Disproportionate Minority Contact (DMC) Diversion Assessment:
Fiscal Year 2009 Juvenile Court Referrals

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**Disproportionate Minority Contact (DMC) Diversion Assessment:
Fiscal Year 2009 Juvenile Court Referrals**

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Introduction

The Utah Criminal Justice Center (UCJC) has assisted the Utah Board of Juvenile Justice's (UBJJ) Disproportionate Minority Contact (DMC) Advisory Committee with calculating the DMC Relative Rate Index (RRI) since Fiscal Year (FY) 2003. The RRI has consistently shown DMC at the point of diversion in the juvenile justice system. Minority youth have a lower rate of diversion than White youth after being referred to juvenile court. Because of this ongoing disparity, the UBJJ DMC Advisory Committee asked UCJC to study the factors that may influence the disproportionately lower rate of diversion for minority youth. This assessment seeks to answer the following questions:

1. What are diversion criteria?
2. How many episodes meet diversion criteria?
3. How many of diversion-qualified episodes are diverted by RRI categories? How many of diversion-qualified episodes are not diverted by RRI categories?
4. How do those that are not diverted differ from those that are?
    a. By delinquency history
    b. By presenting offense severity & type
    c. By risk (pending availability of PSRA & PRA on this group)
    d. Stratified by age
5. What is the failure rate of diverted/not-diverted (but qualified) episodes by RRI categories?
    a. Failure rate = diverted cases turned to petitioned (pending availability of data)
    b. Failure rate = any new referral within 12 months of diversion

Methods

This assessment was comprised of two main research tasks: 1) the compilation of diversion policy and practices, and 2) the analysis of juvenile court CARE data to examine diversion rates in relation to diversion policies and practices, youth and case factors, and minority status.

Diversion Policies and Practices

The Administrative Office of the Courts (AOC) was contacted for materials regarding policies and practices of diversion. The assistant juvenile court administrator provided the statewide policy, procedure, and rules that pertain to intake into the juvenile court and diversion. The chief probation officers and intake staff at the three counties in the assessment, Weber, Salt Lake, and Utah, provided additional materials and clarification on local diversion practices. This information was combined to form rules on diversion qualified (DQ) and non-qualified (non-DQ) criteria that were examined within the CARE data in this assessment.

CARE Data

The annual RRI calculations are calculated from episodes (a group of incidents that come into the juvenile court on a single intake date) that have intake dates within the fiscal year (FY). For this assessment, a sub-set of FY09 episodes was selected, with oversampling of all minority episodes, except Hispanic in Salt Lake County (see Table 1). Throughout this report, White refers to White/Non-Hispanic youth. Those 15,901 episodes represented 8,569 youth whose juvenile court case numbers were sent to the AOC for a query of their referral, disposition, demographic, and detention records. The resulting data files provided by the AOC were combined and analyzed for

the factors (policies and practices, youth characteristics, case characteristics) that were related to likelihood of diversion.

Table 1 FY09 Assessment Sample

	White	African American	Hispanic	Asian	Pacific Islander	Native American	Total
FY09 RRI Sample for Diversion Assessment							
Salt Lake	3408*	749	3249*	236	596	214	8452
Utah	2283*	82	1187	43	97	46	3738
Weber	1915*	176	1512	25	14	69	3711
Total	7606	1007	5948	304	707	329	15901^

*Indicates random cases selected from larger population
^15,901 episodes represents 8,569 youth

Diversion for the purpose of this assessment is defined as a non-judicial closure of an incident or episode that is referred to the juvenile court. The following (see Table 2) intake decision codes in CARE were used to identify diverted cases.

Table 2 Intake Decisions Representing Diversion in this Assessment

Intake Decision	Description
FRM	Form Letter Sent to Parents
NJ	Non-Judicial Closure
NOA	No Action Taken by Intake
NOF	No Action Taken After Contact
NRS	Alternative Referral Services
OTH	Other Non-Petition Action

Results

Diversion Criteria

Diversion, as defined in this assessment, occurs after youth are referred to juvenile court at the point of contact with the probation and intake office of the juvenile court. The juvenile probation officer (PO) receives the referral materials, reviews them to determine if the facts are sufficient to bring the case to juvenile court, holds a voluntary preliminary inquiry with the youth and parent(s)/guardian(s), and gathers additional information about the youth and referral. The purpose of the preliminary inquiry is for the PO to determine if the youth may be diverted (closed without the filing of a petition with the juvenile court). Statewide policy/rules on diversion are dictated by state statute 78A-6-602.

The following are statewide policy/rules on diversion-qualified (DQ) incidents/episodes:
- Youth must admit guilt
- Youth and parent(s)/guardians(s) agree to diversion
- PO determines that diversion is in the best interest of the public and the youth

The following are statewide policy/rules that make an incident/episode non-diversion-qualified (non-DQ):

- Restitution cannot be resolved between victim and youth
- Presenting offense is a felony
- Youth has a history of felony offense(s)[1]
- Youth has a history of more than four misdemeanors committed in at least two separate delinquency episodes and the offense in the present case is a repeat offense[1]
- Motor vehicle related offenses involving alcohol or drugs
- Contempt

Court Rule 7-301. "Intake" also specifies that a non-judicial adjustment (i.e., diversion) should consider the following factors:

- (4)(B)(i)(a) The severity of the offense(s).
- (4)(B)(i)(b) Restitution made or planned where damage to persons or property resulted from the offense.
- (4)(B)(i)(c) Minor's prior court referral history.
- (4)(B)(i)(d) Minor's attitude toward the offense(s).
- (4)(B)(i)(e) Parent's ability to control the minor.
- (4)(B)(i)(f) Previous family involvement with court or social service agencies.
- (4)(B)(i)(g) Minor's school or employment situation.
- (4)(B)(i)(h) Other relevant information concerning the offense or the minor.

In addition, the chief probation officers and intake staff at the three counties in the assessment provided information about diversion practices. From this information, the following additional factors were considered as potentially non-DQ:

- Mandatory Court Appearance (MCA) offenses (e.g., DUI, certain traffic and wildlife offenses, from bail schedule provided by Salt Lake County)
- 2nd time alcohol offenses also require a petition (not diversion eligible)
- Class A Misdemeanor as most serious - all three counties said it would be rare to ask for Diversion on Class A offenses
- Current Restitution over $250

Of the factors that should be considered relevant to diversion decisions, the following are not recorded in CARE and, therefore, are excluded from this assessment: admission of guilt, parental agreement, if restitution is resolved, minor's attitude, parent's ability to control the minor, previous family involvement, and school/employment situation. CARE data were analyzed to examine current offense type and severity and youth's prior court involvement.

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[1] Exceptions can be made per this policy, "The intake supervisor within a district may authorize non-judicial adjustment in highly exceptional circumstances, including, but not limited to, cases involving minors 11 years of age or younger."

CARE Data Analyses by Episode Characteristics

Episode characteristics were examined for all 15,901 Fiscal Year 2009 (FY09) episodes selected for the assessment.

Episode Severity

Differences in the likelihood of diversion by minority status were examined by episodes: the group of incidents that came into the juvenile court on the same intake date. As shown in Figure 1, the vast majority of episodes in FY09 had a Class B misdemeanor as their most severe offense. The second most common episode type was Contempt as the most serious offense. As shown in Figure 1, there was not much difference between White and minority youth on the most common types of episodes. Minorities had slightly fewer Class B and Status episodes and slightly more Class A, Infraction, and Contempt episodes.

Figure 1 Episodes by Most Severe Incident
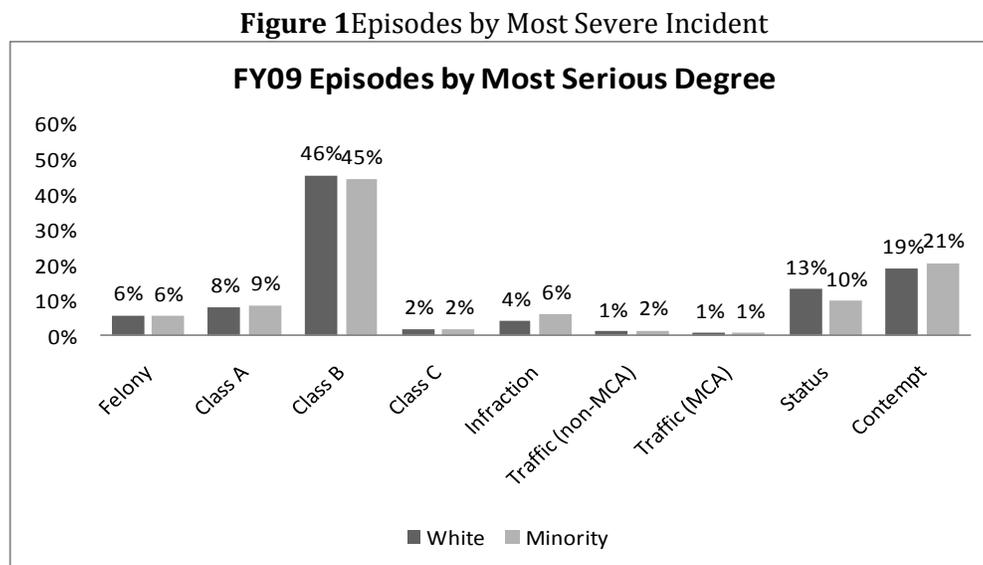
The next figure (Figure 2) displays the White vs. minority diversion rate for each of those types of episodes. Regardless of the severity of the incidents, minorities usually had a lower percent who were diverted. The only type of episodes where minorities were not statistically significantly less likely to receive diversion were ones where essentially no episodes were diverted per juvenile court policy (e.g., felony, contempt, MCA traffic) and non-MCA traffic (where approximately half of each group was diverted). All episodes where a mandatory court appearance (MCA) offense was present were also examined (not shown in Figure 1 or 2). Only 1.7% of episodes in FY09 had a MCA offense. Of those, there were no significant differences between Whites and minorities on diversion rates (p = .452).

**Figure 2** Diversion Rates by Most Severe Incident
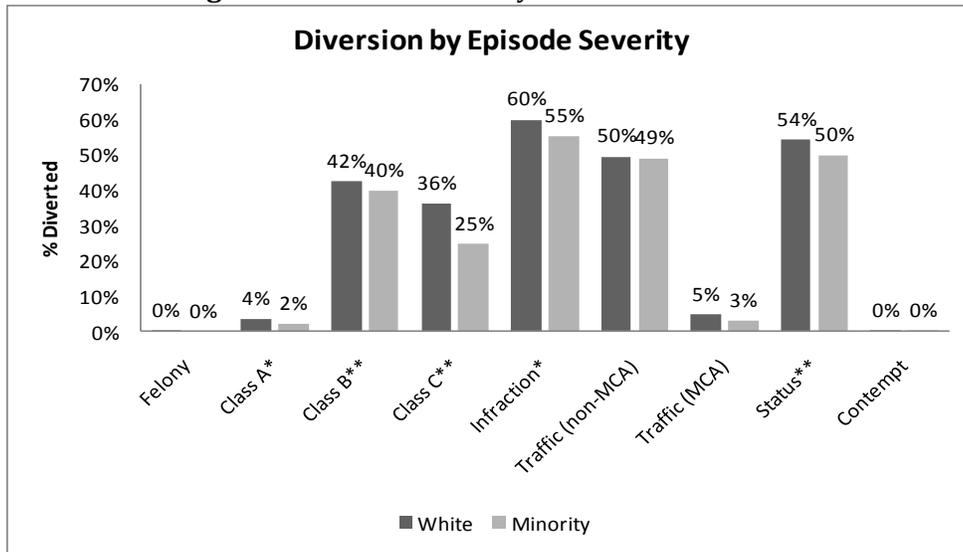
*p < .10, **p < .05, ***P < .01

Referral Source

Regardless of how they actually originate, the vast majority of juvenile court cases are ultimately referred to the court by law enforcement (LE) agencies, such as city police departments (including school resource officers) and sheriff's offices. Figure 3 displays the referral source[2] for FY09 episodes. Due to the lack of variance in referral source, differences in diversion rates for White vs. minority youth were not examined by referral source. It should be noted that none of the JJS and DCFS referred episodes were diverted, while only 0.5% of Juvenile Court referred episodes were diverted. The vast majority of those episodes were contempt which are not divertible (JJS 92%; DCFS 99%; juvenile court 97%).

Figure 3 Episodes by Referral Source

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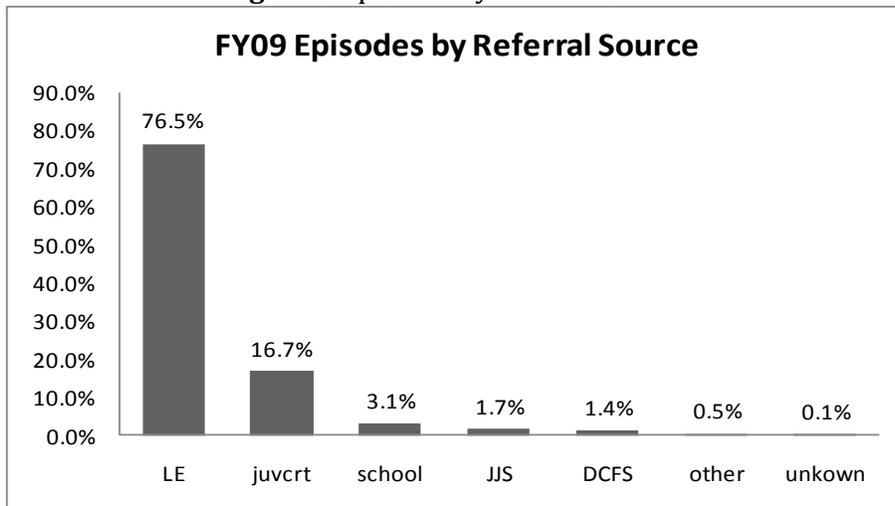
[2] Only 0.8% of episodes had more than one referral type. Of those, the first one was selected.

CARE Data Analyses by Incident Characteristics

Offense Type

The relationship between offense types (e.g., person, property, drug) and the likelihood of diversion was examined at the incident, rather than episode, level. This was necessary, as some episodes were identified where some of the incidents within the episode were diverted, while others were not. There were 22,746 incidents in FY09 data and 14,706 of them were incidents where the offense severity was a Class C Misdemeanor or more severe (MC, MB, MA, F3, F2, and F1). Those 14,706 incidents were included in the following analyses.[3] As shown in Figure 4, the vast majority of incidents in FY09 were property offenses, followed by person and drug. Whites had a slightly higher percentage with drug and alcohol offenses, while minorities had a slightly higher percentage with weapon and obstructing law enforcement (LE) offenses. Weapon offenses were primarily possessing dangerous weapons at school and possession of a dangerous weapon (1st time offense). Obstructing LE offenses were primarily fleeing a peace officer.

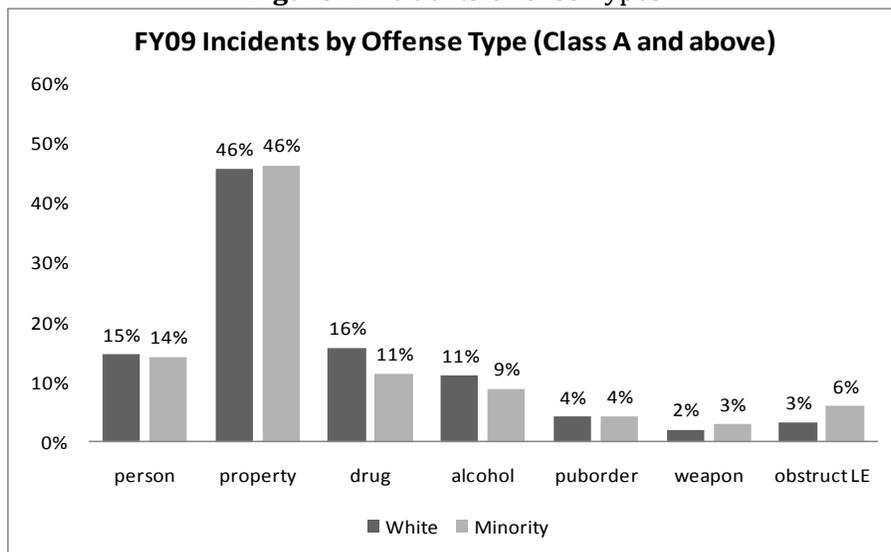**Figure 4** Incidents Offense Types

Figure 5 on the following page displays the White vs. minority diversion rate for each of those types of offenses. Minorities were statistically significantly *more* likely to be diverted on a person offense (19% vs. 15%), but statistically significantly less likely to be diverted on property (29% vs. 31%), alcohol (27% vs. 39%), public order (13% vs. 20%), and obstructing LE offenses (12% vs. 22%). Although the difference in diversion rates is only a couple of percent for property offenses, these represent the most common offense type in juvenile court. Therefore, the impact on minority DMC is large. Alcohol offenses make up about 10% of juvenile court referrals (for Class C or higher incidents) and the gap between White and minority diversion rates for alcohol offenses is over 10% (see Figure 5).[4] Although public order and obstructing LE are lower occurrence incidents, the diversion gap between Whites and minorities is quite large.

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[3] Lower severity offenses (e.g., status or contempt) were excluded, as their offense type and severity were the same. Therefore, their analyses are in the previous "severity" section.

[4] In the FY09 first episode file, repeat vs. first-time alcohol offenses were examined. Essentially no repeat alcohol offenses were diverted and there were no differences between Whites and minorities on repeat alcohol offenses.

Figure 5 Diversion Rates by Incident Offense Types
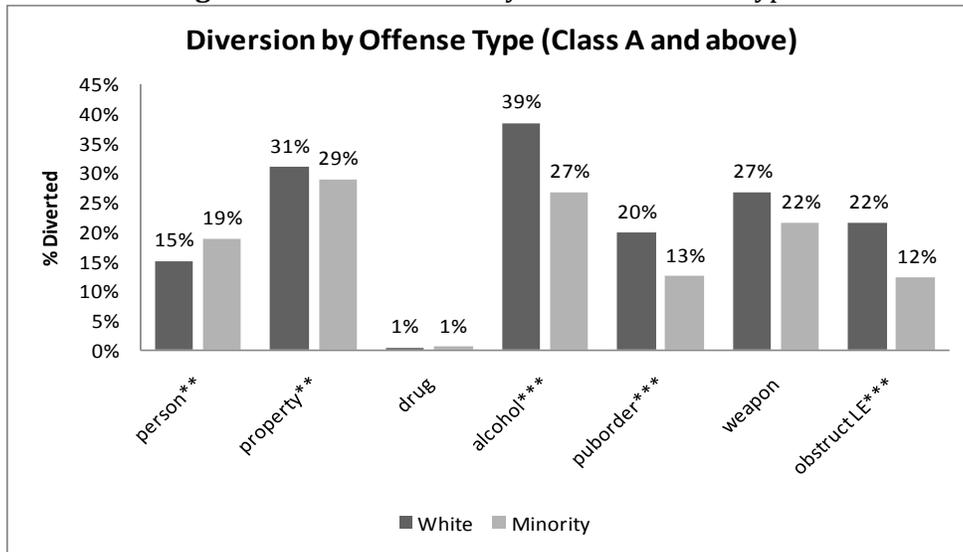
*p < .10, **p < .05, ***P < .01

Alcohol offenses were re-examined back in the episode-based file (N = 15,901) to determine if other factors were present at the time of alcohol incidents which could be related to the much lower diversion rate on alcohol incidents for minority youth. It was found that in episodes where alcohol incidents were present (10.2% of White; 7.9% of minority), minorities were statistically significantly more likely to have other types of offenses present at the same time, such as property, public order, person, and obstructing law enforcement (LE). The only offense type that White youth were statistically significantly more likely to have in conjunction with an alcohol offense was drug offenses. These episode-based analyses suggest that the lower diversion rate for minorities on alcohol incidents is due to minorities having multiple offenses at the time of their alcohol offense, while Whites usually have few other incidents at the same time, or only a drug offense. Furthermore, alcohol offenses were examined in the file that contained youth court history prior to each youth's first episode in FY09 (n = 8569). In those analyses, it was possible to separate first-time alcohol offenders from repeat offenders. There was no difference between Whites and minorities on likelihood of diversion for repeat alcohol offenders (p = .323), as essentially no repeat alcohol episodes were diverted. However, for first-time alcohol offenders (83% of White alcohol offenders were first-time; 79% of minority alcohol offenders were first-time; p = .10), minorities were statistically significantly less likely to be diverted (49% vs. 66%, p < .01). As previously noted, minority alcohol offenders were statistically significantly more likely to have other types of charges present in their alcohol episodes.

Graffiti offenses were examined separately, as Utah County specifically mentioned that their mandatory referral policy regarding graffiti may be disproportionately impacting minorities. Graffiti offenses were only 2.8% of incidents in FY09 (2.4% in Salt Lake, 5.1% in Utah, and 1.2% in Weber). Minorities were statistically significantly more likely than Whites to have graffiti incidents in Salt Lake (3.0% vs. 1.6%) and Utah (9.4% vs. 2.2%) counties (no difference in Weber, 1.3% vs. 1.0%). Furthermore, within those graffiti incidents, minorities were statistically significantly less likely to receive diversion in Utah County (4.6% vs. 11.7%). However, it should be noted that this represented only 19 diverted graffiti incidents in Utah County for the entire FY09. Therefore, it is not likely that this policy is having a large effect on the minority DMC rates, even though there is a disproportionate effect for minorities at this type of point of contact.

CARE Data Analyses by Youth Characteristics

The youth characteristics examined in relation to White vs. minority diversion rates are for each youth's first episode during FY09 (FY09 Episode 1). As noted in the *Methods* section, 15,901 episodes from FY09 were selected for the assessment, representing 8,569 youth. Therefore, analyses in this section are out of 8,569 episodes.
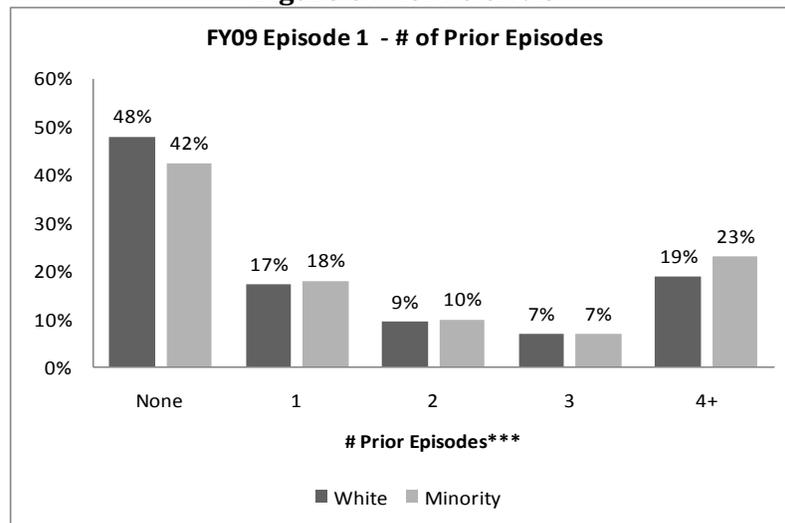
Demographics

Around two-thirds of both White (69%) and minority (68%) referrals were for males (p=.485). Among males referred to the court, minorities were statistically significantly less likely (38%) than Whites (42%) to be diverted (p < .01). Although diversion rates were higher for females, minorities were still significantly less likely (48%) than Whites (53%) to be diverted. At the time of their first episode in FY09, minorities were a few months younger (Mn = 15.6 years old) than White youth (Mn = 16.0) (p < .01). Younger age was associated with greater likelihood of diversion. Those who were diverted were approximately 6 months younger on average (Mn = 15.5 years old) than youth whose episodes were not diverted (Mn = 16.0) (p < .01). Because of this contradiction, age will be included as a covariate in the multivariate analyses of factors influencing likelihood of diversion.
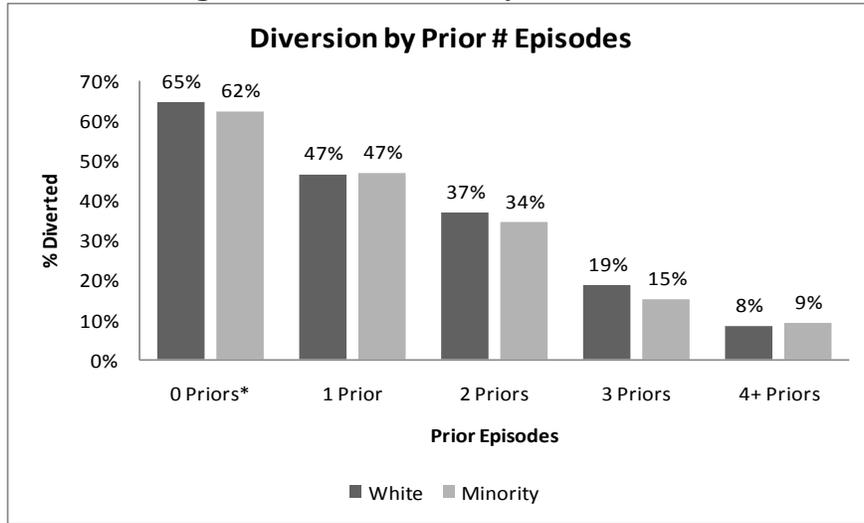
Court History

About half of Whites (48%) had no prior court referrals at their first episode in FY09, compared to 42% of minority youth. As shown in Figure 6, this difference was statistically significant, with minority youth more likely to have prior episodes. Of those who had a prior episode, minority youth were significantly younger (Mn = 13.5 years old) than White youth (Mn = 13.8 years old) at their first referral (p < .01). When comparing those who were diverted at their first episode in FY09 to those who were not, diverted youth were significantly older (Mn = 13.8 years old), on average, at their first referral to juvenile court than youth who were not diverted (Mn = 13.6 years old, p < .01). As shown in Figure 7, of those with one or more prior episodes, there were no significant differences between White and minority youth on likelihood of diversion. However, of first-time referrals, Whites were statistically significantly more likely to receive diversion.

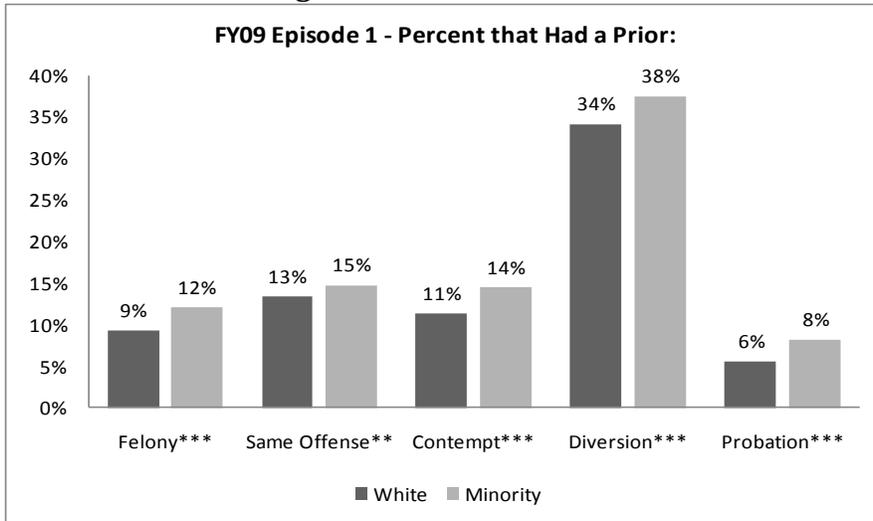**Figure 6** Prior Referrals

*p < .10, **p < .05, ***P < .01

Figure 7 Diversion Rates by Prior Referrals

Diversion by Prior # Episodes

A bar chart titled "Diversion by Prior # Episodes" with y-axis "% Diverted" (0% to 70%) and x-axis "Prior Episodes". Comparing White and Minority:

- 0 Priors*: White 65%, Minority 62%
- 1 Prior: White 47%, Minority 47%
- 2 Priors: White 37%, Minority 34%
- 3 Priors: White 19%, Minority 15%
- 4+ Priors: White 8%, Minority 9%

Legend: White, Minority

*p < .10, **p < .05, ***P < .01

In addition to having a higher percent with prior court referrals, minorities were also statistically significantly more likely than Whites to have had all of the following events at their first FY09 episode: prior felony referral, previous referral for same offense[5], prior contempt, previously diverted incident(s), and prior probation (see Figure 8). Although minorities were more likely to have these events, when each of these sub-groups was examined separately, minorities were not diverted at significantly different rates, with one exception (see Table 3). Of those who had previously had an incident diverted, Whites were statistically significantly more likely to have their FY09 first episode diverted. Otherwise, when only youth with more severe court involvement were compared to each other, there were no significant differences between White and minority youth on diversion rates. It is interesting to note that 9% of White youth and 11% of minorities who had a prior felony had their FY09 episode diverted.[6]

Figure 8 Prior Court Events

FY09 Episode 1 - Percent that Had a Prior:

A bar chart titled "FY09 Episode 1 - Percent that Had a Prior:" with y-axis (0% to 40%). Comparing White and Minority:

- Felony***: White 9%, Minority 12%
- Same Offense**: White 13%, Minority 15%
- Contempt***: White 11%, Minority 14%
- Diversion***: White 34%, Minority 38%
- Probation***: White 6%, Minority 8%

Legend: White, Minority

*p < .10, **p < .05, ***P < .01

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[5] Same offense is an exact match for a prior offense on Statute ID

[6] This represented 34 White youth and 56 minority youth who had a prior felony who were subsequently diverted
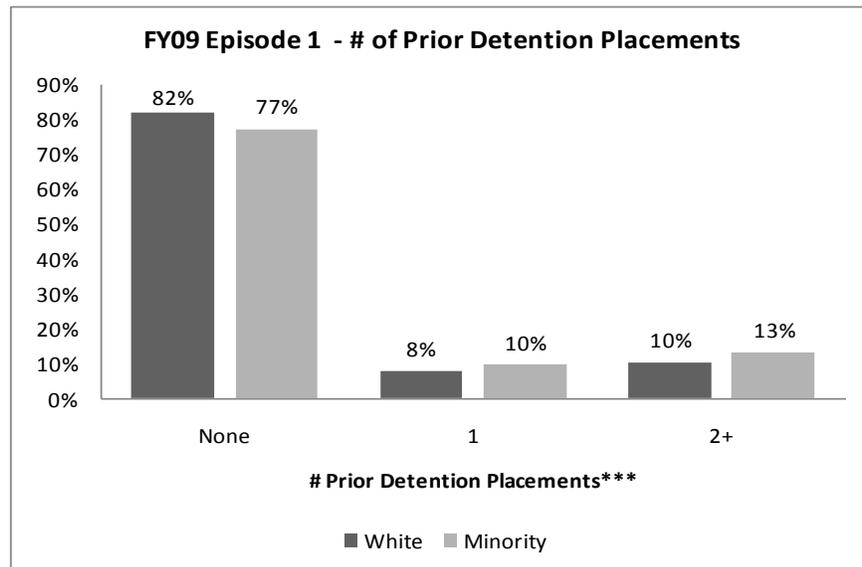
Table 3 Diversion Rates by Prior Court Events

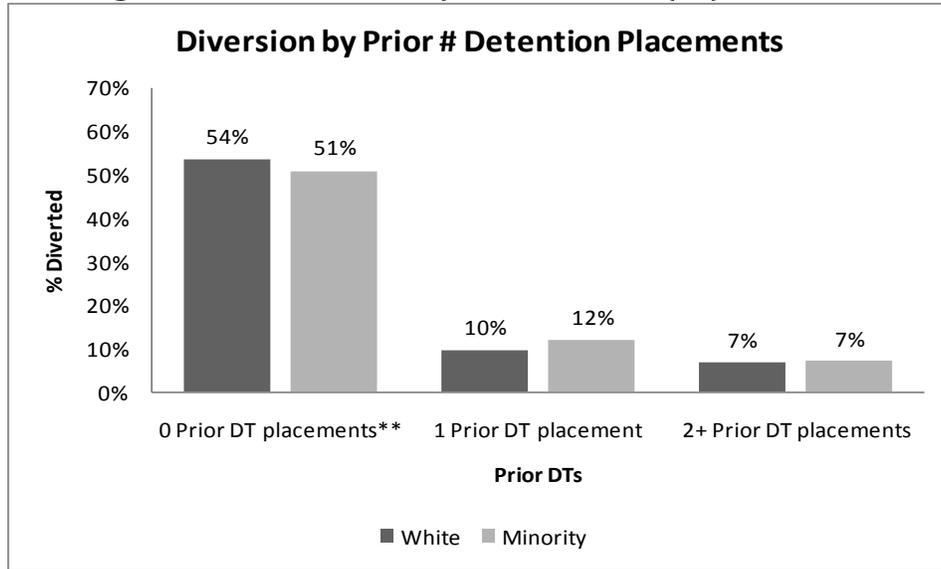|	Percent Diverted	
	White	Minority
Overall Diversion Rate FY09 First Episode***	45%	41%
Of youth who had:		
A prior felony	9%	11%
The same offense previously	21%	22%
A prior contempt	8%	9%
Previously been diverted*	34%	31%
Previously been on probation	10%	10%
*p < .10, ** p < .05, ***P < .01*		

Lastly, minority youth were also statistically significantly more likely to have had a prior detention (DT) placement prior to their first episode in FY09. As shown in Figure 9, 82% of White youth had no prior DT placements, while 77% of minorities had no prior DT placements. When each of these sub-groups was examined separately, there were no significant differences on diversion rates for youth who had prior DT placements; however, out of youth who had never been in detention before, White youth were statistically significantly more likely to be diverted (see Figure 10).

Figure 9 Prior Detention (DT) Placements

*p < .10, **p < .05, ***P < .01

Figure 10 Diversion Rates by Prior Detention (DT) Placements

Diversion by Prior # Detention Placements

(Bar chart showing % Diverted on Y-axis from 0% to 70%, and Prior DTs on X-axis. Legend: White (dark), Minority (light).)

- 0 Prior DT placements**: White 54%, Minority 51%
- 1 Prior DT placement: White 10%, Minority 12%
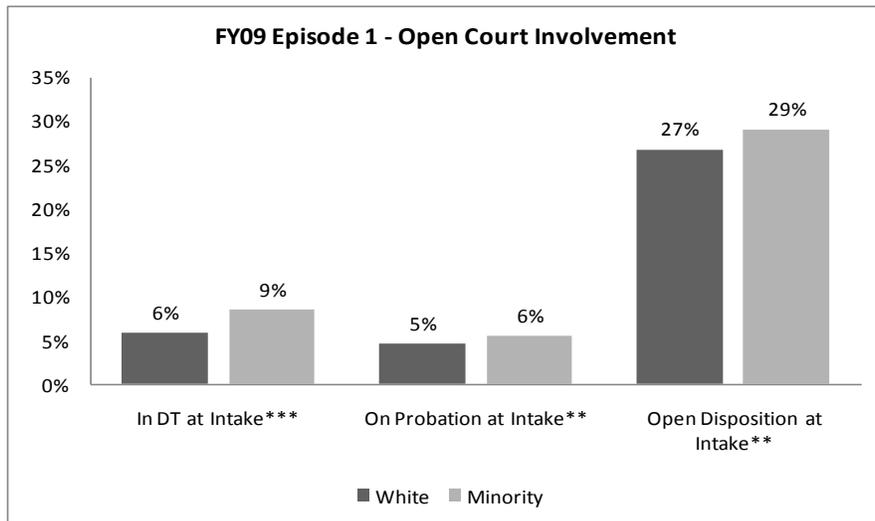- 2+ Prior DT placements: White 7%, Minority 7%

*p < .10, **p < .05, ***P < .01

Court Involvement at Intake

Youth were also examined to see if they had any open involvement with the juvenile court at their first referral during FY09. Very few youth were in detention (DT) at intake for their first episode in FY09. However, significantly more minority youth were in detention than White youth (see Figure 11). Minority youth were also more likely to be active on probation and have an open disposition with the courts. Of those who were in detention or on probation at intake, there were no significant differences between White and minority youth on diversion, with extremely few episodes for either youth being diverted (see Figure 12). However, because minorities were significantly more likely to be currently in detention at intake for their first FY09 episode, it is likely that the disproportionate use of detention is a factor leading to significantly less diversion for minority youth.

Figure 11 Open Court Involvement

FY09 Episode 1 - Open Court Involvement

(Bar chart showing percentages on Y-axis from 0% to 35%. Legend: White (dark), Minority (light).)

- In DT at Intake***: White 6%, Minority 9%
- On Probation at Intake**: White 5%, Minority 6%
- Open Disposition at Intake**: White 27%, Minority 29%
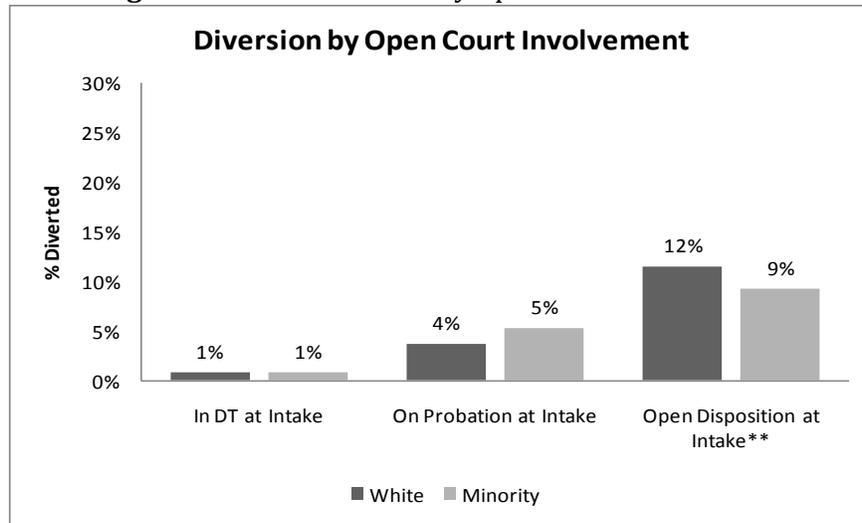
*p < .10, **p < .05, ***P < .01

11

Minorities were statistically significantly less likely than Whites to be diverted if they had an open disposition (see Figure 12). An example of this would be having a disposition that was ordered prior to intake on their first FY09 episode, but not closed until after. Some dispositions that fit this example are fines and community service. The difference in diversion rates for White and minority youth on these episodes is especially important, as intake staff noted it would be rare for a youth to have their episode diverted if they had an open case with a judge. It appears that more exceptions to that practice are being made for White youth.

Figure 12 Diversion Rates by Open Court Involvement

*p < .10, **p < .05, ***P < .01

In Detention at Intake. Because of the disparity in the use of detention (see Figure 11 on the previous page), the circumstances under which detention (DT) was open at the time of the first episode in FY09 were further examined. As shown in the following figure (Figure 13), youth who had felonies, Class A misdemeanors, or contempt as their most severe offense at their first FY09 episode were the ones who were most likely to be in DT at their referral. However, because so few youth committed felonies, the bulk of episodes that were in DT at their first FY09 episode were contempt (n = 183), then all felonies combined (n = 182), then Class B misdemeanors (n = 126), and, lastly, Class A misdemeanors (n = 114).

As shown in Table 4, minority youth did not differ statistically significantly from White youth on the percent in DT when their most severe offense was contempt; however, a higher percent of youth in Salt Lake County received DT when contempt was their most severe offense (compared to Utah or Weber counties). On the other hand, when the most severe offense was a felony (or Class A or B misdemeanor), minorities in Salt Lake and Weber counties were statistically significantly more likely than White youth to be in DT at the time of their referral. Although minorities in Utah County were slightly more likely to be in DT when their most severe offense was a felony (or Class A or B misdemeanor), this difference failed to reach statistical significance. It should be noted that when all non-contempt offenses (Infraction through F1) were examined for Utah County, the difference in detention for Whites (5.4%) and minorities (7.9%) did reach statistical significance (p = .03). The results of the detention comparisons in Table 4 suggest that the differential use of DT for minority youth is occurring across all three counties when a new offense is present. It does not appear that

the juvenile court is using DT disproportionately with minorities when contempt is their most severe offense.

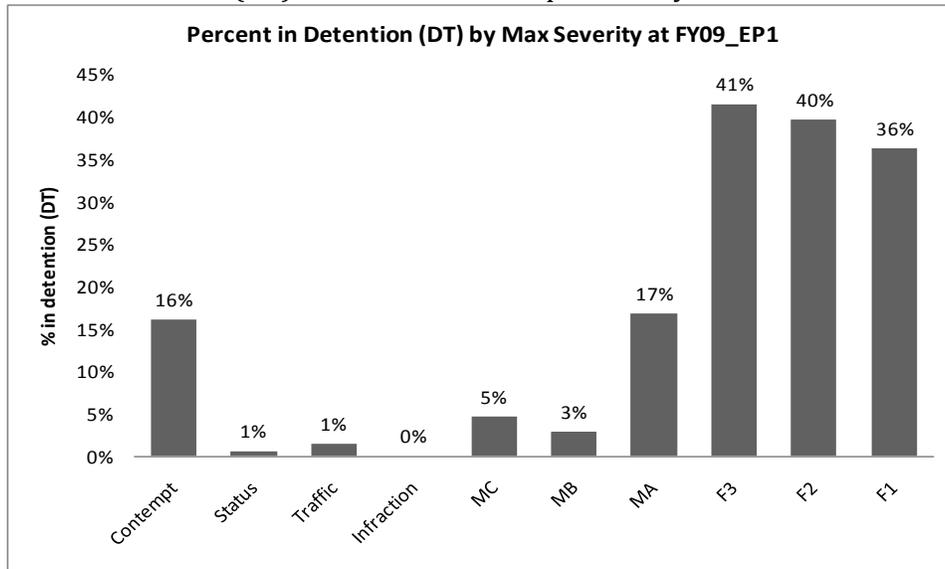**Figure 13** In Detention (DT) at Intake for FY09 Episode 1 by Maximum Offense Severity

Percent in Detention (DT) by Max Severity at FY09_EP1

Table 4 Detention Rates by County and Maximum Offense Severity

	Percent in DT	
	White	Minority
Contempt Episodes		
Salt Lake Co.	22%	24%
Utah Co.	14%	9%
Weber Co.	9%	10%
Felony Episodes		
Salt Lake Co. ***	25%	57%
Utah Co.	30%	33%
Weber Co.**	29%	55%
Class A & B Episodes		
Salt Lake Co.***	3%	5%
Utah Co.	5%	6%
Weber Co.**	4%	7%
*p < .10, ** p < .05, ***P < .01		

CARE Data Multivariate Analyses of Diversion

Several factors that were related to the likelihood of diversion were examined at the same time in multivariate analyses (logistic regression) to determine if minority status was significantly related to diversion after controlling for other significant factors. For the following analyses, episodes where the most severe offense was contempt were excluded (included episodes ranged from status

(severity = 3) to 1ˢᵗ Degree Felony (severity = 11)). Contempt episodes were excluded because essentially none were diverted (see Figure 2 on page 5).

As shown in Table 5 (Model #1), several demographic, court history, court involvement at intake for FY09 Episode 1, and episode characteristics were significantly related ($p < .05$) to the likelihood of receiving diversion. However, after controlling for these significant factors, minority status was not statistically significantly related the likelihood of receiving diversion. The Odd's Ratios presented in Table 5 that are less than one (1) indicate a decreased likelihood of receiving diversion as the predictor variables have higher values. For example, males (coded as 1, compared to females = 0) are about 21% less likely (1.0 – 0.79 = 21%) than females to receive diversion. Similarly, for each additional prior episode a youth has before the episode examined (FY09 Episode 1) the likelihood of diversion decreases by about 25% (1.0 – 0.75 = 25%). On the other hand, Odd's Ratios that are above one (1) in Table 5 indicate an increased likelihood of diversion. For example, youth who have previously been diverted are 25% more likely to be diverted again. Each of these factors' relationship with the likelihood of diversion is after controlling for the relationship between the other factors and diversion – or the "unique" contribution of each one.

One of the strongest factors related to the likelihood of diversion was being in detention (DT) at the episode examined (FY09 Episode 1). Youth who were in DT had a 98% lesser chance of being diverted (see Table 5). As noted in previous analyses (see Figure 11), minority youth were more likely to be in DT at the time of their referral. For this reason, a second logistic regression was conducted (Model #2, see Table 6). Logistic Regression #2 was the same as #1, except one factor was removed: In Detention at FY09 Episode 1. When this factor was removed, minority status became statistically significantly related to the likelihood of diversion, with minority youth being 10% less likely to be diverted (Odd's Ratio = .899) after controlling for the other significant factors. This finding reiterates the important and detrimental relationship between minority status, detention, and diversion.

Table 5 Logistic Regression Model #1: Factors Related to Diversion

Variables in the Equation	Sig.	Odd's Ratio
Demographics		
Gender (0 = female, 1 = male)	0.00	0.79
Age at FY09 Episode 1	0.01	0.93
Court History		
Age at First Referral	0.06	1.05
Number of Prior Episodes	0.00	0.75
Previously Diverted (0 = no, 1 = yes)	0.00	1.25
Previously in Detention (0 = no, 1 = 1 time, 2 = 2+ times)	0.11	0.87
Court Involvement at Intake		
In Detention at FY09 Episode 1 (0 = no, 1 = yes)	0.00	0.02
Open Disposition at FY09 Episode 1 (0 = no, 1 = yes)	0.00	0.40
Episode Characteristics		
Most Severe Offense at FY09 Episode 1 (3 = status, 11 = F1)	0.00	0.72
Minority Status (0 = White, 1 = minority)	0.20	0.93

Also included in Table 6 are logistic regressions excluding felony offenses (Model #3) and with a race/ethnicity breakdown (Model #4). Across the three models presented in Table 6, minority status is significantly related to lower likelihood of diversion, after controlling for the other significant variables (which, as shown in Table 5 are gender, current age, prior episodes, previous diversion, open disposition, and charge severity). Once minority status is broken into the various race/ethnic groups (Model #4), an interesting pattern emerges. The difference in diversion between Whites and African American youth fails to reach statistical significance. Hispanic youth are about 14% less likely to be diverted than Whites (Hispanics are the largest minority group). Asian youth are actually statistically significantly *more* likely than Whites to be diverted, at about 1.5 times. Pacific Islander youth are diverted about 19% less often than Whites, while Native American youth are diverted at about 48% less often than Whites. The Odd's Ratios in Table 6 suggest that once we remove the effect of detention (DT) at the time of the referral, minority youth are consistently less likely than Whites to be diverted, after controlling for other significant factors. Except in the case of Asian youth, where the likelihood of diversion is higher than that of Whites.

Table 6 Logistic Regressions Models #2 to #4: Factors Related to Diversion, continued

	Sig.	Odd's Ratio
Logistic Regression Model #2: Included all variables from LR Model #1, except in DT at FY09 Episode 1		
Minority Status (0 = White, 1 = minority)	0.04	0.90
Logistic Regression Model #3: Included all variables from LR Model #2, removed felony cases (Infraction to MA included)		
Minority Status (0 = White, 1 = minority)	0.01	0.88
Logistic Regression Model #4: Same as LR Model #3, except Race/Ethnicity break-down instead of minority flag		
Race/Ethnicity (compared to White as reference category)	0.00	
African American	0.41	0.91
Hispanic	0.01	0.86
Asian	0.01	1.57
Pacific Islander	0.08	0.81
Native American/Alaskan Native	0.00	0.52

CARE Data Diversion Qualified (DQ) Cases

The final set of analyses were to compare diversion qualified (DQ) to non-DQ episodes to answer the five research questions at the start of this assessment. For this section, each youth's first episode in FY09 was examined (N = 8,569).

1. **What are diversion criteria?**

Diversion exclusionary criteria, as measured by factors available in CARE data, are presented in Table 7. The types of episodes that would *not* meet diversion criteria for the purpose of this assessment are those that include a felony, DUI, MCA offense, repeat alcohol offense, or a Class A

Misdemeanor. Youth who had a prior felony or a history of five or more prior misdemeanors across two or more episodes and a repeat offense would also be ineligible for diversion according to the criteria listed in Table 7.

2. How many episodes meet diversion criteria?

As shown in Table 7, over one-third (35%) of episodes did *not* meet diversion criteria based on the information that was recorded in CARE. However, because of the limited data included in this study, we cannot put an exact number on how many episodes meet *all* diversion criteria. For example, additional diversion criteria, such as youth admitting guilt, parental agreement to diversion, and agreement on restitution payments are not recorded in CARE. Intake Officers also consider several additional factors (e.g., risk level on PSRA, if diversion is in the best interest of the youth and community) that were beyond the scope of this assessment.

Table 7 Diversion Qualifying Criteria

	N	%
Exclusionary Criteria in CARE		
Current Felony	456	5%
Prior Felony	913	11%
5+ Prior Misdemeanors over 2+ Episodes & Current Repeat Offense	477	6%
Current DUI	35	0%
Current Mandatory Court Appearance (MCA) Offense	155	2%
Current Class A Misdemeanor	802	9%
Repeat Alcohol Offense	821	10%
Contempt	1156	13%
Total Non-DQ Episodes based on above 8 criteria (some episodes met more than one criteria)	3035	35%

Table 8 compares the percent of non-DQ episodes by race/ethnicity. As shown in Table 8, Whites have a statistically significantly lower proportion of their episodes (34%) that are disqualified from diversion based on the criteria outlined in Table 7 as compared to all minority groups, except Asian (28%) and Pacific Islander (29%). As previously noted, several other important factors that determine diversion eligibility could not be included in this analysis.

**Table 8** Non-Diversion Qualified Episodes by Race/Ethnicity

	Non-DQ Episodes
White	34%
Minority**	37%
African American	37%
Hispanic	37%
Asian	28%
Pacific Islander	29%
Native American	50%
Total	35%
**Difference between White and minorities and between racial/ethnic groups is stat sig. at $p < .05$	

3. **How many of diversion-qualified episodes are diverted by RRI categories? How many of diversion-qualified episodes are not diverted by RRI categories?**

Among the episodes that were *not* automatically disqualified from diversion based on the eight (8) criteria in Table 7, Whites (66%) were significantly more likely to receive diversion than minorities (62%) ($p < .01$; see Figure 14). Similar to the logistic regression Model #4, Figure 14 also demonstrates that diversion rates were lowest for Native American youth and highest for Asian youth. Because most minority groups are both less likely to have their episodes meet diversion criteria (DQ) and, among those, are less likely to actually be diverted (Figure 14), the impact of the disparity is cumulative.

Figure 14 Diversion Rates for Potential Diversion Qualified Episodes
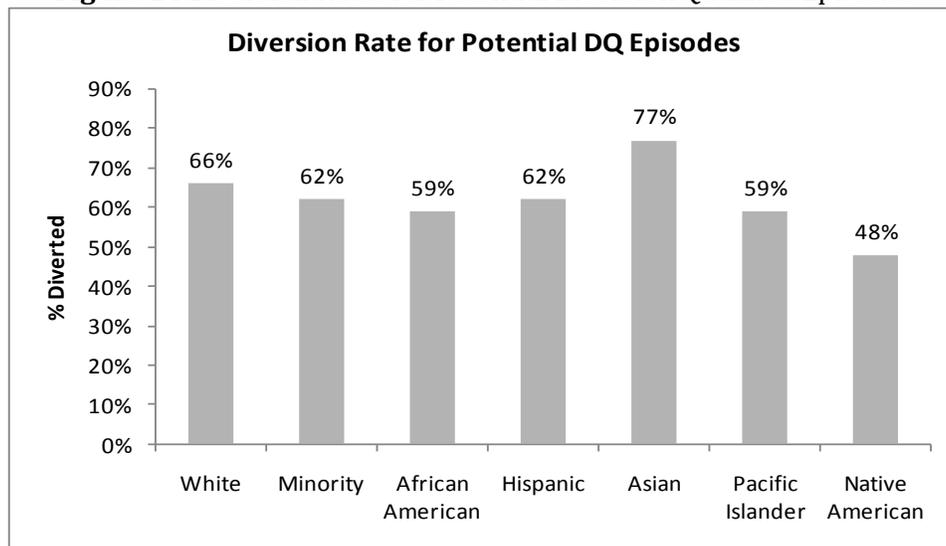
4. **How do those that are not diverted differ from those that are?**

As shown previously, in logistic regression Model #1 (see Table 5 on page 14), episodes that are diverted are those where the current most severe offense is of a lesser degree (i.e., Class B instead of Class A) and the youth does not have an open case with the court, is not in detention (DT), and has a history with fewer prior offenses, older age at first referral, and no prior detention. In addition, female youth and youth who are younger were more likely to receive diversion. Lastly, having a past diversion placement increased the likelihood of being diverted.

5. **What is the failure rate of diverted/not-diverted (but potentially qualified) episodes by RRI categories?**

As shown in Figure 15, the recidivism rate for the potentially diversion qualified (DQ), but not diverted cases is significantly higher (across all racial/ethnic groups) than the recidivism rate for potentially DQ episodes that are diverted. As previously mentioned, several additional factors that are outside the scope of this assessment are taken into account when the decision to divert (or not divert) a youth is made. Therefore, Figure 15 indicates the likelihood that the appropriate youth are being diverted, as they are lower risk and have lower recidivism post-diversion. Because this assessment could not measure all of the factors that may influence the likelihood of receiving diversion (and additionally, youth cannot randomly be assigned to receive diversion or not), it is impossible to measure the unique impact of receiving diversion on future recidivism. It is

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interesting to note (as shown in Figure 15) that the difference in recidivism among *not* diverted youth (petitioned youth) is not statistically significant across the racial/ethnic groups; however, among the youth who were actually diverted, minorities had a statistically significantly higher recidivism rate (37% vs. 34%, $p < .05$). As shown in Figure 15, African American, Hispanic, and Native American youth who were diverted all had higher recidivism rates than White youth. This disproportionate referral rate (recidivism) for minority youth has also been tracked in the annual RRI measures. An assessment of the arrest/referral point of contact may help to uncover the issues that are related to this difference in recidivism. Too few incidents in FY09 data (3.4%) had been changed from diverted to petitioned to analyze this outcome as an additional measure of failure.

Figure 15 Recidivism Rate for Diversion Qualified (DQ) Episodes
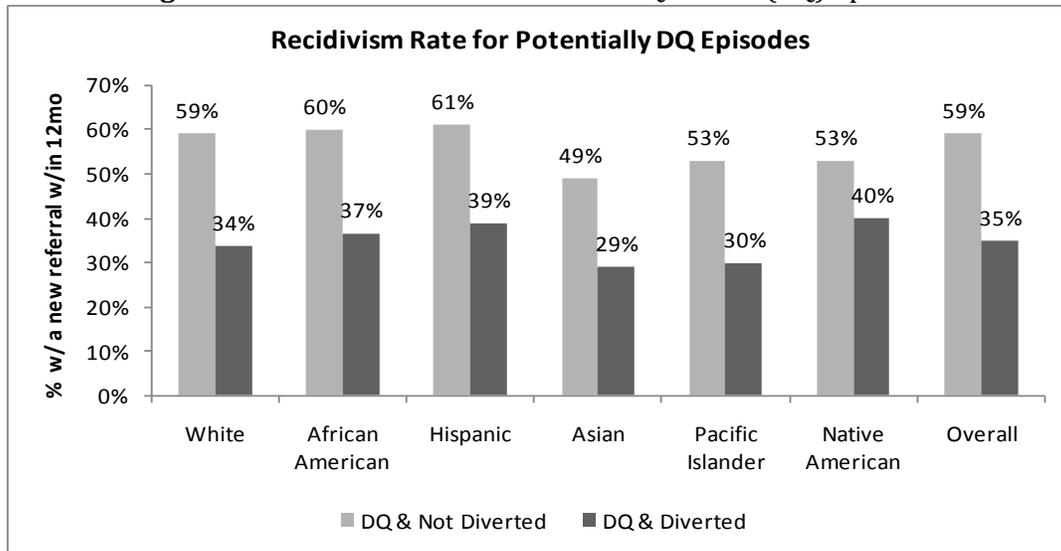
Discussion and Conclusion

DMC Diversion Assessment Key Findings and Areas for Further Analyses

This assessment of disproportionate minority contact (DMC) at the point of diversion for FY09 episodes has identified several key areas that are related to the lower rate of diversion among minorities in Weber, Salt Lake, and Utah counties. The following are the key findings for further analysis and potential intervention in the system:

1. **The use of detention (DT) with minorities for new offenses is significantly higher than for Non-Hispanic Whites**

The most striking finding of this report was the disproportionate rate at which minorities were in detention (DT) at the time of their intake into court (9%) compared to Whites (6%). This difference is important as essentially no youth who were in DT at the time of their episode were diverted. In fact, being in DT decreased the odds of being diverted by 98%, after controlling for the other significant youth and case factors that were related to diversion (including severity of presenting offense). An examination of DT revealed that the disproportionate use of DT for minority youth was

occurring when new charges were present (rather than when a youth was in on contempt). Law enforcement, rather than the courts, makes the determination to use DT with a youth when they have multiple misdemeanors or a felony. The arrest/referral assessment should examine why law enforcement (LE) is using DT with minority youth more often.

2. **The cumulative impact of a more severe court history, not meeting diversion criteria, lower likelihood of receiving diversion, and greater likelihood of recidivism disproportionately affects minority youth.**

At the time of this assessment (FY09 first episode for each youth), minorities had significantly more prior involvement with the juvenile justice system (e.g., prior felonies, contempt, diversion, probation). A more severe prior history (e.g., younger age at first referral, more prior episodes, previous detention) was significantly related to a decreased likelihood of diversion in the multivariate logistic regression models. Similarly, minorities (except Asian and Pacific Islander) had a lower percentage of their episodes meeting the diversion criteria as defined by the eight exclusionary criteria. These disparities represent a cumulative impact on minority youth. Even among those minority youth who do potentially meet diversion criteria (DQ) (63% vs. 66% for Whites), they are actually diverted at a rate that is significantly lower than White youth (62% vs. 66%; except Asian youth who are diverted at a higher rate at 77%). Because minorities are both less likely to have their episodes potentially meet diversion criteria (DQ) and, among those, are less likely to actually be diverted, the impact of the disparity is cumulative. Data in this assessment also indicate that minorities (except Asian and Pacific Islander) have a higher recidivism rate than White youth when they are diverted, thus continuing the cycle of contact with the juvenile justice system. This cumulative impact demonstrates the difficulty of teasing out specific factors for interventions, and may be tied directly to the initial point of contact between youth and the juvenile justice system: arrest/referral. As such, an arrest/referral assessment should identify additional factors for exploring the higher rates of arrest/referral among minority youth.

3. **The overall positive relationship between prior diversion and likelihood of receiving diversion again, yet lower rate of diversion for minority youth with a prior diversion**

One interesting finding was that youth who had previously been diverted were 25% *more* likely to be diverted again at the episode that was examined. This is surprising, as youth who are returning to the court after being previously diverted could be identified as diversion "failures" and, therefore, be less likely to be diverted a subsequent time. Minorities were statistically significantly more likely to have a prior diversion (38% vs. 34%), as they were more likely to have most types of prior court involvement; however, among those with a prior diversion, minorities were still less likely to receive diversion on the current episode.

4. **The negative relationship between open dispositions and the likelihood of diversion, with more minorities having open dispositions**

Another factor for further analysis is the negative relationship between open dispositions and the likelihood of diversion. Minorities were statistically significantly more likely to have an open disposition (29% vs. 27%) and, among those with an open disposition, minorities were statistically significantly less likely to be diverted (9% vs. 12%). Examples of having an open disposition are previously ordered fines, classes, or community service that has not been completed. The DMC Subcommittee should work with the juvenile court to explore why minority youth may be more likely to have open dispositions, after controlling for court history. The issue of open court cases is especially important, as intake staff noted it would be rare for a youth to have their episode

diverted if they had an open case with a judge. It appears that more exceptions to that practice are being made for White youth. This is a potential area for a policy change/intervention to ensure that all youth are being treated similarly when they have an open case before a judge.

5. **The importance of analyzing variance in diversion and recidivism rates by race/ethnicity as significant differences exist between minority groups as well**

Lastly, although the overall minority to White comparisons indicated that diversion outcomes are disproportionately worse for minorities; differences existed among the various racial/ethnic categories. For example, in logistic regression Model #4, the difference in diversion between Whites and African American youth failed to reach statistical significance. However, Hispanic (14% less likely), Pacific Islander youth (19% less likely), and Native American youth (48% less likely) were all significantly less likely than White youth to be diverted. On the other hand, Asian youth were actually statistically significantly *more* likely than Whites to be diverted, at about 1.5 times.

Asian and Pacific Islander youth were the only groups to have more of their episodes potentially meet diversion criteria (DQ) than White youth. While out of those who were potentially DQ, only Asian youth were more likely to receive diversion than Whites. Lastly Asian and Pacific Islander youth had lower recidivism rates than White youth, regardless of if they received diversion or not. These differences suggest the importance of examining each minority group separately when data is sufficient to allow.

Conclusion

Although this report focuses specifically on diversion, it is an important step toward a better understanding of the factors related to disproportionate minority contact among Utah's youth and will be greatly built upon as each of the other points of contact are examined. Specifically, the importance of DT in the decision to divert (or not) warrants the further exploration of that issue.