Addressing Bias in Delinquency and Child Welfare Systems

Eliminating Racial and Ethnic Disparities in Juvenile and Family Courts is Critical to Creating a Fair and Equitable System of Justice for All Youth.

A. Racial and Ethnic Disparities in Juvenile Court

Eliminating racial and ethnic disparities in juvenile and family courts is critical to creating a fair and equitable system of justice for all youth. While the number of youth who come into formal contact with the court system has declined in recent years, little progress has been made in reducing racial and ethnic disparities. Youth of color are disproportionately represented at every decision point of the juvenile delinquency court process. They face higher arrest rates for similar conduct, fewer opportunities for diversion, and are far more likely to be detained and incarcerated. For instance, in 2001, “Black youth were four times as likely as whites to be incarcerated”; today, they are five times as likely. Additionally, Black youth “are at least 10 times as likely to be held in placement as white youth” in six states: New Jersey, Wisconsin, Montana, Delaware, Connecticut, and Massachusetts. Native youth “were three times as likely to be incarcerated as white youth,” while Latino youth “were 65 percent more likely to be detained or committed” than white youth.

Youth of color face these same disparities in the child welfare system, as do their families, who are disproportionately referred into the system by institutions such as hospitals, schools, and law enforcement. Where youth are dually involved in both the delinquency and child welfare systems, these disparities are exacerbated. Addressing the overrepresentation of children and families of color in our juvenile courts requires careful consideration and reform of the policies and practices that drive bias and structural racism.

1. Features of Adolescent Development are Consistent Across Racial Groups and Cannot Account for the Racial and Ethnic Disparities in the Court System

Developmental research shows that behaviors and characteristics common in adolescence are consistent across all races, ethnicities, and socioeconomic groups. These studies, controlling for race and ethnicity, found no significant difference in key features of adolescent development, such as impulsivity, sensation seeking, susceptibility to peer influence, and a limited ability to plan ahead or anticipate consequences. The disproportionate representation of youth of color in juvenile court, therefore, cannot and should not be attributed to differences in adolescent development or differences in behavior across racial and ethnic groups.

Similarly, rates of child abuse and neglect are not higher in families of color; however, these families are disproportionately petitioned and brought into the court system and face greater likelihood of removal of their children than white families.

2. Bias

A fundamental canon of judicial conduct states that judges must perform all duties of office fairly and impartially, without bias or prejudice; avoid actual bias and the appearance of bias; and be aware of and work proactively to address bias in the courtroom. To eliminate bias, we must address the structural bias of the justice system and honestly assess personally held explicit and implicit biases.
a. What Is Structural Bias?
Structural, institutional, or systemic bias refers to “a set of processes that produce unfairness in the courtroom . . . [which] lock in past inequalities, reproduce them, and . . . exacerbate them . . . without formally treating persons worse simply because of attitudes and stereotypes about the groups to which they belong.”17 It is the “cumulative and compounding effects of an array of factors that systemically privilege white people and disadvantage people of color.”18

Structural bias may exist as rules, procedures, practices, or policies, and as a result of legislation, administrative decisions, or historical attitudes and practices, and may also be countermanded in the same way.19 For example, structural biases may be embedded in criminal statutes, such as harsher penalties for certain drug use (e.g., crack cocaine versus powder cocaine), which may subject people of color to longer sentences for comparable behavior.20 Structural bias is perpetuated by those who implement or execute policies by following existing rules or norms that promote racial differences in opportunities, outcomes, and consequences, even though they may have no consciousness of how those policies negatively impact certain groups.21

b. What Is Explicit Bias?
Explicit bias refers to attitudes and beliefs that are consciously held about a person or group of people.22 Overt racism is an example of explicit bias; e.g., Black youth are denied opportunities for diversionary programs because of the belief that (1) they should be punished, and (2) they are dangerous. Racism is defined as “prejudice plus power,” which combines “the concepts of prejudice and power; point[ing] out the mechanisms by which racism leads to different consequences for different groups.”23

Explicit bias has no place in our justice system. Where expressions of explicit bias are observed, justice system stakeholders have an ethical obligation to address and/or report the person responsible.24 Stakeholders must prevent explicit biases and prejudices from influencing decision-making in courts.

c. What Is Implicit Bias?
Implicit bias refers to subconscious feelings, attitudes, and stereotypes that affect our understanding, actions, and decision-making processes in an unconscious manner.25 These assessments, both favorable and unfavorable, are “activated involuntarily and without an individual’s awareness or intentional control.”26 “Implicit biases are not accessible through introspection” because these “associations develop over the course of a lifetime beginning at a very early age through exposure to direct and indirect messages” in the form of “media and news programming” and other life experiences.27

Implicit biases result when we use cognitive shortcuts to filter information, fill in missing data, and categorize people and evidence.28 This often occurs in fast-paced environments, such as juvenile court. Our strongly held conscious beliefs, intentions, and explicit efforts to treat people fairly do not prevent our implicit biases from affecting our perceptions and actions, even among “those [of us] who actively support equality, vehemently reject racism and discrimination, and have positive relationships with people of other races.”29

Implicit biases may, despite our best intentions, influence decisions such as whether to remove a youth from the home, what disposition should be imposed, and other case outcomes. Each and every judicial officer, regardless of race and ethnicity, has an obligation to consciously ensure all decisions are based on the facts in evidence rather than implicitly held biases.

B. Bias in the Juvenile Courtroom

1. Bias Impacts Who is Brought to Court
Structural, explicit, and implicit biases impact which children and families enter the courtroom before judges ever consider their cases. Children of color and their families face a greater likelihood of referral to the court system30—in both the juvenile justice and child welfare systems.31 Beginning as early as pre-school,32 children of color face discriminatory application of school discipline policies and are pushed out of schools and into the juvenile and criminal justice systems.33

2. How Does Bias Impact How I Do My Job as a Judge?
Being aware of bias, particularly implicit bias and its role in how we process information and perceive people and events, is a first step to recognizing how our implicit biases can affect the judicial decision-making process.

Children of color and their families face a greater likelihood of referral to the court system—in both the juvenile justice and child welfare systems.
In every case, we must ensure that our perceptions of a youth’s culpability and capability are not influenced by biases associated with race, class, or ethnicity, and strive to make unbiased decisions accordingly. One way to lessen the impact of bias is to begin with the viewpoint that most youth behavior is normal adolescent behavior and that the youth is amenable to redirection. We should ensure that all decisions are developmentally appropriate, strengthen the youth’s likelihood for success while accounting for public safety, and are driven by an objective assessment of the youth rather than bias.  

3. Preventing Bias at All Stages of the Proceedings

Youth of color, particularly Black, Latino, and Native youth, are overrepresented and receive harsher treatment at every point in the court process. And studies have found “evidence of bias in perceptions of culpability, risk of reoffending, and deserved punishment for adolescents when the decision maker explicitly knew the race of the offender.”

Judges must become cognizant of the potential for bias at each decision point. One of the ways to address our own potential biases is to stop and ask ourselves specific questions at every stage of the case. These may elicit some of our own biases we may not even be aware we hold.

a. Self-reflection inquiries can help identify when biases are impacting our decisions. For example:

The NCJFCJ Enhanced Resource Guidelines prompt judges in child welfare/removal proceedings to ask themselves at each decision point or hearing:

1. What assumptions have I made about the cultural identity, genders, and background of this family?
2. What is my understanding of this family’s unique culture and circumstances?
3. How is my decision specific to this youth and this family?
4. How has the court’s past contact and involvement with this family influenced (or how might it influence) my decision-making process and findings?
5. What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?
6. How am I convinced that reasonable efforts (or active efforts in Indian Child Welfare Act (ICWA) cases) have been made in an individualized way to match the needs of the family?
7. Have I considered relatives as a preferred placement option as long as they can protect the youth and support the permanency plan?

The following is only a sampling, and not an exhaustive list of additional questions to consider:

In a child welfare/removal proceeding:

- Is my own personal experience, culture, and background preventing me from understanding and taking the cultural issues of the child and family into account in deciding what safety issues exist and whether to remove the child from the home?

For Example: Disparities may be driven by the service strategy of an agency within the public child welfare system, due to lack of culturally relevant policies, procedures, practices, and decision-making.

- Am I using data to identify how court recommendations and decisions may impact youth of color negatively?
- Do I believe that families of color abuse and/or neglect their children more than white families?
- Do I believe that if a parent was neglected and/or abused as a child they will be abusive parents?

At an initial appearance or detention hearing:

- Have I considered whether the youth before me has an actual history of failure to appear, or is my perception of that risk an assumption based on prior experience with other youth? Even if this youth has failed to appear, have I inquired into the reasons behind that failure? Was transportation an issue? Did they fail to receive notice? Were there factors outside of the youth’s control that led to that failure?

For Example: Data revealed ethnic disparities within Ventura County, California’s juvenile justice system, where Latino youth were arrested 2.5 times more than white youth despite the county’s population of youth as 47 percent Latino and 43 percent white. Ventura County contracted with the W. Haywood Burns Institute to ensure that youth appeared in court and to reduce the “attendant detentions from bench warrants for failure to appear;” resulting in a 50 percent reduction in admissions for probation violations for Latino youth.
• Does the youth pose a serious public safety threat?  
Or am I basing the detention decision on biases, such as that the youth needs “protection” because they live in a “dangerous” neighborhood?

For Example: • • • • • • • • • • • • • •
Evidence suggests that bail judges rely on inaccurate stereotypes that “exaggerate the relative danger of releasing [B]lack defendants versus white defendants,” which leads to disparities in bail determinations.41

• Am I considering the impact on school continuity when I decide to detain a child? How will detaining the child impact the child’s ability to return to school and/or complete coursework?

For Example: • • • • • • • • • • • • • •
Incarceration as a youth reduces the chance of high school graduation by as much as 39 percent,42 and “youth in correctional confinement score four years below grade level on average.”43

• Is the youth before me also involved in the child welfare system, either as a status offender or as the subject of an abuse and neglect petition? If so, do I hold biases that might impede my impartiality based on my perception of their family situation?

• What objective criteria, in addition to any assessment, am I using to decide if detention is necessary? Do those criteria have a disproportionally negative impact on youth of color? If so, what is the appropriate response to that disproportionality?

• Are there resources that can be provided to address the issues that led me to conclude detention may be necessary? If there are no resources available in the child’s community but there are resources available in another community, would my decision to detain have been different?

• Is bias affecting my decision to set conditions of bond or eligibility for release in a detention decision? For example, do I have a presumption that because the child resides in a single parent home that there will be inadequate supervision? Further, have I presumed that the child does live in a single parent home based on the race of the child?

For Example: • • • • • • • • • • • • • •
Courts often interpret the absence of a father in the home to indicate a lack of adequate parental supervision.44

When hearing pretrial or other motions:

• When defense attorneys file motions raising race, do I give them careful consideration or am I dismissive of the idea that any arresting, charging, or other court decision may have been racially biased?

At adjudication/transfer:

• In a battery case involving a white youth and a Black youth, do I assume the Black youth is the aggressor or more violent? Am I aware of research studies about perceptions of culpability and race?

For Example: • • • • • • • • • • • • • •
Studies have shown that people are more likely to see weapons in the hands of unarmed Black men than white men, which is more likely to lead to systemic and predictable errors in judgments of criminality.45

• Do I think that a youth is more likely to be guilty because of the neighborhood or zip code they live in or the school they attend? Am I making assumptions because I have had other youth from the same neighborhood appear in front of me, or has media coverage regarding certain neighborhoods influenced my perceptions and decisions?

• Do I fail to give credibility to a youth’s denial because of a belief that young people are not truthful?

• Do I believe the police's version of the facts, even though it doesn’t make sense, rather than the young person’s?

• Am I likely to assume a Native youth charged with driving while intoxicated is guilty because I believe Native youth have significant issues with substance abuse? Am I considering the youth individually, rather than projecting my beliefs about racial or ethnic groups the youth belongs to onto the young person in front of me?

• Does bias factor into my decisions to transfer a youth to adult court rather than keep them within the purview of juvenile court, with its more rehabilitative focus?46

At a disposition proceeding:

• In deciding whether to commit a youth, or in setting conditions of probation or supervision, am I treating all youth similarly for similar conduct? For example, if I am ordering curfew, is it related to the time and place of the offense charged? Or is it just a rote standard condition imposed? Do I impose it equally on youth of all races?
• Are my commitment decisions reserved to address significant public safety concerns? Have I considered whether there are less restrictive alternatives? Have I considered the potential harm caused by confinement?

• In crafting conditions of probation, am I focusing on conduct related to the offense for which the youth was adjudicated? For example, if I have ordered ankle monitoring, is it based on the specific facts of the alleged offense or are there any underlying biases regarding the “dangerousness” of youth of color?

• Have I analyzed the disposition data and results by race and ethnicity in my jurisdiction? Are harsher dispositions imposed depending upon the race or ethnicity of the offender or victim? Are there other disparities?

• Am I familiar with services or programs in the youth’s community that are culturally competent to serve youth of a particular race or ethnicity?

At a violation of probation or probation revocation proceeding:

• Have I inquired whether the probation officer has instituted appropriate services and opportunities for support? Have I considered whether the reason for revocation is related to bias against the youth’s race or ethnicity?

For Example: 

In Travis County, Texas, Latino youth were more likely to be “securely detained for technical probation violations” for truancy, curfew violations, and substance abuse than white youth.47

1. Recommended Practices for Judges to Mitigate the Impact of Biases When Making Judicial Decisions

a. Recognize your own implicit bias. In order to combat the impact of bias on judicial decisions, judges and others can learn about their implicit biases by taking one or more of the Harvard Project Implicit bias tests: https://implicit.harvard.edu/implicit/.49

b. Ensure that you and your judicial colleagues, stakeholders, and court staff are educated about implicit bias. Training, literature, and technical assistance are available from a range of sources. These trainings take time, effort, and continuous reinforcement. Creating a court environment where decisions are made without implicit bias requires diligence by all involved.

c. Acknowledge that each of us employs shortcuts to synthesize information. This acknowledgment provides a platform to offer opportunities to others to do the same. Change very often follows acknowledgment.50

d. Slow down the process. Because implicit bias is a shortcut to organize and categorize information, slow down the process of making decisions, induce deliberation, and ensure that decisions are based in fact, rather than an aggregate of biases. Schedule hearings with critical case decisions when you are most alert and least fatigued in the day (this may be different for every judge). Remember that we are prone to decision fatigue, gather as much information as you can, and use checklists as reminder of what questions to ask.51

4. Eliminating Bias Increases Success

Procedural justice — the idea of feeling as though decisions are made in a fair and impartial manner, and without regard to racial or ethnic bias — means youth and families are more likely to feel trust and confidence in the court system and to abide by court orders and recommendations.48

C. Strategies For Correcting Implicit Bias — An Easy Reference Guide For Judges

As outlined above, racial disproportionality poses a significant problem in the juvenile justice and child welfare systems. In order to eliminate disparities in juvenile court, we must first understand our own biases. Because implicit biases are rooted in our subconscious mind, mitigating their impact can be a challenge. Fortunately, learned implicit biases can be “unlearned” through a variety of techniques to change or mitigate the effects of these biases.

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e. Engage in “de-biasing,” a practice of developing a greater appreciation of cultural communities different from our own, through active engagement with those communities.52

f. Question the information you receive from others. It is not enough to correct our own biases; we must also question others’ biases. (For example: a police report states “the juvenile had a belligerent attitude and she was uncooperative.” Are there specific facts to support that conclusion, or could the officer’s perception have been based on implicit or explicit biases?)

g. Consider the tools and instruments used to assess youth and their families in the juvenile justice and child welfare systems. Are the risk-assessment tools racially neutral?

h. Become familiar with data. Data is a good tool to identify trends and patterns that may suggest our decisions are based in bias rather than fact. (For example: do plea negotiations, sentencing recommendations, and imposed sentences differ along racial lines?)

i. Practice mindfulness. Mindfulness means paying attention in a special way; “on purpose, in the present moment, and non-judgmentally.”53 It is a practice of being non-judgmental about anything you notice, of not labeling things as good or bad.

j. Exercise leadership in dismantling bias. Convene meetings of juvenile court stakeholders in the delinquency and child welfare systems to develop concrete plans to address bias.

2. Systemic Considerations

In addition to the recommendations previously mentioned about self-reflection, it is critical that judges are aware of the data and systems they are operating within before they can attempt to mitigate any structural biases that exist. Some questions that judges should ask, or request data regarding, include the following:

a. Does the court or prosecutor’s office in my jurisdiction maintain data by race and ethnicity regarding which youth are referred for diversion?

b. Does the diversion program in my jurisdiction provide for referrals prior to arraignment?

c. Are diversion eligibility decisions informed or limited by the nature of the offense?

d. Do I have access to data regarding the race, ethnicity, and gender of youth who are detained in my jurisdiction?

e. Am I using an assessment or other standardized tool to determine if a youth should be detained? If I am using a standardized assessment, are the criteria used neutral across racial and ethnic identities? How do I know?

f. If there are override criteria for any assessment instrument I am using, do I know if and how the criteria negatively impact youth of color?

g. What criteria are being used by the court or other agencies to conclude that removal from the home is necessary? Are those criteria neutral or do they have a disproportionate impact on youth of color?

h. Is the safety assessment tool the child welfare agency is using dependent on objective criteria? Do those criteria disproportionately impact youth of color? If so, how? And what can be done to address the disparate impact of the tools and criteria used on our decision making?

i. Do I have access to commitment data in my jurisdiction regarding race, ethnicity, and gender?

j. Do I have access to data concerning transfer or waiver rates of all youth broken down by race, ethnicity, and gender?

Addressing the overrepresentation of children and families of color in our juvenile courts requires careful consideration and reform of the policies and practices that drive bias and structural racism.

TRAINING AND TECHNICAL ASSISTANCE

This bench card provides judges with introductory principles and best practices to support the elimination of disparities in the juvenile justice and child welfare systems. Comprehensive, supplementary training is strongly recommended in conjunction with use of this card. To connect with leading experts in the field of correcting implicit bias, please contact the National Juvenile Defender Center at 202-452-0010 or by emailing inquiries@njdc.info.

Project Implicit created a series of Implicit Association Tests (IAT) that measure the strength of associations between concepts (e.g., Black people, gay people) and evaluations (e.g., good, bad) or stereotypes (e.g., athletic, clumsy). Available IATs include (1) Presidents; (2) Religion; (3) Gender-Career; (4) Skin-tone; (5) Sexuality; (6) Weapons; (7) Asian; (8) Native; (9) Gender-Science; (10) Weight; (11) Age; (12) Disability; (13) Arab-Muslim; and (14) Race.


This chapter identified major elements of disparities by race, ethnicity, and ancestry in the juvenile justice system. Some key decision points prior to judicial appearance include “cite and release,” arrest, diversion after arrest, referral to a detention facility, and admission to detention. At each key decision point, juvenile justice professionals exercise judgments about how the young person and their family should be handled. Monitoring these decision points, pursuant to federal policy, reveals that youth of color are funneled deeper into the system for behaviors similar to their white counterparts. In response, the chapter identifies promising policies and practices for reducing racial and ethnic disparities, demonstrating that juvenile justice systems can operate with fairness and equity for all young people, including collaboratively using data to conduct critical self-examination of policies and practices and determine how they impact youth of color.


This study used Becker’s model of racial bias, which predicts that rates of pre-trial misconduct will be identical for marginal white and marginal Black defendants if bail judges are racially unbiased. In contrast, marginal white defendants will have higher rates of pre-trial misconduct than marginal Black defendants if bail judges are racially biased against Blacks, whether that racial bias is driven by racial animus, inaccurate racial stereotypes, or any other form of racial bias. Evidence suggested that there was a substantial bias against Black defendants, indicating that bail judges rely on inaccurate stereotypes that exaggerate the relative danger of releasing Black defendants versus white defendants.

Additionally, this study made three findings:
- Both white and Black bail judges were racially biased against Black defendants;
- Bail judges make race-based prediction errors due to anti-Black stereotypes and representativeness-based thinking, which in turn leads to the over-detention of Black defendants; and
- Racial bias is significantly higher among both part-time and inexperienced judges.


This study examined whether Black male youth are given equal protections of childhood as their peers.
- Three hypotheses were tested:
  - That Black male youth are seen as less “childlike” than their white peers;
  - That the characteristics associated with childhood will be applied less when thinking specifically about Black male youth relative to white male youth, and;
  - That these trends would be exacerbated in contexts where Black males are dehumanized by associating them (implicitly) with apes.
- Findings:
  - The general population sees Black children as less innocent than white children.
  - Black children are seen as older and more culpable than their counterparts.
  - Police officers are also subject to dehumanizing Black children.
  - Black children are not equally “afforded the privilege of innocence – resulting in violent inequalities.”

The D.C. Court of Appeals held that a tip that only identifies a suspect is insufficient, and that where the police received an anonymous tip alleging use of a firearm, the police needed to observe something that corroborated the presence of the gun before stopping the suspect. Id. at 2. The Court identified Miles' flight as the only potential corroborating action in this case and conducted a totality of the circumstances analysis. Id. at 14. The Court noted that a person “may be motivated to avoid the police by a natural fear of police brutality . . . or other legitimate personal reasons.” Id. at 17 (citing In re D.J., 532 A.2d 138,142 n.4 (D.C. 1987)). The Court also referenced the “proliferation of visually documented police shootings of African Americans . . . and the Black Lives Matter protests.” Id. at 17. In finding the stop unlawful, the Court went on to note that the experience of being followed by a police officer on foot, blocked by a police cruiser that drove up on the sidewalk, and then told to stop “would be startling and possibly frightening to many reasonable people.” Id. at 20-22. Moreover, unlike the cases cited by the government, “there was nothing about the character of Mr. Miles’ flight that seemed particularly incriminating,” as it was not unprovoked. Id. at 21. Thus, where Miles' flight was too “equivocal to reasonably corroborate the anonymous tip” the police lacked reasonable articulable suspicion for the Terry stop.


The Supreme Judicial Court of Massachusetts held that the defendant's race alone was insufficient to give officers reasonable articulable suspicion that he was the suspect of an earlier crime when the description lacked any information about facial features, hairstyles, skin tone, height, weight, or other physical characteristics separate from race. Id. at 339. The Court also noted that the police had no justifiable cause to arrest the defendant for running away from them in the first place; it was within the defendant's legal rights to run from the police, and the act of doing so does not imply guilt and is not grounds for arrest. Id. at 341-42. Black men were disproportionately targeted to the extent that flight from police should not necessarily be an admission of guilt. Id. at 342. Rather, Black men have “reason for flight totally unrelated to consciousness of guilt,” such as the desire to avoid the recurring indignity of being racially profiled. Id.

United States v. Smith, 794 F.3d 681 (7th. Cir. 2015).

The United States Court of Appeals for the Seventh Circuit held that officers’ encounter with a Black defendant in a dark alley at night in a minority-dominated urban area was a seizure, and that the defendant was not free to leave. Id. at 687-88. The Court further acknowledged that race was relevant in everyday police encounters with citizens in Milwaukee and around the country, and that existing empirical data demonstrates the existence of racial profiling, police brutality, and other racial disparities in the criminal justice system. Id. at 688.


The American Bar Association’s recently formed Diversity and Inclusion 360 Commission released a video tool to raise awareness and provide practical tips for judges in the United States on the damages caused by implicit bias and the necessary steps to combat it.


The American Bar Association’s Judicial Division summarized six techniques and strategies judges can use on a weekly basis to mitigate implicit bias and successfully “de-bias,” based on an original study, Long-term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention, published by Patricia G. Devine, Patrick S. Forscher, Anthony J. Austin, and William T. L. Cox – (1) Become aware; (2) Individuation; (3) Stereotype replacement; (4) Counter-stereotypic imaging; (5) Perspective-taking; and (6) Increasing opportunities for contact.


Research shows that Black students are disciplined more often and receive more out-of-school suspensions and expulsions than white students. In 2010, over 70 percent of the students involved in school-related arrests or referred to law enforcement were Hispanic or
Black. Overall, Black students were three-and-a-half times more likely to be suspended or expelled than their white peers. According to the Kirwan Institute, implicit bias was heavily implicated as a contributing factor when the causes of racial disproportionality in school discipline were analyzed.


In partnership with the National Council of Juvenile and Family Court Judges (NCJFCJ), the National Juvenile Defender Center released *Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Expression (SOGIE),* a bench card to promote judicial leadership in supporting Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Gender Non-Conforming (LGBTQ-GNC) Youth.


In partnership with the National Council of Juvenile and Family Court Judges (NCJFCJ), the National Juvenile Defender Center released *Applying Principles of Adolescent Development in Delinquency Proceedings,* a bench card to promote judicial leadership in recognizing the developmental differences between youth and adults and integrate, at each stage of the case, applicable principles supported by the research on adolescent development.


Despite long-term declines in youth incarceration, the disparity at which Black and white youth are held in juvenile facilities has grown. As of 2015, Black youth were five times as likely to be detained or committed to youth facilities. Since 2001, racial disparities have grown in 37 states, and at least doubled in five — Maryland, Montana, Connecticut, Delaware, and Wisconsin.


Despite long-term declines in youth incarceration, the disparity at which Native and white youth are held in juvenile facilities has grown. Native youth were three times as likely to be incarcerated as white youth. The disparity has increased since 2001 when Native youth were roughly two-and-a-half times as likely to be detained or committed to juvenile facilities.


Latino youth are 65 percent more likely to be detained or committed than their white peers. While this disparity is concerning, the data shows a modest improvement from 2001, when Latino youth were 73 percent more likely to be in placement. The Latino disparity is smaller than that for Black youth, who are 500 percent more likely than white youth to be detained or committed.


Framing the relationship between institutional and structural racism and disparate treatment raises awareness about how and why disproportionality occurs in public child welfare and the role the system can play to eliminate disparate practices within the agency. Disparities can be produced by the service strategy of an agency within the public child welfare system, due to lack of culturally relevant policies, procedures, practices, and decision-making. Poorly resourced public education systems and inequitable parental arrests are also significant contributors to disparate treatment, which yields negative outcomes for children, youth, and families. Addressing disparities and disproportionalities begins with data assessment, and collectively belongs to all members of the agency.
Child Welfare Information Gateway compared the percentage of children by race in the general population to their percentage at various points in the child welfare continuum. They also compared a particular racial or ethnic population’s representation in the child welfare system to its representation at the prior decision point (e.g., comparing a proportion of children adopted with the proportion of children of that race waiting to be adopted). Four possible explanations for racial disproportionality and disparity were identified: (1) Disproportionate and disparate needs of children and families of color due to higher rates of poverty; (2) Racial bias and discrimination exhibited by individuals (e.g., caseworkers, mandated and other reporters); (3) Child welfare system factors (e.g., lack of resources for families of color, caseworker characteristics); and (4) Geographic context, such as region, state, or neighborhood. A number of suggested strategies to address these issues were identified, but in implementation they should be specific to the disproportionality and disparities present in each jurisdiction, both in terms of the racial and ethnic populations affected and the points within the child welfare process at which those differences are apparent.


Children pulled into the child welfare system are often not afforded stabilizing support systems, which puts them at high risk of developing reactive behaviors that lead to their entry into the juvenile justice system. Involvement in the juvenile justice system is tied to academic failure, future arrests, and other long-term consequences. Citizens for Juvenile Justice worked with the Massachusetts Department of Youth Services (DYS) and the Department of Children and Families (DCF) to examine aggregate case information to academic failure, future arrests, and other long-term consequences. Citizens for Juvenile Justice worked with the Massachusetts Department of Youth Services (DYS) and the Department of Children and Families (DCF) to examine aggregate case information for the more than 1,000 youth with open cases with both DCF and DYS in 2014. This review found that within the child welfare system, children who eventually had juvenile justice involvement had significantly different experiences than those who did not. These findings present opportunities to intervene, and incorporate different policies and programs that can prevent these children’s experience with the juvenile court system.

Endnotes

1 For the purposes of this Bench Card, Juvenile Court applies to all court proceedings affecting youth, including delinquency, child protective, and/or proceedings related to status offenses.


5 Black Disparities, supra note 2.

6 Id.

7 See Native Disparities; Latino Disparities, supra note 2.


Self-Report: Evidence for a Dual Systems Model

Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model, 44 DEVELOPMENTAL PSYCHOL. 1764 (2008) (measuring both sensation-seeking and impulsivity amongst a sample of 935 participants, controlling for ethnicity and socio-economic status); Lauren Steinberg et al., Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model, 44 DEVELOPMENTAL PSYCHOL. 1764 (2008) (measuring both sensation-seeking and impulsivity amongst a sample of 935 participants, controlling for ethnicity and socio-economic status); Lauren Steinberg & Kathryn C. Monahan, Age Differences in Resistance to Peer Influence, 43 Developmental Psychol. 1531 (2007) (measuring resistance to peer pressure, controlling for ethnicity and socio-economic status, and finding that between 10 and 14, little growth in the ability to resist peer pressure occurs, that between 14 and 18 resistance to peer pressure increases linearly, and that between 12 and 18, little growth occurs, in all groups); Lloyd D. Johnson et al., MONITORING THE FUTURE: NATIONAL SURVEY RESULTS ON DRUG USE: 1975-2010, VOLUME I: SECONDARY SCHOOL STUDENTS (2011) (suggesting that Black youth self-report using alcohol and different types of drugs less than other groups and by the 12th grade, white youth a sample of 935 participants, controlling for ethnicity and socio-economic status, and finding that youth of similar ages in the study exhibited similar levels of weak future orientation across ethnicity and socio-economic status); Lauren Steinberg et al., Age Differences in Future Orientation and Delay Discounting; 80 Child Dev. 28 (2009) (controlling for both ethnicity and socio-economic status, and finding that youth of similar ages in the study exhibited similar levels of weak future orientation across ethnicity and socio-economic status); Lauren Steinberg & Kathryn C. Monahan, Age Differences in Resistance to Peer Influence, 43 Developmental Psychol. 1531 (2007) (measuring resistance to peer pressure, controlling for ethnicity and socio-economic status, and finding that between 10 and 14, little growth in the ability to resist peer pressure occurs, that between 14 and 18 resistance to peer pressure increases linearly, and that between 12 and 18, little growth occurs, in all groups); Lloyd D. Johnson et al., MONITORING THE FUTURE: NATIONAL SURVEY RESULTS ON DRUG USE: 1975-2010, VOLUME I: SECONDARY SCHOOL STUDENTS (2011) (suggesting that Black youth self-report using alcohol and different types of drugs less than other groups and by the 12th grade, white youth report using illicit drugs or alcohol more than any other group); CENTERS FOR DISEASE CONTROL & PREVENTION, YOUTH RISK BEHAVIOR SURVEILLANCE (2014), http://www.cdc.gov/mmwr/pdf/ss/ss6304.pdf (according to self-report measures, white youth are engaged in illegal behavior at similar or higher rates compared to youth of color).

See sources cited, supra note 11.

See JOSHUA ROVENER, THE SENTENCING PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS 6 (2016).

See sources cited, supra note 8.

MODEL CODE OF JUDICIAL CONDUCT § 2.2.2.3(A) (Am. Bar Ass'n 2011).

See MODEL CODE OF JUDICIAL CONDUCT § 2.2.2.3(A) (Am. Bar Ass’n 2011).

JERRY KANG, IMPlicit Bias in the Courtroom, 59 UCLA L. REV. 1124, 1133 (2012).


Constitutional amendments, legislation, and Supreme Court decisions have addressed instances of structural or institutional bias in marriage, deed restrictions, voting boundaries, voting registration, school desegregation, college admission and other areas. Statutes may include racial or cultural prejudices that are not overt. The court staff may lack diversity. The courthouse grounds may infer a bias by the inclusion or positioning of flags, monuments, plaques, or photographs that suggest a bias or prejudice. The courthouse location, court services location, or jail and prison locations may cause an impediment to access to justice and services. See, e.g., Griggs v. Duke Power Co., 401 U.S. 424, 430 (1971) (“practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to ‘freeze’ the status quo of prior discriminatory . . . practices.”).


See RACIAL EQUITY TOOLS, supra note 21.

Even where an explicit bias does not appear to be harmful on its face, for example preference for a person who is from the same university alma mater as one’s self, where such bias unfairly favors one group over another to their detriment, it can be harmful. See, e.g., Griggs, 401 U.S. 424. See generally Model Code of Judicial Conduct § 2.3 (Am. Bar Ass’n 2011).


Id.

See First, Do No Harm, supra note 25; Race, Paternalism, and the Right to Counsel; Self Defense; Seeing Black, supra note 11.


Disruption of High School Education by Arrest and Court Involvement

School Completion

Likelihood that a youth will drop out and a court appearance quadruples the likelihood.); Randi Hjalmarsson, Disproportionate Minority Contact, supra note 2; Disproportionate Minority Contact, supra note 31.


See Judicial Div., Am. Bar Ass'n, Judges: 6 Strategies to Combat Implicit Bias on the Bench (2016), http://www.americanbar.org/publications/youraba/2016/september-2016/strategies-on-implicit-bias-and-de-biasing-for-judges-and-lawyer.html (Judge Bernice B. Donald of the 6th Circuit Court of Appeals stated, “Each of us in doing our jobs are viewing the functions of that job through the lenses of our experiences, and all of us are impacted by biases, stereotypes and other cognitive functions that enable us to take shortcuts in what we do.”). See also Patricia Devine et al., Long Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention, 48 J. EXPERIMENTAL SOC. PSYCHOL. 1267, 1270 (2012).


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