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Zachary Auspitz, *Juvenile Status Offenses: The Prejudicial Underpinnings of the Juvenile Justice System*, 8 U. Miami Race & Soc. Just. L. Rev. 1 (2018)

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Juvenile Status Offenses: The Prejudicial Underpinnings of the Juvenile Justice System

Zachary Auspitz*

“In the unceasing ebb and flow of justice and oppression we must dig all channels as best we may, that at the propitious moment somewhat of the swelling tide may be conducted to the barren places of life.”

—Jane Addams

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I. INTRODUCTION

Since its inception in the 19th century, the American Juvenile Justice system has served to protect the interests of our nation's youth.¹ The Juvenile Justice system's primary goal is the rehabilitation of juvenile offenders.² In addition to rehabilitation, the system also purports to maintain public safety, assist in personal development, address individual deficiencies, and re-integrate juvenile offenders back into society.³ In the process of effectuating these proclaimed objectives, the Juvenile Justice System has historically discriminated against some of the most vulnerable classes of juvenile offenders: ethnic minorities and the socioeconomically disadvantaged.⁴

Prior to the development of a formal juvenile justice system, courts systematically imposed draconian punishments on juvenile offenders.⁵ In the late 1700s, courts frequently incarcerated minors and placed them in institutions with adult criminals and the clinically insane.⁶ During this time, American cities experienced elevated levels of poverty.⁷ The government had not yet established institutions designated to treat impoverished, delinquent youth.⁸ In an effort to rescue "children from the degradations of the adult prison," pioneers of juvenile disciplinary reformation, John Griscom and Thomas Eddy formed the Society for the Prevention of Pauperism.⁹ In 1825, Griscom and Eddy established the New York House of Refuge to shelter impoverished, homeless youth.¹⁰ In the next two decades, roughly twenty-five more juvenile reformatory institutions opened throughout the nation.¹¹ The Houses of Refuge purported to take a therapeutic and rehabilitative approach to the

¹ Juvenile Law Center, *Youth in the Justice System: An Overview*, <http://jlc.org/newsroom/media-resources/youth-justice-system-overview>.

² *Id.*

³ Youth.gov, *Juvenile Justice*, <https://youth.gov/youth-topics/juvenile-justice>.

⁴ Miriam Stohs, *Racism in the Juvenile Justice System: A Critical Perspective*, 2 Whittier J. Child & Fam. Advoc. 97, 111 (2003) ("One proposition that researchers generally agree upon is that racism plays a role in the delinquency of minority youth.")

⁵ Center on Juvenile and Criminal Justice, *Juvenile Justice History*, <http://www.cjcj.org/education1/juvenile-justice-history.html> (last visited March 18, 2018).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*; see also Conor Walsh, *The (Unfinished) Growth of the Juvenile Justice System*, 50 New Eng. L. Rev. 237, 240 (2016).

¹⁰ *Id.*

¹¹ Center on Juvenile and Criminal Justice, *Juvenile Justice History*, <http://www.cjcj.org/education1/juvenile-justice-history.html>.

administration of juvenile justice.¹² However, these early juvenile institutions failed to adequately pursue their expressed goal of rehabilitation.¹³ Rather, the Houses of Refuge asserted complete control over the typically impoverished minors in their care.¹⁴ In addition to exercising absolute control over the children of indigent population, the Houses of Refuge also effectively deprived their inhabitants of due process.¹⁵

As the 20th century approached, the judicial system gradually recognized the importance of an individualized focus on juvenile offenders in the corrective justice system.¹⁶ In 1899, the state of Illinois enacted the Juvenile Court Act, which formed the first court for juvenile offenders.¹⁷ As juvenile courts emerged throughout the United States, the courts operated under the doctrine of “*parens patriae*.”¹⁸ This doctrine, which literally translates to “parent of the country,” vests a state with the authority to act as guardian for a child.¹⁹ *Parens patriae* served as the foundation for the establishment of juvenile courts and supported the notion that the juvenile justice system should exist separately from the general criminal justice system.²⁰ Under this doctrine, judges in these early juvenile courts possessed virtually unfettered discretion.²¹

Approximately sixty years later, the juvenile justice system underwent a second major reform in response to inequitable distribution of juvenile justice.²² In 1967, the Supreme Court held that juveniles are entitled to due process of law and thus maintain the rights to counsel, to confront and cross-examine witnesses, to have access to the transcript of the

¹² *Id.* (“Houses of Refuge were developed as ‘schools for instruction rather than punishment, and sought to educate, reform, and train juvenile delinquents to be functioning members of society after their stay.’”).

¹³ See Walsh, *supra* note 9 at 240 (quoting Nell Bernstein, *Burning Down the House: The End of Juvenile Prison*, 38, 39 (2014) “The House of Refuge . . . came to function as a mechanism for gaining control over the children of the poor . . . From its inception, [the House of Refuge was] a race-and class-driven enterprise intended explicitly for other people’s children.”).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Walsh at 241.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ American Bar Association, Division for Public Education, *The History of Juvenile Justice*, <https://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJp-art1.authcheckdam.pdf>.

²⁰ Alicia Harden, *Rethinking the Shame: The Intersection of Shaming Punishments and American Juvenile Justice*, 16 U.C. Davis J. Juv. L. & Pol’y 93, 100 (2012)

²¹ See generally *supra* note 11.

²² *Id.*

proceedings, and the right to appellate review.²³ The Court further held that juveniles must also receive notice of the charges and also maintain the privilege against self-incrimination.²⁴ *Gault* served as a seminal case in extending the procedural safeguards afforded by Fourteenth Amendment to juveniles.²⁵ As courts gradually recognized juvenile rights, juvenile crime exponentially increased.²⁶ Juveniles of ethnic minority groups were substantially overrepresented.²⁷ In 1974, Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDP A).²⁸ Between the 1980s and 1990s, in response to the sharp escalation of juvenile crime, the juvenile justice system departed from a focus on rehabilitation and re-adopted a punitive approach.²⁹ In the mid 1990s, the incarceration of juvenile offenders had reached its peak.³⁰ The court system's deviation from the rehabilitative approach served as the catalyst in effectuating mass juvenile incarceration.³¹ Courts returned to the punitive method in response to a considerable spike in violent crime across the nation.³² This significant increase in the rate of violent crime provoked a sense of "moral panic" in the American people.³³ Consequently, the juvenile court system regressed to the traditional disciplinary approach and confined thousands of juvenile offenders to corrective institutions.³⁴ In the 2000s, the rate of

²³ *Application of Gault*, 87 S.Ct. 1428 (1967).

²⁴ *See generally id.*

²⁵ *See generally id.*

²⁶ *Supra* note 11.

²⁷ Elizabeth N. Jones, *Disproportionate Representation of Minority Youth in the Juvenile Justice System: A Lack of Clarity and Too Much Disparity Among States "Addressing" the Issue*, 16 U.C. Davis J. Juv. L. & Pol'y 155, 157 (2012) ("[a] quick glance at the numbers reveals a clear overrepresentation of youth of color. The percentage of minority youth enmeshed in our country's juvenile justice system far surpasses the percentage of minority youth in the general population.").

²⁸ Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5601 (1974).

²⁹ *Id.*

³⁰ *Supra* note 11; *see also* Mark R. Fondacaro, *The Rebirth of Rehabilitation in Juvenile and Criminal Justice: New Wine in New Bottles*, 41 Ohio N.U. L. Rev. 697, 704 (2015) ("By 1995, detention rates reached their maximum to date at 381/100,000.").

³¹ *Child or Adult? A Century Long View*, PBS: Frontline, <http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/childadult.html>.

³² *Id.*

³³ *Id.*; *see also* Christopher Slobogin, *Treating Juveniles Like Juveniles: Getting Rid of Transfer ans Expanded Adult Court Jurisdiction*, 46 Tex. Tech. L. Rev. 103, 105 n.14 (2013) ("the trend toward punitive juvenile justice reforms in the 1980s and 1990s 'has features of what sociologists describe as moral panic, in which the media, politicians, and the public reinforce each other in an escalating pattern of alarmed reaction to a perceived social threat.'").

³⁴ *Supra* note 31 ("The conservative trend continued in the 1990s: almost every state passed laws making it easier to try juveniles in adult criminal courts; 31 states passed law expanding sentencing options; 47 states modified confidentiality provisions for juvenile

mass juvenile incarceration had declined considerably.³⁵ From 2000 to 2010, the number of incarcerated youth decreased by 39 percent.³⁶ Since 1997, in addition to the considerable decrease in the number of committed juveniles, the number of youth commitment facilities also substantially declined.³⁷

Although the juvenile justice system has radically transformed over the last few centuries, one theme has remained constant: the racial disparity in the representation of ethnic minorities.³⁸ The racial disproportionality in the context of juvenile status offenses is an often overlooked, yet pressing issue in the juvenile justice system. What is a “status crime” in the context of the juvenile justice system? The Office of Juvenile Justice and Delinquency Prevention (OJJDP) defines juvenile status offenses as a “noncriminal act that is considered a law violation only because of a youth’s status as a minor.”³⁹ In other words, in the juvenile justice system, status offenses constitute crimes “that would not be a crime if committed by an adult.”⁴⁰ The OJJDP lists several examples of juvenile status offenses: truancy, curfew violations, running away from guardians, alcohol consumption as a minor, and “general ungovernability.”⁴¹

The following paragraph describes the structure of this note. This note primarily focuses on the underlying causes of the flagrant racial

courts; and 22 states passed laws increasing the victim’s role in juvenile court processing.”).

³⁵ *The Comeback States*, National Juvenile Justice Network & Texas Public Policy Foundation at 2 (2013) http://www.njjn.org/uploads/digital-library/Comeback-States-Report_FINAL.pdf.

³⁶ *Id.* (“In 2000, a record-setting 108,802 youth were held in detention centers awaiting trial or confined by the courts in juvenile facilities in the United States. In a dramatic turnaround, by late-2010, the number of youth confined in state and county juvenile facilities had plummeted by 39 percent to 66,322.”).

³⁷ Joshua Rovner, *Declines in Youth Commitments and Facilities in the 21st Century*, The Sentencing Project, (Dec. 11, 2015), <http://www.sentencingproject.org/publications/declines-in-youth-commitments-and-facilities-in-the-21st-century/> (noting that since 2002, the juvenile justice system has experienced a substantial reduction in the number of juvenile correctional placements).

³⁸ *Disproportionate Minority Contact in the Juvenile Justice System*, The Sentencing Project, <http://sentencingproject.org/wp-content/uploads/2015/11/Disproportionate-Minority-Contact-in-the-Juvenile-Justice-System.pdf> (citing to *Disproportionate Minority Contact Databook*, OJJDP, <https://www.ojjdp.gov/ojstatbb/dmcd/b/>) (“[i]n 2010, African Americans comprised 17 percent of all juveniles, but 31 percent of all arrests.”).

³⁹ Office of Juvenile Justice and Delinquency Prevention, *Status Offenders*, OJJDP (Sept. 2015), https://www.ojjdp.gov/mpg/litreviews/Status_Offenders.pdf.

⁴⁰ Julie Kim, *Left Behind: The Paternalistic Treatment of Status Offenders Within the Juvenile Justice System*, 87 Wash. U. L. Rev. 843 (2010)(quoting Chelby Dalby, *Gender Bias Toward Status Offenders: A Paternalistic Agenda Carried Out Through the JJDP*, 12 Law & Ineq. 429, 437 (1994)).

⁴¹ *Id.*

disproportionality in the convictions of juvenile status offenders. The analysis of this note commences with a comprehensive explanation of a juvenile status offense and the ambiguous role it plays in the juvenile justice system. In section B of the analysis, the note focuses on legislative shortcomings and their effects on the substantial racial disproportionality of juvenile status offenders. The next section of the analysis discusses the exceptions to the general deinstitutionalization of status offenders and its discriminatory effect on minority communities. The final section of the analysis examines the psychological impacts of disproportionately detaining juvenile status offenders of ethnic minorities and the potential correlation to high rates of recidivism. Following an exhaustive analysis of the aforementioned factors, this note provides several policy recommendations including the adoption of a uniform approach to the detainment of juvenile status offenders, the effectiveness of alternatives to detention, strategies to enhance cultural competence, and an emphasis on the improvement of the general youth–police relationship. This final section concludes by reemphasizing the essential points of this note.

II. ANALYSIS

A. *Disproportionate Minority Contact: The Ultimate Legislative Shortcoming*

In response to the flagrant inconsistencies of the application of juvenile justice in the United States, Congress passed the JJDPa in 1974.⁴² At the time of its enactment, Congress’ mission was to combat delinquency, deinstitutionalize incarcerated youth, and rehabilitate minors who found themselves on the wrong side of the law.⁴³ To effectuate this purported goal, the JJDPa established three–pronged approach.⁴⁴ First, Congress established federal entities designated to the management and operation of the juvenile justice system.⁴⁵ The second prong of the JJDPa established a program for the distribution of federal grants to assist state governments in the formation of their state juvenile justice systems. The third and final component of the JJDPa was an incentive system that

⁴² Act 4 Juvenile Justice, What is the JJDPa? <http://act4jj.org/what-jjdp> [“To address inconsistencies and to improve outcomes for youth and community safety, in 1974 Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDPa) and changed the way in which the states approach juvenile justice.”].

⁴³ Kristin M. Finklea, *Juvenile Justice: Legislative History and Current Legislative Issues*, Congressional Research Service at 2 (2012), <https://cardenas.house.gov/sites/cardenas.house.gov/files/CRS%20-%20Juvenile%20Justice%20Overview.pdf>.

⁴⁴ *Id.*

⁴⁵ *Id.*

imposed mandates and provided grants to state governments for their compliance and progress in the development of their respective juvenile justice systems.⁴⁶

The JJDPa required full compliance with the following provisions: Deinstitutionalization of Status Offenders (DSO), Adult Jail and Lock-Up Removal, “Sight and Sound” Separation and Disproportionate Minority Contact (DMC).⁴⁷ Under the legislation, to receive federal funding, states must adhere to these four “core requirements.”⁴⁸ The DSO provision prohibited the confinement of juvenile status offenders to institutions.⁴⁹ The second provision prevented law enforcement from placing youth in adult lockups except under very narrow circumstances.⁵⁰ The JJDPa protected minors who fell under the aforementioned circumstances and mandated “sight and sound” separation from adults while temporarily placed in adult institutions.⁵¹ The fourth provision, disproportionate minority contact, required states to “assess and address” the disproportionality of juveniles of minority ethnicities in their state’s juvenile justice system.⁵² For purposes of this analysis, I will address and dissect the DSO and DMC provisions.

The DMC provision of the JJDPa established a policy that requires states to address the significant race gap amongst youth in their respective juvenile justice systems.⁵³ The DMC further requires that states identify methods to reduce the rampant disproportionality.⁵⁴ To effectively address these issues, the DMC prong of the JJDPa assesses nine “contact points of the juvenile justice system.”⁵⁵ In addressing these nine contact points,

⁴⁶ *Id.*

⁴⁷ The Juvenile Justice and Delinquency Prevention Act: A Fact Book, Act 4 Juvenile Justice (2007) at 10-11, <http://www.campaignforyouthjustice.org/Downloads/Resources/jjdpafactbook.pdf>.

⁴⁸ Gary Gately, *Senate Judiciary Hearing to Focus on Whistleblower Claims, OJJDP Grants*, JUV. JUST. INFO. EXCHANGE (Apr. 16, 2015), <http://jjie.org/2015/04/16/senate-judiciary-hearing-to-focus-on-whistleblower-claims-ojjdp-grants/108584/>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Disproportionate Minority Contact*, Coalition for Juvenile Justice, <http://www.juvjustice.org/juvenile-justice-and-delinquency-prevention-act/disproportionate-minority-contact>.

⁵⁴ *Id.*; see also Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5661 § 251 (2002).

⁵⁵ Coalition for Juvenile Justice, SOS Project, *Disproportionate Minority Contact and Status Offenses*, at 4 (2014), http://www.juvjustice.org/sites/default/files/resource-files/DMC%20Emerging%20Issues%20Policy%20Brief%20Final_0.pdf.

the DMC component of the JJDPa utilizes a five-phase strategy.⁵⁶ These phases include identification, assessment/diagnosis, intervention, evaluation, and monitoring.⁵⁷ While this provision of the JJDPa purports to eliminate the overrepresentation of minorities in the juvenile justice system, this component of the legislation has blatantly fallen short of its proclaimed objectives.⁵⁸ Specifically, as of 2011, 21 states had not addressed all of the nine contact points of the DMC provision of the JJDPa.⁵⁹ Furthermore, that same year, 32 states failed to meet the requirements of the second phase of the DMC provision regarding assessment and diagnosis.⁶⁰ In 2012, the United States Department of Justice determined that only four states had actually implemented the JJDPa-mandated “formal methodological evaluation of delinquency prevention and/or systems improvement strategies statewide or in their local DMC reduction sites.”⁶¹

The general indifference amongst state governments toward fulfilling the requirements of the DMC provision of the JJDPa is a major obstacle in the process of eliminating racial disproportionality in the child welfare system.⁶² The failure of states to meet these requirements not only overlooks the pervasive race gap amongst juvenile status offenders, ignorance of this racial disparity also contributes to the delinquency of minors who belong to some of the most vulnerable classes of individuals in our society.⁶³

Why have such a large number of states failed to complete the objectives set forth by the DMC? The answer to this question is complex and multidimensional. The failure of states to compile, report, and address data regarding the racial disproportionality amongst juvenile status offenders is an issue that is rooted in larger procedural and societal problems.⁶⁴ Specifically, a number of states experience difficulty in

⁵⁶ Melodee Hanes, *Disproportionate Minority Contact*, U.S. Dep’t of Justice at 3 (Nov. 2012), <https://www.ojdp.gov/pubs/239457.pdf>.

⁵⁷ *Id.*

⁵⁸ See generally Megan Mason, *Judges’ Role in Correcting the Overrepresentation of Minority Youth in the Juvenile Justice System*, 28 Geo. J. Legal Ethics 719 (2015).

⁵⁹ *Supra* note 55.

⁶⁰ *Id.*

⁶¹ *Supra* note 52.

⁶² *Supra* note 55.

⁶³ Brenda McKinney, *Investigating the Role of Race and Culture in the U.S. Juvenile Justice System*, 36 Child. Legal Rts. J 45, 56-7 (2016) (quoting *Targeting Blacks: Drug Law Enforcement and Race in the United States*, HUMAN RIGHTS WATCH, 1, 59 (2008)), https://www.hrw.org/sites/default/files/reports/us0508_1.pdf. “[i]t is imperative to address racial disparities in the juvenile justice system because these disparities ‘undermine faith among races and ethnic groups in the fairness and efficacy of the [system]’.”

⁶⁴ *Supra* note 49 at 4.

obtaining the necessary resources to conduct extensive data collection and assessments.⁶⁵ As previously noted, the JJDPa generates financial incentive to the states by authorizing the federal government to provide federal funding when states conform to the legislation's four major requirements.⁶⁶ However, the thrust of this incentive is weakened by inconsistent and improper distribution of these funds.⁶⁷ In 2015, several whistleblowers brought attention to an issue involving a number of states and territories that received federal funding for JJDPa compliance when they actually failed to comply with the legislation's requirements.⁶⁸ While a plethora of potential reasons exists as to the alleged misappropriation of funds, the primary cause is likely a lapse in congressional oversight.⁶⁹ This considerable oversight has potentially existed for nearly twenty years.⁷⁰

In addition to congressional oversight, the widespread failure of states to substantially comply with the requirements of the DMC component of the JJDPa may be directly linked to antiquated, preconceived notions about how to handle juvenile status offenders.⁷¹ The DMC sets forth guidelines for states that include several phases designed to mitigate the racial disproportionality amongst juveniles who have committed status offenses.⁷² In the third phase of the DMC, which is also referred to as the "intervention" phase, state governments are required to implement programs and enforce certain policies in an effort to reduce juvenile delinquency within their borders.⁷³ On its face, this prong of the DMC seemingly addresses its purported objectives.

However, the implementation of these juvenile delinquency-targeting systems raises two major policy concerns.⁷⁴ In order to substantially comply with the intervention phase of the DMC, various organizations in the juvenile justice system must collaborate.⁷⁵ These organizations often face critical issues as a result of forming partnerships with each other.⁷⁶

⁶⁵ *Id.*

⁶⁶ *Supra* note 45.

⁶⁷ *Id.*

⁶⁸ *Id.* (The alleged misallocation of federal funds due to negligent government oversight included Virginia, Rhode Island, Alabama, Illinois, Washington D.C., Tennessee, Idaho, and Puerto Rico.)

⁶⁹ *Id.*

⁷⁰ *Id.* (Noting that Iowa Senator Chuck Grassley's office, which led the investigation on the alleged congressional mishandling of funds, has asserted that "[t]he alleged mismanagement may extend to many more states and could date as far back as 1986.")

⁷¹ Hanes, *supra* note 56, at 4.

⁷² Office of Juvenile Justice and Delinquency Prevention, *supra* note 39, at 2.

⁷³ *Id.*

⁷⁴ Coalition for Juvenile Justice, *supra* note 55, at 4.

⁷⁵ *Id.*

⁷⁶ *Id.*

Specifically, these organizations are inevitably required to adopt entirely new perspectives of their organizational structure and culture in forming these partnerships with other groups as opposed to operating as single entities.⁷⁷ The other issue involves states' competency in addressing the racial disproportionality of those individuals charged with juvenile status offenses.⁷⁸ In other words, the DMC provision of the JJDPa requires that the states address racial disproportionality as it generally applies to delinquency in the juvenile justice system.⁷⁹ Consequently, the issue of whether a state is adequately prepared to address this issue in the narrow context of juvenile status offenders as opposed to the broad concept of delinquency may impede the state's ability to meet the requirements of the DMC.⁸⁰

In sum, one can reasonably conclude that the combination of the alleged misallocations of federal funding, the inevitable culture shock amongst juvenile justice organizations, and the potential inability of state governments to address juvenile status offenders likely serves as a significant hindrance on the states' substantial compliance with the DMC provision.

B. Deinstitutionalization of Status Offenders: An Effort in Futility

The DSO provision of the JJDPa compels states to deinstitutionalize juvenile status offenders.⁸¹ In other words, the federal legislation requires states to release juveniles who are confined to lockup institutions for committing status offenses.⁸² This prong of the JJDPa represents a paradigmatic shift from the original focus of the early juvenile justice system, which commonly committed juvenile delinquents to adult lockup institutions for minor, nonviolent crimes.⁸³

While the deinstitutionalization of these juvenile offenders who committed nonviolent crime is seemingly a step in the right direction, this

⁷⁷ *Id.* at 4 (“policy and practice reform efforts that implicate status offenders often force juvenile justice stakeholders to reach beyond their comfort zone and enter into close partnerships with new actors”).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* (“If states are in the beginning stages of understanding and addressing DMC among the population of youth charged with delinquency, it may be ambitious to expect that they would have the capacity to address it among the population of youth charged with status offenses.”).

⁸¹ *Deinstitutionalization of Status Offenders*, Coalition for Juvenile Justice, <http://www.juvjustice.org/juvenile-justice-and-delinquency-prevention-act/deinstitutionalization-status-offenders> (last visited Mar. 18, 2018).

⁸² *Id.*

⁸³ Center on Juvenile and Criminal Justice, *supra* note 5.

requirement is inconsistently enforced.⁸⁴ In 2010, the juvenile justice system experienced a high volume of status offense cases.⁸⁵ Roughly 8 percent of the juvenile status offenders in 2010 were involuntarily committed to lockup institutions in between judicial proceedings.⁸⁶ The following year, a study on the placement status of juvenile status offenders found that out of 2,239 juveniles charged with status offenses ranging from underage alcohol consumption to general incorrigibility, a total of 1,687 minors were committed to a residential placement for one-day.⁸⁷ However, it should be noted that just under 500 of these minors were detained, but only 53 were diverted.⁸⁸ The statistics clearly demonstrate that akin to the DMC provision of the JJDP, the DSO component is not effectively enforced.⁸⁹ Furthermore, the failure of state governments to enforce the policy of deinstitutionalizing juvenile status offenders potentially has a direct negative effect on ethnic minority communities.⁹⁰

The American juvenile justice system has been rife with racial disparity since its incipency.⁹¹ The race gap is apparent in the disproportionality amongst juveniles charged with status offenses.⁹² In 2010, the OJJDP conducted a study which found that while African-American children make up only 17 percent of the population of minors in the United States, they constitute nearly one-third of all juvenile arrests.⁹³ While the overall arrest rate for juvenile status offenses has significantly decreased over time, African-American juveniles are still disproportionately arrested for various status crimes.⁹⁴ For instance, a

⁸⁴ Coalition for Juvenile Justice, *Deinstitutionalization of Status Offenders (DS) Facts and Resources*, <http://www.juvjustice.org/sites/default/files/resource-files/DSO%20Fact%20Sheet%202014.pdf> (last visited March 18, 2018).

⁸⁵ *Id.* (“In 2010 alone, an estimated 137,000 status offense cases were petitioned in juvenile courts.”).

⁸⁶ *Id.* (noting that of the 137,000 juvenile status offenders, 10,400 of these juveniles were locked up “at some stage between referral to the court and disposition”).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *See generally id.*

⁹⁰ Tiana Davis, *Status Offenders and Race*, Center for Children’s Law and Policy,

⁹¹ *See generally* Edgar Cahn & Cynthia Robbins, *An Offer They Can’t Refuse: Racial Disparity in Juvenile Justice and Deliberate Indifference Meet Alternatives That Work*, 13 U.D.C. L. Rev. 71 (2010).

⁹² Davis, *supra* note 90.

⁹³ The Sentencing Project, *Disproportionate Minority Contact in the Juvenile Justice System*, at 1, <http://sentencingproject.org/wp-content/uploads/2015/11/Disproportionate-Minority-Contact-in-the-Juvenile-Justice-System.pdf> (last visited Mar. 18, 2018) (citing U.S. Dep’t of Justice, *Disproportionate Minority Contact Databook*, <https://www.ojjdp.gov/ojstatbb/dmcd/b/> (last updated Aug. 2017) (“[i]n 2010, African Americans comprised 17 percent of all juveniles, but 31 percent of all arrests.”).

⁹⁴ *Id.* at 3-4 (Juvenile courts handled roughly 137,000 cases involving status offenses in 2010. This figure marked a 29 percent decrease from 2001).

2011 study found that African–American minors were 269 percent more likely to be detained for curfew violations than their Caucasian counterparts.⁹⁵ In addition to this statistic, the previously mentioned study from 2011 that focused on the placement of the 2,239 juveniles charged with status offenses also revealed some alarming figures.⁹⁶ For instance, one–third of the 2,239 juveniles charged with various status offenses were African–American.⁹⁷ Furthermore, statistics demonstrate that minority youth represent a substantial majority of the minors incarcerated in adult prisons.⁹⁸ In consideration of these statistics, it is clear that African–Americans minors are disproportionately charged with status crimes.⁹⁹ Therefore, the enforcement of the DSO component of the JJDPA directly affects the African–American community due to their overrepresentation as juvenile status offenders.¹⁰⁰

Two questions naturally arise in response to this significant overrepresentation: (1) what are the causes of the disproportionate representation of African–Americans in the total number of juvenile status offenders and (2) how can we alleviate this issue?

In response to the first question, a single, clear–cut answer does not exist. Rather, the overrepresentation is likely attributed to an aggregate of multiple social factors.¹⁰¹ Specifically, through a combination of structural racism, centuries of disenfranchisement, limited access to essential resources, defects in the democratic process, and general social subordination and stigmatization, the African–American community has historically been subjugated in the context of the juvenile justice system.¹⁰² For instance, the disparate treatment of African–American status offenders is potentially driven by firmly–held racial stereotypes.¹⁰³ In other words,

⁹⁵ *Id.* at 4, fig. 2. (The study focused on arrest rates for curfew and loitering violations from 1980 to 2011. This figure demonstrates that while overall arrest rates for these crimes have declined considerably in 21 years, the racial disproportionality in these arrests has clearly increased).

⁹⁶ *Id.*

⁹⁷ *Id.* (“A one-day count of detained and committed juveniles, taken in 2011, found more than 2,000 juveniles—half of them white, one-third of them black—whose most serious offense was a status offense.”).

⁹⁸ Stohs, *supra* note 4, at 111. (citing to Eileen Poe-Yamagata & Michael A. Jones, *And Justice for Some: Differential Treatment of Minority Youth in the Justice System*, 8 Ky. Child. Rts. J. 22, 27 (2000) (“In 1997, minorities represented 75% of the 7,400 admissions to adult prisons of youth under the age of 18.”)).

⁹⁹ Stohs, *supra* note 4, at 100.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 100 (“[t]he absence of significant input from minorities and the lower class, much less minority children, makes the system suspect for inherent racism, classism, and paternalism”).

¹⁰³ *Id.* at 111.

African–American juveniles may be subject to differential treatment in the courtroom simply because of the pervasively and irrationally held stigma that African–Americans commit crimes because of the color of their skin.¹⁰⁴ This misconception is perpetuated by several factors that are unfortunately deeply–rooted in the history of American culture.¹⁰⁵ For instance, the white conception of African–American criminality along with other environmental factors such as poverty, substance abuse, and limited access to essential resources collectively contribute to the falsely held notion that a nexus exists between race and rates of criminality.¹⁰⁶

The deinstitutionalization of status offenders is a component of the JJDPa that directly impacts juveniles of ethnic minorities, specifically African–Americans.¹⁰⁷ As demonstrated by the aforementioned statistics, African–American minors are disproportionately charged with status offenses relative to their overall representation in the population.¹⁰⁸ In consideration of this substantial overrepresentation of juvenile status offenders, one must question whether the DSO provision of the JJDPa is sufficiently enforced. While some may argue that the overall decline of the detainment of status offenders indicates that the deinstitutionalization requirement is in fact working, racial disproportionality continues to pervade the system.¹⁰⁹ Therefore, the enforcement of this provision is analogous to placing a Band–Aid on a bullet wound. While the JJDPa purports to reduce overall status convictions and racial disparity, the legislation only accomplishes the former through the imposition of requirements that fail to address the roots of the problem. Instead of taking an individualized approach and addressing the deeply rooted social issues in the juvenile justice system, the JJDPa simply applies a one–size–fits–all method based on antiquated principles.

In regard to the second question, it is evident that to alleviate the extensive racial disparity, the juvenile justice system must undergo a direly needed paradigm shift in its approach towards juvenile status offenders. This note will later analyze and suggest several methods by which these goals can potentially be accomplished.

¹⁰⁴ *Id.* at 111 (“racism can be seen as the cause of delinquency itself”); see also Paul Butler, *(Color) Blind Faith: The Tragedy of Race, Crime, and the Law*, 111 Harv. L. Rev. 1270, 1281 (1998) (reviewing Randall Kennedy, *Race, Crime and the Law*) (“One proposition that researches generally agree upon is that racism plays a role in the delinquency of minority youth. In the words of Paul Butler, ‘Blacks do not commit crimes because they are black. Indeed, the best explanation of disproportionate black criminality is white racism.’”).

¹⁰⁵ Stohs, *supra* note 4, at 111.

¹⁰⁶ *Id.*

¹⁰⁷ See generally Stohs at 111.

¹⁰⁸ The Sentencing Project, *supra* note 93.

¹⁰⁹ See generally Stohs, *supra* note 4.

C. *Harsher Punishments Yield Severe Social Impacts*

In the twentieth century, two competing ideologies regarding the treatment of juvenile offenders emerged.¹¹⁰ In the first half of the 1900s, the juvenile justice system took a more psychologically focused approach to the treatment and rehabilitation of juveniles who committed crime.¹¹¹ In other words, during this period of time, the system concentrated on understanding the psychology of troubled youth and employing appropriate treatment to rehabilitate them.¹¹² In stark contrast with the first half of the century, the juvenile justice system shifted its focus to a more retributive approach and consequently imposed severe punishments on juveniles who committed crime.¹¹³ Although the juvenile justice system has historically purported to “rehabilitate” juvenile offenders, the system has followed traditional notions of corrective justice by focusing primarily on punishing juvenile offenders for past crime instead of assessing the individual needs of the juvenile to effectively rehabilitate and ultimately prevent recidivism.¹¹⁴

While the system has seemingly subscribed to the notion that harsher punishment deters future criminal behavior amongst juveniles, an abundance of empirical evidence contradicts this theory.¹¹⁵ In the 1980s, juvenile courts began to impose “blame-placing and retributive punishment.”¹¹⁶ Several factors such as abusive conditions during incarceration, inadequate psychological treatment, and the deprivation of appropriate educational opportunities during this time period demonstrate that the “tough on crime” approach does not deter future crime.¹¹⁷ By contrast, empirical evidence suggests that strict punishment exacerbates defiant juvenile conduct and actually contributes to rates of recidivism.¹¹⁸

¹¹⁰ Mark R. Fondacaro et al., *The Rebirth of Rehabilitation in Juvenile and Criminal Justice: New Wine in New Bottles*, 41 Ohio N.U. L. Rev. 697, 715-16 (2015).

¹¹¹ *Id.* (citing Christopher Slobogin & Mark R. Fondacaro, *Juveniles at Risk: A Plea for Preventive Justice* (2011)) (“In the first half of the century, lax judicial procedures were combined with interventions aimed at changing the intra-psychic functioning and personality make-up of the child.”).

¹¹² Fondacaro et al., *supra* note 110, at 715-16.

¹¹³ *Id.* at 716.

¹¹⁴ *Id.* at 715 (“the emphasis among developmental researchers and child advocates has been on promoting the adoption of diminished culpability model of juvenile justice—a model that aligns more squarely with traditional doctrines of criminal responsibility focused on backward, retrospective mind reading and blame (i.e., *mens rea* analysis) rather than on forward-looking rehabilitation.”)

¹¹⁵ *See generally id.* at 704-07.

¹¹⁶ *Id.* at 704.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 705-6 (“Research consistently suggests that juvenile detention not only fails to correct delinquent behaviors, it often worsens them Contributing further to

Recent studies have determined that the effective rehabilitation of juvenile offenders is grounded in both physiological and psychological factors that distinguish them from adult offenders.¹¹⁹ For instance, research in adolescent neuroscience demonstrates that unlike the adult brain, the adolescent brain is still developing until the individual has reached physiological maturity.¹²⁰ The frontal lobe of the brain, often referred to as the “control panel” of the brain, controls human cognitive function.¹²¹ The pre-frontal cortex, a cranial region in the anterior portion of the frontal lobe, is the specific area of the human brain that controls judgment, social conduct, and cognitive decision-making.¹²² Dr. Ruben C. Gur, an expert in neuropsychology, has suggested that an individual does not reach physiological and psychological maturity until their early twenties.¹²³ A psychological study conducted at Harvard Medical School found that unlike adults who rely on a fully developed frontal lobe for cognitive decision-making, adolescents may rely on more emotional regions of the brain in the process of making critical decisions.¹²⁴

How does this information affect juvenile status offenders who belong to communities of color? In 2016, between half and roughly three-quarters of individuals in the juvenile justice system exhibited signs of mental health disorder.¹²⁵ Minority youth represent a significant portion of the children in the juvenile justice system who suffer from mental illness.¹²⁶ While the juvenile justice system has more recently shifted its focus to a

incarcerated youths’ risk for recidivism is the population’s lack of educational attainment.”).

¹¹⁹ *Id.* at 716 (“More recently, developmental psychologists and child advocates have pushed juvenile justice in a third direction. The new direction is founded on experimental research that shows age-based differences between juveniles and adults.”).

¹²⁰ *Id.*

¹²¹ *Frontal Lobe*, Healthline (Mar. 2, 2015), <https://www.healthline.com/human-body-maps/frontal-lobe/male>.

¹²² Matthew Dahlitz, *Prefrontal Cortex*, *The Neuropsychologist* (Jan. 4, 2017), <https://www.neuropsychologist.com/prefrontal-cortex/>.

¹²³ American Bar Association, Juvenile Justice Center, *Cruel and Unusual Punishment: The Juvenile Death Penalty: Adolescence, Brain Development and Legal Culpability* (Jan. 2004), https://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_Adolescence.authcheckdam.pdf; *see also* Gur, Ruben C. Declaration of Ruben C. Gur, PhD, *Patterson v. Texas*. Petition for Writ of Certiorari of U.S. Supreme Court, https://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_Gur_affidavit.authcheckdam.pdf.

¹²⁴ American Bar Association, *supra* note 123.

¹²⁵ Bentley, Brandie, *Unlocking Young Minds: An Examination of Minority Mental Health in the Juvenile Justice System*, 9 *McNair Scholars Res. J.* Iss. 1, Art. 3, available at <http://commons.emich.edu/cgi/viewcontent.cgi?article=1099&context=mcnair> (“Estimates reveal that approximately 50 to 75% of the 2 million youth encountering the juvenile justice system meet the criteria for a mental disorder.”).

¹²⁶ *Id.*

psychologically based, rehabilitative model, minority youth, particularly African–Americans and Latinos, continue to have limited access to mental health resources and demonstrate low utilization rates of available services.¹²⁷ Consequently, ethnic minority communities experience higher rates of undiagnosed mental health disorders that are not effectively addressed.¹²⁸ One can reasonably conclude that this pervasive issue exacerbates the racial disparity in the juvenile justice system in that minority juvenile misconduct such as status offenses is often discounted as the natural result of socioeconomic status and not as a symptom of behavior attributed to mental illness.

In consideration of the abundance of empirical evidence demonstrating the inefficacy of the retributive approach in conjunction with the aforementioned research regarding psychological immaturity and mental health issues in minority communities, one can reasonably argue that the juvenile justice system should utilize a rehabilitative, holistic approach in the treatment of juvenile offenders. While the current system has gradually progressed in the rehabilitation of juvenile offenders, its methods still allow some of the most vulnerable classes of individuals to slip through the cracks.

III. RECOMMENDATIONS

The prejudicial treatment of juvenile status offenders is a multifaceted, complex issue. The solution to this problem is profoundly ambiguous as well. This note proposes three suggestions that may alleviate the discriminatory treatment of juvenile status offenders. The abrogation of the Valid Court Order (VCO) exception, the enhancement of cultural competence, and the improvement of youth–police relationships may effectively reduce the severe discrimination that pervades the juvenile justice system.

A. *Abrogation of the Valid Court Order Exception*

The JJDPA vests states with the authority to determine punishment for juvenile status offenders within their borders.¹²⁹ These punishments range

¹²⁷ *Id.* at 3–4.

¹²⁸ *Id.*

¹²⁹ *Status Offenses and the JJDPA Fact Sheet*, Act 4 Juvenile Justice (Aug. 2014), <https://www.act4jj.org/sites/default/files/ckfinder/files/ACT4JJ%20Status%20Offenses%20and%20the%20JJDPA%20Fact%20Sheet%20August%202014%20FINAL.pdf>; *see also* Christina Delgado, *Tom Cotton on the wrong side of juvenile delinquency act*, The Hill (Oct. 7, 2017, 11:00 AM), <http://thehill.com/opinion/criminal-justice/354218-tom-cotton-rand-paul-on-the-wrong-side-of-juvenile-delinquency-act> (“states differ markedly in how they address status offenses.”).

from diversion programs to incarceration.¹³⁰ In 1984, the JJDP A incorporated the VCO exception into the legislation.¹³¹ Under this exception, juvenile courts are permitted to incarcerate juvenile status offenders if the individual violates a court order.¹³² For instance, if a child is habitually truant, a judge may draft a court order in an attempt to curb this behavior.¹³³ However, judges often use the VCO exception as means to incarcerate troubled youth.¹³⁴ As of August 2014, more than half of the states continued to confine juvenile status offenders to lockup institutions under the VCO exception.¹³⁵

In mid-2017, the Senate had passed the first reauthorization of the JJDP A fifteen years.¹³⁶ Although not explicitly mentioned in the current bill, the reauthorization may ultimately call for the elimination of the VCO exception.¹³⁷ The bill, which does not contain a provision regarding the abrogation of the VCO exception, has passed through the Senate.¹³⁸ While a phase-out provision has not yet been included in the proposed bill, proponents of the reauthorization of the JJDP A intend to eliminate the VCO exception in the final version.

Conceptually, phasing out the VCO exception does not explicitly prohibit states from incarcerating juvenile status offenders for the violation of court orders.¹³⁹ Instead, the elimination of the VCO exception would be a three-year process and would penalize states that continue to confine juvenile status offenders to lockup institutions while the VCO exception is gradually being terminated.¹⁴⁰ Failure to comply with this modification to the legislation would result in a penalty against the state essentially in the form of a demerit.¹⁴¹ In other words, each time a state incarcerates a juvenile status offender for the violation of court order, the Office of Juvenile Justice and Delinquency Prevention counts this indiscretion against the state in determining its overall compliance with

¹³⁰ See generally *Status Offenses and the JJDP A Fact Sheet*, *supra* note 129.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* (“A total of 26 states also report that they continue to incarcerate youth through the VCO exception.”).

¹³⁶ John Kelly, *Juvenile Justice Reauthorization: House Bill vs. Senate Bill*, *The Chronicle of Social Change* (Aug. 7, 2017), <https://chronicleofsocialchange.org/juvenile-justice-2/juvenile-justice-reauthorization-house-bill-vs-senate-bill>.

¹³⁷ *Id.*

¹³⁸ *Id.* (“The Senate Leadership on the bill moved it without a phase-out, but they would like to see it make the final bill.”).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

the requirements set forth by the JJDP. ¹⁴² The phase-out process would discourage states from imposing draconian punishment on juvenile status offenders and encourage a stronger focus on rehabilitation. ¹⁴³ If the VCO exception is no longer a viable option for state courts, the remaining alternative options are the more holistic community-based alternatives. ¹⁴⁴ For instance, the gradual phase out of the VCO exception would likely drive states to utilize programs that emphasize diversion and the strengthening families as opposed to the retributive rubber-stamp method engendered by the VCO exception.

How would the elimination of the VCO exception affect juvenile status offenders of ethnic minorities? The substantial overrepresentation of ethnic minorities in the population of juvenile status offenders suggests that the gradual elimination of the VCO exception would directly impact minority communities. ¹⁴⁵ As demonstrated previously in this note, harsher punishments generally do not yield positive outcomes for the troubled youth that the system purports to “rehabilitate.” ¹⁴⁶ Juvenile status offenders of ethnic minority communities would have a fair opportunity to turn their lives around through rehabilitative methods as opposed to being confined in overpopulated corrective institutions that house juveniles who have committed far more serious crimes. ¹⁴⁷ If the final draft of the reauthorization of the JJDP. successfully traverses Congress and the President ultimately signs the bill, one can reasonably conclude that minority communities will reap significant benefits from the legislation’s desperately needed face-lift.

B. *Cultural Competence: The Linchpin of Therapeutic Justice*

Cultural competence is a critical component of a properly-functioning system of problem-solving courts. ¹⁴⁸ A problem-solving court is one that “target[s] such issues as substance abuse, mental health needs, domestic violence, child abuse and neglect, homelessness, unemployment and

¹⁴² *Id.* (“The House includes what the Senate version used to—a three-year phasing out of the exception. After that, youth locked up for VCO status offense violations would count against a state in determining compliance with the federal standard on deinstitutionalization of status offenders.”).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Rovner, *supra* note 94 (noting the significant overrepresentation of minorities in the juvenile status offender population).

¹⁴⁶ *Supra* note 117 at 704-7.

¹⁴⁷ *See* Delgado (“children incarcerated for status offenses may be exposed to other juveniles held in correctional facilities for serious criminal acts, which can out a nonviolent child in harm’s way or expose him or her to a criminal atmosphere.”).

¹⁴⁸ Jami Vigil, *Building a Culturally Competent Problem-Solving Court*, 45-APR Colo. Law. 51 (2016).

truancy.”¹⁴⁹ Juvenile courts fall under this category.¹⁵⁰ These courts often utilize “therapeutic jurisprudence” in handling the complex matters that overwhelm their dockets.¹⁵¹ Therapeutic jurisprudence rests on the idea that the application of legal rules and doctrines ultimately yield socially therapeutic or anti-therapeutic ramifications.¹⁵² Therapeutic jurisprudence is both a social and legal methodology that aims to institute and advocate for systems and guidelines that promote the rehabilitation of offenders as opposed to harsh, unsympathetic punishment that potentially lead to anti-therapeutic, deleterious effects.¹⁵³

The concept of cultural competence is the linchpin of the application of therapeutic justice for problem-solving courts.¹⁵⁴ Cultural competence extends beyond simply accepting the existence of other cultures.¹⁵⁵ Cultural competence takes it a step further beyond the recognition of other cultural belief systems by promoting policies to encourage the acceptance of other cultural frameworks and to bolster equal access to essential services.¹⁵⁶ The juvenile justice system is deprived of cultural competence. There is no single cure-all to this issue, but rather a plethora of social burdens that society must overcome.¹⁵⁷ In other words, the burden rests on the shoulders of society to effectuate such social change and ultimately stimulate mass cultural awareness and acceptance.

Certain strategies will likely strengthen cultural competence in the juvenile justice system. For instance, the implementation of programs to enhance cultural competence in the workplaces of juvenile justice

¹⁴⁹ *Id.* at 51.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Bernard Perlmutter, “*Unchain the Children*”: *Gault, Therapeutic Jurisprudence, and Shackling*, 9 BARRY L. REV. 1, 5 (2007) (Therapeutic jurisprudence is “a field of social inquiry that studies the ways in which legal rules, procedures, and the roles of legal actors produce therapeutic or anti-therapeutic consequences for those affected by the legal process.”).

¹⁵³ See Perlmutter at 5 (“Therapeutic jurisprudence seeks to promote policies, systems, and relationships that are consistent with normative principles of justice and constitutional law, and will secure positive therapeutic outcomes and minimize negative psychological and behavioral effects of anti-therapeutic legal rules and practices.”).

¹⁵⁴ See Vigil at 51 (“One significant hurdle for problem-solving courts, however, is ensuring cultural competence.”).

¹⁵⁵ Vigil at 51 (“Being culturally competent is more than merely embracing diversity.”).

¹⁵⁶ *Id.*

¹⁵⁷ Zachary Auspitz, Note, *The American Child Welfare System: The Inconspicuous Vehicle for Social Exclusion*, 7 U. MIAMI. RACE & SOC. JUST. L. REV. 59, 75 (2017) (“The solution to this complex impediment to social equality requires extensive social reform, not congressional action.”).

organizations is an effective approach.¹⁵⁸ Specifically, instituting programs and enhanced training methods to eliminate cultural and linguistic barriers between juvenile justice professionals and juvenile offenders is a critical step in demolishing the wall of cultural ignorance.¹⁵⁹ In addition, the utilization of programs such as Undoing Racism workshops, which focus on eliminating racism from the workplace through comprehensive discussion groups, are effective tools that can be used to buttress the presence of cultural competence and awareness in the juvenile justice system.¹⁶⁰

The provision of culturally–appropriate programs to ethnic minority communities is also fundamental in the process of enhancing cultural competence.¹⁶¹ The creation of forums for various members and services in communities to collaborate with other agencies not only enhances cultural competence, this strategy empowers the community and gives its members a voice and a sense of purpose.¹⁶² For instance, in Pierce County, Washington, community–based services could not effectively communicate with African–American juvenile offenders until the service program began to utilize a provider who was able to connect and communicate with the troubled youth.¹⁶³

Society must strive to instill cultural competence in every level of the juvenile justice system to reduce the substantial racial disparity that continues to pervade the system. Cultural awareness, competence, and understanding must become the social norm to effectively foster therapeutic jurisprudence in the juvenile justice system and to ultimately eradicate the race gaps amongst juvenile status offenders.

C. *Improve Youth–Police Relationships*

African American juveniles are arrested at significantly higher rates than their white counterparts.¹⁶⁴ Between 2003 and 2013, the racial disparity in the arrest rates for African American juvenile offenders

¹⁵⁸ *Reducing Racial and Ethnic Disparities in Juvenile Justice Systems: Promising Practices*, NATIONAL JUVENILE JUSTICE NETWORK, <http://www.njjn.org/our-work/reducing-racial-and-ethnic-disparities-in-juvenile-justice-systems-promising-practices>.

¹⁵⁹ *Id.* (“Effective communication and cultural understanding are prerequisites to a fair, efficient justice system and can help to reduce the disproportionality of youth of color in the system.”)

¹⁶⁰ UNDOING RACISM, *Programs*, <http://www.pisab.org/programs>.

¹⁶¹ *Supra* note 158.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Joshua Rovner, *Racial Disparities in Youth Commitments and Arrests*, THE SENTENCING PROJECT, <http://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/> (2016).

increased by 24 percent.¹⁶⁵ Furthermore, in 2013, statistics demonstrate that African American juveniles were 129 percent more likely to be arrested than white children.¹⁶⁶ These alarming statistics reveal that structural racism and stereotypes exist at the ground level of the juvenile justice system during the arrest stage.¹⁶⁷ Akin to instilling cultural competence in the community and the juvenile justice system as a whole, improving youth–police relationships is a critical step in reducing the racial disparity in the arrests of juvenile status offenders.

Over the last decade, multiple states have made efforts to alleviate the racial disparity in juvenile arrest rates through the implementation of interactive programs and advanced training for police officers.¹⁶⁸ For example, for the last 10 years, the state of Connecticut has utilized a rigorous program for its police officers to enhance their awareness of youth development and build positive relationships with troubled youth in the community.¹⁶⁹ In Massachusetts, the state government implemented a similar training program for law enforcement that yielded profoundly positive results.¹⁷⁰ In six years, the city of Cambridge, Massachusetts experienced a 71 percent decrease in the number of juvenile arrests.¹⁷¹

While a number of states have taken the first steps in establishing systems to improve youth–police relationships, the juvenile justice system is in dire need of reform in this area. The improvement of youth–police relationships is an essential component in the process of eradicating the stigmatic effect on minority communities. Akin to the DMC reporting requirements, the federal government should incorporate a provision in the current reauthorization bill of the JJDPa that provides financial incentives for states that establish programs to improve youth–police relationships in their communities. While this strategy is not a panacea to the inherent biases that have persistently plagued the juvenile justice system, it is a vital step in effectuating necessary social reform.

IV. CONCLUSION

The juvenile justice system is in critical need of massive social reform. Although the system has gradually embraced the concept of therapeutic justice and shifted its focus from harsh punishment to the rehabilitation of troubled youth, the system continues to experience substantial racial

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Supra* note 158.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

disparity in the treatment of juvenile status offenders. To effectuate necessary social reform to ultimately alleviate this racial disparity, both congressional action and collaborative community efforts are critical. The federal government must rigidly enforce the DMC and DSO requirements of the JJDP. Furthermore, communities of color and juvenile justice organizations must work diligently and collaboratively to enhance cultural competence and eliminate the race bias that pervades the system. While the issue of racial disparity in the treatment of juvenile status offenders impedes our social growth as a nation, through the collective efforts of the major players in the juvenile justice system, the federal government, and our communities, the elimination of these deeply-engrained racial stereotypes and inequalities is within reach.