

**CRITICAL CONDITION**  
African-American Youth In  
The Justice System

By Neelum Arya and Ian Augarten  
Foreword by Hilary O. Shelton

1012 14TH ST. NW, SUITE 610, WASHINGTON DC 20005

PHONE: 202-558-3580 FAX: 202-386-9807 [www.campaignforyouthjustice.org](http://www.campaignforyouthjustice.org)

**POLICY BRIEF**

**RACE AND ETHNICITY** **2**  
VOLUME

CAMPAIGN FOR  
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BECAUSE THE CONSEQUENCES AREN'T MINOR

# CRITICAL CONDITION AFRICAN-AMERICAN YOUTH IN THE JUSTICE SYSTEM

*Foreword by*

**HILARY O. SHELTON**

*Washington Bureau Director  
NAACP*

**NEELUM ARYA**

*Director of Policy and Research  
Campaign for Youth Justice*

**IAN AUGARTEN**

*Program Associate  
Campaign for Youth Justice*

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## FOREWORD

By Hilary O. Shelton, Washington Bureau Director, NAACP

Recent events in Jena, Louisiana, have brought attention to critical issues facing the African-American community including the issues of racial disparities in the justice system, trying children in adult court, and the heinous practice of placing children in adult jails and prisons. The “Jena Six” cases captured the nation’s attention when six teens faced overly aggressive prosecution and extended incarceration for fighting with a white classmate after a series of racial incidents that included the hanging of nooses in a tree at the local high school. One defendant, Mychal Bell, was jailed in an adult facility for nine months before being initially freed. Thousands converged in Jena on September 20, 2007 to demonstrate their outrage and as of this writing, the Jena Six are still being processed in the criminal justice system.

Unfortunately, the Jena Six cases are not isolated incidents but reflect larger system failures by the justice system. It is difficult for any American of conscience to say with conviction that our current legal system is operating with the creed “equal justice under the law.” Shameful stories of disparate treatment from across the country prompted the NAACP to declare a national “State of Emergency” that requires immediate action by local and state authorities as well as the U.S. Department of Justice and the U.S. Congress.<sup>1</sup> This policy brief renews that call to action by presenting the latest data on African-American youth in the justice system.

It is well documented that African-American youth are treated more harshly by the justice system than white youth, for the same offenses, at all stages in the justice system. The National Council on Crime and Delinquency recognized that African-American youth face a “cumulative disadvantage” in the justice system (where the disparities grow deeper as a youth penetrates the justice system) in their landmark 2000 report, *And Justice for Some*, updated and reissued in 2007.<sup>2</sup> Disparities start at the beginning, when a decision is made to arrest a child or let him or her go with a warning: African-American youth make up 30% of those arrested while they only represent 17% of the overall youth population.<sup>3</sup> At the other extreme end of the system, African-American youth are 62% of the youth prosecuted in the adult criminal system, and are nine times more likely than white youth to receive an adult prison sentence.<sup>4</sup>

There is no simple answer to the question of why African-American youth are being treated so poorly, and so unequally. Racial profiling, targeting patrols in certain low-income neighborhoods, and racial bias within the justice system all contribute to the stark disparities confirmed in this policy brief. However, the disparity in treatment between African-American youth and white youth by the court system is both a civil rights and racial justice issue that cannot continue to go unaddressed. It has been two decades since Congress first recognized these disparities through the Juvenile Justice and Delinquency Prevention Act (JJDP). On this twentieth anniversary, we need a long-term commitment from the U.S. Congress and from the Administration that adequate resources will be provided to eradicate these inequities and ensure that “justice and equality” are not just empty words.

The decision to transfer youth to the adult criminal system – the most disparate point in the justice system – is really a decision about whether a youth is “redeemable” and should be rehabilitated by the juvenile justice system, or considered “unsalvageable” and prosecuted in the adult criminal system forever to be branded with an adult court conviction. As this brief shows, African-American youth have been disproportionately deemed unsalvageable by federal and state laws.

The NAACP opposes any policies, statutes, or laws that increase the number of youth transferred to the adult criminal justice system and the number of youth held in adult jails and prisons. Our organization’s policy in opposition to the transfer of youth to the adult criminal justice system is included with this brief demonstrating our commitment to changes in federal and state law and practice. We are committed to working with other civil rights and children’s rights organizations to try to put an end to all of the practices that result in the disparities in how children are treated when they become involved with the justice system.

We need to address these grave concerns now, in a coordinated effort that recognizes the seriousness of the problem and that our collective future is threatened. We must put ourselves in the shoes of our children, the ones who have been prosecuted as adults, placed in an adult jail or prison, children with adult convictions, whose future has effectively been abandoned by our system. The status of our children in the justice system is in critical condition. We must do better.

- **“Overrepresentation”** exists when, at various stages of the justice system, the proportion of a certain population exceeds its proportion in the general population.
- **“Disparity”** refers to a situation in which different groups have different probabilities that certain outcomes will occur. Disparity may in turn lead to overrepresentation.
- **“Discrimination”** refers to differential decision-making among juvenile justice professionals affecting different groups of youth based on their gender, racial, and/or ethnic identity.

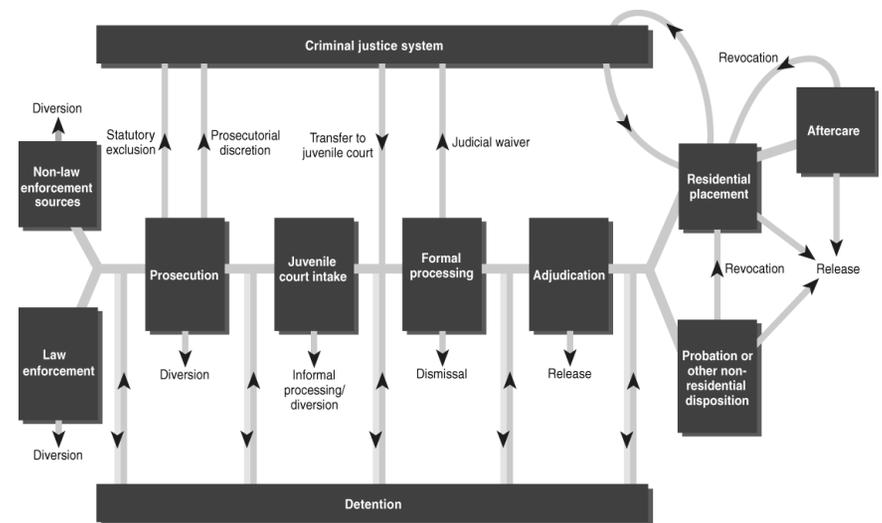
## I. OVERVIEW

The juvenile justice system was originally enacted for the very purpose of separating youth from adult criminals; however, during the 1980s and 1990s every state except Nebraska enacted “get tough” juvenile policies making it easier to try youth as adults by: lowering the age at which juveniles can be prosecuted as adults; greatly expanding the categories of crimes for which youth are automatically prosecuted in criminal court; giving prosecutors the exclusive authority to decide which juveniles are charged as adults; and limiting the discretion of judges to overturn decisions by prosecutors and law enforcement officials.<sup>5</sup> As a result of these laws, thousands of African-American youth are prosecuted in the adult criminal justice system every year.

There are three primary ways children are sent to adult court (see Figure 1). Forty-six states have *judicial waiver*, the traditional path to the adult system wherein a juvenile court judge makes a decision to transfer a youth’s case to adult court after considering several factors (e.g., age, offense, services available in the juvenile system).<sup>6</sup> In contrast to a judicial decisionmaker, the *prosecutorial discretion* transfer mechanism (also known as direct file) allows the prosecutor a choice between filing the case in juvenile or adult court, usually depending on cases that meet certain offense or offender criteria. Fifteen states

grant prosecutors full discretion to decide whether certain cases will be tried in the adult system.<sup>7</sup> Finally, *statutory exclusion* (also known as automatic waiver or legislative waiver) provisions expressly prohibit the juvenile court from hearing certain types of cases. For example, thirteen states currently require all youth ages 16 or 17 (depending on the state) to be tried in the adult criminal system regardless of how minor the offense.<sup>8</sup> Twenty-nine states have mandatory transfer policies for certain violent offenses.<sup>9</sup> Thirty-four states have “once an adult, always an adult” provisions requiring that youth who have been tried or convicted as adults be prosecuted in the adult system for any subsequent offense.<sup>10</sup>

FIGURE 1: JUSTICE SYSTEM CASE PROCESSING<sup>11</sup>



When youth are prosecuted in the adult system, they are deprived of rehabilitative opportunities including education, mental health services, and other age-appropriate services that make it more likely that the youth will become a law-abiding productive citizen. In addition, youth prosecuted in the adult system can be held in adult jails and prisons where they are at great risk of assault, abuse, and suicide. Since enactment of these laws, new research has called into question the efficacy of these laws.

In 2007, the U.S. Centers for Disease Control and Prevention's Task Force on Community Preventive Services found that youth who are tried as adults are, on average, 34% more likely to commit crimes than youth retained in the juvenile justice system. The Task Force also found that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth. As a result, the Task Force recommended against "laws or policies facilitating the transfer of juveniles from the juvenile to the adult judicial system."<sup>12</sup>

In August 2008, the Office of Juvenile Justice and Delinquency Prevention, the federal agency dedicated to juvenile justice issues at the U.S. Department of Justice, released, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, a bulletin finding that laws making it easier to transfer youth to the adult criminal court system have little or no general deterrent effect on crime (i.e., transfer laws do not prevent youth from engaging in criminal behavior). On the contrary, youth transferred to the adult system are more likely to be rearrested and to reoffend than youth who committed similar crimes, but were retained in the juvenile justice system. According to the bulletin, higher recidivism rates are due to a number of factors including:

- Stigmatization/negative labeling effects of being labeled as a convicted felon;
- Sense of resentment and injustice about being tried as an adult;
- Learning of criminal mores and behavior while incarcerated with adults;
- Decreased access to rehabilitation and family support in the adult system; and
- Decreased employment and community integration opportunities due to a felony conviction.<sup>13</sup>

With clear evidence that transfer laws do not protect public safety and are harmful to youth, this policy brief examines the racial disparities in the adult system and is intended to serve as a resource for federal and state policymakers, juvenile justice professionals, and others interested in reforming state and federal laws. The brief begins with a discussion of demographics and disparities in education, health care, child welfare, and economic opportunity that contribute to delinquency and the cycle of incarceration that disproportionately affects the African-American community. Second, this brief examines the self-reported criminal behaviors of African-American and white youth,

and compares them to more traditional criminal justice statistics to show that African-American youth are not disproportionately committing crimes to justify the current disparities. Third, this brief takes an in-depth look at the disproportionate treatment that African-American youth receive at all major decision points in the justice system. Fourth, this brief looks at national initiatives aimed at reducing disparities and highlights recent law and policy changes that are helping African-American youth. Finally, the brief concludes with a series of recommendations for federal and state policymakers to address the pervasive racial disparities in the juvenile and adult criminal justice systems and minimize the negative impact of transfer laws on African-American youth.

## II. DEMOGRAPHICS

Approximately 38 million African-American<sup>i</sup> people live in the United States, comprising 13% of the total population.<sup>14</sup> Black people live in every state of the country, and the states with the highest African-American populations are southern states and states with large urban centers (see Tables 1 and 2). In 2006, the vast majority (89%) of African Americans lived in urban settings, compared to 73% of whites.<sup>15</sup> Similarly, 90% of poor blacks live in urban areas.<sup>16</sup>

The African-American population is relatively young: 41% percent of African-Americans are under age 25, versus 34% of the total U.S. population. There are 5,325,000 African-American youth ages 10 to 17 in the United States, making up 16% of that age group overall.<sup>17</sup>

<sup>i</sup> The terms "African American" and "black" are used interchangeably. The terms "youth of color" or "minority youth" refer to black, Latino, Asian and Native-American youth.

TABLE 1. AFRICAN-AMERICAN POPULATION, 2006<sup>18</sup>

Top 10 Highest Proportion States			
State	Number	Percentage of State Population that is African American	Percentage of National African American Population
District of Columbia	329,000	57%	1%
Mississippi	1,081,000	37	3
Louisiana	1,358,000	32	4
Georgia	2,800,000	30	7
Maryland	1,657,000	30	4
South Carolina	1,253,000	29	3
Alabama	1,212,000	26	3
North Carolina	1,921,000	22	5
Delaware	178,000	21	0
Virginia	1,520,000	20	4

TABLE 2. AFRICAN-AMERICAN POPULATION, 2006<sup>19</sup>

Top 10 Highest Population States			
State	Number	Percentage of State Population that is African American	Percentage of National African American Population
New York	3,353,000	17%	9%
Florida	2,864,000	16	7
Texas	2,805,000	12	7
Georgia	2,800,000	30	7
California	2,445,000	7	6
Illinois	1,928,000	15	5
North Carolina	1,921,000	22	5
Maryland	1,657,000	30	4
Virginia	1,520,000	20	4
Michigan	1,444,000	14	4

### III. RISK AND PROTECTIVE FACTORS

Too many African-American youth are exposed to risk factors known to be common precursors to delinquency, including poverty, unemployment, school failure, unstable families, and neighborhoods plagued by violence. While the statistics below highlight the magnitude of disadvantage threatening the development of black children, it is important to remember that the majority of black youth are not involved with the juvenile or criminal justice systems. Sometimes these startling statistics may inadvertently reinforce stereotypes that African-American youth, particularly poor urban black boys, are prone to violence and criminal activity simply because they are considered “at risk.”

**Poverty.** One in three African-American children under age 18 (35%) was living in poverty in 2007, more than three times the proportion of white youth (10%).<sup>20</sup> While the poverty status of African-American youth has improved dramatically since 1992, when nearly half (47%) of all black children were in poverty, poverty rates have not fallen fast enough.<sup>21</sup> Recent data have shown that poverty rates have not declined since 2001.<sup>22</sup>

Both the juvenile and adult justice systems disproportionately affect people with low incomes. Not only are poor youth more vulnerable to contact with law enforcement, but their families are less likely to be able to afford legal representation to protect them from penetrating further into the system. White youth are twice as likely as African-American youth to be able to retain private counsel. African-American youth whose families disproportionately have limited income are often provided indigent defense by lawyers who carry high case loads with meager resources.<sup>23</sup>

**Families and the Impact of Incarceration.** While many children are successfully raised by single parents and extended families, research shows that youth living without both parents are at increased risk for delinquency.<sup>24</sup> In 2006, 65% of African-American children under age 18 were not living with both parents, versus only 26% of white children.<sup>25</sup> Mass-incarceration has significant consequences for children and families in the African-American community. An estimated 1.7 million children had parents who were incarcerated in federal or state

prison in 2007. Black children were seven and a half times more likely than white children to have a parent in prison.<sup>26</sup> Recent estimates are that 20% of all black children have a father with an incarceration history.<sup>27</sup> In 2006, one in every nine black men ages 20 to 34 was incarcerated, along with one out of every 100 black women ages 35 to 39.<sup>28</sup> If these trends continue, one in three black males born today can expect to spend time in prison during his lifetime.<sup>29</sup>

**Education.** There is a strong relationship between the education a child receives and his or her future life success. Negative educational outcomes, such as dropping out, being suspended, or being expelled increase the likelihood that youth will have contact with the juvenile or criminal justice system. Students who are suspended are more than twice as likely to be incarcerated than students who have never been suspended.<sup>30</sup> African-American youth are disproportionately suspended and expelled: in 2003, in grades K through 12, 20% of black students were suspended and 5% were expelled, compared to 9% and 1%, respectively, for white students.<sup>31</sup>

Dropping out of school triples the likelihood that a person will be arrested.<sup>32</sup> Without a high-school diploma or GED, youth transitioning into adulthood have significant difficulties obtaining employment or further education. Three-quarters of white students, but only half of black students, graduate from high school after four years.<sup>33</sup> In many of the nation's large urban districts, graduation rates for black youth are even lower (30% to 40% range).<sup>34</sup> Research demonstrates that increasing high school graduation rates would decrease violent crime by 20% and drug and property crimes by more than 10%. Economists have calculated that each black male who graduates from high school is associated with a savings to the criminal justice system of more than \$55,000 (the estimate accounts for the expense of trials, sentencing, and incarceration).<sup>35</sup>

There are some signs of improvement in the education of African Americans. Black elementary school students have made significant improvements in test scores,<sup>36</sup> and black high school students participate in after-school activities at the same rate as white students.<sup>37</sup> African-American enrollment in undergraduate degree-granting institutions has also increased by 40% in the past decade.<sup>38</sup> In fact, blacks in 2007 made up 13% of the fall enrollment in degree-granting undergraduate institutions, about equal to their proportion of the total pop-

ulation.<sup>39</sup> With the increasing value of a college degree on the job market, high post-secondary enrollment is a promising sign.

**Employment:** The lack of employment opportunities for both young African Americans and their parents substantially increases the risk of exposure to the justice system by encouraging participation in the illicit economy. In 2006, half of African-American children lived in a family in which no parent had full-time, year-round employment, versus only one-quarter of white children who lived in the same kind of family.<sup>40</sup> Eleven percent of African-American youth and young adults were unemployed in the years 2005 to 2007, almost twice the percentage of unemployed whites (6%) in that age group.<sup>41</sup>

Criminal justice system involvement also dramatically limits employment opportunities. Most states allow employers to deny jobs to anyone with a criminal record. In fact, in most states employers can deny jobs to people who were arrested but never convicted of a crime.<sup>42</sup> One study of employers found that more than 60% of employers probably would not hire an applicant with a criminal record.<sup>43</sup> Another study found that having a criminal record led to a 50% reduction in employment opportunities for white applicants, and a 64% reduction for African-American applicants.<sup>44</sup> Employers in a growing number of professions, including home health care, nursing, education, eyeglass dispensing, plumbing, and even barbering, are barred by state licensing agencies from hiring people with a wide range of criminal convictions, even convictions that are unrelated to the job or license sought.<sup>45</sup>

**Health.** The health disparities that begin before birth and continue throughout the lifespan for African Americans may also be linked to delinquency. African-American mothers often fail to receive adequate prenatal care, which resulted in 2005 a black infant mortality rate that was more than twice the rate for white children.<sup>46</sup> Black children are also at higher risk of exposure to environmental toxins which compromise proper development and impair cognitive functioning. From 2001 to 2004, black children ages 1 to 5 were more than twice as likely as white children in this age group to have elevated blood lead levels.<sup>47</sup> Many black children also have inadequate access to the health services they need either because they lack health insurance, or because their coverage is not sufficient. Twelve percent of African-American children (versus 7% of white children) did not have health

insurance in 2007.<sup>48</sup> HIV poses a severe problem in the African-American community, especially for youth. In 33 states studied by the Centers for Disease Control and Prevention in 2006, black youth accounted for 70% of new HIV/AIDS cases diagnosed among adolescents ages 13 to 19.<sup>49</sup>

Despite longstanding health disparities between whites and African Americans, some indicators have shown improvement for African-American youth. Between 1991 and 2005, the birth rate for black teenagers ages 15 to 17 dropped 60% (from 86 to 35 per 1,000 females).<sup>50</sup> According to 2005 data, the child-death rate and the teen-death rate have also both fallen since 1999.<sup>51</sup>

**School and Community Safety.** Community supports are instrumental in helping African-American youth overcome significant challenges and avoid justice system involvement. Many African-American children live in unsafe communities or attend schools where parents fear for their children's safety. A 2003 national survey of parents of black children found that 32% did not feel that they lived in a supportive neighborhood, versus only 13% of parents of white children who felt this way. Thirty-one percent of African-American parents, versus only 8% of white parents, believed their child is never or only sometimes safe in their community or neighborhood.<sup>52</sup>

Even though there are no significant differences in the proportions of black and white students who report being threatened or injured with a weapon on school property, African-American youth and parents are more afraid of violence in their schools.<sup>53</sup> According to the 2005 National Crime Victimization Survey, 9% of African-American students and 4% of white students reported they were afraid of being attacked at school.<sup>54</sup> One-quarter of parents of African-American children believe that their child is never or only sometimes safe at school, as opposed to 6% of white parents.<sup>55</sup>

**Gangs.** Gang violence has garnered much attention in recent years even though estimates from law enforcement suggest that no more than 1% of all youth ages 10 to 17 are gang members.<sup>56</sup> In a 2005 survey of students ages 12 to 18, 37% of African Americans reported that gangs were present at their schools, versus only 17% of white students.<sup>57</sup> Self-report surveys conducted from 1997 to 2001 find that 12% of African Americans reported gang membership, versus 7% of

whites.<sup>58</sup> Law enforcement estimates find greater racial discrepancies in gang membership than measures that directly survey youth. According to the 2004 National Youth Gang Survey, law enforcement agencies estimate that 37% of gang members are African American, as opposed to 8% white.<sup>59</sup> U.S. Sentencing Commission data from 2003 to 2006 also show that gang-related crime laws are disproportionately applied to minorities. Between 60% to 75% of individuals convicted under current gang-related statutes are minorities, even though minority groups only make up 33% of the general U.S. population.<sup>60</sup>

Part of the difficulty in addressing gang violence is that current research and policy solutions often fail to distinguish between serious gang behaviors and the minor, fleeting involvement characteristic of most gang members. In fact, the majority of youth "age out" of gang-related activities. Research demonstrates that half to two-thirds of gang members are affiliated for one year or less and are not members "for life."<sup>61</sup> Overly reactive and punitive responses to gang membership, such as gang databases or mandatory sentencing laws, may actually increase the likelihood that a youth remains in a gang. According to a 2007 report from the Justice Policy Institute, increased arrests and longer sentences actually create more cohesive and stronger gang identification.<sup>62</sup>

**Victimization.** Research has shown that childhood exposure to violence leads to an increased risk of being arrested for violent crime.<sup>63</sup> Being abused or neglected as a child increases the likelihood of arrest as a juvenile by 59%, as an adult by 28%, and for a violent crime by 30%.<sup>64</sup> African-American youth are almost twice as likely as white youth to be the victims of child maltreatment.<sup>65</sup> Black children make up 15% of the child population but 23% of child maltreatment victims<sup>66</sup> and 32% of the foster care population.<sup>67</sup> In addition to high rates of child abuse, African-American youth ages 16 to 19 are more likely than blacks of any other age group to be victims of violent crime. They are more than twice as likely as white youth in the same age group to be the victims of serious violent crimes including rape, sexual assault, robbery, and aggravated assault.<sup>68</sup> Black youth are nearly 15 times more likely than are white youth to die from homicide.<sup>69</sup> In fact, homicides accounted for 25% of deaths of African-Americans ages 10 to 17, the second leading cause of death for that age group in 2005.<sup>70</sup>

#### IV. CRIMINAL ACTIVITY REPORTED BY AFRICAN-AMERICAN YOUTH

Self-report surveys help answer the question of whether African-American youth commit more crimes than white youth. Traditional criminal and delinquency statistics (e.g., arrest rates or court processing data) tell us only how government agencies respond to youth who have been arrested or brought to the attention of the authorities. To the extent that other factors or biases influence outcomes in the juvenile justice system, the official data may be open to multiple interpretations.<sup>71</sup> For example, an increase in juvenile arrest rates for drug-abuse violations may reflect increasing drug use, greater police monitoring, changing laws and policies, or a combination of factors. In contrast, self-report data (participants anonymously report on their own experiences and actions) reveal behavior that is never reported or detected by law enforcement and is more likely to reflect actual levels of criminal activity. Recognizing the importance of self-report data, the Centers for Disease Control and Prevention has surveyed the nation's youth since 1991 using the National Youth Risk Behavior Surveillance System (YRBSS).<sup>72</sup>

**Drug and Alcohol Use.** According to the 2007 YRBSS survey, African-American youth report lower rates than white youth of most drug- and alcohol-related behavior (see Table 3). These results have been largely consistent since 1991, when the YRBSS began.<sup>73</sup> The finding of lower rates of drug use for black youth has also been replicated in other self-report studies.<sup>74</sup> This finding has especially important implications because of the disproportionate rate at which African Americans are arrested and detained for drug violations, discussed in the following section.

TABLE 3. SELF-REPORTED DRUG- AND ALCOHOL-RELATED RISK BEHAVIOR, 2007<sup>75</sup>

Risk Behavior	Black Students (%)	White Students (%)
Lifetime alcohol use (had at least one drink of alcohol during their life)	69	76
Episodic heavy drinking (had five or more drinks of alcohol within a couple of hours on at least one occasion during the last 30 days)	13	30
Lifetime cigarette use (ever tried cigarette smoking, even one or two puffs)	50	50
Lifetime marijuana use (used marijuana one or more times during their life)	40	38
Lifetime cocaine use (used any form of cocaine, including powder, crack, or freebase one or more times during their life)	2	7
Lifetime inhalant use (sniffed glue, breathed the contents of aerosol spray cans, or inhaled any paints or sprays to get high one or more times during their life)	9	14
Lifetime hallucinogenic drug use (used hallucinogenic drugs such as LSD, acid, PCP, angel dust, mescaline, or mushrooms one or more times during their life)	2	9
Lifetime methamphetamine use (used methamphetamines [also called speed, crystal, crank, or ice] one or more times during their life)	2	5
Lifetime ecstasy use (used ecstasy [also called MDMA] one or more times during their life)	4	6

Note: Shaded boxes are statistically significant differences based on t-test analyses,  $p < .05$ .

**TABLE 4. SELF-REPORTED VIOLENT AND DELINQUENT BEHAVIOR OF SECONDARY SCHOOL STUDENTS, 2007<sup>76</sup>**

Risk Behavior	Black Students (%)	White Students (%)
In a physical fight (one or more times during the past 12 months)	45	32
Carried a weapon (for example, a gun, knife, or club during the past 30 days)	17	18
Carried a weapon on school property (for example, a gun, knife, or club during the past 30 days)	6	5
Carried a gun (during the past 30 days)	6	4

Note: Shaded boxes are statistically significant differences based on t-test analyses,  $p < .05$ .

**TABLE 5. LIFETIME PREVALENCE OF SELF-REPORTED VIOLENT AND DELINQUENT BEHAVIOR BY AGE 17, 1997-2001<sup>77</sup>**

Risk Behavior	Black Students (%)	White Students (%)
Vandalism (damaged or purposely destroyed property that did not belong to you)	33	39
Theft of less than \$50	38	44
Theft of more than \$50	15	12
Drug selling (ever sold or helped sell marijuana, hashish, or other hard drugs such as heroin, cocaine, or LSD)	13	17
Assault (attacked someone with the idea of seriously hurting them)	36	25
Carry a handgun	15	16
Runaway (left home, at least overnight, without parents permission)	18	21

Note: Shaded boxes are statistically significant differences based on t-test analyses,  $p < .05$ .

**Violent and Delinquent Behavior.** According to the YRBSS survey and another self-report survey, the National Longitudinal Survey of Youth (NLSY) conducted by the U.S. Bureau of Labor Statistics, racial discrepancies exist in offending and these differences vary by offense (see Tables 4 and 5). In both surveys, African-American youth report that they are more likely than white youth to commit assault and be involved in serious physical altercations. However, white youth report that they are more likely to commit drug infractions, including both use and distribution, than are black youth. Black and white youth are equally likely to report carrying weapons, findings that have been largely consistent since the YRBSS began in 1991.<sup>78</sup>

The self-report data indicate that African-American youth are not disproportionately committing crimes or engaging in delinquent behavior to warrant the disparities currently seen in the justice system. In fact, with the exception of assaults and thefts of more than \$50, white youth consistently report engaging in more criminal behavior than black youth.

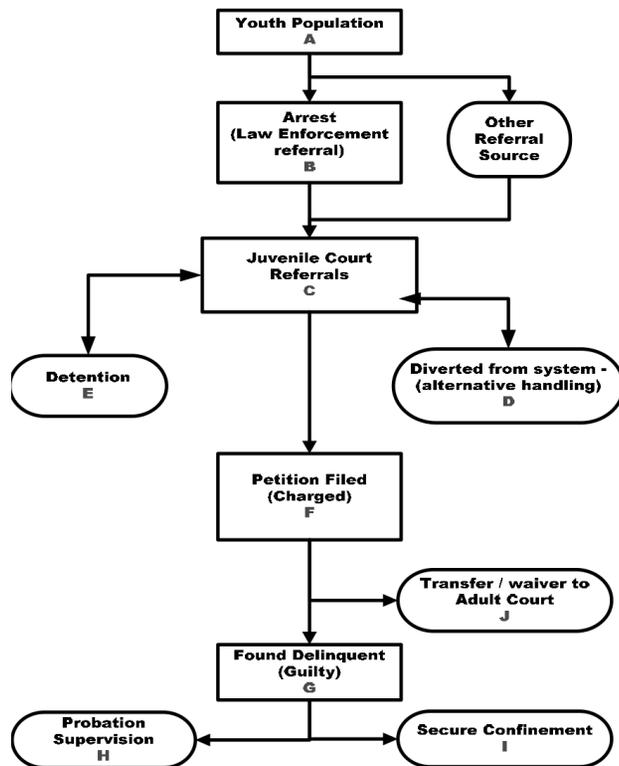
## V. DISPARITIES IN THE JUVENILE JUSTICE SYSTEM

Congress first recognized the vast disparities in treatment between African-American and white youth in 1988 when the federal Juvenile Justice and Delinquency Prevention Act (JJDP) required states to address the disproportionate confinement of minority youth (i.e., when the proportion of a minority group's youth in a state's secure facilities exceeded their proportion in the population) in their State plans. Four years later, Congress elevated the issue to a "core requirement" of the Act, meaning that federal funding eligibility was tied to compliance. In 2002, Congress broadened the requirement to a focus on disproportionate minority "confinement" to disproportionate minority "contact" with any part of the juvenile justice system. The "DMC" requirement now requires that states address disparities at each contact point (i.e., decisions to arrest, detain, charge, sentence, etc.) to maintain compliance with the law. Despite twenty years of explicit acknowledgement of the problem and some progress in specific jurisdictions, African-American youth continue to be overrepresented at most stages in the justice system.<sup>79</sup>

As African-American youth are disproportionately arrested compared to their proportion of the overall population, they are overrepresented at most stages of case processing.<sup>80</sup> This overrepresentation persists in further stages of the system regardless of how they are treated at other points in case processing. To identify precisely which justice system contact points contain disparities, a new tool, the Relative

Rate Index (RRI) was developed. The Relative Rate Index measures disparities at each of the contact points where DMC may occur in the juvenile justice system (see Figure 2). Since youth prosecuted in the adult system via prosecutorial or statutory waivers don't have contact with the juvenile court, data is currently not available at the national level for those types of transfer mechanisms.

FIGURE 2: RELATIONSHIP OF DATA ELEMENTS FOR RELATIVE RATE INDEX CALCULATIONS<sup>81</sup>



The RRI “controls” for the disparities at arrest or other points in the system by comparing what happens at a particular decision point to the rates at the previous point in the system. For example, the RRIs for arrests are based on the differences in rates between points B and A, and the RRIs for whether a youth is adjudicated delinquent are based on the differences in rates between points G and F. An RRI that is greater than 1 indicates that black youth are more likely than white

youth to be at that contact point; an RRI of less than 1 indicates that black youth are less likely than white youth to be at that contact point. Table 6 contains the absolute rates for African-American and white youth at each point of contact, as well as the RRI (shaded column) comparing the two groups. African-American youth are more than twice as likely to be arrested as white youth. After referral, white youth are 50% more likely than African-American youth to be diverted before adjudication, and African-American youth are 40% more likely than white youth to be detained before adjudication.

TABLE 6. RATES AND RELATIVE RATE INDICES (RRIS) FOR ALL DELINQUENCY OFFENSES, 2005<sup>82</sup>

Rate	All	White	Black	Black / White RRI
Juvenile arrests per 1,000 persons in population	56.2	49.1	101	2.1
Cases referred per 100 juvenile arrests	88.8	84.3	98.5	1.2
Cases diverted per 100 cases referred	26.6	29.6	20.7	0.7
Cases detained per 100 cases referred	21.7	19.3	26.5	1.4
Cases petitioned per 100 cases referred	55.5	52.2	61.9	1.2
Cases adjudicated per 100 cases petitioned	66	68.4	61.7	0.9
Probation cases per 100 adjudicated cases	60.9	63.1	56.5	0.9
Placement cases per 100 adjudicated cases	22.4	20.7	25.5	1.2
Cases judicially waived per 100 cases petitioned	0.8	0.7	0.8	1.1

The disparities in treatment are exacerbated when considering specific offenses (see Table 7). The disparities are greatest in arrest rates for person offenses, for which African Americans are nearly four times more likely than whites to be arrested. For property and drug offenses, black youth are twice as likely to be arrested. The disparities in detention, diversion, and waiver to the adult court are greatest for drug offenses. White youth are twice as likely as black youth to be diverted before adjudication for a drug offense. African-American youth are more than twice as likely as white youth to be detained pre-adjudication for a drug offense. In addition, African Americans are 40% more likely than whites to be waived to adult court for a drug offense.<sup>83</sup>

TABLE 7. AFRICAN AMERICAN RELATIVE RATE INDICES BY OFFENSE CATEGORY, 2005<sup>84</sup>

RELATIVE RATES: Black	Total Delinquency Offenses	Person Offenses	Property Offenses	Drug Law Violations	Public Order Offenses
Arrest rate	2.1	3.6	1.9	2.0	1.7
Referral rate	1.2	0.9	1.1	0.8	1.5
Diversion rate	0.7	0.7	0.7	0.5	0.8
Detention rate	1.4	1.1	1.4	2.1	1.3
Petitioned rate	1.2	1.2	1.2	1.4	1.1
Adjudicated rate	0.9	0.9	0.9	0.9	0.9
Probation rate	0.9	0.9	0.9	0.8	0.9
Placement rate	1.2	1.2	1.2	2.0	1.1
Waiver rate	1.1	1.2	0.6	1.4	0.7

Note: Person offenses include, but are not limited to, homicide, assault, rape, and robbery. Property offenses include burglary, theft, and arson. Drug offenses include trafficking and possession. Public order offenses include weapons possession offenses.

Compared to the self-report data discussed previously, the findings in Table 7 strongly suggest the presence of biases in the juvenile justice system's treatment of African-American youth. Whereas the self-report data suggest that African-American youth are roughly 40% more likely to be involved in a physical fight or assault, they are over 300% more likely to be arrested for aggravated assault and other assaults.<sup>85</sup> Even though white youth are more likely to report using drugs and 30% more likely to report selling drugs, African-American youth are more than twice as likely to be arrested and detained for drug offenses.<sup>86</sup>

**Arrest Rates.** After a peak in juvenile arrests in the mid 1990s, the juvenile arrest rate for all youth has remained near a 25-year low according to 2006 data.<sup>87</sup> However, while the arrest rate for white youth decreased 9% from 2001 to 2006, the arrest rate for black youth increased by 7% during this same time period.<sup>88</sup> From 2001 to 2006, arrest rates of black youth increased 50% for robbery; almost 40% for curfew, loitering, and weapons violations; and almost 30% for disorderly conduct.<sup>89</sup> Although African-American youth were 17% of the population in 2005, they represented 30% of children arrested in the U.S.<sup>90</sup> In fact, the overall RRI for arrests of African-American youth in 2006 remained at the highest point in a decade.<sup>91</sup>

Most African-American youth are arrested for nonviolent crimes (see Table 8). The five most common offenses for which African-American youth are arrested are "other" assaults (i.e., not aggravated assaults), disorderly conduct, larceny-theft, drug abuse violations, and curfew and loitering laws. With the exception of alcohol-related offenses, black youth are disproportionately arrested for every offense.

TABLE 8. JUVENILE ARREST RATES BY RACE, 2006<sup>92</sup>

Offense, sorted by highest rate	Black (per 100,000 youth ages 10-17)	White (per 100,000 youth ages 10-17)	Relative Rate Index (RRI)
Total including suspicion	12179	5773	2.1
Other assaults	1753	566	3.1
Disorderly conduct	1524	469	3.3
Larceny-theft	1502	735	2.0
Drug abuse violations	1069	519	2.1
Curfew and loitering law violations	1054	369	2.9
Runaways	519	304	1.7
Burglary	477	214	2.2
Aggravated assault	463	131	3.5
Robbery	436	43	10.2
Vandalism	407	358	1.1
Weapons carrying, possessing, etc.	316	112	2.8
Motor vehicle theft	272	72	3.8
Liquor laws	124	495	0.2
Arson	27	25	1.1
Drunkness	24	57	0.4
Forcible rape	21	8	2.5
Murder and nonnegligent manslaughter	14	2	7.0
Driving under the influence	13	71	0.2

**Referral.** Once a youth is arrested, law enforcement officers make the decision about whether to refer the case to juvenile court or divert the case out of the court system. Youth can also be referred to juvenile

court by means other than arrest, such as through schools, social services, or family members. After arrest, African-American youth are 20% more likely than white youth to be referred to juvenile court.

At least for drug and person offenses, the overrepresentation of African-American youth at the stage of arrest seems to be slightly corrected at the referral stage. According to the RRIs from 2005, black youth arrested for drug and person offense arrests were less likely than white youth to be referred to court, suggesting that many black youth were unnecessarily arrested for their offenses. In contrast, black youth were 50% more likely than white youth to be referred for a public order offense, and 6% more likely to be referred for property offenses.<sup>93</sup>

**Juvenile court intake.** After referral to juvenile court, a youth's case may be dismissed, handled informally, or a petition may be filed in the juvenile court for formal intervention. A large proportion of juvenile cases are handled informally (44% in 2004),<sup>94</sup> in which case they may be dismissed if the youth consents to and complies with a set of conditions. After referral, African-American youth were 20% more likely to have their cases petitioned to the juvenile court for formal handling. Another way of looking at the data is that in 2005, white youth were nearly 50% more likely to have their case diverted to an alternative program than were African-American youth. The disparity in cases petitioned was greatest for drug law violations, for which African Americans were 40% more likely to be petitioned, and whites were twice as likely as blacks to have their drug cases diverted.<sup>95</sup>

**Detention.** Many youth are detained while waiting for trial, in both secure detention facilities and non-secure placements like group homes. When youth are detained, their lives are interrupted. According to the Justice Policy Institute report, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities:*

[Youth] can spend anywhere from a few days to a few months in locked custody. At best, detained youth are physically and emotionally separated from the families and communities who are the most invested in their recovery and success. Often,

detained youth are housed in overcrowded, understaffed facilities—an environment that conspires to breed neglect and violence. [In addition,] detention has a profoundly negative impact on young people’s mental and physical well-being, their education, and their employment. One psychologist found that for one-third of incarcerated youth diagnosed with depression, the onset of the depression occurred after they began their incarceration, and another suggests that poor mental health, and the conditions of confinement together conspire to make it more likely that incarcerated teens will engage in suicide and self-harm... the experience of detention may make it more likely that youth will continue to engage in delinquent behavior, and that the detention experience may increase the odds that youth will recidivate, further compromising public safety.<sup>96</sup>

African-American youth in 2005 were 40% more likely than white youth to be detained after arrest.<sup>97</sup> The disparity was greatest for drug law violations, for which African Americans were more than twice as likely to be detained.<sup>98</sup> As a result of these disparities, in many detention centers across the country the majority of youth locked up are African American. Nationally, African-American youth comprised 43% of youth detained in detention centers in 2006.<sup>99</sup>

African Americans are overrepresented in the number of youth detained in detention centers in every offense category: black youth make up 60% of the youth detained for drug trafficking, 43% of those detained for non-trafficking drug offenses, 44% of those detained for theft, 53% of those detained for weapons possession, and 34% of those detained for status offenses (youth such as runaways and truant youth whose activities would not be illegal but for their age).<sup>100</sup> One-third of the African-American females detained in detention centers in 2006 were held for technical violations or status offenses.<sup>101</sup>

There is evidence to suggest that many youth are unnecessarily detained before trial. In 2004, of African-American youth who were

detained, only 20% were placed in juvenile facilities following their adjudication, while 26% were released, 33% were given probation, and 19% were treated with other penalties such as fines, restitution, or community service.<sup>102</sup>

As the majority of African-American youth are detained for nonviolent offenses, it is likely that they could be better served with community-based services or other alternatives to detention.

**Adjudication.** A juvenile court “adjudication” is analogous to an adult court “conviction.” In both cases a hearing is held to determine whether the person committed the alleged offense. In 2005, African Americans were slightly less likely than whites to be found guilty (have their cases adjudicated delinquent) once petitioned (RRI 0.9).<sup>103</sup> This holds almost equally across all offense categories. Based on these RRIs, it appears that the juvenile court hearing process does not exacerbate racial disparities, but may actually correct for disparities in previous stages. It may be that juvenile court judges at this stage are identifying youth who could have been more appropriately handled informally or diverted out of the juvenile justice system.

**Youth Committed to Residential Placement.** After a youth has been adjudicated (i.e., found guilty), the court develops a “disposition” (the equivalent to an adult court “sentence”) to identify the necessary services and sanctions for the child to be rehabilitated. Possible dispositions for delinquent youth range from the most severe punishment of incarceration in a youth correctional facility to placement in other non-secure residential facilities such as group homes or treatment facilities, or lesser sanctions such as probation, fines, restitution, or community service. The vast majority of delinquency cases do not result in an incarceration sentence or out-of-home placement; only 10% of black adjudicated youth and 8% of white adjudicated youth are removed from their homes.<sup>104</sup> However, black youth are more likely to receive the harshest sentence, incarceration, after being found guilty. African-American youth are 23% more likely than white youth to be removed from home, and black youth are twice as likely to be removed from home for drug offenses.<sup>105</sup>

The majority of African-American youth who were placed outside of their homes (e.g., secure facility, residential treatment facility, or group home) were not being held for violent offenses. In 2006, more than

60% of committed black youth had been found guilty of nonviolent offenses, including 24% committed for property offenses, 10% for drug offenses, 10% for public order offenses, 12% for technical violations, and 5% for status offenses.<sup>106</sup>

## VI. DISPARITIES IN THE ADULT CRIMINAL JUSTICE SYSTEM

Although there is no national data system that collects data on youth transferred to the adult system, researchers estimate that as many as 200,000 youth are prosecuted as adults each year.<sup>107</sup> All available evidence indicates that African Americans are overrepresented in the population of youth tried as adults.

The only national data available on youth tried in the adult system is data on youth transferred to the adult system via judicial waiver. In 2005, 7,000 youth were transferred via judicial waivers, and 39% of these youth were African-American.<sup>108</sup> According to the 2005 RRI, African-American youth were only 13% more likely than whites in 2005 to be waived to the adult court once petitioned (RRI 1.1). Black youth were much less likely than whites to be waived for property offenses (RRI 0.6) and public order offenses (RRI 0.7) and much more likely to be waived for drug law violations (RRI 1.4).<sup>109</sup> However, these RRI significantly underestimate the racial disparities of youth transferred to the adult system because judicial waiver represents a very small portion of youth tried in the adult system.

In 2007, the Campaign for Youth Justice commissioned a study by Jolanta Juszkievicz, Ph.D., to learn more about the characteristics of youth in the adult system. *To Punish a Few: Too Many Youth Caught in the Net of Adult Prosecution*, provides the most in-depth look at the issue of youth in the adult system through the lens of 40 jurisdictions from all the major regions of the country (West, Midwest, South, and Northeast) using the most recent available data from 1998.<sup>110</sup> The study analyzed data collected by the Bureau of Justice Statistics as part of the Juvenile Defendants in Criminal Courts, Survey of 40 Counties, 1998 (JDCC) program. The JDCC consisted of cases involving juveniles prosecuted for felony offenses in criminal courts in 40 large, urban jurisdictions. All the cases involving juveniles that were filed for felony offenses during calendar year 1998 in the state criminal courts were selected for the study. Please note that the study examined only felony cases, not misdemeanors, and did not include youth automatically transferred to the adult system via a reduced age of juvenile court jurisdiction. The key findings of *To Punish a Few* with respect to African-American youth are:

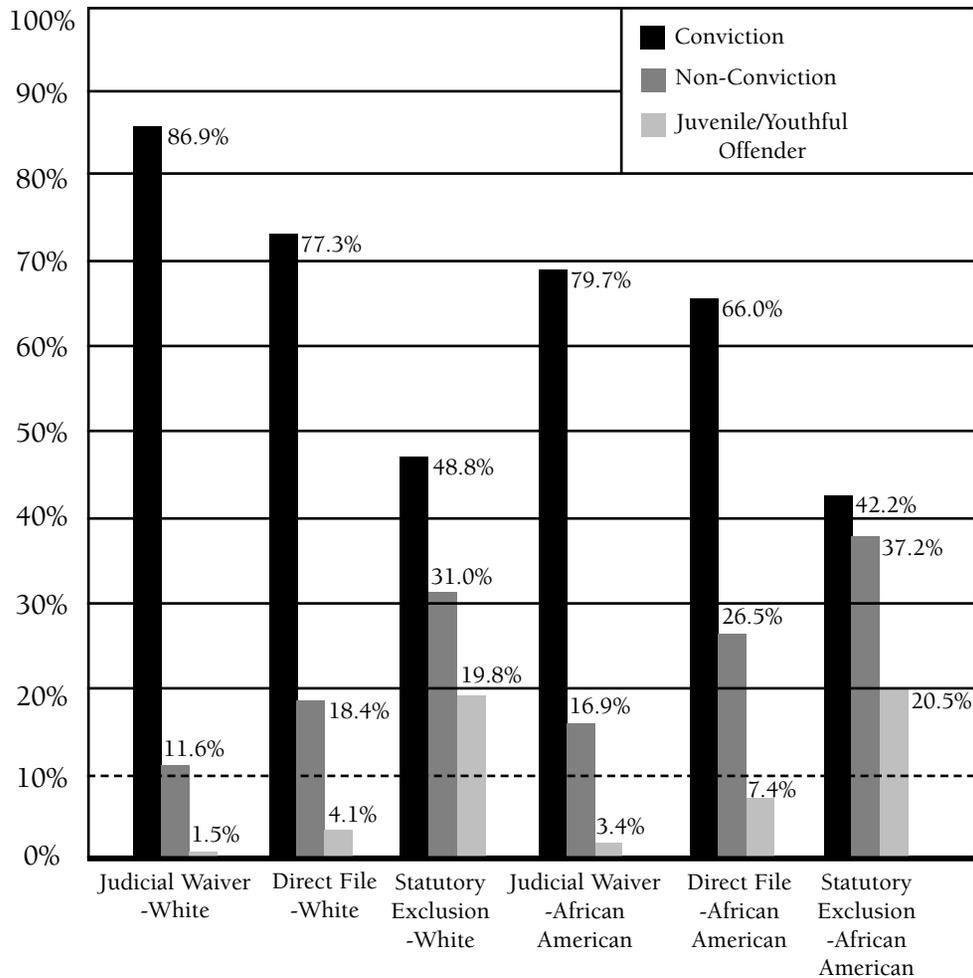
Youth of color are disproportionately impacted by transfer policies. The overwhelming majority of cases (83%) that were filed in adult courts involved youth of color. African-American youth constituted 62% of the youth, and Latino youth were 19%. With the exception of two counties in the study, youth of color constituted between 60% and 100% of all youth prosecuted as adults in the 40 counties included in the study.

Most African-American youth do not receive the benefit of a juvenile court judge individually evaluating their case, but are transferred to the adult system via statutory exclusion or prosecutorial waiver mechanisms. Half (49.2%) of all cases involving African-American youth were filed in criminal court as a result of statutory exclusion. A third (31.9%) of cases were filed as a result of direct file/prosecutorial discretion. Only 18.9% were judicial waiver cases where a judge could make an individual decision after a hearing.

Many African-American youth tried in the adult system are not convicted, suggesting that cases brought against these youth are not very strong. More than 40% of all African-American youth prosecuted in adult court did not receive an adult court conviction (versus only 27.3% of white youth). A third of the youth (27.7%) were not convicted at all, and 12.7% were returned to juvenile court. In fact, African-American youth were more likely than other racial/ethnic groups to have their cases transferred back to juvenile court. This finding is disturbing because many youth will have been subject to detention in an adult facility, discussed below. In addition, African-American youth charged as a result of statutory exclusion laws or a direct file provision were much less likely to be convicted than youth transferred to adult court via judicial waiver (see Figure 3).

Similar to youth in the juvenile justice system, disparities vary by type of offense. Out of all youth cases in adult court, African-American youth accounted for 87% of those charged with drug offenses; 48% of those charged with property offenses; 59% of those charged with property offenses; and 63% of those charged with public order offenses.

**FIGURE 3: FINAL DISPOSITION BY FILING MECHANISM FOR AFRICAN-AMERICAN AND WHITE JUVENILE DEFENDANTS IN CRIMINAL COURTS, 1998**



Drug cases were filed against African-American youth at nearly 5 times the rate of white youth. More than one-fifth (21.4%) of all African-American youth tried in adult court were charged with a drug offense, and one-quarter of these youth were charged with a drug offense that did not include sales or manufacturing (i.e., drug possession or possession of drug paraphernalia). More African-American youth charged with drug offenses were detained pretrial than white

youth (86.2% of white youth with drug charges were released versus 65.8% of African-American youth).

Most youth prosecuted in the adult system are not serious violent offenders. A common misperception about youth transferred to the adult system is that the majority are charged with the most serious violent offenses of rape and murder. However, the top five offenses (75% of all cases) of African-American youth tried in adult court were for crimes that are regularly handled in juvenile courts: robbery (33.2%); assault (18.2%); drug sales/manufacture (16.1%); burglary (5.7%); and other drug offenses (5.3%).

African-American youth are routinely incarcerated in adult jails. Overall, a higher proportion of white youth were released pretrial (59.8%) than any other racial/ethnic categories. Only half (50.5%) of African-American youth were released pretrial. Of the African-American youth detained pretrial, 65.4% were held in adult jails and only 34.6% were held in juvenile facilities (72% of white youth were held in adult jails pretrial).

Most youth convicted in adult court do not receive an adult prison sentence, and most sentenced to adult prison are not convicted of a violent offense. The majority of African-American youth (55.5%) convicted in adult court do not receive an adult prison sentence. Of the African-American youth convicted in adult court, 44.5% received an adult prison sentence, 24.6% received probation, 16.6% were sentenced to jail, 10.3% received a juvenile sanction or bootcamp, and 4% were released for time served.

The majority of African-American youth (57.6%) sentenced to adult prison were not sentenced for a violent offense. Of the African-American youth sentenced to adult prison: 43.4% had a violent offense charge, 24.8% had a property offense charge; 12.5% had a drug offense charge; and 7.9% had a public order offense charge.

**Racial disparities in youth serving time in adult prison.** According to a report by the National Council on Crime and Delinquency, *And Justice for Some*, nearly three-quarters of youth admitted to adult prisons were youth of color in 2002 (the most recent data available). For every 10 youth admitted to adult prison, six were black youth. The rate of commitment to adult prison was more than nine times higher

for black youth than for white youth.<sup>111</sup> The five states with the highest prison commitment rates for African-American youth were Wisconsin (155 per 100,000), Oregon (143 per 100,000), South Carolina (101 per 100,000), North Carolina (101 per 100,000) and South Dakota (97 per 100,000).<sup>112</sup>

Racial disparities are also observed for youth serving life without parole sentences. According to a 2005 report by Human Rights Watch and Amnesty International, black youth are serving life without parole sentences at a rate that is ten times higher than white youth. African-American youth constitute 60% of the youth offenders serving life without parole sentences nationwide, compared with 29% of white youth.<sup>113</sup>

## VII. PROMISING APPROACHES TO ADDRESSING DMC

Jurisdictions that have a commitment to reducing racial and ethnic disparities have demonstrated the ability to move toward more equitable treatment of youth of color as they move through and out of the justice system. Successful approaches to addressing DMC are targeted and tailored to the specific state, county, city or region; however, these approaches share some consistent commonalities including:

- *Strengthened leadership* through creation of DMC committees and focused state efforts on addressing the problem.
- *Collection and monitoring of state data* to improve states' ability to assess and address the root causes of DMC in their state.
- *Standardized and objective screening instruments* used by decision-makers, such as judges, to eliminate subtle stereotypes and biases.
- *Community-based prevention, intervention, and diversion* efforts to eliminate biases and encourage diversion of youth out of the juvenile justice system.
- *Community empowerment* by engaging communities at the local level to assist with DMC reduction activities.
- *Efforts to increase cultural sensitivity* (e.g., training) to make system stakeholders more sensitive to the needs of minority youth.
- *Legislative changes* to reduce the disparate impact of state laws.<sup>114</sup>

## Nationwide Initiatives to Reduce DMC

There are several nationwide efforts aimed at reducing disparities. For the past fifteen years, the Juvenile Detention Alternatives Initiative (JDAI), a project of the Annie E. Casey Foundation, has demonstrated that jurisdictions can safely reduce reliance on secure detention and generally strengthen their juvenile justice systems through a series of inter-related reform strategies. From the beginning, JDAI recognized that juvenile detention reform efforts must reflect the reality that minority youth bear the brunt of policies that lead to arrest, referral, detention, adjudication, and imprisonment of young people.<sup>115</sup> JDAI is now being replicated in over 80 jurisdictions across the country.

A key partner in the JDAI initiative is the W. Haywood Burns Institute, an organization working to reduce the overrepresentation of youth of color in juvenile justice systems since 2001.<sup>116</sup> The Burns Institute works with over 21 local jurisdictions across the country to reduce racial disparities in their juvenile justice systems by improving decision-making, court processes, and alternatives to incarceration. The Burns Institute provides technical assistance to jurisdictions prepared to implement institutional changes to remedy disparities. The Burns Institute engages traditional and non-traditional stakeholders in a data-driven examination of their policies and practices, followed by a remedial plan aimed at measurable results. A key component of reducing racial disparities is the use of effective, culturally-appropriate neighborhood-based programming that primarily serves communities of color.

The John D. and Catherine T. MacArthur Foundation began making grants in the field of juvenile justice in 1996. Since then, the foundation has launched Models for Change, an effort to create successful and replicable models of juvenile justice system reform through targeted investments in key states.<sup>117</sup> The Center for Children's Law and Policy's (CCLP) coordinates the DMC activities in each of the four Models for Change states (Illinois, Louisiana, Pennsylvania, and Washington).<sup>118</sup> CCLP staff work in Allegheny, Berks, and Philadelphia counties in Pennsylvania; on statewide policy in Illinois; in Jefferson and Rapides parishes in Louisiana; and in two counties and with state officials in Washington. In these sites, CCLP staff conduct quantitative and qualitative research to understand the racial and

ethnic disparities and learn how decisions are made at the local level, recommend interventions based on their analyses, and monitor the implementation of interventions. In addition, CCLP manages the DMC Action Network, a network of 12 sites across the country working to achieve sustainable reductions in racial and ethnic disparities in the juvenile justice system.

### **Reducing Racial Disparities without Compromising Public Safety in Illinois**

In the early 1980s, Illinois was one of the first states to adopt a “tough on crime” approach by passing laws to automatically try youth in adult court for a range of offenses, including drug offenses. Illinois’ drug transfer laws required that 15- and 16-year-olds be automatically tried as adults for drug offenses that occurred within 1,000 feet of schools or public housing. This automatic transfer provision prohibited judges from making individual determinations about whether children accused of certain drug offenses should remain in the juvenile justice system.

These policies subsequently proved to be racially biased as research demonstrated that of all youth transferred in 2003, 99% were minorities, and 92% were African-American. The overwhelming disproportionate impact on minority youth made the law “the most racially biased drug transfer law in the Nation.”<sup>119</sup> Fueled by concern over the growing number of minority youth in adult court charged with nonviolent drug offenses, on August 12, 2005, Governor Blagojevich signed PA-94-0574 into law, repealing Illinois’ nearly 20 year policy of automatically transferring youth charged with drug offenses to adult court.<sup>120</sup>

Nearly four years later, automatic transfers in Cook County have gone down by more than two-thirds without any corresponding increase in juvenile caseloads. The first year after PA 94-0574, the number of youth automatically transferred in Cook County went down by approximately two-thirds, from 361 in 2003 to 127 in 2005-2006. There was no corresponding increase in juvenile court petitions or judicial waivers to adult court. This same rate of reduction held steady in the second year, with the number of youth automatically transferred in Cook County declining again to 103 in 2006-2007 without a corresponding increase in juvenile court petitions or judicial waivers to adult court. The absence of any increase in juvenile

court caseloads after the law went into effect demonstrates that the rollback of Illinois’ drug transfer law had no detrimental effect on public safety.<sup>121</sup>

Illinois was one of the first states to allow automatic transfer of youth, was one of the first to re-think its policies, and is now demonstrating that there are more fair and appropriate ways to treat youth who do not include transferring drug offenders to adult court. Illinois is continuing to reassess other aspects of their transfer policies as well. Legislation is pending in the Illinois Legislature to allow 17-year-olds facing misdemeanor charges to be returned to juvenile court jurisdiction. The legislation would also create a task force to review increasing the age of jurisdiction for youth charged with felonies.

### **Raising the Age of Juvenile Court Jurisdiction in Connecticut**

Connecticut currently locks up more children in adult prisons than any other state in the nation. Approximately 425 youth are held in adult prisons in Connecticut each year. This is mainly because Connecticut is one of only three states that tries all 16- and 17-year-olds as adults – even those youth accused of minor and nonviolent offenses. Nearly 8,000 youth in Connecticut enter the adult court system each year, the vast majority for nonviolent crimes (96% of the 16- and 17-year-old youth arrested were charged with nonviolent crimes). The law has a disproportionate impact on youth of color. Although African-Americans represent only 13% of the youth population, more than 82% of youth held in adult corrections were youth of color.<sup>122</sup>

Deprived of the rehabilitative focus of the juvenile system, youth prosecuted in the adult system are denied appropriate services, given limited educational and employment opportunities, and exit the adult system with the stigma of a criminal conviction. In response to these concerns, two symbiotic efforts were started – a “Raise the Age CT” campaign coordinated by the Connecticut Juvenile Justice Alliance (CTJJA) and the Juvenile Jurisdiction Planning and Implementation Committee (JJPIC), a legislatively-mandated committee comprised of key stakeholders – were formed with the goal of raising the age of juvenile court jurisdiction in the state. The combined efforts of legislators, state agencies, law enforcement officials, judicial officers, advocacy and grassroots organizations, and parents and family members led the Connecticut state legislature to unanimously pass Public Act 07-4 in June 2007 returning 16- and 17-year-olds to juvenile court jurisdiction.<sup>123</sup>

Although the law will not take effect until January 1, 2010, Connecticut has a strong plan for changing the policies that have negatively impacted African-American youth. The youth who will be returned to the juvenile justice system will have access to improved diversion programs, regional youth courts, and new services and supports to ensure that they are successful.

#### **Dismantling the School to Prison Pipeline in Clayton County, Georgia**

In 2003, community leaders in Clayton County, Georgia, voiced concerns about the numbers of children being sent to juvenile court by schools. Between 1993 and 2003, juvenile court referrals had jumped from about 200 to more than 1,100 each year largely as a result of school-based referrals. Even though serious school safety issues had not increased (felony referrals from schools were constant), school-based referrals were almost a quarter of all juvenile court referrals.

Troubled by these numbers, community leaders from schools, law enforcement, the juvenile court, the district attorney's office, child-serving programs, parents and other stakeholders came together in 2003 to explore ways to improve school safety and reduce referrals to court.

After several months, the group developed a collaborative agreement now referred to as the School Offense Protocol. This protocol zeros in on low-level misdemeanor offenses like disorderly conduct and affray, which had accounted for a majority of school referrals in Clayton County. For those offenses, the protocol establishes a system of graduated sanctions to standardize consequences for youth.

Everyone has seen tremendous gains from the School Offense Protocol. School Resource Officers (SROs) are no longer required to spend time arresting students for every minor infraction. As a result, school-based referrals of African Americans have been reduced by 46 percent.

An important lesson from Clayton County is that new sources of funding were not needed to reduce racial disparities, rather it required local leaders to come together and think about the best way to use existing resources more efficiently. Schools in Clayton County are not only safer places to learn as a result of the protocol, but now that fewer students are being referred to juvenile court, instructional time has increased and graduation rates are expected to improve as well.<sup>124</sup>

## **VIII. POLICY RECOMMENDATIONS**

To address the pervasive racial disparities in the juvenile and adult criminal justice system, and minimize the negative impact of transfer laws on African-American youth as documented in this policy brief, federal and state policymakers should take immediate action.

#### **Congress should:**

- Strengthen the “Disproportionate Minority Contact (DMC)” core requirement of the Juvenile Justice and Delinquency Prevention Act (JJDP) by giving states specific guidance on action steps to reduce disparities such as identifying and analyzing key decision points to determine where disparities exist, collecting data, developing a work plan, and publicly reporting on progress.
- Close the loophole allowing youth charged as adults to be housed in adult jails. The “Jail Removal” and “Sight and Sound” core requirements of the JJDP should be expanded to apply to youth who are charged in the adult system. In addition, states should be encouraged to house youth convicted in adult court in juvenile facilities, rather than adult prisons.
- Fully fund the JJDP so that these recommendations can be effectively implemented by states.
- Invest in significant data collection efforts to identify and track youth prosecuted in the adult criminal system.
- Support proposals, including Representative Robert C. “Bobby” Scott’s Youth PROMISE Act, that will effectively prevent crime before it occurs and provide intervention programs to redirect youth already involved with the juvenile or adult criminal justice systems toward law-abiding and productive futures.
- Repeal provisions of federal laws that make it more difficult for youth convicted in the adult system to reintegrate into the community successfully (e.g., limitations on the eligibility of financial aid for college, food stamps, or Medicaid).
- Oppose legislation that increases the transfer of youth to the adult criminal system.
- Oppose legislation that adds additional mandatory minimum sentences (e.g., gang enhancements).

- Oppose legislation that increases the likelihood that youth will be incarcerated instead of receiving appropriate community-based treatment and services.

**State Policymakers should:**

- Reduce racial and ethnic disparities of youth tried in the adult criminal system in their state by identifying and bringing together stakeholders, collecting accurate and timely data, developing a work plan, and publicly reporting on progress.
- Immediately stop housing young people in adult jails and prisons.
- Increase the age of juvenile court jurisdiction to 18.
- Substantially reduce the prosecution of youth in adult court by providing judges with sole discretion to make the decision on whether or not to prosecute a youth in adult court.
- Invest in quality and effective legal counsel for youth.
- Redirect resources from incarceration to developmentally-appropriate and cost-effective treatment and services for youth.
- Reduce barriers to employment by sealing or expunging arrests that never led to conviction and conviction records after an appropriate period of time has lapsed.
- Repeal state laws (e.g., employment, voting, and other restrictions for people with criminal histories) that make it more difficult for youth convicted in the adult system to reintegrate into the community successfully.
- Enact laws that recognize a youth's ability to mature and be rehabilitated by permitting individualized reassessments of youth serving long sentences in the adult system (e.g., establishing a juvenile clemency board).

NOTES

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**NAACP Resolution\***  
**Opposition to Transfer of Youth to the**  
**Adult Criminal Justice System**

WHEREAS the NAACP has previously resolved that prevention and rehabilitation are vital components of any juvenile justice policy, and that equal protection to youthful offenders be guaranteed under the law; and

WHEREAS youth of color receive more punitive treatment than their white peers for the same offenses at all stages of the justice system; and

WHEREAS African-American youth are disproportionately represented in cases transferred to adult court, representing 16% of the youth population but 35% of youth judicially transferred, and 58% of youth committed to state prison; and

WHEREAS, African-American youth are five times more likely than white youth to be charged in adult court for a drug offense; and

WHEREAS the adult criminal justice system is punitive and not rehabilitative by nature, resulting in youth being denied programming such as education, mental health treatment, and employment skills training which are essential to proper development; and

WHEREAS the historical role of the juvenile system is to rehabilitate and treat youthful offenders while holding them accountable and maintaining public safety, and it is therefore better equipped to work with youth than the adult criminal justice system; and

WHEREAS an average of 7,500 youth are held in adult jails each day in America, many of whom will be adjudicated back to the juvenile system or will not be convicted; and

WHEREAS there exists serious human rights concerns, as well as physical and emotional health concerns, for housing youth in adult jails as youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility, and youth comprise 21% of all substantiated victims of inmate-on-inmate sexual violence although they are only 1% of the jail population; and

WHEREAS public safety is compromised, when youth transferred to the adult court are 34% more likely to reoffend than youth of a similar background and offense type treated in the juvenile system according to the federal Centers for Disease Control; and

WHEREAS the use of statutes or procedures that automatically exclude youth from the juvenile court without an assessment of individual circumstances by a judge denies youth basic fairness, and contradicts public opinion polls revealing that 92% of the U.S. public disagrees with such policies; and

WHEREAS the collateral consequences of an adult charge or conviction may cause youth to be denied opportunities to obtain education, employment, federal assistance, and voting rights, thereby creating further obstacles to rehabilitation.

**THEREFORE, BE IT RESOLVED** that the NAACP strongly opposes any policies, statutes, or laws that increase the number of youth transferred to the adult criminal justice system and the number of youth held in adult jails and prisons; and

**THEREFORE, BE IT RESOLVED** that the NAACP will work to end the practice of youth being tried in the adult criminal justice system and to ensure that young people are appropriately adjudicated in ways that enhance community rehabilitation, safety and stability; and

**THEREFORE, BE IT RESOLVED** that the NAACP strongly supports reforms that effectively reduce the overrepresentation and disparate treatment of African-American youth among youth who are prosecuted, detained, sentenced, and incarcerated as adults; and

**THEREFORE BE IT FINALLY RESOLVED** that the NAACP supports the creation and maintenance of programs and services that address the educational, health, mental health, and vocational needs of youth currently in and exiting from the juvenile and adult criminal justice systems.

\*NAACP Resolution approved at the July 2008 National Convention.

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