



# RACE matters

## Unequal Opportunities for JUVENILE JUSTICE

### Why Equal Opportunity is Important

- The law requires the reduction of disproportionate minority confinement (DMC). The Juvenile Justice and Delinquency Prevention Act (JJDP) reauthorization mandates that states address prevention and system improvement efforts to reduce DMC at every critical contact point within the juvenile justice system.
- Embedded racial inequities produce disparities in youth treatment and outcomes. Compared to the treatment received by White youth, policies, practices, and stereotypes within the juvenile justice system work against youth of color and expose them to greater vulnerability for juvenile detention and compromised outcomes.<sup>1</sup> We need to understand the sources and consequences of embedded inequities, how they are produced, and how they can be challenged in order to ensure that all youth are treated fairly and have an equal chance to succeed.
- Laws are getting harsher despite declining youth crime, and youth of color are bearing the brunt. In 1999 the juvenile murder rate was the lowest in recorded history and violent crime was at a decade low. Yet, almost every state has made it easier to prosecute youth as adults and to impose harsher penalties. The consequences are being imposed on youth of color more than Whites, even when they commit the same offenses.<sup>2</sup>
- The consequences of juvenile detention are far-reaching. Youth who have been confined are at significant risk of not gaining the educational credentials they need to succeed as adults, have difficulty obtaining sustained employment, and are vulnerable to re-arrest for lack of appropriate treatment, support systems, and networks.<sup>3</sup> Youth of color are disproportionately vulnerable to these outcomes because of inequities in the juvenile justice system.
- We know what it takes for youth in contact with the law to be treated fairly. Jurisdictions that have a commitment to juvenile detention reform coupled with a focus on disproportionate minority confinement (DMC) have demonstrated the ability to move toward more equitable treatment of youth across racial-ethnic groups as they come into contact with the law.<sup>4</sup>

### Barriers to Equal Opportunity

- Poverty. Both the juvenile and adult justice systems disproportionately confine people who are poor. Because African American, Latino/a, and Native American youth disproportionately live in families with lower incomes, they are differentially vulnerable to contact with these systems, and their families are less likely to be able to afford legal representation to protect them from discrimination.
- Resource allocation that prioritizes incarceration. When the bulk of juvenile justice system allocations favor deep-end institutions – and incentivize incarceration through privatization – youth of color are more likely to be targeted for detention and White youth are more likely to receive community-based supports, even when their circumstances are comparable.
- Statutory biases. Laws that criminalize youth behaviors are typically passed without any determination about possible disparate impacts, and their language can be so broad as to allow considerable discretion in implementation. Research across youth-serving systems shows that the more discretion that exists in decision-making, the more likelihood that youth of color, especially African American, Latino, and Native American, will be treated more negatively than their White counterparts.
- Spatial segregation and its link to police and juvenile system practices. One characteristic of low-income racially segregated neighborhoods is a concentration of crime that results in greater police deployment. This deployment increases the odds that youth of color will be taken into custody. Once these youth are detained, juvenile system personnel are more inclined to view them as a risk because of their residence and fail to recognize any assets of their family or their neighborhood in decision-making about disposition.

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1. Building Blocks for Youth, "Fact Sheet: Punitive Policies Hit Youth of Color Hardest." [www.buildingblocks-foryouth.org/issues/dmc/facts\\_yoc.html](http://www.buildingblocks-foryouth.org/issues/dmc/facts_yoc.html).

2. Ibid.

3. "Moving Youth from Risk to Opportunity," Kids Count Essay, Annie E. Casey Foundation, 2004.

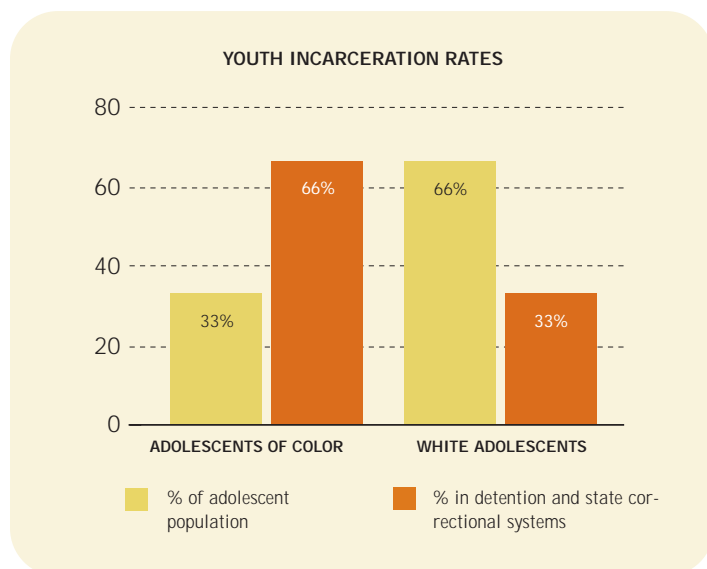
4. Eleanor Hynton Hoytt et al., "Reducing Racial Disparities in Juvenile Detention." Vol. 8, *Pathways to Juvenile Detention Reform*. Annie E. Casey Foundation, n.d.

## Barriers to Equal Opportunity (cont'd)

- **Differential access to counsel.** Having representation by a private attorney significantly improves a youth's chances of being acquitted or having the cases returned to juvenile court if they were originally prosecuted as adults. White youth are twice as likely as African American youth to be able to retain private counsel. Instead, African American youth whose families disproportionately have limited income are provided indigent defense by lawyers who carry high case loads with meager resources.<sup>5</sup> The 5,000+ immigrant youth detained by the INS have no right to government-appointed counsel or guardians.<sup>6</sup>
- **Racial stereotyping and discrimination.** African American and Latino/a youth experience stereotyping and consequent discrimination at every step of the intake and adjudication process, including disproportionate arrest using anti-gang laws,<sup>7</sup> disparate assignment of motivation and blame,<sup>8</sup> harmful labeling as superpredators, disparate risk determinations, inadequate assessment of available family and community resources for detention alternatives,<sup>9</sup> and the self-serving claim that these youth expect to go to prison.<sup>10</sup> Because the juvenile system workforce, including top level administrators and policy makers, does not reflect the demographics of the population served within the system, stereotyping and discrimination are more likely.
- **Cultural indifference.** The juvenile system generally fails to acknowledge and build upon family, community, and cultural strengths and practices. For example, reports document lack of access to cultural and spiritual activities for confined Native American youth,<sup>11</sup> lack of culturally competent bilingual staff for immigrant Latino/a youth and their families,<sup>12</sup> and punitive responses to cultural expression, such as punishing Native American youth speaking in Lakota.<sup>13</sup>

## The Consequences of Unequal Opportunity

- **Disproportionality in detention.** A predictable portion of youth across all racial groupings will engage in delinquent behavior as a part of their adolescence. Any marginal differences that exist in behaviors across groups cannot explain the huge racial disparities in accompanying arrest or incarceration rates.<sup>14</sup> Although youth of color represent only 1/3 of the U.S. adolescent population, they are 2/3 of youth confined in local detention and state correctional systems.<sup>15</sup> Between 1983 and 1997, the number of youth in detention on any given day doubled. Due to much higher rates of detention, kids of color accounted for 80% of this increase in average daily population.<sup>16</sup> Even these data dramatically understate the problem because states do not have a uniform practice for classifying Latino/a youth and often categorize them as "White." Thus, data overstate the level of "White" youth arrests and detention.<sup>17</sup>



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5. Hinton Hoytt et.al.

6. Francisco A. Villaruel et.al., "¿Dónde Esta la Justicia?" Institute for Children, Youth, and Families, Michigan State University, July, 2002.

7. Ibid.

8. Bridges & Steen, p. 29 in Hinton Hoytt et.al.

9. Hynton Hoytt et.al.

10. Judith A. Cox and James Bell, *Journal of the Center for Families, Children, and the Courts*. Vol. 3, 2001:31-43.

11. [www.buildingblocksforyouth.org/issues/nativeyouth/facts.html](http://www.buildingblocksforyouth.org/issues/nativeyouth/facts.html).

12. Villaruel et.al.

13. [www.buildingblocksforyouth.org/issues/nativeyouth/facts.html](http://www.buildingblocksforyouth.org/issues/nativeyouth/facts.html)

14. Hynton Hoytt et.al.

15. Building Blocks for Youth, "Fact Sheet: Disproportionate Minority Confinement (DMC)." [www.buildingblocksforyouth.org/issues/dmc/facts\\_mandate.html](http://www.buildingblocksforyouth.org/issues/dmc/facts_mandate.html).

16. Hynton Hoytt et.al.

17. Villaruel et. al.

## The Consequences of Unequal Opportunity (cont'd)

- **Vulnerability to arrest in disinvested neighborhoods.** African American and Latino/a youth who live in disinvested neighborhoods are disproportionately vulnerable to being picked up by police when police choose to target their patrols in these low-income neighborhoods. Further, various state statutes have profiled these youth in indirect ways such as by requiring youth to be tried as adults for drug sales within 1,000 feet of a school or public housing project (which targets dense, low-income urban neighborhoods)<sup>18</sup> or by application of “anti-gang laws” that turn otherwise youthful offenses into adult felonies (and presume that youth from these neighborhoods are gang-involved).<sup>19</sup>
- **Inequitable link between behaviors and their consequences.** When compared to White youth committing comparable offenses, African American, Latino/a, and Native American youth experience more punitive treatment in terms of arrests, referral to juvenile court, detention, formal processing, waiver to adult court, incarceration in juvenile facilities, and incarceration in adult facilities.<sup>20</sup> Further, while White youth engage in unlawful behaviors more than their African American and Latino/a counterparts, such as fighting, weapons possession crimes, and using and selling drugs, data show that White youth are more than twice as likely not to be arrested.<sup>21</sup>
- **Accumulated disadvantage for youth of color.** At every step of the juvenile justice process, disproportionality builds upon disproportionality: from arrests, to referrals to juvenile court, to detention, to formal processing, to waiver to adult court, to commitment to a locked institution, to incarceration in juvenile facilities, and to incarceration in adult jails and prisons.<sup>22</sup>
- **Confinement.** Even when White, African American, and Latino/a youth with no prior admissions are charged with the same offense, African American youth are six times more likely and Latino/a youth three times more likely than White youth to be incarcerated.<sup>23</sup> In 26 states, Native American youth are disproportionately placed in secure confinement.<sup>24</sup> In every offense category, the average length of confinement was longer for Latino/a youth than for any other group.<sup>25</sup>
- **Transfer to adult court.** Prosecutors and state laws rather than judges control about 85% of the decisions to prosecute juveniles as adults. Data show that their decisions and these laws are being applied in discriminatory and ineffective ways. A study of 18 key jurisdictions found that 82% of cases filed in adult court involved minority youth, with African American males constituting over half of these.<sup>26</sup> Yet, 43% of African American youth, 28% of Latinos/as, and 24% of Whites were not convicted when sent to adult court, suggesting a pattern that disproportionately sends youth of color wrongly to adult courts. When convicted of the same offenses in these courts, White youth were less likely to be incarcerated, and when incarcerated, received shorter sentences.<sup>27</sup> Compared to youth in juvenile facilities, those in adult jails or prisons are more likely to be sexually assaulted, assaulted by staff, attacked with a weapon, or commit suicide. Even when they have similar characteristics and arrest records as their counterparts in the juvenile system, youth confined in adult facilities are also more likely to recidivate.<sup>28</sup> These consequences fall disproportionately on African American, Latino/a, and Native American youth.

18. Hynton Hoytt et.al.

19. Villaruel et.al.

20. Ibid.

21. Eileen Poe Yamagata and Michael A. Jones, “And Justice for Some: Differential Treatment of Minority Youth in the Justice System.” Washington, D.C.: Building Blocks for Youth, April, 2000.

22. Ibid.

23. Ibid.

24. Building Blocks for Youth, “Native American Youth Fact Sheet.” [www.buildingblocksforyouth.org/issues/nativeyouth/facts.html](http://www.buildingblocksforyouth.org/issues/nativeyouth/facts.html).

25. Villaruel et.al.

26. Building Blocks for Youth, “Youth Crime/Adult Time: Is Justice Served?” [www.buildingblocksforyouth.org/ycat/exec.html](http://www.buildingblocksforyouth.org/ycat/exec.html).

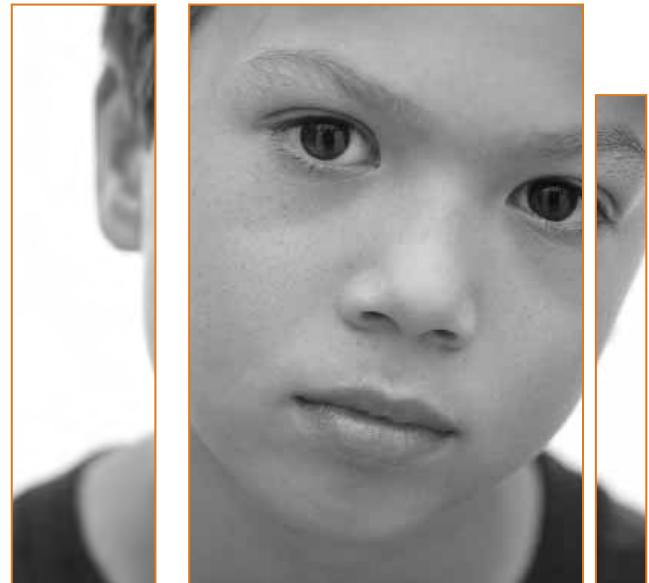
27. Ibid.

28. Villaruel et.al.

# RACE matters

## Strategies to Promote Equal Opportunity

- **Implementation of DMC mandates.** Despite the fact that JDDPA mandates attention to DMC, little success has been made in reducing the disparate treatment of youth of color. This policy requires active enforcement and provision of technical assistance for what works in order to put teeth into a reasonable expectation. Successful approaches are documented in “Reducing Racial Disparities in Juvenile Detention”<sup>29</sup> and “Addressing Disproportionate Representation of Youth of Color in the Juvenile Justice System.”<sup>30</sup>
- **Racial equity impact analyses.** Existing and pending legislation such as three-strikes policies need to be monitored for their differential impact on various racial-ethnic and language groups. In turn, where differential impact is noted, such legislation should be altered to be consistent with the JDDPA DMC mandate.
- **Change of practices that contribute to disparities/disproportionality.** For every phase of the juvenile justice process, data must be collected by race-ethnicity and then analyzed in disaggregated form to identify points of disparate impact. Experience shows that when such attention to disparate impact is coupled with core detention reform strategies such as adequate alternatives to detention, it is possible to reduce racial disparities.<sup>31</sup>
- **Use of assessment tools that minimize bias.** Justice system personnel must have objective criteria with which to make critical decisions. Risk assessment tools should be examined for unintended racial bias, which would be manifest if youth of color are impacted differently than White youth when their circumstances are comparable. Disaggregated data on impact at those junctures where such tools are used can pinpoint racial bias in the instrument itself or in the use of the instrument. Where no tools exist at discretionary decision points, they should be created by a culturally competent, collaborative team of stakeholders.
- **Cultural competence for practitioners and agencies.** Cultural competence refers to the ability to appreciate and be respectful of family and community traditions, values, assets, and interactions. It is reflected in operations that have bilingual and bicultural staff and language-relevant materials where populations are diverse, and that utilize community members for outreach, advocacy, and mediation. However, these practices cannot be fully effective if undertaken in the absence of the policy and practice changes mentioned above.
- **Mobilization of stakeholders for systemic change.** Because embedded inequities are a multi-faceted system of pervasive and subtle advantages for Whites and pervasive and less subtle disadvantages for people of color, change is likely to require broad, diverse, and committed coalitions. The best chances of success will come in those places where the issues are defined in concrete ways amenable to change and the coalition partners remain steadfast in their advocacy.



29. Hinton Hoytt et.al.

30. Cox and Bell.

31. Cox and Bell.