organizations uncovered racial inequalities in the juvenile justice system. In 1974, for example, 55.3% of juveniles arrested for violent crimes were identified as black at a time when blacks constituted only 11.1% of the population.<sup>23</sup> This statistic, among others, brought racial disparities in the juvenile justice system to federal legislators' attention.

In the late-1980's, Congress began the process to reauthorize the Juvenile Justice and Delinquency Prevention Act. During a series of hearings, Congress started to discuss the large numbers of minority youth in the criminal justice system.<sup>24</sup> During this time, researchers from national organizations presented alarming data regarding youth

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<sup>22</sup> Juvenile Justice and Delinquency Prevention Act of 1974 42 U.S.C 5601 note.

<sup>23</sup> National Advisory Committee On Criminal Justice Standards and Goals, *supra* note #4, 4; U.S. Census Bureau, *supra* note #7.

<sup>24</sup> U.S. House. Committee on Education and Labor. *Hearing to Reauthorize The Juvenile Justice and Delinquency Prevention Act*, 11 September 1987. (Washington: Government Printing Office, 1988). (Y4. Ed 8/1 100-51).

incarceration rates, and urged the Justice Department to spearhead a mission to change these patterns. In 1986, Ira Schwartz, Director of The Center for the Study of Youth Policy, testified before the House Subcommittee on Human Resources that minority youth constituted over half the population of incarcerated juveniles.<sup>25</sup> In 1988, Congress publically acknowledged this worrisome statistic and instituted the Disproportionate Minority Confinement (DMC) mandate. This provision required states to measure and remedy high rates of incarcerated minority youth, and provided funding to support these efforts.<sup>26</sup> But it is important to note that Disproportionate Minority Confinement comprised a small proportion of juvenile policy making in 1988. Although reducing racial disparities in the juvenile justice system did not become the focus of criminal justice policy making, the DMC legislation spurred important studies and conversations across the country.

After the Disproportionate Minority Confinement mandate, independent organizations continued to research and analyze minority youth involvement with the juvenile justice system. In 1988, the National Coalition of State Juvenile Justice Advisory Groups dedicated their annual conference to this topic.<sup>27</sup> The conference's product, a 1989 report entitled *A Delicate Balance*, challenged policy makers to continue to engage

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<sup>25</sup> Kempf-Leonard, Kimberly, Carl E. Pope and William H. Feyerherm. *Minorities In Juvenile Justice*. (California, Sage Publications: 1995), 7.

<sup>26</sup> U.S. House. Committee on Education and Labor. *Juvenile Justice and Delinquency Prevention Amendments of 1988* (H. Rpt. 100-605). (Washington: Government Printing Office, 1990).

<sup>27</sup> Created by the JJDP Act of 1974, State Advisory Groups are funded by the Office of Juvenile Justice and Delinquency Prevention to work with state agencies on "prevention, intervention, and treatment of juvenile delinquency." (Office of Juvenile Justice and Delinquency Prevention. "State Advisory Groups, State Planning Agencies, and Juvenile Justice Specialists" in *FY 2003 Drug-Free Communities Support Program* <<http://ojjdp.gov/dfcsgrant/stateadvisorgrps.pdf>>

questions surrounding racial inequality in the juvenile justice system, ensuring these matters did not get swept under the rug.<sup>28</sup> In 1991, a Senate hearing took place in Washington, D.C. to exclusively address this matter.<sup>29</sup> During this hearing, Senator Joe Biden stated that on an average day 53,000 juveniles were held in custody. Of these, 30,000 were minorities.<sup>30</sup> In response to these troubling findings, in 1992, legislators elevated the Disproportionate Minority Confinement mandate to a Justice Department core requirement.<sup>31</sup> By doing so Congress tied a proportion of future funding from OJJDP to a state's completion of research and initiatives on Disproportionate Minority Confinement, furthering interest in identifying and remedying racial inequalities in the state and local juvenile justice systems.

As states gathered and reported data to the Justice Department, concerns deepened regarding minority interaction with the juvenile justice system.<sup>32</sup> In 2002, the Justice Department broadened the Confinement mandate to Disproportionate Minority Contact (DMC). Instead of concentrating efforts on the confined juvenile population, the Contact provision includes every checkpoint in the juvenile justice system, from arrest to incarceration. Like the Confinement mandate, the Justice Department requires states to detect overrepresentation of minority groups, identify the sources of this inequality, and

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<sup>28</sup> National Coalition of State Juvenile Justice Advisory Groups. *A Delicate Balance* (Washington, D.C: 1989)

<sup>29</sup> U.S. Senate. Committee on The Judiciary. *Hearing on Minority Overrepresentation in the Juvenile Justice System*, 25 June 1991. Washington: Government Printing Office, 1991. (Y4. J89/2 S. hrg.)

<sup>30</sup> Ibid, 8-9.

<sup>31</sup> Coleman, Andrea R., supra note #3.

<sup>32</sup> Devine, Patricia, Kathleen Coolbaugh and Susan Jenkins, "Disproportionate Minority Confinement: Lessons Learned From Five States," *Juvenile Justice Bulletin* (1998)



remedy racial disparities in their local juvenile justice systems.<sup>33</sup> As we will see, the definitions of overrepresentation, disproportionality, inequality and disparity evolve and change.

The 2002 Contact mandate represents the last significant policy initiative regarding minority youth overrepresentation in the criminal justice system. Although the legislation has not been reauthorized since this time, legislators annually approve funding for the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and state initiatives endure.<sup>34</sup> Today, however, Disproportionate Minority Contact plays a very small role in the context of all juvenile justice policy.

Legislators have not reviewed the mandate's language since 2002, and therefore, several contentious points persist. Specifically, policy makers fail to define what level of "disproportionality" is acceptable. As a result, researchers and juvenile justice professionals do not approach redressing inequalities with a clear goal in mind. Furthermore, increased racial diversity in the population, influenced by immigration, means that simplistic racial categories used to analyze the distribution of minority youth in the juvenile justice system may fail to reflect local realities. More specifically, categories such as African-American or Black, Asian, and Hispanic/Latino fail to accurately represent the diversity of the juvenile population.<sup>35</sup> Not many individuals closely identify with one of these broad categories. For example, the African-American or black category encompasses Americans with dark skin, but also individuals from

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<sup>33</sup> Coleman, Andrea R., *supra* note #3.

<sup>34</sup> Thomas Library of Congress. "Bill Summary and Status - 111<sup>th</sup> Congress (2009-2010) – H.R. 6029," <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:hr6029>: Accessed November 25, 2013.

<sup>35</sup> Rodriguez, Clara E. *Changing Race: Latinos, the Census, and the History of Ethnicity in the United States*. (New York, New York University Press: 2000)

across the continent of Africa, as well as people from Haiti, and elsewhere in the Caribbean.<sup>36</sup> Individuals often draw upon complicated, dynamic ancestries and backgrounds to orient their personal identity. The meaning of minority changes over time and place, but government research remains static. Therefore, these broad categories become increasingly meaningless overtime, reducing the value of the research and making it less helpful in identifying potential changes in policy to reduce disproportionality.

Federal legislators, so far removed from the localities where juvenile justice plays out, have failed to implement effective policy to measure and redress racial inequalities in the juvenile justice system. Ultimately, the language of the Disproportionate Minority Contact mandate itself is ineffective in instituting a positive change regarding racial disparities in juvenile justice.

### **Disproportionate Minority Confinement: Constructing the Mandate**

Aside from federally funded state research, throughout the 1970s, several independent non-profit organizations began studying racial disparities in the juvenile justice system. Both the Center for the Study of Youth Policy and the National Council on Crime and Delinquency examined this topic extensively. Ira Schwartz and Barry Krisberg, Directors of these two organizations, presented their data to the House in 1986 and 1987, respectively. Ultimately, their findings brought racial disparities in juvenile detention centers into the national spotlight, and contributed directly to the Disproportionate Minority Confinement mandate in 1988.

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<sup>36</sup> U.S. Census Bureau, “Information on Race,” accessed April 30, 2014 <[http://quickfacts.census.gov/qfd/meta/long\\_RHI125212.htm](http://quickfacts.census.gov/qfd/meta/long_RHI125212.htm)>

By the mid-1980's, discussion of minority youth involvement in the justice system reached the Congressional floor. Ira Schwartz, Director of The Center for the Study of Youth Policy, testified before Congress on this matter in 1986. At this time, the House Subcommittee on Human Resources oversaw minority youth involvement in the criminal justice system. During his testimony, Schwartz repeated the statistic that minority youth constituted more than half of the incarcerated juvenile population. The data suggested that even when individuals of the same race committed the same crimes, minority youth experienced incarceration more often.<sup>37</sup> Schwartz' testimony indicated serious racial inequities across the juvenile justice system and suggested discriminatory treatment by law enforcement officials.

In 1987, Barry Krisberg from the National Council on Crime and Delinquency testified before the same Subcommittee. His testimony echoed and expanded on Schwartz' earlier remarks. Krisberg demonstrated that minority youth experienced incarceration at rates higher than their proportion in the general population. For example, black males were three to four times more likely than their white peers to be incarcerated. Krisberg also explained that between 1977 and 1983, arrest rates for all juveniles declined, but minority youth incarceration increased by 26%.<sup>38</sup> Additionally, the likelihood was greater for minority youth to be confined in public facilities, compared to white juveniles who were more often placed in private facilities. In 1982, 53% of confined juveniles were white, but 65% of juveniles in private facilities were white.<sup>39</sup> Although neither public nor private facilities have reduced recidivism rates,

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<sup>37</sup> Kempf-Leonard, Kimberly, *supra* note # 24, 8.

<sup>38</sup> U.S. House. Committee on Education and Labor, *supra* note #23.

<sup>39</sup> *Ibid*, 22.

distinguishing between public and private facilities is significant due to the greater resources for juveniles in private facilities. Furthermore, segregated detention centers raise concerns over the government creating separate and unequal facilities for youth.<sup>40</sup> Aside from his testimony, Krisberg's co-authored article, entitled "Juvenile Corrections: Is There A Future?" was entered into the Congressional record. In the article, Krisberg wrote, "juvenile facilities are becoming minority enclaves in which conditions of confinement are becoming even more harsh."<sup>41</sup>

Krisberg's findings proved extremely worrisome to the Committee. First, he cited data supporting Schwartz' claims that offending and arrest rates differed by race. This indicated that either minority youth commit more crimes than white youth and/or that systematic bias exists in policing and court processing, perpetuating racial disparities. Krisberg argued unemployment levels and the lack of community-based programs fueled high levels of minority youth incarceration, recognizing the relation of racial disparities in juvenile justice to racial inequalities in society. He urged the Justice Department to gather more data and conduct analyses to determine the roots of these patterns. Krisberg believed that if institutions, such as police departments and court systems, reformed their tactics and policies according to these findings, a decrease in minority incarceration rates might occur.<sup>42</sup> Krisberg advocated a two-tiered approach to eliminate racial disparities in juvenile justice: institutional reforms in juvenile justice, but also understanding patterns of juvenile delinquency.

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<sup>40</sup> Bayer, Patrick and David E. Pozen. "The Effectiveness of Juvenile Correctional Facilities: Public Versus Private Management," (November 2004)  
<[http://www.econ.yale.edu/growth\\_pdf/cdp863.pdf](http://www.econ.yale.edu/growth_pdf/cdp863.pdf)>

<sup>41</sup> Ibid, 31-32.

<sup>42</sup> Ibid, 23.

It is important to note that neither Schwartz' 1986 nor Krisberg's 1987 testimony took place during hearings specifically on minority youth and the juvenile justice system. Rather, the hearings were organized on much broader questions related to reauthorizing the Juvenile Justice and Delinquency Prevention Act of 1974. Thus, Krisberg did not speak exclusively on issues relating to minority youth incarceration, but also on the jail removal mandate and the juvenile correctional system, issues independent of racial inequalities in the juvenile justice system.<sup>43</sup>

During the reauthorization debates, issues of Disproportionate Minority Confinement failed to capture politicians' attention for extended periods of time. Legislators apparently viewed this mandate as a minor issue in the grand scheme of juvenile justice policy. Perhaps the reauthorization hearing in Iowa on December 4, 1987 best illustrates this attitude. The Iowa hearing focused exclusively on the first three provisions from the 1974 Act, namely, removing status offenders from secure facilities, separating juveniles and adult prisoners, and removing juveniles from adult jails altogether.<sup>44</sup> Allison Fleming, the Chair of the Iowa State Advisory Group for Juvenile Justice, spoke extensively during the hearing. The only time Fleming mentioned minority youth was to suggest the topic deserved a separate hearing for discussion. She recommended the Subcommittee organize regional hearings to discuss minority incarceration rates.<sup>45</sup> However, there are no indications that regional hearings took place to discuss Disproportionate Minority Confinement. Ultimately, this shows the subordinate role that racial disparities played in the grand scheme of federal juvenile

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<sup>43</sup> U.S. House. Committee on Education and Labor, *supra* note # 23.

<sup>44</sup> U.S. House. Committee on Education and Labor, *supra* note #23.

<sup>45</sup> *Ibid*, 8-9.

justice policy. Researchers pushed the issue onto the Congressional floor with alarming data. Politicians, receptive to the message, listened to the data and instituted Disproportionate Minority Confinement to further examine and address the issue. But at no time did the House Committee on Human Resources consider racial inequalities in the juvenile justice system an issue of utmost importance. From the late-1970's to the late-1980's, racial disparities were just another glitch in the system.

### **DMC: The Mandate**

In 1988, at the conclusion of the 1974 reauthorization hearings, the Committee on Education and Labor issued a report to the House entitled, *Juvenile Justice and Delinquency Prevention Amendments of 1988*. The report recommended reauthorizing the Juvenile Justice and Delinquency Prevention Act until 1992. Additionally, the Committee recommended adding three amendments to the bill: the Runaway and Homeless Youth Act, the Missing Children's Assistance Act, and Disproportionate Minority Confinement.<sup>46</sup> Recall that in 1974, how to deal with runaways and truants posed the greatest challenge to law enforcement officers and policy makers. Including the Confinement mandate as an amendment represented an important acknowledgement of issues of racial inequalities for youth. By establishing the Confinement Mandate, the federal government pledged to take the lead in pressing states to investigate and remedy racial inequalities in the juvenile justice system.

The report contained specific language pertaining to the Disproportionate Minority Confinement, and later the Contact, mandate. The Committee offered a layered approach to combating racially disproportionate youth incarceration rates. The first

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<sup>46</sup> U.S. House Committee on Education and Labor, *supra* note #25.

required states to provide comprehensive efforts to reduce racially biased incarceration rates. Using funding from the Justice Department, states should track differences in arrest rates, compare processing of youth depending on their racial identity, and improve outreach organizations and programs that targeted minority youth.<sup>47</sup> Assessing arrest rates suggested racially imbalanced incarceration rates stemmed from unequal treatment early on in the system, perhaps from when police officers and youth first interact. Furthermore, targeting agencies that work with minority youth can increase the potential to keep these minors out of the justice system, or to work with them to prevent recidivism down the road.

The report defined minority youth as, “youth from ethnic as well as racial minority groups.” Racial categories included black and Asian; Hispanic constitutes an ethnic category. Additionally, the Committee recommended that data distinguish not only between minority groups but also genders. Presumably, breaking down these racial and gendered groups would help target certain populations with prevention and rehabilitative services.<sup>48</sup> The report’s conclusion cited that black males were four times as likely to be incarcerated in comparison to their white peers. Hispanic males were 2.6 times as likely to be incarcerated in comparison to their white peers.<sup>49</sup> These statistics come directly from Krisberg’s statements before the Committee in 1987. Ultimately, the Committee supported the Justice Department’s leadership role in the juvenile policy field. It described the goal of the mandate to implement “racially and ethnically neutral” policies

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<sup>47</sup> Ibid, 10.

<sup>48</sup> Ibid, 10.

<sup>49</sup> Ibid, 10.

and practices across all state and federal juvenile facilities.<sup>50</sup> That is to say the Justice Department supported juvenile justice policies with intentional language to treat individuals equally, regardless of their race, ethnicity, or gender.

Congress adopted the Juvenile Justice and Delinquency Prevention Amendments in 1988. The Disproportionate Minority Confinement mandate, prescribing state research and requiring strategies geared towards providing a racially equitable juvenile justice system, was put into motion. Congress now required states to detect, identify, and remedy racial inequalities in their local systems. The mandate found inequality, or disproportionality, when the population of confined minority youth exceeded the proportion of minority youth in the general population.<sup>51</sup> Not only states, but also organizations outside the Justice Department continued to gather and analyze data, prompting further reforms to the mandate in the future.

In 1989, the National Coalition of State Juvenile Justice Advisory Groups released a report entitled, *A Delicate Balance*. Directed towards the President, Congress, and the Office of Juvenile Justice and Delinquency Prevention, this report challenged juvenile justice policy leaders to think hard about the state of racial inequality among our young people in the criminal justice system. The report itself focused on how police and courts process minority youth in the juvenile justice system. The Coalition acknowledged that minority youth seemed to commit slightly more crime than white youth. However, the report suggested that biased actions of hundreds of police officers, judges, and other

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<sup>50</sup> Ibid, 10.

<sup>51</sup> Coleman, Andrea R., supra note #3.



law enforcement officials often resulted in discriminatory treatment of minority youth.<sup>52</sup>

Ultimately, *A Delicate Balance* argued that,

“... The juvenile justice system is nothing more than a shadow of the larger society which defines and supports it. In that sense, equity and justice, the pillars of our justice system, require that we look at a great deal more than our life pursuits- a delicate balance in a democratic society where differences and individuality are seen as fundamental strengths.”<sup>53</sup>

Here, the Advisory Group implicitly questioned whether the federal government can really redress racial inequalities in the juvenile justice system. We live in a society where skin color shapes our worldview. Whether conscious or subconscious, intentional or unintentional, individual decisions as well as larger programs and policies often treat individuals differently based on the color of their skin. Since our juvenile justice system functions within our society, in order to remedy racial inequity in the system, we must address the structured inequalities, the inherent biases among individuals working within the system, and the policies that shape both the system and our society. This responsibility lies with individuals, but more so with institutions and with our government, both federal and local. These issues, entrenched in individual attitudes, behavior, social structure, and policy over time, reside beyond the boundaries of the criminal justice system.

Throughout *A Delicate Balance*, the Advisory Group recommended reforms relating to both operational and strategic matters affecting juvenile justice and delinquency prevention. The report asked President George H. Bush to designate a Chairman of a Special Task Force to spearhead research into differential processing practices throughout the juvenile justice system, and to resolve these problems. The

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<sup>52</sup> National Coalition of State Juvenile Justice Advisory Groups. *A Delicate Balance*, 1.

<sup>53</sup> *Ibid*, 1.

report asked Congress to hold hearings on this matter, just as Allison Fleming asked during the Iowa reauthorization hearing in 1987. The Advisory Group also asked Congress to appropriate funds to endow five model youth correctional facilities of 30 youth or less that reduce disproportionate minority incarceration.<sup>54</sup> Although this pilot program would not reduce Disproportionate Minority Confinement across the nation, lessons learned would help inform future efforts.

The greatest number of recommendations fell on the Administrator of the Office of Juvenile Justice and Delinquency Prevention. Ultimately, the Advisory Group requested the Office provide leadership to states in implementing professional trainings and delinquency prevention strategies, encourage community colleges to connect with minority youth, and offer technical assistance to states.<sup>55</sup> The Advisory Group asked the Administrator to implement various research reforms. These research initiatives targeted police practices, penalties for chronic offenders, and how law enforcement offices made decisions to detain minority youth. The report encouraged the Office of Juvenile Justice and Delinquency Prevention to take an active role in training law enforcement officials and court officers on sensitivity to issues of race, gender, class, and ethnicity. Moreover, the Advisory Group asked that individuals providing these trainings represent various ethnic, cultural, and educational backgrounds. The report also tasked the Administrator with developing strategies to share state results through conferences, seminars, publications, and presentations.<sup>56</sup> In making these recommendations, the Advisory Group

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<sup>54</sup> Ibid, executive summary.

<sup>55</sup> Ibid, executive summary.

<sup>56</sup> Ibid, executive summary.

believed these efforts would curb discriminatory treatment in the juvenile justice system and reduce rates of minority youth crime, and thus, minority youth confinement.

The Advisory Group supported their recommendations in *A Delicate Balance* by presenting information regarding minority incarceration rates and arrest rates. The report cited both Schwartz and Krisberg's statistics from the 1986 and 1987 hearings, respectively. The report also suggested that mentally and physically disabled minority youth are more likely to enter the justice system, rather than appropriate health care facilities. In regard to arrest rates, the report cited data showing 7 in 10 young black males in California experience at least one arrest in their early adult years. Among the same white population, only 3 in 10 face one arrest.<sup>57</sup> These trends surely contributed to disproportionate confinement, but also to the social consequences these young men experience, which create a stigma, alter life chances of youth, and ultimately, may increase recidivism. Therefore, the report urged those in the justice system to,

“... Look beyond the decision process of the juvenile justice system for answers. We must examine the health of the minority community, the stability of family life, and the highly constrained life chances of youth who lives on the streets.”<sup>58</sup>

Racial disparities in the juvenile justice system are not as simple as racial categories. Black youth, for example, do not commit crimes because of the color of their skin. Rather, social constructs contribute to these disproportions, often related to racial boundaries. Poverty rates, employment opportunities, income distribution, and education levels are meaningful measures that may contribute to crime.<sup>59</sup> The Advisory Group feared segregated practices in the juvenile justice system would exacerbate these trends,

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<sup>57</sup> Ibid, 5.

<sup>58</sup> Ibid, 5.

<sup>59</sup> Ibid, 8. These factors are examined in Chapter 3 of this honors project.

and eventually lead to a dual society. If legal consequences continued to impair minority populations, whites would continue to reap benefits from a society structured to further their success. Ultimately, these patterns reflect a structural problem.<sup>60</sup>

The Advisory Group's findings in *A Delicate Balance* point to worrisome, realistic consequences for our nation if these inequities persist. Over time, the Task Force, academics, and the Advisory Group strongly encouraged the federal government to lead efforts to redress racial inequalities in the juvenile justice system. The federal government took these conversations and findings seriously. In 1991, the Juvenile Justice Subcommittee of the Senate Judiciary Committee hosted the hearing on Minority Overrepresentation in the Juvenile Justice System.<sup>61</sup> The Juvenile Justice Subcommittee did not exist in 1988, when the Disproportionate Minority Confinement mandate came into being. The hearing featured leaders from national non-profit agencies working to prevent juvenile delinquency, youth participating in these programs, and law enforcement officers.

Senator Herbert Kohl from Wisconsin opened the hearing by stating, "The scales of justice were never meant to be color coded."<sup>62</sup> He stated that Black youth comprise 17% of the population, but 40% of public detention centers, and that there were more black youth in prison than in college. Even when black and white youth commit the same crime, black youth were four times as likely to be incarcerated for that offense. Kohl argued that detaining youth can increase mental and physical health problems, and lead to

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<sup>60</sup> Ibid, 8.

<sup>61</sup> U.S. Senate. Committee on The Judiciary. *Hearing on Minority Overrepresentation in the Juvenile Justice System*, 102-304.

<sup>62</sup> Ibid, 2.

unemployment and homelessness.<sup>63</sup> Perpetuating these trends along racial lines is especially problematic, as Kohl asserted, because the Justice System functions most basically to ensure equality.

Joe Biden, at the time the Senator of Delaware and serving as Chair of the Juvenile Justice Subcommittee, echoed Senator Kohl's sentiments. Senator Biden stated that on an average day, 53,000 juveniles are held in custody, of which 30,000 are minorities.<sup>64</sup> Senator Biden stated these patterns reflect greater problems in society, such as poverty, unemployment, educational opportunities, and community violence. He believed federal and state programs have not kept pace with society to address youth needs.<sup>65</sup>

Following the hearing, in 1992, Congress elevated Disproportionate Minority Confinement to a core requirement of the Juvenile Justice and Delinquency Prevention Act. This policy reflects the implications of racial disparities in the juvenile justice system, made explicit in *A Delicate Balance*. Elevating the mandate to a core requirement tied future state funding to state compliance. Each year, the Office of Juvenile Justice and Delinquency determines state compliance by reviewing state plans.<sup>66</sup> If states fail to provide plans redressing disproportionate minority incarceration, they risk losing 25% of annual funding from the Justice Department.<sup>67</sup>

To help states reach this new standard, the Office of Juvenile Justice and Delinquency Prevention created a pilot program for five states. The program involved

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<sup>63</sup> Ibid, 1-2.

<sup>64</sup> Ibid, 2-3.

<sup>65</sup> Ibid, 2-3.

<sup>66</sup> If this plan seems vague, that's because it is. As we will see in Chapter 2, it is very easy for states to meet compliance, and receive full federal funding.

<sup>67</sup> Coleman, Andrea R., supra note #3.

two phases. During the first phase, states assessed the extent that disproportionate minority confinement occurred. In the second phase, the Office provided assistance to the states for designing and implementing “correction actions.”<sup>68</sup> Assistance included funding, technical support for designing strategies, and technical assistance for implementing these strategies. Arizona, Florida, Iowa, North Carolina, and Oregon participated in the pilot program.<sup>69</sup>

At the program’s conclusion, the Office summarized and published the results in a report entitled, “Disproportionate Minority Confinement: Lessons Learned From Five States.” Each state observed disproportionate minority confinement in its population, and found racial inequalities existed beyond secure facilities. In Florida, researchers found African-American youth overrepresented at multiple stages in the justice system, such as arrest and case filings.<sup>70</sup> Oregon found similar patterns. In Iowa, researchers found minority youth experienced longer stays in detention centers. Implementation strategies for curbing disproportionality differed, from creating community-based programs to working with youth to changing police methods.<sup>71</sup>

The report argued that both underlying bias in the juvenile justice system and unequal social circumstances contribute to racially imbalanced trends in the juvenile justice system. The social factors include educational attainment, family conditions, and economic resources. Remedying these matters was viewed as essential to completely address juvenile delinquency. The most significant outcome from the pilot program

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<sup>68</sup> Devine, Patricia, Kathleen Coolbaugh and Susan Jenkins, “Disproportionate Minority Confinement: Lessons Learned From Five States,” 1.

<sup>69</sup> Ibid, 1.

<sup>70</sup> A detailed explanation of contact points occurs in Chapter 2.

<sup>71</sup> Ibid, 3-9.

resides in the suggestion to expand the mandate to incorporate multiple layers of the juvenile justice system, later named contact points. Racial disparities exist beyond just the confined population, and these deserve appropriate attention.<sup>72</sup> These troublesome conclusions influenced continued reforms to the Confinement mandate.

Congress adjusted the provision again in 2002, with the shift from Disproportionate Minority Confinement to Disproportionate Minority Contact. This new terminology encompassed all racially disproportionate patterns in the juvenile justice system. Now, Congress required states to examine racial disparities at every contact point in the juvenile justice system, including arrests, charges, transfers to adult court, and confinement. This shift expanded attention regarding racial inequities for juveniles in the criminal justice system. As in the past, states were required to implement intervention strategies to assure racial equality and prevent juvenile delinquency.<sup>73</sup>

The 2002 mandate also included an important change in methodology. Recall that under the past Confinement provision, states compared the proportion of minority youth in detention facilities to their proportion in the general population. The 2002 statutory language required states to use the Relative Rate Index to measure disproportionality. States measure the Relative Rate Index (RRI) by comparing the rate of minority contact at a given point with the rate of white contact at the same point. Put simply,  $RRI = \text{minority rate} / \text{white rate}$ .<sup>74</sup> The quotient represents disproportionality. So, for example, suppose RRI in this case is used to measure disproportionate arrest rates in a given state. If the RRI is 4.0, minority youth are 4 times as likely to be arrested as white youth in the

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<sup>72</sup> Ibid, 11.

<sup>73</sup> Coleman, Andrea R., supra note #3.

<sup>74</sup> Parsons- Pollard, Nicolle. *Disproportionate Minority Contact: Current Issues and Policies*. (Durham: Carolina Academic Press, 2011), 39.

given locality. Conversely, if the RRI is 0.5, minority youth account for half the arrest rate of white youth. RRI measurements prove useful because they enable policy makers to compare disproportionality across jurisdictions.<sup>75</sup> In order to achieve compliance with the Contact mandate, states must provide a statewide RRI, as well as an RRI corresponding to the three most racially diverse counties, every three years. Today, many states release annual reports and analyze more than three counties.<sup>76</sup>

### **Disproportionate Minority Contact Today**

The 2002 Disproportionate Minority Contact mandate, still an amendment to the 1974 Juvenile Justice and Delinquency Prevention Act, expired in 2007.<sup>77</sup> From 2007 until 2010, the JJDP Act was continued on an annual vote. In 2010, Representative Keith Ellison from Minnesota introduced the Act's reauthorization.<sup>78</sup> The bill discusses contemporary disparities that African-American youth experience in the juvenile justice system, and demonstrates disproportionality's changing meaning over time.

“In 2003, African-American youth constituted 16 percent of the adolescent population of the United States, but constituted 28 percent of youth arrested, 37 percent of youth securely detained before adjudication, 30 percent of youth adjudicated in juvenile court, 35 percent of youth judicially waived to adult criminal court, 38 percent of youth sent to residential placement, and 58 percent of youth admitted to state prisons.”<sup>79</sup>

In these statistics, legislators observed disproportionality by comparing rates of juvenile justice contact to the proportion of minorities in the general population. However, the bill

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<sup>75</sup> Ibid, 39.

<sup>76</sup> Ibid, 42. Several of these reports are analyzed in Chapter 2.

<sup>77</sup> Ibid, 24.

<sup>78</sup> U.S. House. Committee on Education. *Juvenile Justice and Delinquency Prevention Reauthorization Act of 2010* (H.R. 6029) <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:hr6029>: accessed November 24, 2013.

<sup>79</sup> Ibid.



also finds disproportionality in African-American youth experiencing harsher consequences for committing crimes than white youth, even when they commit the same crime. Here, disproportionality arises by comparing the African-American and white youth populations in the justice system. Using both of these methodologies, measuring disproportionality by comparing minorities to the general population and disproportionality by comparing minorities to other populations in the justice system, reveals ambiguity in the term. What exactly does disproportionality mean? Moreover, legislators failed to identify the goal of DMC efforts. Given racial disparities in crime rates, what would be equitable contact rates for minority youth and the juvenile justice system?

Ultimately, the legislation calls for increased research efforts and states its clear purpose is to “support effective state and local efforts to reduce the disproportionate numbers of youth of color involved in the juvenile justice system.”<sup>80</sup> Representative Ellison’s 2007 reauthorization bill states that in 2010, “youth of color constitute 69 percent of the youth held in secure detention.”<sup>81</sup> Given this gross inequality, states clearly need further guidance in remedying racial disparities in juvenile justice.

The JJDP Act was not reauthorized in 2010. The last action on the bill occurred on October 30, 2010, when the House referred the bill to the Subcommittee on Healthy Families and Communities.<sup>82</sup> Since this time, the JJDP Act has been put on continuous resolution. While reauthorization would sustain the Office of Juvenile Justice and Delinquency Prevention and all of its programs and facilities for many years, legislators

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<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

instead annually approve the Act. In effect, the Office of Juvenile Justice and Delinquency Prevention, its programs and facilities, live paycheck to paycheck. Additionally, with each passing year, the legislative package that contains it grows. In 2013, the Disproportionate Minority Contact mandate comprised a microscopic portion of H5326, a bill appropriating funding to commerce, justice, and science.<sup>83</sup>

Over time, the Disproportionate Minority Contact mandate has been bundled into a large legislative package, which keeps politicians from revisiting the issue. Disproportionate Minority Contact simply persists from year to year, and so do racial inequalities in the juvenile justice system. Racially charged crime patterns do not begin or end with the juvenile justice system. The mandate represents an action on behalf of federal legislators to respond, perhaps symbolically, to an issue endemic throughout our nation's history: racism.

## **Conclusion**

In reviewing Disproportionate Minority Contact's legislative history, several contentious points arise. First, politicians failed to clearly and consistently define disproportionality. Researchers observed disproportionality when the minority youth population in detention facilities exceeded the proportion in the general population. Researchers later observed disproportionality by comparing the rates of activity in the justice system across racial lines. However, these formulas do not indicate how much disproportionality is acceptable; the methodologies merely constitute a means to an ambiguous end. Without a definition of equity, exactly what do these statistics mean?

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<sup>83</sup> Thomas Library of Congress. "Status of Appropriations Legislation for Fiscal Year 2013," <http://thomas.loc.gov/home/approp/app13.html> Accessed November 24, 2013.

What should state systems work towards? Equal rates of juveniles arrested, tried in court, confined and put on probation according to their skin color? Progress cannot be attained if states do not show yearly progress, or if policy is not anchored in a concrete purpose.

Twenty-five years after the Disproportionate Minority Confinement mandate came into practice, states certainly have many numbers, plans, and practices. But the research relies on simplistic racial and ethnic categories geared towards remedying an ambiguous “disproportionate” trend that lacks a clear reference point. The mandate’s continuous burial into legislative packages prevents policy makers from addressing or resolving these issues. These problems prevent federal legislation from effectively providing incentives and support for remedying racial disparities among minority juveniles. Ultimately, these failures to redress racial inequalities in the criminal justice system rest with federal policy makers, the legislative process, and with state and local justice systems. As we will see, aside from ambiguous language, states experience many hurdles in complying with the Disproportionate Minority Contact mandate.

## **CHAPTER 3**

### **Contemporary State Studies**

#### **Introduction**

In Chapter 2, we learned that through the Disproportionate Minority Contact mandate, the Office of Juvenile Justice and Delinquency Prevention tasked states with identifying and remedying racial disparities at various stages in the juvenile justice system. Significant federal funding from the Justice Department obliges states to participate. Knowing this, how do states implement the Disproportionate Minority Contact mandate? What challenges do states face in doing so? This chapter analyzes the challenges associated with implementing the Disproportionate Minority Contact mandate by comparing the activities of several states in their efforts to achieve compliance.

States face many challenges in implementing DMC, the first of which is appointing an individual or office to oversee compliance with the mandate. Collecting data to detect inequalities represents one of the biggest challenges for states, as many have a hard time ensuring that the many police departments, local courts, and detention facilities maintain accurate data on the youth they serve. Contemporary evidence suggests state offices fail to accurately measure racial and ethnic disparities at various points in the juvenile justice systems. In some communities, static racial categories fail to account for growing immigrant and ethnic populations. Furthermore, after analyzing statistics and determining racial inequalities, states must identify and implement strategies to improve their juvenile justice systems. After doing so, they must continue to monitor these programs and disparity rates. But without reliable local data, juvenile justice workers cannot accurately measure racial and ethnic disparities, or implement strategies to redress those inequalities.

Despite twenty-five years of tracking Disproportionate Minority Confinement and Contact, the Justice Department has yet to determine the source of racial inequities in the juvenile justice system. In 2012, all 50 states had completed the identification stage. Only 18 states had completed the assessment phase. Thirty-four states reported they implemented delinquency prevention strategies, 30 of which received funding or technical training to implement nationally recognized models. Only four states reported entering the evaluation stage. This means despite an array of prevention strategies implemented throughout the nation, only four states systematically evaluated their programs. Even if these programs showed promise in curbing minority youth delinquency, state legislators may not have been aware the program existed. Regardless, in 2012, 39 states reported entering the monitoring phase.<sup>84</sup> How can states monitor a system they have not yet evaluated? Are completing phases not necessary before moving onto the next stage? The legislation does not provide concrete compliance standards, provide strategies to correct problematic actions, or facilitate conversations among states to compare successes and failures. The mandate leaves states to creatively implement strategies on their own timelines. This ambiguous action plan provided by the Justice Department leads to inconsistent state reforms.

This chapter focuses particularly on New England states. The minority populations in New England states are variable but small, such as in Rhode Island, where in 2010, 82% of residents identified as white, 6% as black or African-American, and 12% as Hispanic or Latino.<sup>85</sup> States with small minority populations have trouble gathering

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<sup>84</sup> Office of Juvenile Justice and Delinquency Prevention. "In Focus: Disproportionate Minority Contact." (November 2012).

<sup>85</sup> 2010 Census.

accurate data on their minority populations. As a result, many DMC measurements of differential rates remain statistically insignificant, especially in local areas where the total juvenile justice populations are small.

In order to achieve compliance and obtain full funding from the Office of Juvenile Justice and Delinquency Prevention, states must provide data measurements and plans to address disparities and to monitor racial inequalities over time. Ultimately, the Office of Juvenile Justice and Delinquency Prevention has the responsibility of overseeing state juvenile justice system compliance with the Disproportionate Minority Contact mandate. As we will see, some states have produced statistics and implemented intervention strategies. Other states lag behind, unable to overcome these challenges in gathering data.

### **Compliance: Contact Points, Statistical Significance, and RRI**

The Disproportionate Minority Contact mandate requires states to investigate racial and ethnic disparities at nine contact points in the juvenile justice system. These contact points, also known as decision points, represent instances where juveniles formally interact with police officers, judges, attorneys, and/or juvenile justice workers. At each stage, a juvenile justice professional makes a decision regarding the juvenile's future in the criminal justice system.

The nine contact points are: arrest, referral to court, diversion, case petition, secure detention, delinquency finding, probation, confinement in a secure correction facility, and case transferred to adult criminal court.<sup>86</sup> The Office of Juvenile Justice and Delinquency Prevention defined these nine points in the 4<sup>th</sup> edition of the Technical

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<sup>86</sup> Office of Juvenile Justice and Delinquency Prevention, *supra* note #85.

Assistance Manual.<sup>87</sup> An *arrest* occurs when a law enforcement officer stops a juvenile for a suspected delinquent act. Criminal adult crimes, such as crimes against persons and property, drug offenses, and crimes against the public order, constitute delinquent acts. The second contact point, *referral*, materializes when a law enforcement officer formally directs the arrested youth to the juvenile justice system. The third point, *diversion*, refers to juveniles legally processed in the arrest or referral stage, but never formally charged with a crime. Intake workers may dismiss, or divert, the case for lack of evidence, or settle the dispute informally. Law enforcement officers often intentionally divert juveniles to therapeutic programs or community service, recognizing the stigma of the justice system, and the overcrowding of juvenile facilities.<sup>88</sup> Arrested juveniles are either diverted or referred to the juvenile justice system.

The fourth point, *detention*, refers to youth held in secure detention while the court processes their case. This may occur before or after the court's decision: courts may detain youth while awaiting trial or while awaiting sentencing. The fifth contact point, *case petition*, concerns cases with formal charges that appear on a court calendar. The next point, *delinquency findings*, refers to adjudications, the equivalent to convictions in the adult criminal courts. This represents the court's legal finding that the juvenile bears responsibility for the crime committed. *Probation*, the seventh contact point, refers to those juveniles put under formal supervision in the community after adjudication. Those put on probation without case petitions being filed fit into the earlier diversion point. The

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<sup>87</sup> Office of Juvenile Justice and Delinquency Prevention. *Disproportionate Minority Contact Technical Assistance Manual Fourth Edition* (U.S. Department of Justice: 2009)

<sup>88</sup> The Center on Juvenile and Criminal Justice. "Diversion Programs: An Overview." *Juvenile Justice Bulletin* (1999) <<https://www.ncjrs.gov/html/ojjdp/9909-3/div.html>>

eighth point, *confinement* in a secure correctional facility, concerns adjudicated juveniles serving time in secure residential or correctional facilities. Group homes, shelters, and mental health treatment facilities do not constitute a secure correctional facility. Lastly, *transfers to adult courts* refer to cases waived to adult criminal court. A judge may weigh the juvenile's age and the gravity of the criminal act, and determine that the juvenile should be treated as a legal adult.<sup>89</sup>

Today, the Justice Department prescribes five steps for states to analyze and address minority overrepresentation in the juvenile justice system. The first step, identification, requires states to determine the extent that racial disparities exist in their juvenile justice systems. This calls for statistical evidence measured by RRI, or the Relative Rate Index, which compares the rates at which white and minority juveniles pass through respective contact points.<sup>90</sup> The second phase, assessment, asks states to identify the reasons Disproportionate Minority Contact exists, if in fact the statistics reflect racial inequalities. The third step, intervention, requires states to put "intervention strategies" in place to address the sources of overrepresentation identified in the previous phase. The fourth step, evaluation, asserts states must evaluate the implemented strategies for effectiveness and ideally, success. The final phase, monitoring, requires states to continuously track trends and adjust intervention programs as needed.<sup>91</sup>

In seeking to provide identification data, states have had trouble gathering statistically significant RRI measurements. Statistical significance correlates to volume, or number of cases, commonly referred to as sample size. Generally, statistical

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<sup>89</sup> Office of Juvenile Justice and Delinquency Prevention, *supra* note #88.

<sup>90</sup> Parsons- Pollard, Nicolle, *supra* note #73.

<sup>91</sup> "About DMC," Office of Juvenile Justice and Delinquency Prevention, accessed November 1, 2013, <<http://www.ojjdp.gov/dmc/about.html>>



significance “expresses the probability that the result of a given experiment or study could have occurred purely by chance.”<sup>92</sup> In this instance, the question is whether disparities in rates between whites and black, for example, represent “real” differences in experience, or random variations in rates over time that do not reflect underlying differences in experience. In practice, this means larger sample sizes are more likely to yield statistically significant measurements, because it is less likely the disparity occurred randomly.

The Office of Juvenile Justice and Delinquency Prevention provides baselines for states to use as RRI comparisons to ensure consistent, comparable measurements across jurisdictions. Arrests are measured by the base rate of 1,000 juveniles in the population. Referrals are measured per 100 arrests. Diversion, detention, and charges filed are each measured per 100 referrals. Delinquency findings are measured per 100 charges filed. Probation placements and secure correctional placements are each measured per 100 delinquency findings. Transfers to adult courts are measured per 100 charges filed. In essence, each RRI measurement builds off of previous decision points to remain comparable across time and place.<sup>93</sup>

### **Where Are They Now? New England and DMC in 2013**

The Office of Juvenile Justice and Delinquency Prevention outlines five steps for states to analyze and address Disproportionate Minority Contact. The Office often refers

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<sup>92</sup> “Statistical Significance.” Accessed December 12, 2013.

<http://dictionary.reference.com/browse/statistical+significance>

<sup>93</sup> Delay, Dennis and Steve Norton. “Juvenile Justice in New Hampshire; Disproportionate Minority Contact Identification 2013.” (New Hampshire Center for Public Policy Studies: 2013), 3.

to these steps as reduction activities.<sup>94</sup> Identification, assessment, intervention, evaluation, and monitoring comprise these steps.<sup>95</sup> In 2012, the Office mapped out how states have engaged in reduction activities.<sup>96</sup> New England states reported compliance with many reduction activities.

In the identification phase, Connecticut, Maine, and Vermont indicated they gathered data for all nine contact points. Massachusetts and Rhode Island provided data for six or more contact points. New Hampshire published an identification report in 2012, after the Office's report went to press.<sup>97</sup> The Office requires states collect RRI data every three years. Only Vermont and Rhode Island indicated collecting data more often.<sup>98</sup>

Under the assessment phase, the Office asked states whether they had completed a DMC assessment within the last six years. Connecticut, Maine, and Rhode Island indicated doing so.<sup>99</sup> New Hampshire completed an assessment study in 2013.<sup>100</sup> In regard to the intervention phase, Massachusetts and New Hampshire reported implementing nationally recognized strategies to improve systems and prevent delinquency. Massachusetts and New Hampshire also reported funding, receiving funding and/or technical assistance to implement these strategies. Nationwide, 30 of the 34 states that implemented these strategies also received funding or technical assistance to do so.<sup>101</sup>

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<sup>94</sup> Office of Juvenile Justice and Delinquency Prevention, *supra* note #85.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> Delay, Dennis, *supra* note 93.

<sup>98</sup> Office of Juvenile Justice and Delinquency Prevention, *supra* note #85.

<sup>99</sup> *Ibid.*

<sup>100</sup> Delay, Dennis, *supra* note 93.

<sup>101</sup> Office of Juvenile Justice and Delinquency Prevention, *supra* note #85.

In the evaluation phase, only four states from across the nation reported conducting one formal methodological evaluation of delinquency prevention and/or systems improvement strategies. Connecticut was one of these states. Among 39 states nationwide that reported tracking and monitoring RRI trends over time, all New England states claimed to be doing it.<sup>102</sup>

For the purposes of this section, the identification phase will be used to analyze challenges to implementing the Disproportionate Minority Contact mandate. In the identification stage, states gather data and compute statistical measurements to identify racial and ethnic disparities in the juvenile justice system. These measurements provide the backbone to all other initiatives. Failure to gather complete or accurate data skews later implementation strategies.

New England states experience challenges in producing statistically significant data, partly due to small minority youth populations. According to the 2010 Census, 72.4% of all Americans identified as white, 12.6% as black or African-American, and 16.3% as Hispanic or Latino.<sup>103</sup> In comparison, New England states have more racially and ethnically homogenous populations. The following table displays the racial composition of New England states from the 2010 Census.<sup>104</sup>

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<sup>102</sup> Ibid.

<sup>103</sup> U.S. Census Bureau. "An Overview: Race and Hispanic Origin and the 2010 Census," accessed December 12, 2013 <<http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>>

<sup>104</sup> 2010 Census.

Racial Composition of NE States, 2010			
	WHITE	BLACK/AF-AM	HISPANIC/ LATINO
CT	77.57%	10.14%	13.40%
RI	81.41%	5.72%	12.41%
MA	80.41%	6.63%	9.59%
NH	93.89%	1.14%	2.79%
VT	95.29%	1.00%	1.47%
ME	95.23%	1.18%	1.28%

Given these small minority populations present across New England, various local courts, police departments, and other state offices have limited opportunities to track minority juveniles in the system. Furthermore, even when their statistics are accurate, these localities must conform to similar data-gathering practices. Ultimately, these challenges in data gathering prevent New England states from consistently determining where disparities exist, and therefore, from fully implementing the DMC mandate. These challenges may be similar to other states and localities where minority populations are low.

In June 2013, New Hampshire released an identification report.<sup>105</sup> In this document, New Hampshire compared their RRI measurements to other New England state RRI data. The following table compares these statistics.<sup>106</sup> Statistically significant numbers are indicated in bold. Double asterisks indicate not enough cases for any analysis.

Statistically significant measurements indicate that serious disparities exist between white juveniles and minority juveniles. For example, in Massachusetts, minorities are five times as likely to be securely detained during their court case. In

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<sup>105</sup> Delay, Dennis, *supra* note 93.

<sup>106</sup> *Ibid*, 16. The author of this document does not indicate where out-of-state data were drawn from. Therefore, the data may be misleading.

Connecticut, minorities are over three times as likely to be confined in a secure correctional facility. In Rhode Island, minorities are four times as likely to be arrested. Across all New England states, minority youth clearly interact with the juvenile justice system at much higher rates than white youth.

RRI All Minorities for New England States						
RRI Compared with: White						
	NH	CT	ME	MA	RI	VT
Juvenile arrests	<b>1.6</b> **		0.9	0.8	4	<b>1.4</b>
Refer to juvenile court	**	<b>2.7</b>	<b>1.5</b> **		1.1	<b>2.2</b>
Cases diverted	<b>0.4</b>	<b>0.7</b>	<b>1.9</b> **		<b>0.2</b>	<b>0.6</b>
Cases involving secure detention	1.1	<b>2</b>	<b>0.7</b>	5	1.5	<b>0.6</b>
Cases petitioned	1	<b>1.4</b>	<b>1.2</b>	3.3	1	0.9
Cases resulting in delinquent finding	1	1	0.9	1.3	1	1
Cases resulting in probation placement	0.9	<b>0.9</b>	0.9	0.7	**	<b>0.4</b>
Cases resulting in confinement in secure juvenile correctional facilities	1.5	<b>3.2</b>	<b>1.5</b>	1.2	2.4	**
Cases transferred to adult court	**	<b>2.3</b> **	**	**	**	<b>0.2</b>

RRI measurements for cases diverted present a separate trend in racial disparities in juvenile justice. As evidenced above, across all New England states, minorities were diverted at higher rates than their white peers. In Maine, minority juveniles were diverted at twice the rate of their white peers. Case diversions represent a concerted effort on behalf of localities to keep a juvenile out of the system, and in the community. Disproportionate diversion rates in favor of minorities should be viewed as a step towards remedying racial disparities in juvenile petition, delinquency finding, and secure confinement.

The table above not only illustrates disparities but also suggests states' inability to gather full and statistically significant data sets. This surely hinders efforts to identify and to remedy causes of disparities. Without a consistent, complete data set, real disparities cannot be analyzed, and states cannot move forward in remedying racial inequalities amongst juveniles.

In examining the African-American population, racial discrepancies become more pronounced. The following chart illustrates these inequalities across New England. This chart also confirms state inability to gather complete RRI data sets.

RRI Black or African-American for New England States						
RRI Compared with: White						
	NH	CT	ME	MA	RI	VT
Juvenile arrests	3.3	**	2.1	2.6	9.6	2.4
Refer to juvenile court	**	4.6	1	**	0.9	1.4
Cases diverted	0.7	0.7	2.2	**	0.3	0.5
Cases involving secure detention	1.7	2	0.6	2	1.5	1
Cases petitioned	1.3	1.4	1.4	1.4	1	1
Cases resulting in delinquent finding	1	1	0.9	1.7	1	0.9
Cases resulting in probation placement	1.1	0.9	0.9	0.5	**	**
Cases resulting in confinement in secure juvenile correctional facilities	1.6	3.3	1.6	1	2.4	**
Cases transferred to adult court	**	2.6	**	**	**	**

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In Connecticut, African-American youth were referred to juvenile court at almost five times the rate as white youth. These youth were also three times as likely to be confined in a secure facility. In Rhode Island, African-American youth were arrested at over nine times the rate of their white peers. African-American youth also experienced secure confinement at more than double the rate than their white peers. In Massachusetts,

<sup>107</sup> Ibid, 18. The author does not cite sources for these data, either.

these juveniles were arrested at almost three times the rate than white youth. African-American youth were also detained at twice the rate of white youth. In New Hampshire, these juveniles were arrested at over three times the rate of their white peers. African-American youth were almost twice as likely to be detained. In Vermont, African-American youth were arrested at over twice the rate of white youth. In Maine, these youth were twice as likely to be arrested as their white peers, but also twice as often were diverted from the juvenile justice system.<sup>108</sup>

After twenty-five years of research into racial inequalities in the juvenile justice system, and twenty-five years of “reduction” efforts, substantial racial disparities continue to exist in New England. Additionally, states still struggle to produce full data sets. Without complete information, states can find it difficult to implement meaningful changes to their juvenile justice systems. The Disproportionate Minority Contact mandate appears not to have significantly impacted this unfortunate reality. The following case studies elaborate on state challenges in identifying and remedying racial disparities in the juvenile justice system.

### **Case Studies: Vermont, Massachusetts, and Maine**

#### *Vermont*

In 2012, the Office of Juvenile Justice and Delinquency Prevention indicated that Vermont had completed only the identification and monitoring stages.<sup>109</sup> In the New

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<sup>108</sup> These data sets call a separate, equally important question into focus: *Why* do minority youth, and African-American youth in particular, interact with the juvenile justice system at such high rates. This question is addressed in the third and final chapter of this project.

<sup>109</sup> Office of Juvenile Justice and Delinquency Prevention, *supra* note #85.

Hampshire identification report, research indicated Vermont measured six statistically significant RRI measurements. Vermont RRI's for all minority youth appear below:

2012 Vermont Minority RRI	
Contact Point	RRI
Juvenile arrests	1.4
Refer to juvenile court	2.2
Cases diverted	0.6
Cases involving secure detention	0.6
Cases resulting in probation placement	0.4
Cases transferred to adult court	0.2

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Given these Vermont RRI measurements, minority youth do not appear to experience much inequality in the juvenile justice system. Minority youth were arrested at slightly higher rates than white youth, and referred to juvenile court at double the rate for white youth. However, these racial disparities exist at only two early contact points. The rates of minority secure detention, probation placement, and transfer to adult court are lower for minorities than for whites. Perhaps DMC has worked effectively to reduce overt discrimination in the Vermont juvenile justice system.<sup>111</sup> However, this conclusion may be unwarranted, given what we know about problems implementing DMC in Vermont.

Information directly from the Vermont State Advisory Group to Delinquency Prevention indicates the state has faced many challenges in complying with the

<sup>110</sup> Delay, Dennis, *supra* note #93, 16.

<sup>111</sup> The New Hampshire identification report does not reference the source of New England state data. It is unclear where Vermont RRI's actually come from, given Vermont has not published their own identification report.



Disproportionate Minority Contact mandate. This Advisory Group exists within The Children and Family Council for Prevention Programs, and functions to advise state legislators, monitor state compliance with the JJDP Act, and make grants in conjunction with the Department for Children and Families.<sup>112</sup> The Advisory Group, composed of community members, state and non-profit professionals, fulfills a JJDP Act provision.<sup>113</sup> It has the responsibility to monitor minority youth contact with the Vermont criminal justice system to protect youth, but also to ensure Vermont remains eligible for federal delinquency prevention funding.<sup>114</sup>

In 2011, the Advisory Group issued an annual report to the Vermont Agency of Human Services.<sup>115</sup> The report acknowledged Disproportionate Minority Contact constituted a JJDP Act core requirement. The report faulted law enforcement officials with Vermont's inability to meet full DMC compliance, because of insufficient data gathering. Police officers, prosecutors, and court administrators failed to track racial identification for over 65% of the juveniles in the system.<sup>116</sup> Although Vermont has collected and monitored minority youth in the juvenile justice system for ten years, it has not yet determined the rates at which African-American youth enter the justice system, as compared to white youth. Although the Advisory Group designed and implemented strategies to remedy this data-gathering problem, law enforcement officials have failed to

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<sup>112</sup> Vermont State Advisory Group to Delinquency Prevention. "2011 Annual Report." Children and Family Council for Prevention Programs (Vermont Agency of Human Services: 2011).

<sup>113</sup> A core requirement of the JJDP Act requires each state establish a Juvenile Justice Advisory Committee to comply with the DMC mandate.

<sup>114</sup> Vermont State Advisory Group, *supra* note #112, 2.

<sup>115</sup> Vermont State Advisory Group, *supra* note #112.

<sup>116</sup> *Ibid.*

improve their practices.<sup>117</sup> Improving these practices represents an essential task to continued compliance with the DMC mandate, and to identifying and tracking racial disparities in the Vermont juvenile justice system. Ultimately, the Advisory Group recommended increased state leadership to resolve inadequate data collection.

This case study also illustrates how easily states can achieve compliance. Vermont achieved compliance with the mandate by tracking disparities among only 35% of the youth in the juvenile justice system. Ultimately, the data sets reported by Vermont are very misleading. Vermont has not successfully implemented the DMC mandate. In reality, it is unclear if racial disparities even exist in the Vermont juvenile justice system.

### *Massachusetts*

In 1996, Massachusetts' researchers submitted a *Disproportionate Minority Confinement Analysis Final Report* to the Massachusetts Executive Office of Public Safety and the Governor's Juvenile Justice Advisory Committee.<sup>118</sup> The report included interviews with juvenile justice workers, law enforcement officers, juveniles on probation and in state custody, and detention data.<sup>119</sup> Since researchers compiled these data during the Disproportionate Minority Confinement mandate, the research did not include RRI statistics for other contact points. In speaking with individuals working in the juvenile justice system, researchers discovered that officers who identified as minorities were more likely to indicate disparate treatment of minority youth in the system.<sup>120</sup> In speaking

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<sup>117</sup> Ibid.

<sup>118</sup> Forcier, Michael W., Marc R. Berube, Beverly C. Sealey, and Kevin W. Smith. "Disproportionate Minority Confinement (DMC) Analysis: Stage Two Final Report." (Social Science Research and Evaluation, Inc: 1996).

<sup>119</sup> Ibid, 52-53.

<sup>120</sup> Ibid, 52.

with juveniles on probation and in state custody, minority youth voiced concerns about unfair treatment due to the color of their skins.<sup>121</sup>

The researchers also analyzed detention data from 1993 to determine disproportionality. They found African-American and Hispanic males were placed in secure facilities more often than white males.<sup>122</sup> Researchers analyzed court data, as well, focusing particularly on differential adjudication rates. But these measurements did not produce statistically significant differences.<sup>123</sup> Ultimately, the 1996 report uncovered some disparities in the Massachusetts juvenile justice system, but produced uneven statistical evidence, and failed to determine sources of apparent inequalities. Researchers recommended establishing a comprehensive client tracking system, among other initiatives.<sup>124</sup> These recommendations, it was hoped, would provide a solid foundation for Massachusetts to continue analyzing and addressing racial inequalities in their juvenile justice system.

But Massachusetts failed to move forward with these initiatives. In 2003, the Massachusetts American Civil Liberties Union branch issued a report entitled, *Disproportionate Minority Confinement in Massachusetts: Failures in Assessing and Addressing Overrepresentation of Minorities in the Massachusetts' Juvenile Justice System*.<sup>125</sup> The report attacked the Massachusetts Juvenile Justice System for failing to continue DMC research after the 1996 report. ACLU researchers determined that

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<sup>121</sup> Ibid, 52. A sample from this report is included in Appendix H-I.

<sup>122</sup> Ibid, 54.

<sup>123</sup> Ibid, 54.

<sup>124</sup> Ibid, 59-60.

<sup>125</sup> Dahlberg, Robin. "Disproportionate Minority Confinement in Massachusetts: Failures in Assessing and Addressing the Overrepresentation of Minorities in the Massachusetts Juvenile Justice System." (Massachusetts American Civil Liberties Union: 2003).

approximately 7 in 10 juveniles in the Massachusetts system identified as youth of color. While the state wrote plans to reduce disproportionality, implementation never occurred. Between 1998 and 2003, the state received \$35 million in OJJDP funding, but less than \$600,000, or less than 2%, went towards programs to identify and minimize racial disparities.<sup>126</sup>

As the ACLU report implies, Massachusetts' ability to comply with the mandate illustrates the legislation's weakness in enforcement. The ACLU claimed the state lacked leadership in addressing DMC, had not accurately measured the scope of racial inequalities in the system, had not identified the sources of these disparities, had not implemented planned projects, and had not properly allocated federal funding to these initiatives.<sup>127</sup> The ACLU recommended the Governor re-vamp the Juvenile Justice Advisory Committee, make reducing racial disparities among juveniles a priority, identify the roots of these disparities, and monitor disproportionate statistics statewide. The ACLU also recommended that the Governor require local police departments and other agencies to comply with data collection efforts and contract with an independent evaluator to conduct thorough investigations.<sup>128</sup>

The ACLU report suggested Massachusetts DMC reduction activity stagnated due to the Advisory Committee's composition. In 1997, 16 of the Committee's 26 members were full-time government employees who were apparently uninterested in changing the system. The Office of Juvenile Justice and Delinquency Prevention twice recommended that the Committee reduce the number of government employees. But in 2003, 12 of the

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<sup>126</sup> Massachusetts American Civil Liberties Union. "Disproportionate Minority Confinement in Massachusetts." accessed December 12, 2013 (2006).

<sup>127</sup> Dahlberg, Robin, *supra* note #125, 1-2.

<sup>128</sup> *Ibid*, 3-4.

23 members on the Committee were still full-time government employees.<sup>129</sup> The Committee members met sporadically, and kept their meetings closed to the public.<sup>130</sup>

Massachusetts participated in the Office's 1999 Disproportionate Minority Confinement Intensive Technical Assistance Initiative. But, following this consultation, the state failed to implement the technical recommendations from the Office.<sup>131</sup> Ultimately, the Committee appeared to represent a superficial effort to comply with the DMC mandate and secure funds from the federal government: government employees "attending private meetings" with ambiguous plans to continue DMC research simply to secure federal funding for matters unrelated to racial disparities in the juvenile justice system. Massachusetts' ability to do so, while retaining compliance status, again highlights the weakness of the compliance provisions in the Disproportionate Minority Contact legislation.

Today, private citizens, professors, non-profit directors, and government employees constitute the Massachusetts Juvenile Justice Advisory Committee.<sup>132</sup> In 2012, the Committee released a three-year plan, which included updated DMC reduction activities.<sup>133</sup> The report indicated that many issues persist with data gathering practices across Massachusetts, however. Referral, diversion, and cases transferred to adult court statistics appear to be missing for all racial and ethnic groups. Furthermore, arrest data

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<sup>129</sup> Ibid, 6.

<sup>130</sup> Ibid, 6.

<sup>131</sup> Ibid, 6.

<sup>132</sup> Official Website of the Executive of Public Safety and Security. "JJAC Current Members," accessed February 24, 2014.

<sup>133</sup> Ibid.

did not distinguish Latinos as an ethnic population, skewing the white arrest rate.<sup>134</sup> The Committee indicated a statewide data collection system would be implemented in 2013.<sup>135</sup>

The Committee concluded their 2012 plan by outlining future reduction plans and the budget associated with these activities.<sup>136</sup> The Committee did not allocate any funding to the identification stage, assessment phase, to the Subcommittee itself, or to community organizations. The Committee did indicate directing funding towards programs and methods aimed to reduce DMC. But this funding appears conditioned on donations the Committee receives. Therefore, the Committee did not include a specific estimate of the funding these programs might receive.<sup>137</sup>

Furthermore, the report listed statewide RRI data between 2005 and 2011.<sup>138</sup> Between these years, black juveniles experienced detention at almost 6 times the rate of white juveniles and confinement at almost 7 times the rate of white youth.<sup>139</sup> The statistics present two pressing issues. First, these statistics suggest gross inequalities in the juvenile justice system. Second, Massachusetts has only gathered data for *two* contact points in the juvenile justice system. Despite this history and persistent failures to gather accurate data, Massachusetts' ability to "maintain compliance" with the Disproportionate Minority Contact mandate once again illustrates the ineffectiveness in enforcing DMC legislation.

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<sup>134</sup> Massachusetts Juvenile Justice Advisory Committee. "Massachusetts FFY2012 Three Year Plan." (2012), 62.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid, 71-73.

<sup>137</sup> Ibid, 73.

<sup>138</sup> It is unclear where these RRI measurements come from, who conducted these studies. Furthermore, these statistics are inconsistent with the NH data set.

<sup>139</sup> Ibid, 63.

Deficient DMC funding in Massachusetts highlights another important failure in the Disproportionate Minority Contact mandate. Although states must comply with DMC reduction activities to receive full funding from the Office of Juvenile Justice and Delinquency Prevention, the mandate does not require states to direct any portion of that funding to DMC activities. As a result, the effectiveness of the mandate appears to rest on the good will and commitment of local and state officials, but not the oversight of the Office of Juvenile Justice and Delinquency Prevention.

### *Maine*

The distinct African immigrant and refugee populations in Portland and Lewiston, Maine present an important case study to analyze Disproportionate Minority Contact's effectiveness. Maine's ethnic population has grown quickly since 1990. The 1990 census indicated Cumberland County contained 98.1% white individuals and 0.6% black individuals. A similar population distribution existed in Androscoggin County at that time, with 98.5% whites and 0.5% blacks.<sup>140</sup> The 2010 census, however, indicates a rapid change in Maine demographics. In Cumberland County, 92.8% of individuals identified as white, while 2.4% of individuals identified as black or African-American. Likewise, in Androscoggin County, 92.8% of individuals identified as white, while 3.7% of individuals identified as black or African-American.<sup>141</sup> Additionally, 2005-2010 American Community Survey data indicated 19.35% of foreign-born in Cumberland

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<sup>140</sup> 1990 Census.

<sup>141</sup> 2010 Census.

County migrated from the African continent. In Androscoggin County, 22.74% of foreign-born migrated from Africa.<sup>142</sup>

Given these demographics, Maine researchers have found the Disproportionate Minority Contact methodology particularly challenging to implement. The static racial categories administered by the Office of Juvenile Justice and Delinquency Prevention fail to accurately represent the diversity of minority youth in Maine.<sup>143</sup> Specifically, the “black or African-American” category fails to measure ethnic diversity, such as first-generation African descent.

Maine did not begin gathering or analyzing DMC data in the juvenile justice system until 2005. At this time, Kenny Moire from the Maine Statistical Analysis Center started analyzing the state’s existing juvenile justice databases.<sup>144</sup> Moire found the police departments databases failed to track offender’s race and ethnicity, but that the Maine Department of Correction’s database, CORIS, did track race and ethnicity. However, if a corrections officer left the ethnicity question blank, the database automatically answered “non-Hispanic.”<sup>145</sup> This setting clearly warped data. Neither the police database nor CORIS aided Disproportionate Minority Contact data gathering practices in 2005.

Ultimately, Moire’s 2005 report illustrated the obstacles in locating existing data sets to carry out DMC studies. He called for future surveys and data gathering measures

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<sup>142</sup> 2005-2010 American Community Survey.

<<http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>>

<sup>143</sup> The Office of Juvenile Justice and Delinquency Prevention requires states measure DMC using the following census categories: white, black or African-American, Hispanic or Latino, Asian, American Indian or Alaska Native, and Native Hawaiian or Other Pacific Islander.

<sup>144</sup> Moire, Kenny, George Shaler, and Carmen Dorsey. “Juvenile Disproportionate Minority Contact.” (Maine Statistical Analysis Center, Muskie School of Public Service: 2005).

<sup>145</sup> Ibid.



be aligned with DMC policy and practice. In 2006, the Maine Department of Corrections changed the ethnicity setting in CORIS, enabling accurate race and ethnicity data gathering through the system.<sup>146</sup>

In 2009, Maine released its first identification study.<sup>147</sup> Researchers analyzed disproportionality in six counties. Although the minority youth population in Maine continues to expand, the rural areas in Northern Maine simply do not contain enough minority youth for meaningful RRI measurements. Therefore, researchers did not analyze the northern-most Maine counties for disproportionality.<sup>148</sup> The report attributes the growing minority youth population in Southern Maine to African immigration.<sup>149</sup> Research also indicated black and African-American youth experience arrest and referral at higher rates than their white peers. Additionally, these youth experienced diversion less than white youth. But since the black and African-American category does not distinguish between African-Americans and ethnic Africans, immigration's impact on Maine's juvenile justice system remains unknown.<sup>150</sup>

The 2009 report also included results from interviews taken with 18 juvenile justice professionals, including judges, Juvenile Community Corrections Officers, and Assistant District Attorneys from around the state. These individuals voiced concerns regarding the way the Juvenile Justice system was working with the African immigrant population in Maine. They suggested that language and communication barriers, as well

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<sup>146</sup> Noreus, Becky, Teresa Hubley, and Michael Rocque. "Disproportionate Minority Contact in Maine: DMC Assessment and Identification." (University of Southern Maine Muskie School of Public Service: 2009), 5.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid, 1.

<sup>149</sup> Ibid, 2.

<sup>150</sup> Ibid, 2.

as limited youth community programs, propel crime and juvenile justice contact amongst African youth (see appendix from Maine probation juveniles and DYS juveniles).<sup>151</sup>

Most recently, Maine began tracking immigrant youth in the Long Creek Detention Center. Before each juvenile enters the facility, a corrections officer issues a detention form, or survey, which gathers information regarding the juvenile's personal background, court case, and reason for detention. The survey began tracking information regarding juvenile immigration status in 2012.<sup>152</sup> These questions prove particularly important in gauging juvenile justice system involvement by members of Maine's growing immigrant and refugee population.

The survey asks several questions to probe the juvenile's ethnic background.<sup>153</sup> Between 2012 and October 2013, 85 minority juveniles were surveyed, of which 80% identified as Black, 16.5% as Asian, and 3.5% as Hispanic. When asked if their family had recently arrived in the United States, 14 juveniles responded yes. Of these families, 6 came from Sudan, 2 from Somalia, and the others from Congo, Kenya, and Qatar. Additionally, the survey gauged family language background. When interacting with law enforcement, twenty-one juveniles responded their parents would need a translator. Acholi, Arabic, French, and Somali proved the most common languages among juveniles, with Vietnamese, Spanish, and Neur translators requested, as well. These surveys indicate minorities in Maine are represented in the juvenile justice system and come from a variety of different racial, ethnic, linguistic, and cultural backgrounds.

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<sup>151</sup> Ibid, 3.

<sup>152</sup> I gained access to the Long Creek Detention surveys through Christopher Northrop, a professor at the University of Maine School of Law, and member of the Maine Juvenile Justice Advisory Group. I worked for Professor Northrop in the summer of 2013. All surveys were redacted, so that names and other identifying information were kept private.

<sup>153</sup> Sample redacted form included in Appendix.

Tapping into the immigrant and refugee population in Maine proves important to understand and respond to DMC because these youth may experience different factors that contribute to their contact with the juvenile justice system. These include the lack of community resources and problematic communication in contact with the juvenile justice system. The Disproportionate Minority Contact mandate must adjust its methodology to allow for accurate representation of local state populations. Maine officials have taken the initiative to do this on their own, but until Congress reforms the mandate's language to account for these sorts of variations, the mandate will be ineffective in measuring and remedying some inequalities in the juvenile justice system.

## **Conclusion**

In analyzing RRI measurements from across New England, we see that states experience many challenges in implementing the Disproportionate Minority Contact mandate. Case studies reveal failure to gather full data sets and use of static racial categories that prevent states from accurately analyzing their local youth populations. The mandate underestimates the complexity of gathering data from a myriad of state agencies. Furthermore, low standards for compliance keep state and local agencies from unifying data-gathering methods. Knowing the state can achieve compliance at such a low threshold, state offices have little incentives to change their ways. But without reliable measurements, states cannot redress racial inequalities in juvenile justice.

Maine's experience indicates a problematic aspect of Disproportionate Minority Contact lies in racial categories. Recall that the Justice Department defines minorities in both racial and ethnic terms, using census categories: African-American, American Indian, Asian, Pacific Islander, and Hispanic categories. These racial categories put forth

by the Justice Department are used to gather data and analyze populations. But these static categories do not fully represent dynamic population diversity; rather, they disguise other sources of diversity. With surging immigration rates, these racialized categories become increasingly varied. For example, the African-American category includes youth with varying skin color, from both the North American continent, the African continent, and beyond. Likewise, the Hispanic category includes those from Mexican, Dominican, Puerto Rican, and Spanish decent, among other ethnic backgrounds.<sup>154</sup> What do these youth really have in common, other than their skin color, national origin, or language? Static racial or ethnic categories lose significance as our population continues to diversify. This issue may be particularly important in states where recent immigrants constitute a significant proportion of the people of color.

Furthermore, as evidenced by the Vermont and Massachusetts case studies, the legislative standard regarding state compliance with the Disproportionate Minority Contact mandate appears troublesome. Currently, states must report RRI every three years, and must show plans addressing observed disparities. However, states are not required to show any progress in redressing these disparities. In 1990, the Office of Juvenile Justice and Delinquency Prevention released the first Technical Assistance Manual to promote uniform state approaches to Disproportionate Minority Contact. But states have never been required to read, follow, or consult the technical manual. While states may have the ability to creatively address local issues, the Justice Department does not facilitate collaboration between states. Furthermore, the low standard for compliance does not encourage states to act urgently.

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<sup>154</sup> Rodriguez, Clara E, *supra* note #34.

Twenty-five years after the Justice Department first required states to track and analyze racial inequalities amongst criminal youth, states have not determined the full extent and sources of these disparities. Ultimately, trouble implementing Disproportionate Minority Contact suggests the mandate is simply too tall an order for state juvenile justice systems to fulfill. Lacking resources and incentives, progress depends on driven and enthusiastic state officials to successfully conduct DMC studies, and work towards remedying racial inequalities in juvenile delinquency. But would gathering accurate RRI measurements even help solve racial disparities in juvenile justice? A look into the sources of these crimes can help explain the Justice Department's inability to curb racial inequalities in the juvenile system.

## **CHAPTER 4**

### **The Limited Reach of the Mandate: Factors Creating Disparities**

#### **Introduction**

This chapter analyzes the societal factors contributing to Disproportionate Minority Contact's failure to curb racial disparities in the juvenile justice system. As we learned in Chapter 2, Disproportionate Minority Contact legislation tasks states with detecting disproportionality, identifying the source of this inequality, and remedying racial disparities in their local juvenile justice systems. This chapter revealed several problematic elements built into DMC legislation, such as ambiguous language and weak enforcement strategies. In Chapter 3, we analyzed the effectiveness of Disproportionate Minority Contact by studying implementation efforts and problems in New England, particularly in Vermont, Massachusetts, and Maine. But the question remains: why exactly do racial inequalities in the juvenile justice system persist? Is discriminatory treatment in the juvenile justice system the only explanation of disproportionality? Is the juvenile justice system truly equipped to remedy broader, societal factors, leading to disproportionality and redress persistent racial inequalities?

Two competing theories explain minority overrepresentation in the juvenile and criminal justice systems. The first theory claims the justice system discriminates against certain groups, pulling them into the system, and then earmarking these individuals as criminals, keeping them in the system disproportionately. The second argues that underlying social conditions create and perpetuate differing rates of delinquency among social groups, and that disproportionality in juvenile justice simply reflects these underlying differences. Many factors contribute to delinquency, including but not limited

to, poverty and disadvantaged neighborhoods and poor schools and their disciplinary policies. In this view, to understand why racial disparities in the juvenile justice system persist requires that we look outside of the juvenile justice system.

Despite widely accepted and publically acknowledged theories of criminology, the Disproportionate Minority Contact mandate does not address and has no impact on underlying social conditions. Disproportionate Minority Contact encourages state juvenile justice systems to perform an internal audit to detect practices or policies fueling racial disparities in juvenile justice processing. By its internal system focus, DMC ignores the societal conditions affecting delinquency. This chapter examines several of these societal factors, including poverty and disadvantaged neighborhoods and disparities in school discipline, which drive disparities in juvenile delinquency. Further, this chapter explores police tactics and federal criminal justice initiatives, which also drive disparities in entering the juvenile justice system. Racial disparities in poverty reflect a fundamental social structure which help shape how these latter institutions, namely police departments and public schools, function. Although both institutions utilize tactics that are non-discriminatory in intent, clear disparities in their outcomes cannot be overlooked. This chapter analyzes these factors, showing that underlying social conditions create and encourage delinquency, and institutionalized practices perpetuate racial disparities in delinquency.

### **Disparities In Conditions: Poverty and Disadvantaged Neighborhoods**

In 1967, President Lyndon B. Johnson's Commission on Law Enforcement and Administration of Justice released the following statement:

“The Commission... has no doubt whatever the most significant action that can be taken against crime is action designed to eliminate slums and ghettos, to improve education, to improve jobs... We will not have dealt effectively with crime until we have alleviated the conditions that stimulate it.”<sup>155</sup>

Poverty, particularly concentrated poverty, greatly contributes to delinquency. In America, minorities experience poverty and live in areas of concentrated poverty more often than do whites. Although many assume housing segregation no longer exists in America, contemporary data paint a different picture.

In 2012, the median household income for all Americans was \$51,017, but varied greatly according to race and ethnicity.<sup>156</sup> Asians earned the greatest income, with a median earning of \$68,636.<sup>157</sup> The median income for white, non-Hispanics was \$57,009 and for Hispanics was \$39,005.<sup>158</sup> Black Americans earned the lowest median income, at just \$33,321 per year.<sup>159</sup> These differences can be seen over time in Figure 1 below.<sup>160</sup>

In 2012, 15% of Americans were living in poverty. Like income, poverty rates vary by race and ethnicity. In 2012, 9.7% of white, non-Hispanics experienced poverty and 11.7% of Asians did so. Amongst Hispanic and Black Americans, 25.6% and 27.2% of individuals experienced poverty, respectively.<sup>161</sup>

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<sup>155</sup> Tonry, Michael H, *Malign Neglect: Race, Crime, and Punishment in America*, (New York: Oxford University Press, 1995), 19.

<sup>156</sup> DeNavas-Walt, Carmen, Bernadette D. Proctor, and Jessica C. Smith, U.S. Census Bureau. Current Population Reports, P60-245, “Income, Poverty, and Health Insurance Coverage in the United States: 2012,” (U.S. Government Printing Office, Washington, DC, 2013), 7.

<sup>157</sup> *Ibid*, 5.

<sup>158</sup> *Ibid*, 5.

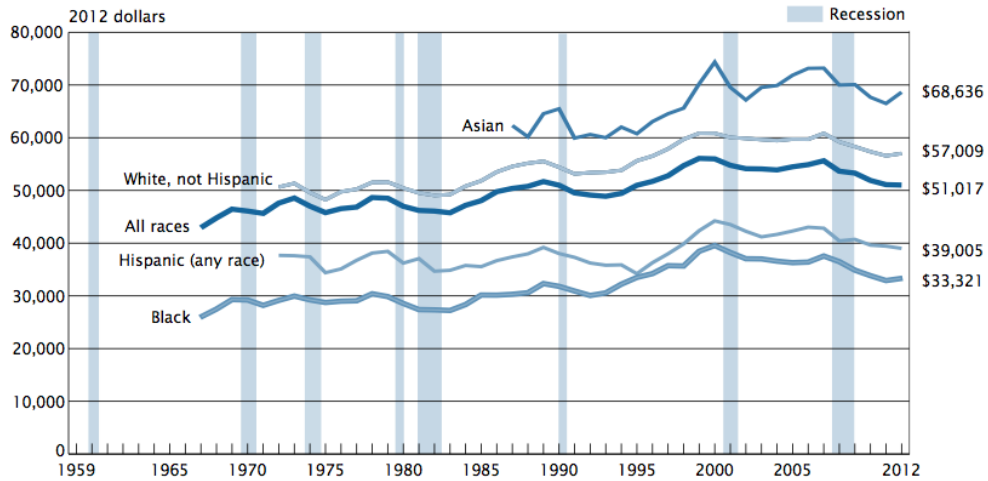
<sup>159</sup> *Ibid*, 5.

<sup>160</sup> *Ibid*, 5.

<sup>161</sup> *Ibid*, 13-15.



Figure 1.  
**Real Median Household Income by Race and Hispanic Origin: 1967 to 2012**



Note: Median household income data are not available prior to 1967. Implementation of 2010 Census population controls began in 2010. For information on recessions, see Appendix A.  
 Source: U.S. Census Bureau, Current Population Survey, 1968 to 2013 Annual Social and Economic Supplements.

Figure 1

Moreover, minorities are more likely to live in areas of concentrated poverty, especially after the recession.<sup>162</sup> Between 2005 and 2009, 12.2% of the white population lived in areas of concentrated poverty, compared to 49.2% of the black population.<sup>163</sup>

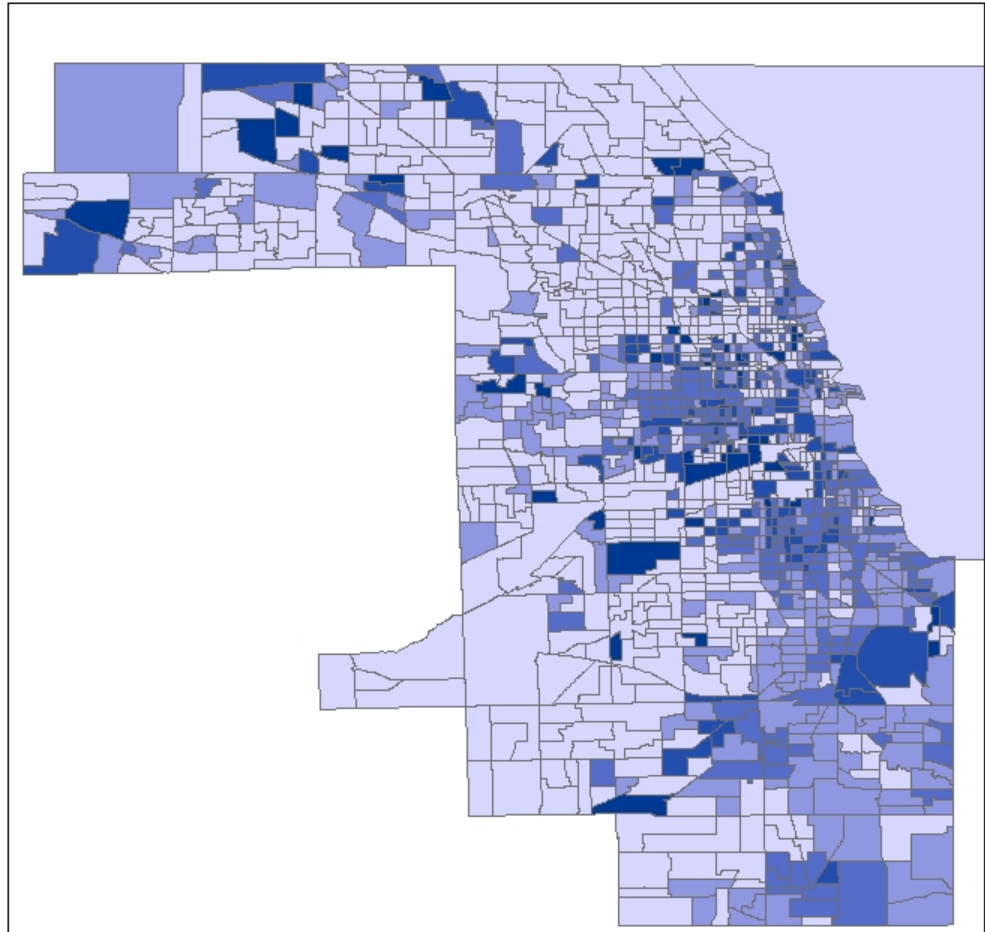
In order to understand just what concentrated poverty looks like in America, it helps to analyze particular metropolitan areas as examples. Map 1 depicts concentrated poverty in Cook County, Illinois. The official variable mapped is Poverty Status in the Past 12 Months (Black of African-American alone).<sup>164</sup>

<sup>162</sup> Lichter, Daniel T., Domenico Parisi, and Michael C. Taquino. “The Geography of Exclusion: Race, Segregation, and Concentrated Poverty,” *Social Problems* vol. 59 (University of California Press: 2012).

<sup>163</sup> *Ibid*, 376.

<sup>164</sup> U.S. Census Bureau, ACS 2006-2010 5-Year Estimates (2010)

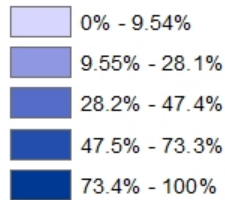
Black or African-American Individuals  
Living Below the Poverty Line  
Cook County, IL: 2010



**Legend**

**Cook County, Illinois**

**Percent of Black or African-Americans Living Below the Poverty Line**



Map 1

The map indicates the census tracts in and around the Chicago area are densely populated with Black or African-Americans living below the poverty line. Typically, concentrated poverty is indicated when 30% of individuals in a given census tract live under the poverty line. In Cook County, over 50% of census tracts are comprised of at least 28.2% of African-American residents living below the poverty line.

Not only are black families very likely to live in areas of concentrated poverty, they are much more likely than poor white families to live in these concentrated, poor neighborhoods. Map 2, also of Cook County, Illinois, depicts the Poverty Status in the Past 12 Months (White Alone, Not Hispanic or Latino).<sup>165</sup>

By comparing Map 1 and Map 2, African-Americans clearly inhabit areas of concentrated poverty at much higher rates than whites. Less than 12% of census tracts in Cook County contain 30% or more white residents living under the poverty line.<sup>166</sup> Clearly, African-Americans in the Chicago region experience concentrated areas of poverty much more often than Whites. This phenomenon is observed in metropolitan areas across the nation.<sup>167</sup>

Poor, minority individuals often live under different life circumstances than do white Americans. Racial segregation and concentrated poverty greatly impact crime and delinquency patterns among African-Americans. Just as African-Americans disproportionately experience residential segregation, African-

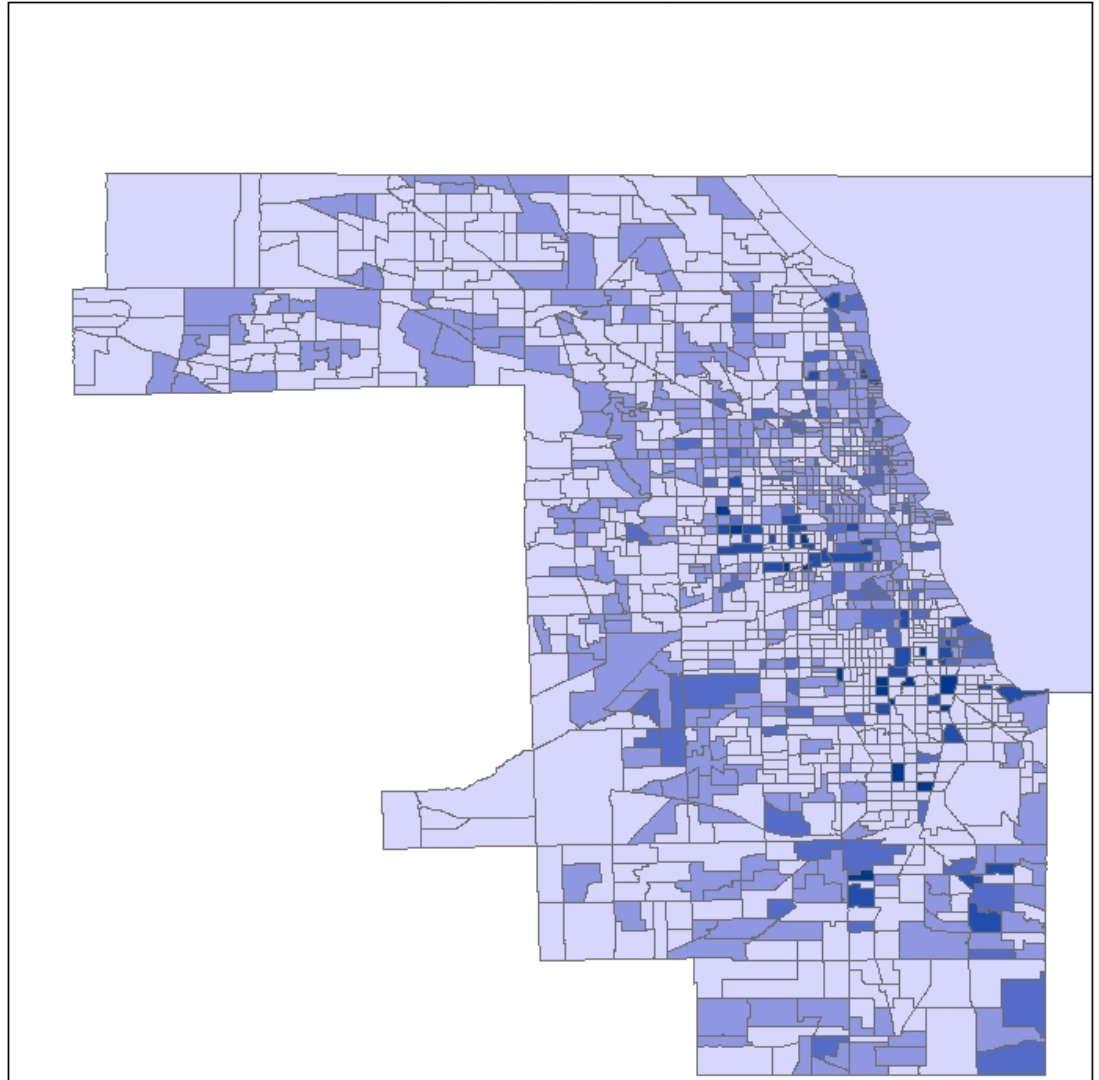
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<sup>165</sup> U.S. Census Bureau, *supra* note #163.

<sup>166</sup> U.S. Census Bureau, *supra* note #163.

<sup>167</sup> Lichter, "The Geography of Exclusion," *supra* note #162.

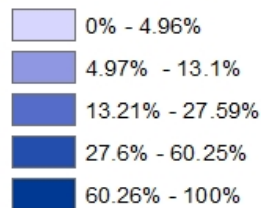
White, Non-Hispanic, Non-Latino Individuals  
Living Below the Poverty Line  
Cook County, IL: 2010



**Legend**

**Cook County, Illinois**

**Percent of White Individuals Living in Poverty**



Americans disproportionately encounter the criminal justice system. Several factors fuel this process.

Typically, residential stability and strong community organizations encourage strong ties, or bonds, among community members. These strong institutions work to prevent crime across society. This happens, according to social control theory, because when individuals are engaged with community institutions, they seek to comply with local laws to continue receiving rewards from those institutions. Individuals form bonds with these institutions, which criminologist Travis Hirschi defines as attachment, commitment, involvement, and belief.<sup>168</sup> The greater the bonds individuals feel with local institutions, the more likely they are to obey local laws, since following the rules enables them to continue to engage these with institutions. Ultimately, it's not the consequences they fear from breaking the law, but the rewards they seek to continue to obtain from family, school, and work. Strong institutions, such as good public schools, may provide greater resources and rewards to individuals than weak institutions, and therefore greater incentives for local residents to comply with local laws.<sup>169</sup>

If excluded from rewards in weak community institutions and from mainstream economic markets, residents of these neighborhoods can also organize to create alternative networks. Concentrated areas of poverty are often socially disorganized neighborhoods, where individuals don't experience conventional forms of order. Social

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<sup>168</sup> Agnew, Robert. "Social Control Theory And Delinquency: A Longitudinal Test," *Criminology* vol. 23 (1985), 47.

<sup>169</sup> Matsueda, Ross L. and Karen Heimer. "Race, Family Structure, and Delinquency: A Test of Differential Association and Social Control Theories," *American Sociological Review* vol. 52 (American Sociological Association: 1987), 827-828.

disorganization theory states that in disorganized communities, residents are more likely to develop “alternative opportunity structures,” which may include criminal subcultures. These alternative opportunity structures include street gangs, drug dealing, and prostitution.<sup>170</sup> Surely not every individual in an inner-city community engages in illegal activities. But those who do are making a rational choice to engage in these activities. This is not a matter of character. For inner-city youth, the short-term social rewards and financial benefits of selling drugs or committing a minor theft may greatly outweigh compromising college plans or professional success.<sup>171</sup> Moreover, the chasm created between those employed and those who engage in alternative markets results in a lack of common neighborhood values and an inability to institute effective social controls.<sup>172</sup>

The Disproportionate Minority Contact mandate fails to target poverty, housing patterns, and community institutions as factors contributing to racial disparities in the juvenile justice system. These social conditions rest entirely outside of the criminal justice system’s jurisdiction, and the implementation of DMC studies leaves concentrated poverty as a separate issue, independent of delinquency. In reality, the two are intertwined, and one problem cannot be solved without addressing the other. This oversight in DMC legislation again reinforces the mandate’s failure to remedy racial disparities in juvenile justice.

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<sup>170</sup> Pattillo-McCoy, Mary E, *Black Picket Fences: Privilege and Peril Among the Black Middle Class*. (Chicago: University of Chicago Press, 1999), 68-69.

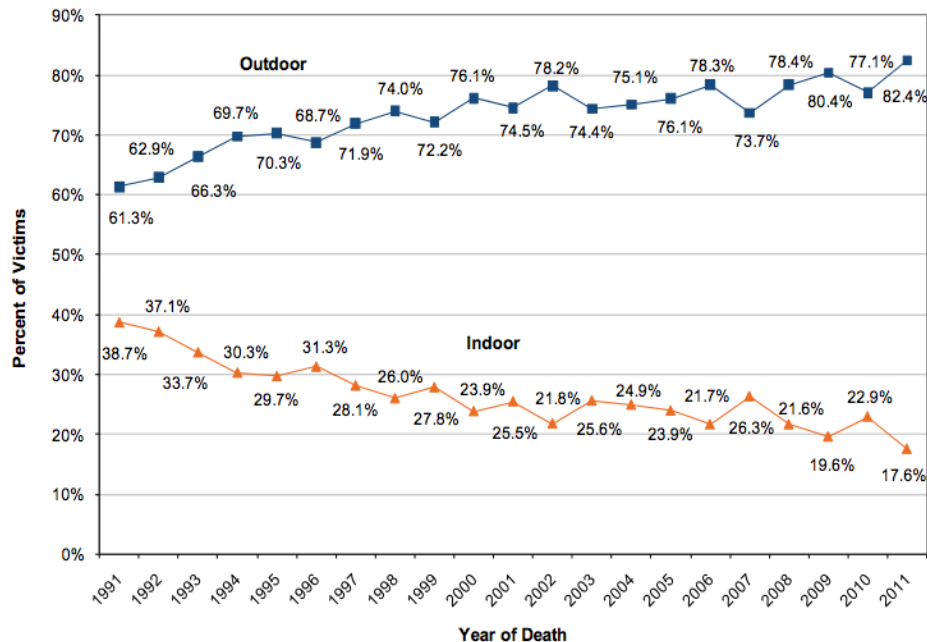
<sup>171</sup> Tonry, Michael, supra note #154, 135.

<sup>172</sup> Pattillo-McCoy, supra note # 169, 69-70.

## Disparities in Delinquency: Police Tactics and the Impact of Federal Initiatives

In the context of these neighborhood patterns, police tactics also perpetuate racial disparities in the criminal justice system. As evidenced above, African-Americans are more likely than other racial groups to experience poverty and also to live in areas of concentrated poverty, which often have high crime rates. Likewise, police are more likely to monitor these areas closely. In areas of concentrated poverty, particular kinds of crime often take place in public. In these neighborhoods, settling disputes and selling drugs often occurs on the streets, instead of in work place or in residences, as in middle or upper class neighborhoods.<sup>173</sup> For example, in 2011, 76 murders in Chicago occurred indoors, but 357 occurred outdoors. The following graph displays how this trend has increased over time.<sup>174</sup>

**FIGURE 2: PERCENTAGE OF MURDER VICTIMS FOUND OUTDOORS VS. INDOORS, 1991 TO 2011**



<sup>173</sup> Ibid, 42.

<sup>174</sup> Figure 2 from Chicago Police Department: Research and Development Division, "Chicago Murder Analysis, 2011," (Chicago Police Department, 2011).

Outdoor crime, specifically in socially disorganized neighborhoods, simply makes it easier for police to detect crime and make an arrest. Crime and violence in public (illegal actions with inherent visibility) warrant individual, departmental, and political action. In order to make a drug “bust” in a socially disorganized neighborhood, law enforcement officers can easily pose as drug buyers and enter the environment. Since buyers are relatively prevalent on public streets, this is a viable police tactic. In order to make an arrest in a middle or upper class community however, law enforcement officers may spend months working to arrest one or two individuals, because sales occur in private spaces and closed networks. Since police departments encourage volume of arrests, it is simply more efficient for law enforcement officers to police socially disorganized minority neighborhoods. This brings a bigger arrest pay off than planning one bust in an upper class neighborhood over the same period of time.<sup>175</sup>

Federal policies perpetuate differential policing in these neighborhoods, exacerbating racial inequalities in the criminal justice system. Racial disparities in the criminal justice system are particularly concentrated in drug charges, a consequence of the War on Drugs. This happens despite evidence that rates of drug use are consistent across racial groups.<sup>176</sup> In 1985, before the War on Drugs began, there were a higher proportion of whites sentenced for drug offenses than of blacks. However, as the War on Drugs took hold, these proportions rapidly changed. In 1985, 42.70% of sentenced state prisoners for drug offenses identified as black. By 1995, this figure grew to 59.60%.

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<sup>175</sup> Tonry, Michael, *supra* note #154, 106.

<sup>176</sup> Substance Abuse & Mental Health Data Archive. “Quick Tables: National Survey on Drug Use and Health, 2011” accessed April 29, 2014.  
<[http://www.icpsr.umich.edu/quickttables/quickconfig.do?34481-0001\\_all](http://www.icpsr.umich.edu/quickttables/quickconfig.do?34481-0001_all)>



Conversely, between 1985 and 1995, the percentage of white sentenced state prisoners for drug offenses dropped from 54.50% to 38.30%.<sup>177</sup> As evidenced here, blacks experience state prison sentencing for drug offenses disproportionately, compared to whites. This disproportionality arises not from differential rates of drug use, but from drug enforcement practices, that end up targeting African-Americans.

The War on Drugs, racially neutral in intent, clearly has a discriminatory outcome. As criminologist Michael Tonry argues,

“The issue is no longer whether social disorganization and economic disadvantage predispose the people affected by them to crime; it is whether the crime control policies and justice system practices can be made less socially destructive.”<sup>178</sup>

Although the War on Drugs appeared to be a criminal justice intervention to make neighborhoods safer, the campaign actually hurts these neighborhoods and damages individuals. By targeting low-level drug offenders and giving law enforcement officers maximum use of personal discretion, the War on Drugs has encouraged police to monitor concentrated areas of poverty and make arrests by volume. But selectively punishing minor drug offenders ignores the chronic social and economic conditions that frame these disadvantaged communities and the decision-making process of the residents.<sup>179</sup> Today, the policies from the War on Drugs era continue to function across our legal system. Unfortunately, there has been very little backlash against these policies, as not many politicians speak up to challenge these practices.<sup>180</sup> Policies enacted as part of the War on Drugs have become commonplace in police departments, and given the tendency for states to focus on the working of their juvenile justice systems as part of the

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<sup>177</sup> Bureau of Justice Statistics “Prisoner” Series, 1996-2005.

<sup>178</sup> Tonry, Michael, supra note #154, 7.

<sup>179</sup> Ibid, 36.

<sup>180</sup> Ibid, 92.

Disproportionate Minority Contact mandate, studies do not identify local police tactics reinforced by federal government policies as factors contributing to delinquency.

Furthermore, decisions by the Supreme Court permit continued use of law enforcement strategies that help produce racial disproportionality in the justice system. In 1987, the Supreme Court declared that without a showing of discriminatory intent, parties could not challenge racial bias under the 14<sup>th</sup> amendment. The case involved Congress' infamous distinction between crack cocaine and powder cocaine. The Court declared that even when shown statistical evidence of racially disproportionate effect, the law would stand without clear evidence of discriminatory intent.<sup>181</sup> This ruling, and others like it, make it virtually impossible to challenge discriminatory police and criminal justice policies in court.

Fundamental police tactics are perceived to be non-discriminatory, which the Supreme Court confirms, regardless of disparate outcomes. Ultimately, these decisions protect police discretion and the War on Drug policies. The Court continues to require evidence of discriminatory intent; discriminatory effect is not sufficient. Thus, not only do local and state police agencies and the federal government encourage police tactics that disproportionately target minorities, but the justice system protects this practice. So long as this continues, the Disproportionate Minority Contact mandate will have little meaningful effect on remedying racial disparities in juvenile justice.

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<sup>181</sup> Alexander, Michelle, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, (New York: The New Press, 2010), 108.

## **Disproportionate School Discipline: Suspensions, Expulsions, and Criminality**

Our schools also help drive racial disparities in juvenile justice. Often referred to as the “school to prison pipeline,” this phenomenon reflects America’s tendency to punish youth rather than educate them. The pipeline contains several elements, from failing public schools, to policing school hallways, and disciplinary alternative schools. School disciplinary policies, particularly suspensions and expulsions, greatly increase a student’s chance of coming into contact with the juvenile justice system.<sup>182</sup> In order to remain eligible for funding, the federal government requires schools to suspend and expel students for possessing deadly weapons on school grounds, but many school districts have developed school disciplinary codes that penalize students for much smaller infractions, such as minor disturbances during class time. Repeated removal from the classroom, coupled with suspensions and expulsions, are detrimental to student learning, and also to their social development and general wellbeing.<sup>183</sup> School disciplinary policies, a factor completely outside the jurisdiction of the juvenile justice system, contribute to racial disparities in juvenile delinquency, and yet, are not discussed in state DMC studies.

By examining the evolution of school disciplinary codes, we see the policies used to penalize students go beyond federal requirements. In 1994, President Clinton signed the Gun-Free Schools Act into law, which gave schools federal funding when they expelled and referred students to the justice system if the student brought a weapon to

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<sup>182</sup> Council of State Governments Justice Center, “Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement,” (New York: July 2011).

<sup>183</sup> American Civil Liberties Union. “What Is The School-to-Prison Pipeline?” accessed April 5, 2014 <<https://www.aclu.org/racial-justice/what-school-prison-pipeline>>

school. This legislation prompted many schools to adopt more stringent policies, such as suspending or expelling students for bringing any weapon to campus, beyond firearms.<sup>184</sup> By 1997, 79% of schools nationwide had adopted zero-tolerance disciplinary policies towards alcohol, drugs, and violence, as well.<sup>185</sup> Since the inception of these zero-tolerance policies, suspensions have become commonplace in our nation's schools. In 1974, 3.7% of all students experienced at least one suspension. In 2006, 6.8% of all students experienced at least one suspension.<sup>186</sup>

In 2011, researchers in Texas issued a report examining the intersection between school disciplinary records and juvenile delinquency. The study involved the seventh grade classes in Texas from 2000, 2001, and 2002, almost one million students.<sup>187</sup> In order to determine the impact of school discipline policies on future juvenile delinquency, researchers compared student disciplinary records with their juvenile records from their seventh grade year until their expected year of high school graduation. The Texas Education Agency and the Texas Juvenile Probation Commission provided these documents.<sup>188</sup> Given that Texas runs the second largest school system in the nation, with five million students, and that 2/3 of students are nonwhite, the trends identified in this study are particularly striking.<sup>189</sup>

Study participants included 51% male students and 49% female students. In terms of demographics, 14% of these students identified as African-American, 40% as Hispanic, and 43% as white or non-Hispanic. Additionally, 13% of students qualified for

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<sup>184</sup> Ibid, 3.

<sup>185</sup> Ibid, 3.

<sup>186</sup> Ibid, 5.

<sup>187</sup> Council of State Governments Justice Center, supra note #181, 1.

<sup>188</sup> Ibid, ix.

<sup>189</sup> Ibid, 1.

special education services, and 60% of students were classified as economically disadvantaged (receiving free or reduced-cost meals).<sup>190</sup> The evidence shows that 70% of the study participants obtained their high school diploma or GED on time.<sup>191</sup> At the same time, between seventh and twelfth grade, 75% of African-American students became involved with the school disciplinary system, compared to 64.8% of Hispanic students and 46.9% of white students.<sup>192</sup>

Only 3% of Texas school disciplinary actions occurred in response to federal requirements, where student behavior required suspension or expulsion for the school to continue receiving federal funding. The remaining disciplinary actions took place under local school policies. Those students suspended or expelled, particularly those repeatedly disciplined, were more likely to be held back or to drop out. In Texas, 31% of students suspended or expelled between seventh and twelfth grade repeated a grade at least once. In contrast, only 5% of students without a disciplinary history were held back. Additionally, 10% of students suspended or expelled between seventh and twelfth grade dropped out.<sup>193</sup>

Furthermore, students disciplined in school exhibited a much higher chance of coming into contact with the juvenile justice system. In Texas, more than one in seven students came into contact with the juvenile justice system between seventh and twelfth grade. Those students suspended or expelled for discretionary matters were three times as likely to be in contact with the juvenile justice system in the following year.<sup>194</sup> Only 2%

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<sup>190</sup> Ibid, 28.

<sup>191</sup> Ibid, 28.

<sup>192</sup> Ibid, 42.

<sup>193</sup> Ibid, xi.

<sup>194</sup> Ibid, xii.

of students who did not experience school disciplinary action became involved with the juvenile justice system.<sup>195</sup>

Given this clear connection between school disciplinary action and juvenile justice intervention, racial disparities in school disciplinary action become increasingly worrisome. In Texas, researchers found that many students experienced school disciplinary action, but as indicated earlier, these rates varied across gender and race. Over the course of their post-secondary education, 54% of Texas students experienced in-school suspension. These suspensions ranged from one hour to several consecutive days, where a student spent time out of his or her ordinary classroom.<sup>196</sup> African-American students and students with disabilities were most likely to be disciplined and removed from the classroom. Amongst African-American males, 83% were removed from the classroom at least once for a “discretionary violation.” Additionally, 74% of Hispanic male students were removed at least once, and 59% of white male students. Amongst females, 70% of African-American students had been removed at least once, 58% of Hispanic students, and 37% of white female students.<sup>197</sup> While the Texas school district disciplinary codes may not be discriminatory in their intent, the policies are certainly disproportionate in their outcome.<sup>198</sup>

With respect to out-of-school suspensions, 26.2% of African-American students them for their first behavioral violation, while 18% of Hispanic students and 9.9% of white students received the same treatment.<sup>199</sup> Ultimately, minority students encountered

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<sup>195</sup> Ibid, xii.

<sup>196</sup> Ibid, ix.

<sup>197</sup> Ibid, x.

<sup>198</sup> Ibid, 41.

<sup>199</sup> Ibid, 42.

the school disciplinary system many more times than other students, and were then treated more harshly in the system. Among African-American students, 25.7% received 11 or more discretionary disciplinary actions, while 18.1% of Hispanic students and 9.5% of white students experienced as many disciplinary actions.<sup>200</sup>

Across the Texas schools, 25.6% of African-American males became involved in the juvenile justice system, more than the 22% of Hispanic males or 13.9% of white males.<sup>201</sup> Similar trends existed among females, with 14.4% of African-American females coming into contact with the justice system, 12.7% Hispanic females, and just 7.9% of white females.<sup>202</sup> This translates to one in five African-American students in contact with the juvenile justice system, one in six Hispanic students, compared to one in ten white students.<sup>203</sup> As evidenced by this study on the Texas public school system, racial disparities in school disciplinary policies clearly contribute to racial disparities in juvenile justice.

Since this 2011 report, several other studies have investigated racial disparities in school disciplinary codes and the impact of disciplinary actions on juvenile delinquency. Currently, black students without disabilities are three times as likely to be suspended or expelled from school.<sup>204</sup> A UCLA study found that in 10 states, including California, Connecticut, Delaware and Illinois, in the 2009-2010 school year, more than 25% of

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<sup>200</sup> Ibid, 42.

<sup>201</sup> Ibid, 67.

<sup>202</sup> Ibid, 67.

<sup>203</sup> Ibid, 67.

<sup>204</sup> Rich, Motoko, "Administration Urges Restraint in Using Arrest or Expulsion to Discipline Students," in *The New York Times* (New York, January 8, 2014).

black students were suspended. Additionally, the increase of police officers on school grounds has dramatically increased criminal charges filed against youth.<sup>205</sup>

Minority students, particularly African-American males, clearly experience school disciplinary action at higher rates than their peers, and this trend directly correlates with racial disparities in the juvenile justice system. However, state DMC studies have yet to identify school disciplinary policies as a factor contributing to juvenile delinquency. These studies, by nature, call for state organizations to analyze their own systems: local police treatment of juveniles, juvenile justice processing and arrest methods, and resources for juveniles. Schools are clearly one source of racial disparities in the juvenile justice system, but schools reside entirely outside of the criminal justice system's jurisdiction. Therefore, suspensions and expulsions are unlikely to be identified, or remedied, as a result of DMC studies. Ultimately, this foreseeable inefficiency of the mandate prevents the legislation from having a meaningful impact on redressing racial disparities in juvenile justice.

In response to alarming school disciplinary policy trends, the Department of Education and the Department of Justice partnered to issue new guidelines for school disciplinary actions to reduce disparities among students. On January 8, 2014, the departments jointly issued the *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline*.<sup>206</sup> The letter guides schools in disciplining students without discriminating against them on the basis of race, color, or national origin.<sup>207</sup> The Departments recommend that schools approach discipline by blending several strategies,

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<sup>205</sup> Ibid.

<sup>206</sup> Lhamon, Catherine E. and Jocelyn Samuels, "Dear Colleague Letter," (U.S. Department of Education and U.S. Department of Justice: January 2014).

<sup>207</sup> Ibid, 1.



including conflict resolution, restorative practices, counseling, and structured systems of positive interventions.<sup>208</sup> Potential remedies to discrimination include correcting records of those students treated unfairly, providing compensatory academic services to those removed from academic instruction, implementing teacher disciplinary trainings, providing in-school behavior support for students, creating teacher-student mentoring programs, conducting forums for students and administrators to discuss disciplinary matters and policies, and revising disciplinary policies to be have less ambiguous language.<sup>209</sup> These remedies ensure compliance with Titles IV and VI of the Civil Rights Act of 1964.<sup>210</sup>

In order to encourage compliance, the letter concretely defines discrimination. It reaffirms the anti-discrimination provisions in the Civil Rights Act of 1964, prohibiting discrimination in schools and among individuals who are recipients of federal financial assistance.<sup>211</sup> The Departments indicate that they suspect that any racial disparities in school discipline may result from differential treatment from school policies or practices with adverse, discriminatory effects.<sup>212</sup> Additionally, the Departments state that both differential treatment and disparate impact of disciplinary policies constitute discrimination.<sup>213</sup> Here, the Department breaks from Supreme Court decisions discussed earlier in this chapter, acknowledging disparate outcomes are just as problematic as discriminatory intent. These disciplinary policies often limit students' instructional time,

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<sup>208</sup> Ibid, 1.

<sup>209</sup> Ibid, 21-22.

<sup>210</sup> Ibid, 22.

<sup>211</sup> Ibid, 2.

<sup>212</sup> Ibid, 4.

<sup>213</sup> Ibid, 6-13.

contributing to the “school to prison pipeline.”<sup>214</sup> In defining discrimination and outlining discriminatory treatment, the Department of Education and the Department of Justice accomplish a task that the DMC legislation did not. Disproportionate Minority Contact legislation is not grounded in the Civil Rights Act of 1964, because the Act does not address discriminatory practices of criminal justice institutions.

## **Conclusion**

Testimony and hearings recounted in Chapter 1 suggested politicians and community members thought carefully about racial disparities in the juvenile justice system in developing DMC legislation. So why has DMC proved to be so ineffective? As we have seen, a major reason is that it fails to account for factors outside of the juvenile justice system, such as poverty, police tactics, criminal sanctions, and school disciplinary policies, which contribute to disparities. Moreover, our justice system legally protects some of the discriminatory policies of police and criminal justice policies, regardless of their disparate impact. So long as that happens and racial disparities exist within institutions outside the juvenile justice system, racial disparities will persist in juvenile justice. Ultimately, many institutions drive disproportionately in juvenile justice, and many of these institutions operate beyond the jurisdiction of the Disproportionate Minority Contact mandate.

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<sup>214</sup> Ibid, 4.

## CHAPTER 5

### **Conclusion: Why DMC Has Had Limited Effect**

In 1974, 75.2% of juveniles arrested identified as white, and 22.5% as black. By 2002, 25.7% identified as black, and by 2012, 32.2% identified as black.<sup>215</sup> Despite the Disproportionate Minority Confinement and Contact mandates, these figures show that disproportionality regarding minority youth in juvenile justice has only increased. Although Disproportionate Minority Contact may have a marginal effect on rates of juvenile delinquency, the mandate has not remedied racial disparities in the juvenile justice system, as minority youth increasingly come into contact with law enforcement at higher rates than their white peers.

Optimistic politicians from the 1980's and 1990's crafted the Disproportionate Minority Confinement mandate, and later the Contact mandate, with high expectations. However, the language of the mandate was ambiguous. Although the Office of Juvenile Justice and Delinquency Prevention prescribed five steps to analyze and address minority overrepresentation in juvenile justice, they did not require states to complete these steps in their prescribed order. Although the mandate became a hurdle for states to overcome in order to receive full funding from the Justice Department, it did not require them to put any federal funding back into prevention programs, or into their DMC efforts, in any capacity. With little guidance and limited oversight by the Office of Juvenile Justice and Delinquency Prevention, the Disproportionate Minority Contact mandate fails to encourage states to actively research and remedy racial disparities in juvenile justice.

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<sup>215</sup> FBI. "Crime in the U.S., 2002- Persons Arrested," *Uniform Crime Reports* accessed December 13, 2013; FBI. "Arrests by Race, 2012," *Uniform Crime Reports*.

When states do actively work towards researching and remedying racial disparities in their local juvenile systems, they face many obstacles in implementing the mandate. In 2008, the U.S. Criminal Justice system contained 50 primary state law enforcement agencies, 3,063 sheriffs' offices, 12,501 local police departments, and a myriad of courts, probation offices, and juvenile detention facilities. Furthermore, these agencies employed over 1.2 million individuals.<sup>216</sup> In order for state juvenile justice offices to merely obtain accurate data regarding the races of youth in contact with the justice system, each of these offices and jurisdictions must conform to the same data-gathering practices. Unfortunately, uniform data-gathering practices regarding race and ethnicity are unrealistic at this time; neither the Justice Department nor state DMC agencies have the power to make these state and local agencies conform to data-gathering methods. Without accurate data regarding disproportionality, states cannot move forward to remedy disparities. But would accurate measurements really work to mitigate racial disparities in juvenile justice?

As we have seen, many factors contribute to the mandate's inefficiencies, and to increased contact between minority youth and the justice system. Schools, concentrated poverty, federal initiatives, and the justice system together create, perpetuate, and protect racial disparities in the criminal justice system. Disproportionate Minority Contact initiatives will never address these societal sources of racial inequalities in juvenile delinquency. By nature, the DMC legislation encourages state juvenile justice systems to examine their practices and policies to determine if they fuel racial disproportionality in juvenile involvement in the system. While these findings may help improve subtle biases

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<sup>216</sup> Reaves, Brian A. *Census of State and Local Law Enforcement Agencies, 2008*. (U.S. Department of Justice, Bureau of Justice Statistics: 2011), p. 2.

and inefficiencies in local systems, major forces contributing to juvenile delinquency exist entirely outside of the juvenile justice institutional structure. Until Disproportionate Minority Contact legislation adjusts to this fact, the mandate will not have a meaningful impact on racial disparities in juvenile justice.

### *Moving Forward*

Where do we go from here? Instead of continuing to fund the Disproportionate Minority Contact mandate on continuous resolution, politicians, juvenile justice workers, and academics need first to revisit the mandate. In reviewing the mandate, Congress should raise the bar for state compliance. Too often the Office of Juvenile Justice and Delinquency Prevention recognizes states' "future plans" as compliance with DMC. Compliance with the mandate should entail regular reports, and concrete action by state advisory groups. Furthermore, the Justice Department should require that states use a portion of juvenile justice funding towards DMC studies, juvenile crime prevention, and programs for youth. This will incentivize states to take the mandate seriously, and not view it simply as a hurdle to obtain funding.

Moreover, the federal government needs to invest in our underprivileged communities. Using a socioeconomic, not racial, lens is essential to doing this. Changing fundamental, underlying conditions is the only meaningful way to prevent juvenile delinquency and reduce disproportionate involvement in the juvenile justice system. Race often overlooks class in our criminal justice system. Adding a socioeconomic component to DMC, and to criminal justice reform in general, is integral to curbing racial disparities in the justice system.

“The Commission... has no doubt whatever the most significant action that can be taken against crime is action designed to eliminate slums and ghettos, to improve education, to improve jobs... We will not have dealt effectively with crime until we have alleviated the conditions that stimulate it.”<sup>217</sup>

The Disproportionate Minority Contact mandate may be useful in raising awareness of persistent racial disparities in juvenile justice, with the potential to spark a state movement both inside and outside of the justice system. Unfortunately, today, the Disproportionate Minority Contact mandate, and the tools states have to comply with it are not sufficient to remedy significant racial disparities in the juvenile justice system.

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<sup>217</sup> Tonry, *Malign Neglect*, supra note #155.

## **APPENDICES**

### **Open-Ended Responses Provided by Maine Probation Juveniles and DYS Juveniles**

## OPEN ENDED RESPONSES PROVIDED BY PROBATION JUVENILES

The following responses were taken directly from the interviews about the *police*:

(White Male) Many police officers are white so they treat their own better. They handle the white kids differently, they might be more physically aggressive with Blacks and Hispanics.

(White Male) Cops are racist!

(White Female) The cops told me not to hang around with kids from other towns who were "not white" and "from bad areas".

(White Female) Whites treated better because Blacks are labeled and blamed. More lenient with whites.

(White Male) Movies about cops beating up Blacks; Rodney King.

(White Male) Most of the cops are white around here, so whites are treated better.

(White Male) Hispanics are more known to be punks, known more to be street kids. If police officer looked at a Hispanic youth he'd be more apt to look for as much as he could to find on that kid as opposed to other youths.

(Latina/Hispanic Female) Police think that if your black or hispanic your automatically in a gang or steal.

(Latina/Hispanic Female) They hit my sister (she got into a fight at the YMCA). She couldn't calm down so they slapped her on the face. They aren't supposed to search or pat down girls and a male cop patted me down.

(Latina/Hispanic Female) I got arrested for a petty charge - vandalism. If it was a white kid they would have gotten off. Depends on race of cop. If a cop is white and sees a black or hispanic doing the littlest thing they will arrest them.

(Latina/Hispanic Female) If you see a group of white kids sitting somewhere they (cops) don't stop. But if you see a group of blacks and hispanics the cops stop and harass them. They search them for weapons and drugs.

(Latino/Hispanic Male) They threw me on the ground and hit me.

(Latino/Hispanic Male) Cop punched me in the stomach because he said I was being wise. They called me a little \_\_\_\_\_in spic.



(Latino/Hispanic Male) Police celebrate when they arrest people - its like a game. The more they arrest the better they think they are.

(Latino/Hispanic Male) Black and hispanics are harassed more often whereas white kids are rarely bothered.

(Latino/Hispanic Male) I used to get in fights with whites and I would get arrested and they wouldn't.

(Latina/Hispanic Female) I've seen cops put a gun to my seven year old brother's head to get information.

(African-American Female) Police assume all Blacks and Hispanic youth are involved in gangs and tend to harass them frequently. The Blacks and Hispanics are more likely to be physically abused than white youths.

(African-American Male) Cops always beat blacks, I only see black people getting arrested.

(African-American Female) There are more white cops than blacks and white cops do not know how to handle and talk to black kids - they (white cops) are always on the defense.

(African-American Male) Cops are more respectful to whites. Cops tend to see whites as innocent. Whites will get second chances whereas blacks won't.

(African-American Male) When they handcuffed me they put them on too tight, my hand was cut. They had a snobby attitude with me. If I said something they said shut up and they always cut me off. Told me and the other kid in the cruiser to shut the \_\_\_\_ up!

(African-American Male) Police officers bent my leg back and punched me. I was verbally and physically abused by a white officer while a black officer stood by and let the white officer beat me up.

(African-American Male) I think cops need to sign a contract to prevent crookedness.

(African-American Male) The police brought my arm back so far (while handcuffing) they dislocated my left shoulder.

(African-American Male) Police think all black kids are up to something no good and tend to stop and harass them more than white kids.

(African-American Male) I can't sit on my porch without getting harassed by the cops.

The following responses were taken directly from the interviews about the *courts*:

treat white juveniles better and give them less of a sentence

(White Male) Judges want to put minorities away because they are more of a threat to society.

(Latina/Hispanic Female) African-American and Hispanic youth usually get worse sentences.

(Latino/Hispanic Male) Prosecutors are always trying to sink you in the system.

(Latino/Hispanic Male) White kids are treated better. Hispanic kids are treated worse than blacks and whites.

(Latina/Hispanic Female) Prosecutors and judges treat whites better because they really don't do anything wrong. In some cases whites do commit serious crimes, but judges and prosecutors still treat them better and let them off.

(Latina/Hispanic Female) The newspaper plays blacks as being bad. If one black does it the courts assume all blacks do it.

(African-American Male) Judges are biased when dealing with blacks. They feel whatever they are charged with they did it. They receive longer sentences or more community hours.

(African-American Male) If black kid is in for murder and white kid is in for murder they are treated differently. Black kid they try to stick it to you whereas white kid they try to bring the charge down. If Eddie O'Brien was black they would of tried him as an adult.

(African-American Female) I got called an idiot by the judge.

(African-American Male) If a white kid and black kid are charged with the same crime, chances are the white kid will receive no punishment but the black kid will receive some time.

(African-American Male) Blacks are guilty until proven innocent when it should be innocent until proven guilty.

(African-American Male) Courts feel white people are better off than minorities.

(African-American Male) White kids are treated better than blacks, hispanics and Asians.

## OPEN ENDED RESPONSES PROVIDED BY DYS JUVENILES

The following responses were taken directly from the interviews about the *police*:

(African-American male) One day after school some kids got in a fight. I was standing there when the cops arrived and they immediately searched me and all the other minority kids, not the whites. They searched me for no reason, I wasn't even in the fight.

(African-American male) Whites are treated better because they dress proper, whereas blacks wear baggy cloths and are always getting searched. If you live in the hood you will get searched, whereas if you live in a nice area you won't. Appearance has a lot to do if you are going to get stopped.

(White male) Police don't want minorities around here so they arrest them and put them in jail. Cops think that whites were here first and it should stay that way.

(African-American male) One time cops arrested me for drugs when I didn't even have them on me. The drugs were around the area I was hanging, but not on me. I wouldn't doubt it if the cops planted them there. In court the cop that arrested me lied on the stand and the court caught him in his lies and he started to laugh.. He said he arrested me with speaker wire, drugs, and a huge knife. On the way out of the court he told me he would get me the next time. I hate cops!

(African-American male) Police think that all blacks are drug dealers, carrying guns, and are up to no good. They search us all the time for nothing. You could be walking home from school with a book bag and they would stop and search your bag. One time police said they had reasonable suspicion to search me for a gun. I saw them coming and didn't even run. Common sense would tell you if I had a gun I would run. They searched me and found nothing. Sometimes they search you three or four times in the same day. They tell you if they see you around here again they will arrest you. Where do they want me to go its where I live. (Incident happened in front of his house).

(African-American male) Police are quick to draw and aim their guns at a black person. They think blacks are the criminals and they are intimidated by blacks so we are locked up more frequently.

(Cape Verdian female) Hispanics and blacks are treated the worse by police. Hispanics because of the language barrier between them and police, and blacks because of their stereotype. For example if a black kid has a beeper police automatically assumes that the youth is selling drugs.

(White male) Whites are treated better than minorities by police because society sees minorities as a threat to society. People are constantly hearing about minorities getting in trouble, therefore they assume that all minorities are up to no good. There is definitely a negative stereotype associated with minorities by police.

(Latino/Hispanic male) The police put the gun to my head, dropped me on the floor and threw me around the car.

(Latino/Hispanic male) One time the cops yelled and swore at me. I got thrown up against a car and they didn't read me my rights - or my two brothers either.

(African-American male) Whites are treated better than hispanics and blacks by police because they really aren't in gangs like blacks and hispanics are.

(African-American male) If I'm in a predominantly white community hanging out cops automatically stop and search me.

(Latino/Hispanic male) When I'm out at night with my brother, we get pulled over and they keep us there for awhile and question us. You'll see a group of white kids walk by and the cops will pass right by them.

(Latino/Hispanic male) I got arrested by the police for sticking up for my boy. The cop assaulted my friend - punched him in the stomach and dragged him on the floor. I tried to stop the cops from beating down my boy and they arrested me for disorderly conduct.

(White female) Asians are treated the worst by police because they look more suspicious.

(White female) Police are rough with everybody. They do whatever they want. They hit me in the face and stomach. Swearing is without saying. (inner city youth)

(Latino/Hispanic male) Cops think that whites are goodie to shoes. They always cut them slack. Cops think that blacks and hispanics are always involved in negative activities. They don't like the clothes we wear. They don't let us express ourselves.

(Latino/Hispanic male) When the cops arrested me they choked and threatened me. They told me that I was going to do big time now - in the big house with a nice big roommate.

(Latino/Hispanic male) Whites are perceived as innocent, not a threat. Whites are able to sneak away from the police. Cops treat blacks and hispanics the worst because of their stereotypes. They see us as a threat to society. Police think if your black or hispanic your in a gang.

(White Portuguese male) Whites are treated better by the police because of the environment they live in (nice neighborhoods). Minorities are treated the worse because they live in bad areas (projects).

(African-American male) Whites are treated better by police because most cops are white. Blacks are treated the worst because they say racial comments to us. For example: When they arrest you they say move your black ass over there boy ( when they want you to move).

(African-American male) Cops are constantly coming around harassing and threatening us.

They grab us for no reason and search us without a warrant.

(Latino/Hispanic male) Hispanics and blacks are treated the worst by the police. They don't care about our rights. Society thinks that minorities are animals in the free world, therefore they must lock them up.

(White female) Cops call blacks and hispanics trash, tell them their no good and they shouldn't be here. Most cops are white.

(White male) Cops are fair around my area (rural), but from what I hear in other areas, minorities are treated pretty bad.

(White male) Rich kids are treated better by the police, whereas kids that live in bad neighborhoods are always getting stopped by the cops for questioning.

(White male) Cops were really rough with me. Cops put the cuffs on real hard. They always twist them and make them tighter. When they put me in the cruiser they would tell me to watch my head and then they would push me real fast in the car and make me hit my head. Walking into the station they would always bump me into walls with the cuffs on. They would always swear and yell at me.

(White male) Police are always harassing me and telling me that I am going down. They search me without a warrant all the time. Whenever, they see me they automatically pat me down. (This youth lives in the inner city)

(African-American male) Me and two other black guys and one white guy were arrested for disorderly conduct. The blacks were held while the white guy was set free. The blacks had to have their parents pick them up. The white guy was allowed to go free on his own recognizance.

(African-American male) White kids are treated better by the police and are not harassed by white officers.

(African-American male) Police harass me constantly They made me strip search in front of everyone.

(African-American male) Blacks are blamed for everything. If a crime is committed and the police have no suspects they will blame it on a black man real fast.

(White female) Some cops are racist. Cops beat up Puerto Ricans and Camobians all the time. Whites are treated better because most cops are white.

The following responses were taken directly from the interviews about the *courts*:

(White male) My court appointed lawyer lied to me. He said he was going to commit me to DYS and I would be out in a month when I turned 17. I turned seventeen last June and I am

still in DYS. He never told me that DYS had the discretion of determining how long I would be committed for.

(Latino/Hispanic male) Me, two black dudes, and a white dude were all at a court that was in a white community. The white dude was in for beating his girl, being drunk, stealing a car, and violating a restraining order. The DA took the white dude upstairs and cut a deal for him (probation). A black or hispanic dude would never get a deal in this court because all the court staff in this area are white. I was held on \$10,000 bail, while the black dudes were detained also for similar offenses as the white dude. I think it was the court's way of trying to tell us to stay out of this area.

(Latino/Hispanic male) When I was in court they never told me what was going to happen to me. My mom wanted to ask questions - my mom doesn't speak or understand English well, and they wouldn't tell her anything. I had a court appointed lawyer. They never told  
- what's

(White female) Black kids are treated the worst by the courts because the court people think that blacks are always starting the trouble. Black parents are usually bad, and most black people come from bad areas. Courts think that they aren't gonna do anything good so they lock them up.

(White male) Judges are more likely to set higher bail for blacks accused of similar crimes as opposed to whites because people look at them as a violent race.

(Latino/Hispanic male) In \_\_\_\_\_, the court was all white. I was the only person of color. A white kid with the same charges went home with his mother. For me they made bail \$10,000. When I got the money they raised the bail.

(African-American male) When I was in \_\_\_\_\_ court, I saw a white and black kid with the same offense (stolen car). Black kid got locked up, white kid got let go. Its just the way it is.

(Latino/Hispanic male) Judges set higher bail for blacks and hispanics because they don't want us back in the ghetto. They see as a threat to society. They set high bail because they know that our parents can't come up with it.

(African-American male) Whites get treated the best by the courts. Me and a white kid were both at court the same time. The white kid was placed in the new cell and I was put in the old cell. He also got food and I didn't.

(Latino/Hispanic male) When I was in court a black kid was in with me for similar charges. Black kid got 30 days, I got 7 to 9 months. Black kid had black caseworker.

(African-American male) I was in court for car jacking with a replica handgun I got \$10,000 bail. A white dude was in for car jacking with a real handgun his bail was only \$1,000.

(White male) White youth are treated better than minorities by the courts because they come in better dressed.

(White female) One time me and my friend got caught with drugs. We both got caught with the same amount at the same time and I got a month of community service and he got 2 years in jail. The reason he got more is because he was Puerto Rican.

(White male) Blacks are treated the worst by the courts because of the way they come in dressed, the way they talk and sound. Blacks are also always coming back to court and judges don't like that.

(African-American male) Blacks are more likely to be arrested, found guilty and sentenced.

(African-American male) If a black man was caught for murder and no fingerprints or anything to link him to the murder, chances are he will be found guilty. If a white person on the otherhand same thing he would be cleared of all wrong doing.

(African-American male) The court set my bail for one million dollars. I read up on my bail and it was not reasonable. My bail has been the highest in history. I've seen white kids get lower bail for murder than blacks.

(African-American male) Judges set higher bail for blacks because they want to keep them locked up as a way of keeping the streets clean and free of crime.

(African-American male) My bail was set at one million dollars and a white kid with the same charge (murder) his bail was set at \$50,000. Both of us were from \_\_\_\_\_.

(African-American male) Society is threatened by blacks and the only way to handle them is to lock them up when they break the law, no matter if it's their first offense.

(African-American male) The police do not want blacks on the streets. They feel if one black kid is bad then the whole race is bad, therefore should be locked up.

(African-American male) My bail was \$900,000 and a white kid with the same exact crime his bail was set at \$300,000.

The following responses were taken directly from the interviews about the *DYS*:

(Cape Verdian female) Girls that are from Boston and Springfield are treated the worse by *DYS*. Most staff here perceive urban areas as dangerous. Girls from rural and suburban areas are treated better by *DYS* staff.

(White male) Because of my offense (sex offense) *DYS* staff would take points and privileges away from me when I would play wrestle with other residents. The residents that I would play wrestle with wouldn't lose any points. This happened about 5 to 6 times.

(Cape Verdian female) There are two girls here that were co-defendants for the same exact offense. One is black and the other is white. The black girl got more time than the white girl for the same exact offense.

(Cape Verdian female) In this secure facility all the white girls are in here for petty crimes, whereas the blacks are in for serious crimes.

(Latino/Hispanic male) If DYS staff at this program see two or more hispanics sitting together, they automatically separate them because they think we are devising a plan of attack or they see us as a gang. Two hispanics can never room together in this place, but they put two whites and two blacks together in the same room. At this program they don't have any Spanish staff. Staff doesn't allow us to speak Spanish because they say they can't understand us. They have no respect for our culture. I have to write a paper just to watch the Spanish station. My mother only speaks Spanish and when I call her on the telephone they don't let me speak Spanish, therefore I am unable to communicate with her.

(Latino/Hispanic male) Spanish kids get treated the worse here by staff because only one Spanish staff person works here. When Spanish staff person is around white staff is cool, but when Spanish staff person isn't around white staff bust my balls. It's not all of them, but most of them. White staff don't understand where us hispanics come from.

(Latino/Hispanic male) I don't eat seafood and staff makes me eat it. There is a white kid in here who doesn't eat seafood, but they give him something else to eat. Staff also gives me less time in the shower than other residents.

(White male ) Asians are treated the worse by DYS staff. I had a friend in my evaluation unit that was Cambodian and staff always made fun of how he talked and acted.

(White male) I would like to see less violence by DYS staff. When I was in evaluation I saw a kid get a black eye from staff for doing something very minor. Staff are rough when restraining youth. If you complain about it they say come on take it like a man. They restrain you by a drop of a hat - from getting a coke when your not supposed to, too getting in a fight.

(Latino/Hispanic male) Whites get treated the best at DYS. At night staff would take them to the cafeteria buy them things and let them stay up late. Staff thinks that all minorities are in gangs and are punks. I have Asian friends that have no chance when they get locked up.

(White male) DYS staff says racial slurs about minorities all the time. Most of the staff here are white, therefore whites are treated better.

(African-American male) Hispanics are treated the worse by DYS staff because of language barrier - a lot of hispanics in the system can't speak English therefore they are harassed, picked on etc. A lot of staff speak Spanish, but they are all on the same shift.

(African-American male) If the system was more willing to work with hispanic kids they



would be better off. They should put more time into understanding from where these kids are coming from and respecting their culture.

(Latino/Hispanic male) DYS staff should learn how to better restrain a resident without hurting them. They broke my nose, scarred my face and left shoulder when restraining me. My mother has pictures to prove this.

(African-American male) DYS staff give whites second chances whereas we don't.

(White male) DYS staff get in my face and call me a faggot, a \_\_\_\_\_ing pussy, and a wimp because of my charge (Rape). When I was taking a shower one of the kids said I was looking at him and I wasn't. When I am in the showers with others, staff yell out my charge to other residents and they would laugh and tell me to clean my ass. When staff restrain me they laugh about it and talk about how they roughed me up to others. One staff person told me the reason he likes his job is to restrain people.

(White male) DYS staff at this program treat minority residents better because most of the staff here are minorities. Only two or three are white. Same race equals fair or better treatment.

(White male) Sex offenders are treated the worst by DYS. A lot of time we go last for showers. Staff should learn how to properly restrain youth and other staff members should be present when a restraint is taking place.

(White female) DYS staff make fun of how black people talk. All white staff here except for one lady who is half black/half white. No Spanish staff.

(Latino/Hispanic male) Ghetto kids get treated the worst by DYS staff. They harass us, threaten us - they treat us like animals because of our background. They take advantage of their authority over us.

(Latino/Hispanic male) Minorities get treated like garbage by DYS staff. Staff spit in minority residents drinks. We don't get full meals at dinner time and the proper necessities. Verbal abuse a lot - you \_\_\_\_\_in spic, you \_\_\_\_\_in black mother \_\_\_\_\_er etc. Some staff are prejudice. Instead of trying to make us feel good about ourselves they lower our self esteem with these actions and comments.

(Latino/Hispanic male) I don't get listened to. If I bring up an issue it doesn't get resolved. Staff person grabbed my neck for no apparent reason while in time out room and kept on poking me and pushing me. This incident resulted in staff member getting fired. Clinicians, staff, and caseworkers don't listen to my concerns.

## **Long Creek Detention Center 2012 Intake Survey**

DETENTION FORM

Juvenile: [redacted] Race: B (M) / F Age: 17 DOB: 3/24/1996  
Defense Attorney: Gina Yarrastno ADA: C Thibeault  
Reason for Detention:  New Crime  PV  VCR  Warrant  
New Charges: Probation Violation  
Location of detention hearing:  Portland  Bridgton  West Bath  
Court date: 8/29/13 Judge: Powers

The Arrest

- 1. The hold was authorized by:  the assigned JCCO  another JCCO  the duty worker  
 the prosecutor; OR  the juvenile was held at a court appearance.
- 2. Did the parents refuse to take Juvenile home following arrest? Yes (No)
- 3. Would the Juvenile have been released to a shelter if a bed had been available? Yes (No)
- 4. Was the Juvenile tested for illegal drugs or alcohol? Yes (No)
- 5. If yes, what were the results? Negative / Positive for: \_\_\_\_\_

The JCCO and Parents

- 6. Who is the JCCO? Andrew Moore Present for hearing? (Yes) / No
- 7. Were the parents present at the detention hearing? (Yes) / No
- 8. Do the parents need an interpreter? (Yes) / No
- 9. If yes, for what language is the interpreter needed? French
- 10. Has the family recently arrived in the United States? (Yes) / No
- 11. If yes, from which country have they arrived? Congo

School

- 12. Is the Juvenile suspended? Yes (No)
- 13. Is the Juvenile expelled? Yes (No)
- 14. Is the Juvenile frequently absent? Yes (No)

Services

- 15. Is the juvenile in DHHS custody? Yes (No) Custodian: \_\_\_\_\_
- 16. Does the Juvenile have a mental health case manager? Yes (No)
- 17. Has the Juvenile received, or will the Juvenile be referred to, the following services:

	Received in Past	Future Referral	Notes
Community supervisory program	<input type="checkbox"/>	<input type="checkbox"/>	_____
FFT	<input type="checkbox"/>	<input type="checkbox"/>	_____

The Detention Hearing

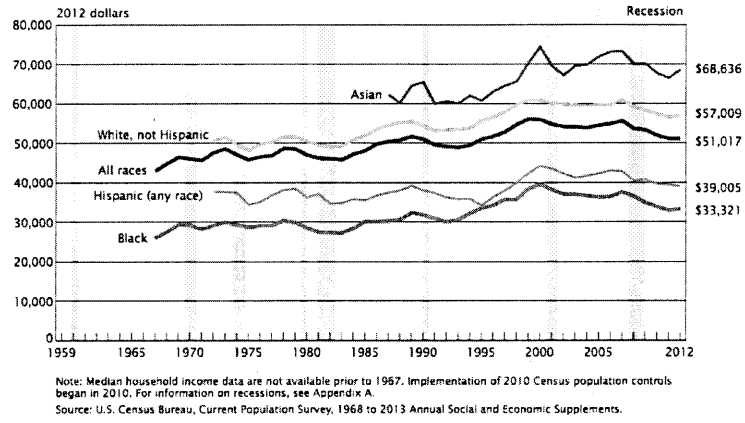
18. Was the detention hearing contested? Yes  No
19. Has the Juvenile been previously detained? Yes  No How many times? \_\_\_\_\_
20. Was a parent willing to take the Juvenile home?  Yes / No \_\_\_\_\_
21. Were other family members contacted for possible placement? Yes  No \_\_\_\_\_

The Hold

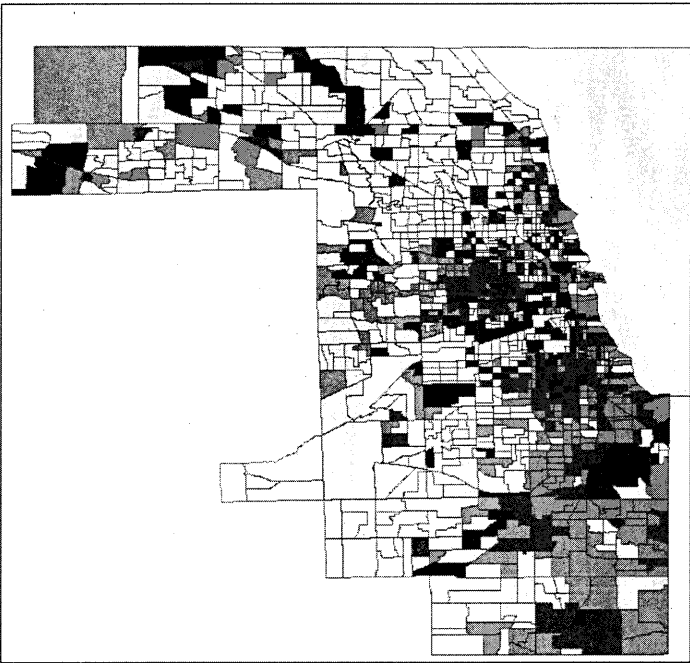
22. Did the court order the Juvenile held? Yes  No
23. Was the hold ordered as a shock sentence? Yes / No
24. If the Juvenile was held, is there a right to release? Yes / No
25. Will the Juvenile be released to a shelter if a bed is available? Yes / No
26. Will the Juvenile be released home once services are available? Yes / No
27. If yes, what services are being requested? \_\_\_\_\_
- Notes: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## **Color Images in Black and White**

Figure 1.  
**Real Median Household Income by Race and Hispanic Origin: 1967 to 2012**



Black or African-American Individuals  
Living Below the Poverty Line  
Cook County, IL: 2010



**Legend**

**Cook County, Illinois**  
**Percent of Black or African-Americans Living Below the Poverty Line**

0% - 9.54%
9.55% - 28.1%
28.2% - 47.4%
47.5% - 73.3%
73.4% - 100%

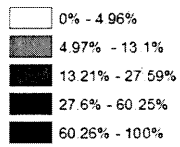
White, Non-Hispanic, Non-Latino Individuals  
Living Below the Poverty Line  
Cook County, IL: 2010



**Legend**

**Cook County, Illinois**

**Percent of White Individuals Living in Poverty**





**FIGURE 2: PERCENTAGE OF MURDER VICTIMS FOUND OUTDOORS VS. INDOORS, 1991 TO 2011**

