JUVENILE JUSTICE AND RACIAL DISPROPORTIONALITY

A Presentation to the

Washington State Supreme Court

Public Welcome

March 28, 2012

1:00-4:30 p.m.

Reception Follows

Temple of Justice, Washington State Supreme Court
Olympia, Washington

The Task Force on Race and the Criminal Justice System

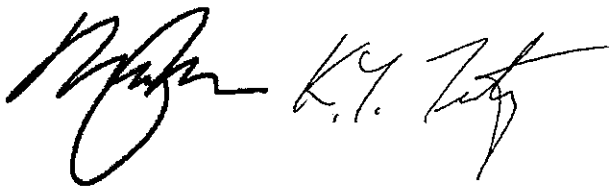
Message from the Conveners of the Symposium on Racial Disproportionality in Washington State's Juvenile Justice System

Chief Justice Madsen and Justices of the Supreme Court; Governors of the Washington State Bar Association; Members of the Superior Court Judges' Association; Leaders of Washington's Specialty Bars; and All those interested in the general welfare of juveniles:

We are pleased to convene this symposium on the ongoing problem of racial disproportionality among juveniles in our state's juvenile justice system. The symposium and this report is a sequel to the Preliminary Report on Race and Washington's Criminal Justice System, issued by the Research Working Group of the Task Force on Race and the Criminal Justice System. The Task Force chose the topic of juvenile justice because so many stakeholders in our state are committed to making change at *this time* that will have tremendous impact on so many lives. A newly convened Juvenile Justice Subcommittee, together with the Task Force's ongoing Recommendations and Research Subcommittee, developed the agenda and background materials for this symposium.

Today's symposium marks the beginning of what we hope is a newly productive dialogue on racial disproportionality in Washington's juvenile justice system. Our intent is to provide a framework for understanding the various and interlocking systems that often serve as "feeders" into our juvenile justice system and that combine to create a complex web that entangles too many youth (especially youth of color) for too long. To present the full dimensions of this complex issue, we have planned a symposium that combines academic and "on-the-ground" perspectives, including hearing from youth themselves. The life experiences of youth in our juvenile justice system lend validity to the concerns expressed by our Juvenile Justice Subcommittee.

To supplement today's presentation, we have included a set of recommendations that is addressed to a variety of participants in the juvenile justice system; we recognize that it will require a serious and sustained effort by each of these entities to bring about the necessary reforms. Our hopes are that the recommendations might serve as a blueprint for action, that the judicial branch will call upon these entities to join together to make improvements in the administration of justice, and that the state of Washington may serve as a model for the nation in the collaborative leadership that is necessary to create fairness and justice for young people in the juvenile and criminal justice systems.



Judge Mary I. Yu and Dean Kellye Y. Testy
Co-chairs, Juvenile Justice Subcommittee

ACKNOWLEDGEMENTS

As with most large-scale projects, this one benefitted from the energy, talents, and dedication of many individual and organizational participants.

Great thanks to:

Chief Justice Madsen and the Justices of the Washington State Supreme Court for their eager willingness to engage in this dialogue;

Professor Robert Chang and Judge Nicole Gains for their leadership of the Task Force on Race and Criminal Justice, and all members of the Task Force;

The members of the Recommendations Subcommittee of the Task Force, especially including Mark Larson, Gail Stone, Travis Stearns, Jennifer Shaw, Anne Lee, Robert Boruchowitz, Kim Ambrose, and Lisa Daugaard;

The members of the Juvenile Justice Subcommittee of the Task Force, especially including those who chaired critical areas of the Subcommittee's work: Anne Lee, Jennifer Shaw, Kim Ambrose, Paul Holland, Justice (ret.) Bobbe Bridge, Mark Larson, Carla Lee, Carl McCurley, Bonnie Glenn, Diana Singleton, and Chach Duarte-White;

Anne Lee, Jennifer Shaw, and Kim Ambrose who went "above and beyond" in preparing materials and organizing the program for the March 28 presentation to the Court; Eleanor Doermann, Kim Lee, and Odessa Stevens (externs to Judge Mary Yu) for their assistance in cite checking;

The speakers at the Juvenile Justice and Racial Disproportionality presentation: Judge Frank Cuthbertson, Justice (ret.) Bobbe Bridge, Carl McCurley, Ryan Pinto, Michael Pullman, Kim Ambrose, Reese Ali, Karen Garcia, Drew Gipson, Anjenee Miller, Judge Kitty-Ann Doornick, TJ Bohl, Kevin Williams, and James Bell. A special thank you to Magdaleno "leno" Rose-Avila, Debra Baker and Stephanie Williams for assisting with the youth presentation;

Members of the University of Washington School of Law staff who handled communications and logistics support with grace, including Hana Hughson, Melissa Kane, and Elizabeth Coplan;

The University of Washington School of Law Foundation, which provided financial support for meetings, the reception at the Court on March 28, and printing costs for materials;

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Prolumina for generously providing technical support for the March 28th Presentation to the Court; and

All of the many dedicated individuals and organizations in Washington who strive daily to make the juvenile justice system one that is fair to all youth.

Executive Summary

The over-representation of youth of color in the juvenile justice system has drawn national and local attention since the 1980's and hundreds of thousands, if not millions of federal, state and private dollars have been dedicated to addressing the issue. Despite this attention, the over-representation of minority youth at every stage of the juvenile justice process persists with very little change. Although the juvenile crime rate is at one of its lowest points in history and progress has been made in reducing overall juvenile detention rates, youth of color continue to be disproportionately arrested, referred to juvenile court, prosecuted, detained and sentenced to secure confinement compared to their white peers.

There is clear evidence of persistent over-representation of youth of color at each stage of the juvenile justice system. The Washington State Center for Court Research ("WSCCR") analyzed statewide court data from 2009 and found strong evidence of over-representation at the early stages of contact with the juvenile justice system:

- Black youth are nearly twice as likely as White youth to be arrested.
- Black and American Indian/ Native Alaskan youth are more than twice as likely to be referred to court as White youth.

Diversion is considered to be an approach that keeps youth from formal processing and further contact with the juvenile justice system. WSCCR's data analysis indicates that :

- With the exception of Asian/Pacific Islanders, youth of color are less likely to receive a diversion relative to White youth.

Youth of color are also over-represented in transfers to the adult criminal system. Black youth made up 31% of the transfers to adult court, while they represent only 6% of the juvenile population. Latino and Asian youth are also over-represented in the population of youth transferred to the adult system.

Finally, the cumulative effect of over-representation in the system results in big disparities for youth of color incarcerated in our state Juvenile Rehabilitation Administration (JRA) facilities. Relative to Whites, both Blacks and Asian/Pacific Islanders are more likely to be incarcerated in JRA facilities. While Black youth make up 6% of the Washington population, they make up 21% of youth sentenced to JRA.

Compared to the experience of youth studied in 1992, youth of color in 2009 continued to be more likely to be arrested, referred to court, prosecuted, adjudicated guilty and confined to a state facility than white youth. Although there are slight improvements as well as evidence of worsening over-representation, the general conclusion is that not much progress has been made over the last two decades in reducing the over-representation of youth in the juvenile justice system.

There are several theories seeking to explain the over-representation of youth of color in the juvenile justice system. These theories consider a variety of factors, including differential involvement in offending behavior, social and economic disparities, differential selection and processing by the court system, differential opportunities for prevention and treatment, and the accumulation of disparity and enduring negative impacts once involved in the juvenile justice system.

The sources and perpetuation of disparity are complex and intertwined and require a data-driven, multi-faceted and results-based approach to reducing over-representation. Thus, the Recommendations Committee, in collaboration with the Juvenile Justice Subcommittee, developed a set of recommendations addressed to various entities that have the capacity to make a significant contribution to the reduction of disproportionality. The solutions are never easy. However, we believe making a *real difference* will require judicial leadership, genuine collaboration across different agencies, and meaningful engagement with the communities at every stage. The recommendations are intended to be a blueprint for action and an invitation to begin that dynamic process of change now.

Preliminary Report and Recommendations to the Supreme Court to Address the Disproportionality in Washington's Juvenile Justice System

Presented by the Juvenile Justice Subcommittee of
Race and Criminal Justice Task Force

March 28, 2012

I. Introduction

The over-representation of youth of color in the juvenile justice system has drawn national and local attention since the 1980's and hundreds of thousands, if not millions of federal, state and private dollars have been dedicated to addressing the issue. Despite this attention, the over-representation of minority youth at every stage of the juvenile justice process persists with very little change. Although the juvenile crime rate is at one of its lowest points in history and progress has been made in reducing overall juvenile detention rates, youth of color continue to be disproportionately arrested, referred to juvenile court, prosecuted, detained and sentenced to secure confinement compared to their white peers.

For over two decades, Washington State has been collecting data regarding the disproportionate representation of minority youth in the juvenile justice system. The report below follows the Preliminary Report on Race in Washington's Criminal Justice System presented to the Washington Supreme Court by the Task Force on Race in the Criminal Justice System in May, 2011.

II. An Overview of Washington's Juvenile Justice System[1]

At the turn of the 20th century, Washington State was an "early and enthusiastic convert to the rehabilitative ideal and indeterminacy," and its criminal justice laws provided "wide and unconstrained discretion to judges and correctional officials."[2] Washington first enacted a juvenile code in 1913 that was solidly within the *parens patriae* philosophy of rehabilitation through "benevolent coercion."[3] In the period following *In re Gault*, Washington struggled to reform its juvenile justice system. Nearly a decade passed before the Washington State legislature enacted the Juvenile Justice Act of 1977 (JJA).[4] While Washington's juvenile justice act was modeled after the federal Juvenile Justice Delinquency Prevention Act of 1974,[5] it was also influenced by adult sentencing trends

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[1] Section II and Appendix A are sections of *Washington: An Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters* (E. Calvin, 2003 AM. BAR ASS'N JUVENILE JUSTICE CTR.) that have been updated and reprinted with permission.

[2] D. Boerner & R. Lieb, *Sentencing Reform in the Other Washington, in* 28 CRIME AND JUSTICE: A REVIEW OF RESEARCH at 73. (M. Tonry, ed., UNIV. OF CHICAGO PRESS, 2001).

[3] M.K. Becker, *Washington State's New Juvenile Justice Code: An Introduction*, 14 GONZ. L. REV. 289, 307-08 (1979). The author, State Representative Mary Kay Becker, was one of the principal sponsors of the Juvenile Justice Act of 1977.

[4] WASH. REV. CODE §13.40.

[5] Juvenile Justice and Delinquency Prevention Act, Pub. L. No. 93-415, 88 Stat. 1141 (1974) (codified at 5 U.S.C., 18 U.S.C. & 42 U.S.C.).

across the country.[6] The JJA was a "complete overhaul of the juvenile justice system"[7] and has been called "the most substantial reform of a state juvenile code that has occurred anywhere in the United States."[8] The JJA continues to be a work in progress, as the state legislature has amended it every year since its enactment.[9]

Juvenile courts are a division of the Superior Court in Washington, and Superior Court Judges and Commissioners hear cases.[10] Three types of cases are heard in juvenile court:

- Dependency cases
- Status offenses (e.g. truancy, children in need of services and 'at-risk' youth petitions)
- Offender matters (also referred to as delinquency)

Juvenile court jurisdiction generally extends over children under the age of 18 for offender matters,[11] but it may be extended up to an offender's 21st birthday.[12] By law, children under the age of eight years are incapable of committing a crime and in no case may be charged in juvenile court.[13] A child at least eight years old and under twelve years of age is presumed to be incapable of committing a crime, but this presumption may be rebutted by the prosecution with clear and convincing evidence that, at the time of the alleged crime, the child was capable of forming the intent necessary to commit the crime charged.[14]

Washington's juvenile justice system is remarkably similar to its adult criminal court in many respects. All of the due process rights outlined in *In re Gault* by the Supreme Court were codified in the JJA. Like adult defendants, children can be arrested, taken into custody, face charges, have a trial (though without a jury) and appeal the findings.[15] The JJA's purpose includes what are typical of the crime and punishment goals found in adult criminal justice systems in this country:

- Protect the community from criminal behavior;
- Provide a process for determining guilt or innocence;
- Make the juvenile offender accountable for his or her criminal behavior;
- Provide for punishment commensurate with the age, crime and the offender's criminal history;

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[6] Boerner & Lieb, *supra* note 2, at 74-78.

[7] J. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing Juvenile Court*, 69 N.C. L. REV. 1038, 1106 (1991).

[8] *Id.* (citing S. Schneider & D. Schram, *Responses of Professionals to the Washington (State) Law, in* CURRENT ISSUES IN JUVENILE JUSTICE at 101 (R. Corrado, M. LeBlanc & J. Trepanier, eds., 1983)).

[9] *Washington State Juvenile Justice Annual Reports: 2010,* WASH. P'SHIP COUNCIL FOR JUVENILE JUSTICE, http://www.dshs.wa.gov/ojj/annual_report.shtml (last accessed March 11, 2012).

[10] WASH. REV. CODE §13.04.030.

[11] This definition excludes offenders who have been previously transferred to or are otherwise under the jurisdiction of adult court. WASH. REV. CODE §§13.40.010 - .020(14).

[12] Proceedings must be pending and an order of the court extending jurisdiction must be entered. For purposes of enforcing an order of restitution or a penalty assessment, jurisdiction extends for ten years after the offender's eighteenth birthday, and can be extended an additional ten years during the initial ten year period. WASH. REV. CODE §§13.40.190, 13.40.300.

[13] WASH. REV. CODE §9A.040.050.

[14] For Washington case law related to the issue of capacity, *see* State v. K.R.L., 840 P.2d 210 (1992); State v. J.P.S., 954 P.2d 894(1998); State v. J.F., 943 P.2d 303 (1997); State v. E.D.W., 934 P.2d 704 (1997); State v. T.E.H., 960 P.2d 441(1998).

[15] Juveniles are not entitled to jury trials in Washington. WASH. REV. CODE §13.04.021.

- Provide due process for juveniles alleged to have committed an offense;
- Ensure restitution to victims; and
- Implement clear policies for sentencing.

Despite the aforementioned similarities, Washington's juvenile court system differs from the adult system in that it maintains additional, rehabilitation-oriented goals that are explicitly given equal importance within the traditional crime and punishment purposes of the JJA. These rehabilitation goals include:

- Provide necessary treatment, supervision and custody for juvenile offenders;
- Encourage the parents or custodians of offenders to actively participate in the juvenile justice process;
- Take into consideration the age of the offender when determining the punishment; and
- Provide for the handling of juvenile offenders by the community (as opposed to incarceration in state facilities) whenever consistent with public safety.[16]

Washington's juvenile justice system is unique among the fifty states primarily because it is the only state with determinate sentencing for juveniles. The JJA sets out presumed standard sentences for each crime, in a manner very similar to the state's adult criminal system.

A flow chart, glossary and detailed overview of Washington's Juvenile Justice system and process can be found in Appendix A.

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[16] "...[T]he legislature declares the following to be equally important purposes of this chapter:
(a) Protect the citizenry from criminal behavior;
(b) Provide for determining whether accused juveniles have committed offenses as defined by this chapter;
(c) Make the juvenile offender accountable for his or her criminal behavior;
(d) Provide for punishment commensurate with the age, crime, and criminal history of the juvenile offender;
(e) Provide due process for juveniles alleged to have committed an offense;
(f) Provide necessary treatment, supervision, and custody for juvenile offenders;
(g) Provide for the handling of juvenile offenders by communities whenever consistent with public safety;
(h) Provide for restitution to victims of crime;
(i) Develop effective standards and goals for the operation, funding, and evaluation of all components of the juvenile justice system and related services at the state and local levels;
(j) Provide for a clear policy to determine what types of offenders shall receive punishment, treatment, or both, and to determine the jurisdictional limitations of the courts, institutions, and community services; and
(k) Encourage the parents, guardian, or custodian of the juvenile to actively participate in the juvenile justice process." WASH. REV. CODE §13.40.010(2).

III. An Historical Overview: Federal, State and Private Efforts to Address Disproportionality in Washington's Juvenile Justice System

A. Federal Efforts: The Juvenile Justice and Delinquency Prevention Act

Washington, like all states, receives federal funding for juvenile justice programs through the federal Juvenile Justice and Delinquency Prevention Act ("JJDPA").[17] The JJDPA, originally enacted by congress in 1974 and reauthorized in 2002, created the Office of Juvenile Justice and Delinquency Prevention ("OJJDP") within the Office of Justice Programs in the U.S. Department of Justice. Through formula and block grants to states and local governments, OJJDP seeks to set standards for and improve juvenile justice systems.[18]

Since 1992, addressing the reduction of the disproportionate number of minority youth in secure facilities has been one of the "core protections" states must comply with in order to receive federal formula grants under the JJDPA.[19] Research across the country has established that youth of color are more likely to be arrested, detained, charged in juvenile court, transferred to adult court, and confined to secure facilities than their white peers.[20] In 2002, the JJDPA was amended to expand the protection to encompass the disproportionate representation of minorities at any point in the juvenile justice system, what is now referred to commonly as disproportionate minority contact ("DMC").

Although DMC has been one of 4 core protections required by the JJDPA for almost two decades, critics charge that the language of the requirement is so vague and no structure or guidelines are provided to states such that "the federal government set the bar so low that today nearly anything — regardless of how attenuated or remote from actual results — done in the name of "DMC" is still considered adequate."[21]

In response to the JJDPA requirements, Washington has been studying and making attempts to address DMC for more than 20 years. The Governor's Juvenile Justice Advisory Committee ("GJJAC") was created by executive order in 1982 to comply with the JJDPA's requirement that each state establish a "State Advisory Group" to administer the state's Formula Grants Program. Since 1988, Washington's State Advisory Group, now known as the Washington State Partnership Council on Juvenile Justice ("WA-PCJJ") has

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[17] Pub. L. No. 93-415 (codified at 42 U.S.C. § 5601 *et seq*). In 2010, Washington State was awarded over $1 million in federal formula grants under the JJDPA. *FY 2010 Awards*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, http://www.ojjdp.gov/funding/fy10awards.html (last visited March 11, 2012).

[18] 42 U.S.C. §5602.

[19] 42 U.S.C. §5633. The original JJDPA of 1974 focused on two requirements: the separation of juveniles from adult offenders and the deinstitutionalization of status offenders. In 1980, a third protection was added: removing juveniles from adult jails. In 1988, the JJDPA first required states to address reduction of the disproportionate number of minority youth in secure facilities; however, it did not become a core requirement until 1992.

[20] Perry L. Moriearty, *Combating the Color-Coded Confinement of Kids: An Equal Protection Remedy*, 32 N.Y.U. REV. L. & SOC. CHANGE 285, 288 n. 19 (2007-2008).

[21] The Act requires that States "address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system." J. Bell & L.J. Ridolfi, *Adoration of the Question: Reflections on the Failure to Reduce Racial and Ethnic Disparities in the Juvenile Justice System*, W. HAYWOOD BURNS INSTITUTE 15 (2008).

been collecting and reporting data on DMC in an annual Juvenile Justice Report.[22] In addition to reporting on DMC, over the past two decades, the State Advisory Group has granted over a million dollars in federal funds on programs and initiatives to address DMC.[23]

B. The Washington Legislature

The Washington legislature has passed several pieces of legislation over the years to encourage the evaluation and reduction of DMC. In 1991, the legislature funded a study of racial disproportionality in the juvenile justice system.[24] The report, released in 1993, found racial disproportionality at every stage in the juvenile justice process from arrest to secure confinement in a state facility.[25] In response to these findings, the legislature passed a bill in 1993 entitled "Implementation of Juvenile Justice Racial Disproportionality Study Recommendations."[26] This bill did several things, including: requiring the annual reporting and evaluation of state funded county juvenile programs' effectiveness in reducing racial disproportionality;[27] requiring the development and regular provision of "ethnic and cultural diversity training" for juvenile court judges[28] and law enforcement;[29] and requiring the Administrative Office of the Courts to convene a workgroup to develop prosecution standards and guidelines for juvenile offenders and report these recommendations to the legislature.

In 1994, the legislature passed a bill requiring prosecutors to develop filing standards pursuant to the 1993 recommendations. The bill also mandated annual reporting requirements by state agencies supervising adjudicated youth. It established local juvenile justice advisory committees to monitor and report annually on proportionality, effectiveness and cultural relevance of local and state rehabilitative services for juveniles and to review and report on citizen complaints regarding bias or disproportionality within local juvenile justice systems.[30] Recommended prosecutorial filing standards were developed and codified[31]; however, the other requirements for juvenile justice advisory committees on proportionality were removed by the legislature in 2007.[32]

In 1996, the legislature established an experimental program to implement prosecutor guidelines and evaluate their effectiveness in reducing racial disproportionality in the prosecution of juveniles in two counties.[33] The resulting study found that minority

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[22] In 2010, GJJAC was replaced by the new Washington State Partnership Council on Juvenile Justice ("WA- PCJJ") as the new State Advisory Group. The new 31 member advisory group first met in January 2011. *Washington State Juvenile Justice Annual Report: 2010, supra* note 9.
[23] *Washington State Juvenile Justice Annual Reports: 1991-2010,* WASH. P'SHIP COUNCIL FOR JUVENILE JUSTICE, *see supra* note 9.
[24] 1991 Wash. Sess. Laws 1166.
[25] George S. Bridges et al., *Racial Disproportionality in the Juvenile Justice System*, OLYMPIA COMM'N ON AFRICAN AM. AFFAIRS AND MGMT. SERV'S DIV., DEP'T OF SOC. AND HEALTH SERV'S (1993).
[26] 1993 Wash. Sess. Laws 1655.
[27] WASH. REV. CODE §13.06.050(3).
[28] WASH. REV. CODE §2.56.030(17).
[29] "The commission shall ensure that ethnic and diversity training becomes an integral part of the training of law enforcement personnel so as to incorporate cultural sensitivity and awareness into the daily activities of law enforcement personnel." WASH. REV. CODE §43.101.280.
[30] 1994 Wash. Sess. Laws 2196.
[31] WASH. REV. CODE §13.40.077.
[32] 2007 Wash. Sess. Laws 2195.
[33] 1996 Wash. Sess. Laws 36.

respondents were more likely to be declined to the adult system than white respondents; cases involving white respondents have a higher likelihood of being diverted and cases involving minority respondents have a higher likelihood of having charges filed. The study also found that no clear pattern explained the differences, and recommended further study to include analysis of police reports.[34]

C. Privately Funded Efforts to Reduce DMC in Washington State

In addition to the federal and state efforts to reduce DMC, private funds have been targeted toward reducing DMC in Washington for more than 10 years. King County, with the State's largest minority youth population, has worked purposefully on the DMC issue since 1999, initially with the privately funded Building Blocks for Youth Initiative that is now the Hayward Burns Institute.[35] Since 2004, The Annie E. Casey Juvenile Detention Alternatives Initiative (JDAI) has been funding projects in Washington. Currently there are eight counties receiving JDAI funding and technical assistance.[36] While JDAI's primary focus is not DMC, its goal to ensure that secure detention is used appropriately has resulted in fewer children of color being incarcerated – although minority youth have not benefited at the same rate as white youth.[37] Since 2008, the MacArthur Foundation's Models for Change Initiative has worked on DMC in Washington State as one of its three focus areas. The goals of Models for Change DMC work in Washington are "to improve data collection where needed, to develop the capacity to collect and analyze detailed DMC data regularly at the state and county levels, and to use DMC data analyses and other research to identify, implement, and monitor appropriate interventions to reduce disparate treatment and limit the unnecessary penetration of youth of color in the juvenile justice system."[38]

Despite extensive studies, legislation and privately funded efforts, the relative rate of disproportionate minority contact persists at nearly every stage in the juvenile system.[39]

IV. Statistical Evidence of Disproportionate Minority Contact in Washington's Juvenile Justice System

A. Over-Representation Exists and Persists

There is clear evidence of persistent over-representation of youth of color at each stage of the juvenile justice system. The Washington State Center for Court Research's (WSCCR)[40]

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[34] *See Washington State Juvenile Justice Annual Report:* 1999, *supra* note 23, at 53-54.
[35] *See No Turning Back: Promising Approaches to Reducing Racial and Ethnic Disparities Affecting Youth of Color in the Justice System*, BUILDING BLOCKS FOR YOUTH INITIATIVE (2005), http://www.aecf.org/upload/PublicationFiles/ntb_fullreport.pdf (last accessed March 11, 2012).
[36] These funds are administered through the Washington State Partnership Council for Juvenile Justice. http://www.dshs.wa.gov/ojj/jdai.shtml.
[37] Between 2004 and 2009 minority detention populations in Benton/Franklin, King, and Pierce Counties increased from 50.8% to 62.3%, 53.9% to 66.3% and 41.7% to 47.5% respectively. *Supra* note 9, at 166 tbl.72. http://www.dshs.wa.gov/pdf/ojj/AnnualReport2010/18-JuvenileDetention.pdf (last accessed March 11, 2012).
[38] *Models for Change: Systems Reform in Juvenile Justice*, JOHN D. AND CATHERINE T. MACARTHUR FOUNDATION, (2007), http://www.modelsforchange.net/publications/120 (last accessed on March 11, 2012).
[39] *Washington State Juvenile Justice Annual Report: 2010, supra* note 9.

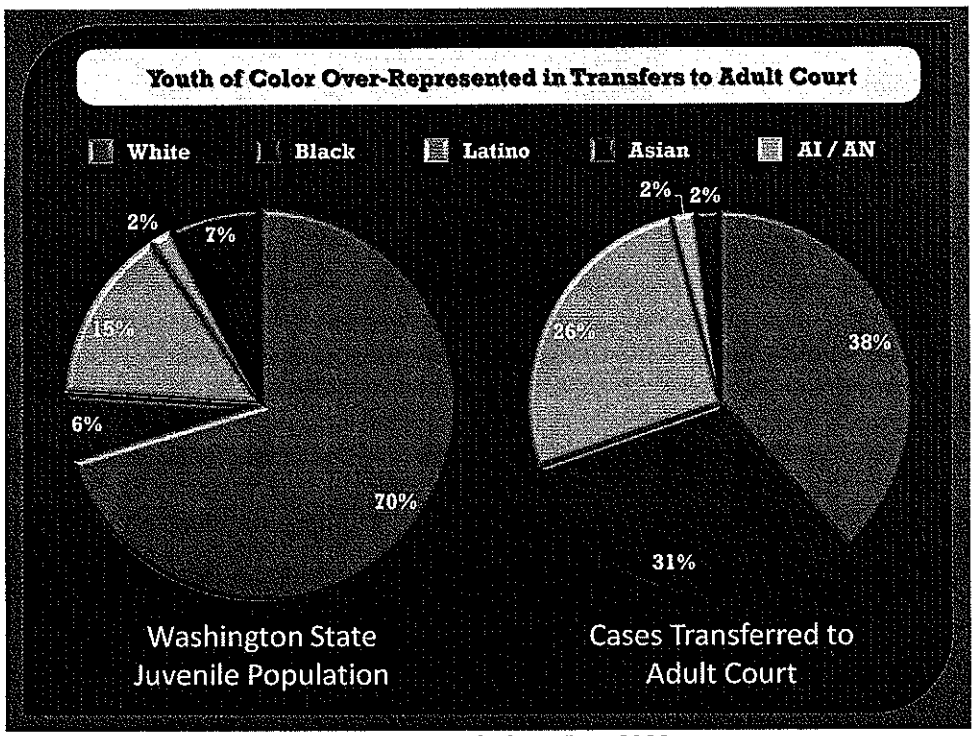
analysis of statewide court data from 2009 indicates strong evidence of over-representation at the early stages of contact with the juvenile justice system:

- Black youth are nearly twice as likely as White youth to be arrested.
- Black and American Indian/ Native Alaskan youth are more than twice as likely to be referred to court than White youth.

Diversion is considered to be an approach that keeps youth from formal processing and further contact with the juvenile justice system. WSCCR's data analysis indicates that:

- With the exception of Asian/Pacific Islanders, youth of color are less likely to receive a diversion relative to White youth

Children may be tried in adult criminal court under two circumstances: a case may be either transferred (or "declined") to adult court after a hearing before a juvenile court judge, or it may be automatically transferred with no judicial decision. WSCCR's data analysis finds that youth of color are also over-represented in transfers to the adult criminal system. Black youth made up 31% of the transfers to adult court, while they represent only 6% of the juvenile population. Latino and Asian youth are also over-represented in the population of youth transferred to the adult system.



WSCCR, Statewide Court Data 2009

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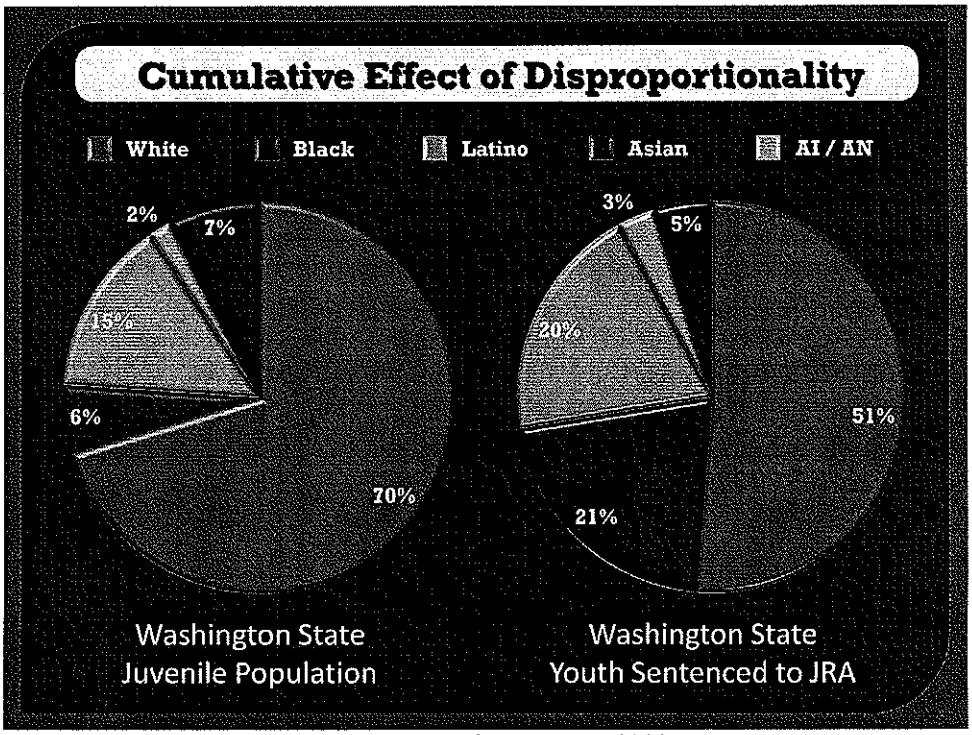
[40] The Washington State Center for Court Research (WSCCR) is the research arm of the Administrative Office of the Courts. It was established in 2004 by order of the Washington State Supreme Court to maintain an independent capacity for objective research within the judicial branch. Order No. 25700-B-440, In the Matter of the Establishment of the Washington State Center for Court Research (2004), http://www.courts.wa.gov/wsccr/ (last accessed on March 11, 2012).

Finally, the cumulative effect of over-representation in the system results in big disparities for youth of color incarcerated in our state Juvenile Rehabilitation Administration (JRA) facilities. Relative to Whites, both Blacks and Asian/Pacific Islanders are more likely to be incarcerated in JRA facilities. While Black youth make up 6% of the Washington population, they make up 21% of youth sentenced to JRA.



WSCCR, Statewide Court Data 2009

Compared to the experience of youth studied in 1992, youth of color in 2009 continued to be more likely to be arrested, referred to court, prosecuted, adjudicated guilty and confined to a state facility than white youth. Although there are slight improvements as well as evidence of worsening over-representation, the general conclusion is that not much progress has been made over the last two decades in reducing the over-representation of youth in the juvenile justice system.

B. Understanding the Measures of Over-Representation

Tracking and reporting information on DMC helps identify where differences arise and allows for data-driven decision making. There are various metrics used to measure disproportionality. Prior to 2002, OJJDP calculated minority over representation at different decision points by simply dividing the proportion of youth of color by the proportion of youth of color in the general population. This DMC Index has limitations on how jurisdictions could be compared to each other and where to isolate sources of disparity. In 2002, OJJDP adopted the use of RRI's to measure DMC. It has become common practice nationally to present DMC data using the Relative Rate Index (RRI).[41]

[41] Using White youth as the referent category, a population's increased or decreased likelihood of participation at different stages of the juvenile justice system are measured. RRIs greater than one (RRI>1) indicate an increased likelihood of the group experiencing the event (such as arrest or

The RRI is a different methodology that allows for better comparison across jurisdictions and at each decision point. Calculations of RRI's generally do not account for characteristics of the offender (other than race/ethnicity) or their crime, so the RRI is used as an indicator of where to begin exploring causes of DMC, not a final measure.

C. The Quality and Availability of Data

Since the DMC research of the early 1990's, Washington's ability to collect and report information about the experience of juveniles has improved dramatically. For example, the 1993 study conducted by Bridge, et, al. collected data through a review of thousands of case files. Because of improvements in data collection and recent efforts to establish data sharing agreements between governmental entities, it is now possible to follow youth experiences not only the juvenile justice system, but also in other child serving systems like education and child welfare.

While measures of disproportionality have improved and now allow for a better understanding of DMC at key decision points, these measures rely on accurate and consistent recordings of race and ethnicity. There are three key components to gathering race and ethnicity information on juveniles in the justice system: 1) consistency in the racial and ethnic categories available for selection, 2) who makes the determination of race and ethnicity (e.g. the individual to whom it pertains or an observer), and 3) when the determination is made. The National Center for Juvenile Justice and the Center for Children's Law and Policy have developed "Best Practices" for collecting race and ethnicity data.[42] While these practices have been adopted by the OJJDP, they are followed to varying degrees across, and within, organizations. The Washington State Center for Court Research has worked to train the Washington Juvenile Courts on these best practices and assist in implementation across the state. They have been implemented and maintained to varying degrees of success in juvenile courts across the state. In order to understand DMC at all points (not just within the juvenile court) it is necessary for agencies at all stages of the system to agree on and collect race and ethnicity data in a uniform manner. Until this is accomplished, it is difficult to make inferences across systems.

There is still very little consistent data on race and ethnicity at the arrest stage, particularly for Latino/a youth. This has been and continues to be a gap in information.

V. Understanding the Factors that Contribute to and Perpetuate Disparities for Youth of Color

There are several theories seeking to explain the over-representation of youth of color in the juvenile justice system.[43] These theories consider a variety of factors, including differential involvement in offending behavior, social and economic disparities, differential selection and processing by the court system, differential opportunities for

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filing) and RRIs less than one (RRI<1) indicate a decreased likelihood of the group experiencing the event (such as youth of color being less likely to receive diversion).

[42] P. Torbet, H. Hurst & M. Soler, *Guidelines for Collecting and Recording the Race and Ethnicity of Juveniles,* NAT'L CTR. FOR JUVENILE JUSTICE (2006).

[43] *See e.g.,* A. Piquero, *Disproportionate Minority Contact,* 18 THE FUTURE OF CHILDREN 59 (2008); *see also Disproportionate Minority Contact Technical Assistance Manual, 4th Edition,* OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (2009), https://www.ncjrs.gov/html/ojjdp/dmc_ta_manual/ (last accessed March 17, 2012).

prevention and treatment, and the accumulation of disparity and enduring negative impacts once involved in the juvenile justice system. As the multiple theories suggest, the sources and perpetuation of disparity are complex and intertwined. The brief discussion that follows highlights areas ready for our full attention where data-driven, multi-faceted and results based approaches can reduce over-representation of youth of color in the various stages of the juvenile court process.

A. The Roots of Disparity

External socio-economic factors such as family structure, poverty, employment opportunities, affordable housing, and the academic and opportunity gaps in education can be found at the roots of racial and ethnic disparities in the juvenile justice system.[44] While both the child welfare and education systems hold much promise to address many underlying social inequities, both of these systems are found to create and exacerbate racial disparity. National attention has focused recently on the relationship between school discipline and juvenile justice involvement. This focus is particularly relevant to the discussion of disproportionality because youth of color are more likely to be suspended and expelled, are held back more, and have lower academic achievement and high school graduation rates.[45]

Another area of focus is the relationship between the child welfare system and juvenile justice involvement. A recent study showed that "involvement in child welfare is related to worse outcomes in the juvenile justice system on many levels – such as time spent in detention and recidivism – when compared to youth with no or limited involvement in the child welfare system. These outcomes, particularly for youth of color and females, worsened if the youth had more extensive involvement in the child welfare system."[46]

B. Accumulated Disadvantage and Disparity

Being "justice system-involved" can establish, reinforce and exacerbate disparity patterns - the deeper into the system, the greater the cumulative racial/ethnic disparity. This "accumulated disadvantage" impacts minority youth as they are processed through the system.[47] "Studies have indicated that decisions made at earlier stages, such as detention, affect outcomes at later stages and, in particular, judicial disposition. That is, detention strongly predicts more severe treatment at judicial disposition. Although minority youth and white youth who have been detained may be treated similarly, because the former group is more likely to be detained, they receive more severe dispositions than do their white counterparts. Consequently, race or ethnicity may not directly influence judicial disposition, but its effects may be masked, operating through a racially linked criterion of pre-adjudicatory detention."[48]

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[44] J. Short & C. Sharp, *Disproportionate Minority Contact in the Juvenile Justice System,* CHILD WELFARE LEAGUE OF AMERICA (2005); D. Tate Vermeire & N. Merluzzi, *Balancing the Scales of Justice: An Exploration into How Lack of Education, Employment, and Housing Opportunities Contribute to Disparities in the Criminal Justice System,* ACLU OF NORTHERN CALIFORNIA and W. HAYWOOD BURNS INST.
[45] *See e.g.*, C. Adams, et. al., *Data Show Retention Disparities,* 31 EDUCATION WEEK 1 (March 6, 2012), http://www.edweek.org/ew/articles/2012/03/07/23data_ep.h31.html (last accessed March 17, 2012).
[46] G. Helemba & G. Siegal, *Doorways to Delinquency: Multi-System Involvement of Delinquent Youth in King County (Seattle, WA),* NAT'L CTR. FOR JUVENILE JUSTICE, September 25, 2011.
[47] OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *supra* note 43, at 2-10.
[48] *Id.*

C. Enduring Negative Impacts of Juvenile Justice Involvement

Juvenile justice involvement, even if it is just an arrest, can have a lasting negative impact on youth, especially for youth of color who are over-represented at all stages of the proceedings. These negative impacts have a cumulative and enduring effect and can increase the risk factors that contribute to their continued involvement in the juvenile and adult criminal justice systems.

Because of the availability of Washington State's juvenile records on the Internet, youth may not have a meaningful opportunity to put delinquency behind them.[49] The Administrative Office of the Courts sells juvenile records in batch form to credit reporting agencies that make that data available to employers, landlords, and others who may be checking criminal history. Even though most juvenile records can be sealed and electronic records can be amended, electronic records that are released prior to the sealing date may continue to exist on the Internet and at credit reporting agencies.[50]

Educational opportunities are lost or limited by zero tolerance policies, significant enrollment barriers, minimal academic and transition support, and attitudes that discourage high school completion and post-secondary goals. For job candidates with juvenile justice history, employment opportunities are limited by an increasingly competitive job market, assumptions made by employers about the aptitude of job candidates, and outright discrimination. Barriers to stable housing are similar –the near instant availability and low cost of juvenile history through credit reporting agencies keep young people with records from renting and the difficulty of finding employment make most housing options unaffordable.[51] Public housing options are also limited for youth with certain offenses. National efforts have focused attention on the negative collateral and direct consequences of juvenile justice involvement.[52] The American Bar Association passed a resolution in 2010 recognizing that extra effort must be made to reduce the stigma and discrimination faced by youth involved in the juvenile justice system. Chair of the ABA's Juvenile Justice Committee, Lawrence Wojcik, commented on the resolution stating, "Court-involved children face numerous obstacles imposed by law that adversely impact their attempts to successfully return to their communities. In adopting this policy, the ABA is urging the business, education and government sectors to refrain from placing additional barriers that are not mandated by law in the path of these children. The policy

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[49] Washington's juvenile justice system is much more open than the vast majority of U.S. state systems. Not only are proceedings public, but Washington is with a handful of states that allows for the release of juvenile records without restriction. L. Szymanski, *Public Juvenile Court Records*, 5 NCJJ SNAPSHOT 10, NAT'L CTR. FOR JUVENILE JUSTICE (2000).

[50] Between 1997 and 2010, the juvenile code mirrored the adult provisions for sealing of records: Class A felonies could never be sealed, Class B felonies required ten years with no new convictions, Class C felonies required five years, and misdemeanors required two or three years (depending on the crime) with no new convictions. In 2010 the legislature amended RCW 13.40.050(12) to expand the sealing provisions to include Class A felonies. In 2011 the legislature amend the section to allow all sex offenses (except Rape 1, Rape 2 and indecent liberties with actual forcible compulsion) to also be sealed after being relieved of sex offender registration.

[51] Vermeire & Merluzzi, *supra* note 44, at v.

[52] *See e.g.*, A. Nellis, *Addressing the Collateral Consequences of Convictions for Young Offenders*, THE CHAMPION, NAT'L ASSOC. OF CRIMINAL DEF. LAWYERS at 20 (July/August 2011).

embraces the idea that the best way to help such children is to encourage their return to the community by offering them every opportunity to succeed."[53]

VI. Conclusion

The issue of racial disparity and over-representation in juvenile court is not new in Washington State. Nearly twenty years ago, the legislature studied and found racial disparity at every juvenile justice decision point. Today, we continue to monitor and analyze the numbers. Our ability to collect and analyze data has improved dramatically and will no doubt provide key information to guide and assist our efforts going forward. But, despite years of study and attention, we have not seen much progress in reducing disparities. As James Bell laments, "There's been a lot of motion but little movement in the last two decades....Meanwhile, the overrepresentation of youth of color climbs."[54]

The good news is that in we are in unprecedented economic and political times that create opportunity to rethink how we utilize court resources and community partnerships. New economic realities are forcing decision-makers to reconsider and restructure systems. Our state is committed to putting resources into what works on an individual and systems level. Instead of the tough on crime stances that created the fear of the juvenile super predators, we are in an era where being smart on juvenile crime can result in positive outcomes for young people and for society.

There is no better context for reform. Arrest, filing, and detention rates have reached all time lows and reflect a national trend for juvenile justice. These are positive developments, but we must be vigilant in ensuring that our system of justice is fair and that over-representation of youth of color does not increase as we have seen in some jurisdictions.

Reducing the over-representation of youth of color in the justice system is complex. While we should continue to monitor and analyze data in search of explanations about the current disparities, especially at entry point into the juvenile justice system, there are concrete steps that we can take now to curb accumulated disadvantages and enduring negative impacts on youth of color. The following recommendations recognize that a fair and just system requires the commitment and efforts of all aspects of the system. Our success is dependent upon the leadership of the Supreme Court and others to inspire the structural and philosophical changes needed to motivate data-driven, results-based improvements that reduce the over-representation of youth of color in the juvenile justice system.

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[53] *ABA Adopts Policy to Limit Collateral Consequences for Juvenile Offenders*, AM. BAR ASSOC., http://apps.americanbar.org/abanet/media/release/news_release.cfm?releaseid=909 (last accessed March 19, 2012).
[54] Bell & Ridolfi, *supra* note 21, at 15.

VII. Recommendations

The Recommendations below reflect the multi-dimensional approach necessary for the structural reform and philosophical shifts necessary for the reduction of over representation of minority youth in our juvenile justice system. Embracing change takes courage and so we invite the reader to wrestle with the Recommendations. Ask what they might mean for you and others, comment and offer critique. Regardless of whether you agree or disagree with the Recommendations, we ask that you join us in the dynamic work of making our juvenile justice system one that offers our youth *a way out* of our systems and on a path to success.

RECOMMENDATIONS FROM THE JUVENILE JUSTICE SUBCOMMITTEE OF THE TASK FORCE ON RACE AND THE CRIMINAL JUSTICE SYSTEM

WASHINGTON SUPREME COURT

1. Exercise leadership and encourage the judiciary at all levels to examine and address racial disparities in the juvenile and criminal justice systems. Judges should be encouraged to examine practices and policies within their courts to determine whether they contribute to such racial disparities.

2. Direct the Office of the Administrator of the Courts and the Washington State Center for Court Research, in collaboration with the Washington Partnership Council for Juvenile Justice, trial courts and law enforcement to define, collect and annually publicize disaggregated data about youth by jurisdiction and race/ethnicity at the key juvenile/criminal justice decision points, including arrest, referral, diversion, filing, adjudication, disposition, disposition alternatives, secure confinement, prosecution of juveniles as adults, and recidivism.

3. Direct the Office of the Administrator of the Courts and the Washington State Center for Court Research, in collaboration with the trial courts, to establish a process for conducting annual reviews of data quality related to identification of race and ethnicity.

4. Create measures of accountability and steps for realizing those measures for ensuring that youth of color receive equitable treatment in the juvenile and adult criminal justice systems.

5. Task the Washington State Minority and Justice Commission with working collaboratively with the Washington State Partnership Council on Juvenile Justice and other interested stakeholders to undertake a new initiative that will focus on disparities for youth in the juvenile and criminal justice systems. The Commission should take concrete steps to address DMC through judicial education, community outreach, research, training, leadership and workforce diversity. The Commission

should collaborate with community leaders, community-based and faith-based organizations, and youth and their families to create opportunities for engaging the community on identifying and developing solutions to reduce racial disparity in the juvenile justice system.

6. Task the Washington State Minority and Justice Commission with working collaboratively with the Washington State Bar Association and other interested stakeholders to review the Juvenile Court Rules for offender, dependency, truancy, At Risk Youth and Child In Need of Services proceedings to recommend new rules that will help to reduce racial disparities, enhance system coordination and efficiency, and improve long-term outcomes for youth.

7. Review the policies and procedures for disseminating juvenile justice information through the Juvenile Information System (JIS) and modify provisions that allow erroneous, incomplete or outdated court information to be available to the public through the Internet or other means.

WASHINGTON STATE BAR ASSOCIATION

1. Provide training to bar leaders and attorneys to create awareness of disparities for youth in the juvenile and criminal justice systems.

2. Collaborate with community leaders, community-based and faith-based organizations, youth, youth advocates, and families to create opportunities for engaging the community on identifying and developing solutions to reduce racial disparity in the juvenile justice system.

3. Pro-actively increase workforce diversity through recruitment and mentoring and competence among legal professionals serving and representing diverse youth.

4. Work collaboratively with the Washington State Minority and Justice Commission and other interested stakeholders to review the Juvenile Court Rules for offender, dependency, truancy, At Risk Youth and Child In Need of Services proceedings to recommend new rules that will help to reduce racial disparities, enhance system coordination and efficiency, and improve long-term outcomes for youth.

LOCAL GOVERNMENTS/COURTS

1. Working collaboratively with DSHS' Office of Juvenile Justice, the Washington State Center for Court Research, or other interested stakeholders to convene a committee or workgroup to gather and review local data, identify decision points where disparity exists including length of stay in detention, and establish benchmarks and incentives to reduce disproportionate minority contact at each decision point.

2. Adopt a racial impact review process for funding programs that impact youth at risk of or in the juvenile justice system.

3. Limit the use of secure confinement on failure to appear warrants by creating policies and funding strategies that address the underlying reasons for failures to appear in juvenile court matters.

4. Adopt policies prohibiting the use of juvenile arrests and adjudications for hiring in local government positions unless directly relevant to the work to be performed.

5. Ensure that contracts for juvenile public defenders comply with the WSBA standards for indigent public defense and that both public defenders and prosecutors who work in juvenile court have adequate resources and training to ensure fairness in the justice system.

6. Collaborate with community leaders, community-based and faith-based organizations, youth, youth advocates, and families to create opportunities for engaging the community on identifying and developing solutions to reduce racial disparity in the juvenile justice system.

LEGISLATURE

1. Adopt a racial impact review process for legislation and funding of programs that impact youth at risk of or in the juvenile justice system.

2. Expand diversion options and ensure that diversion opportunities are available to all similarly situated youth, such as allowing for diversion of felonies and multiple misdemeanors and the use of community-based and restorative justice approaches.

3. Allocate resources for programs that promote diversion from formal prosecution to treatment-oriented or other supportive services for youth.

4. Incentivize the use of culturally competent, positive behavior and positive school climate approaches to school misconduct to reduce exclusionary discipline practices (suspensions and expulsions) and the use of law enforcement in schools.

5. Allocate state resources to improve the quality of juvenile public defense and juvenile prosecution.

6. Amend laws governing the filing and sentencing of youth in the adult criminal justice system to be consistent with current social science research and the U.S. Supreme Court's decisions in *Graham v. Florida*, 130 S. Ct. 2011 (2010) and *JDB v. North Carolina*, 131 S. Ct. 2394 (2011).

7. Review the policies and procedures for disseminating juvenile justice information through the Juvenile Information System (JIS) and modify provisions that allow erroneous, incomplete or outdated court information to be available to the public through the Internet or other means.

8. Permit the vacating and sealing of juvenile deferred dispositions without first requiring full payment of legal financial obligations by allowing outstanding legal financial obligations to be converted to civil judgments.

9. Allow courts to convert restitution and other legal financial obligations into community service hours or other conditions.

10. Fund and develop effective reentry and transition services for youth returning from secure confinement, including parole and other post-release supports that reduce recidivism and re-arrest.

LAW ENFORCEMENT

1. Local law enforcement agencies should work collaboratively with the Washington Association of Sheriffs and Police Chiefs to ensure the collection of accurate arrest and referral data, including disaggregated race and ethnicity data. The Minority and Justice Commission should seek out technical assistance and other resources to assist and provide guidance on how law enforcement agencies can improve the accuracy of arrest and referral data, including disaggregated race and ethnicity information.

2. The Criminal Justice Training Commission should include training on the juvenile justice system and other child serving systems (child welfare, mental health, education, DDD, etc.) during the Basic Law Enforcement Academy.

3. The Criminal Justice Training Commission should develop and provide training for all line officers on best and promising practices for interacting with youth and particularly youth of color to reduce escalating behavior and promote positive outcomes arising from police contact.

4. Local law enforcement agencies should continue efforts to pro-actively increase workforce diversity (through recruitment and mentoring) and competency of law enforcement professionals who interact with diverse youth.

5. Prioritize the creation of policies establishing standards and training for school administrators, school resource officers, and police officers in the areas of school based problem solving, increasing diversion options and interventions that keep youth engaged in school and on track to graduate. The Minority and Justice Commission's Juvenile Justice/DMC Committee should convene a workgroup that includes law enforcement to create a framework for collaboration at the local level.

6. Local law enforcement agencies should regularly participate in DMC workgroups as established by local governments and/or juvenile courts.

PROSECUTORS

1. Develop and provide training for all deputy prosecutors practicing in juvenile court on the following topics: adolescent development and the impacts of trauma; effective treatment for mental health, substance abuse and other adolescent health issues; cognitive and developmental disabilities; school discipline; racial disproportionality; and research-based effective practices for diversion and reducing recidivism.

2. Provide training to develop expertise in understanding where racial disparities exist in the juvenile justice system, how racial bias affects youth of color, and how racial bias can affect prosecution.

3. Pro-actively increase workforce diversity through recruitment and mentoring and competence among legal professionals serving and representing diverse youth.

4. In consultation with schools, courts, law enforcement and the community, review diversion and filing standards, including auto adult filings, to determine whether they add to racial disparities and make adjustments in the standards or practices to reduce racial disparities in juvenile court.

5. Collect data on race, ethnicity and school based referrals and filings in order to develop practices that enhance safety, reduce juvenile justice involvement, and promote positive school engagement for youth of color.

6. Regularly participate in DMC workgroups as established by local governments and/or juvenile courts.

PUBLIC DEFENSE ORGANIZATIONS AND ATTORNEYS REPRESENTING YOUTH IN JUVENILE COURT

1. Develop and provide training for all public defenders representing youth in juvenile court on the following topics: adolescent development and the impacts of trauma; effective treatment for mental health, substance abuse and other adolescent health issues; cognitive and developmental disabilities; school discipline; racial disproportionality; and research-based effective practices for diversion and reducing recidivism.

2. Provide training to develop expertise in understanding where racial disparities exist in the juvenile justice system, how racial bias affects youth of color, and how racial bias can affect defender practice.

3. Pro-actively increase workforce diversity through recruitment and mentoring and cultural competence among legal professionals serving and representing youth.

4. Provide resources for holistic representation of youth to address their legal issues in multiple systems including offender, dependency, truancy, mental health, and education.

5. Adhere to caseload standards as developed by the Washington State Bar Association and the Washington Defender Association.

6. Promote diversion options and warrant reduction for youth through direct representation and advocacy within the juvenile court system.

7. Provide post-disposition advocacy, including the sealing of juvenile records.

8. Regularly participate in DMC workgroups as established by local governments and/or juvenile courts.

LAW SCHOOLS

1. Incorporate juvenile justice and race and disparity issues as part of the regular curriculum of Criminal Law and Procedure courses.

2. Host seminars and conferences focusing on improving children and youth serving legal systems.

3. Collaborate with community leaders, community-based and faith-based organizations, youth, youth advocates, and families to create opportunities for engaging the community and the judiciary on identifying and developing solutions to reduce racial disparity in the juvenile justice system.

SCHOOLS/Office of the Superintendent of Public Instruction

1. In collaboration with schools, law enforcement, courts, and the community, establish standards and training for administrators, School Resource Officers and police officers assigned to schools, including standards for referring matters to juvenile court, increasing school based problem solving, creating diversion options, and incorporating interventions that keep youth engaged and in school and on track to graduate.

2. Work in partnership with the Office of the Superintendent of Public Instruction, including the Gangs in Schools Task Force and the Education Opportunity Gap Oversight and Accountability Committee, to create policies and programs to address the nexus between race and ethnicity, the academic achievement and opportunity gaps, drop-out rate, school discipline, and juvenile justice involvement.

3. Collect and publish disaggregated data exploring the nexus between students' race and ethnicity, special education status, school discipline, truancy/absence history, the academic achievement and opportunity gaps, free and reduced lunch eligibility, drop-out rate and juvenile justice involvement.

4. Train school administrators in FERPA/HIPPA compliance and provide them with on-going technical assistance regarding data systems in order to overcome obstacles to data sharing and ensure that the data collected is available and useful for research and policy review purposes.

5. Encourage local districts to develop memoranda of understanding with OSPI, WSCCR, and DSHS to improve the ability to study and analyze the nexus between school experience and juvenile justice involvement.

6. Train school administrators on the juvenile justice system and other child serving systems, including training on the direct and collateral consequences of juvenile justice involvement.

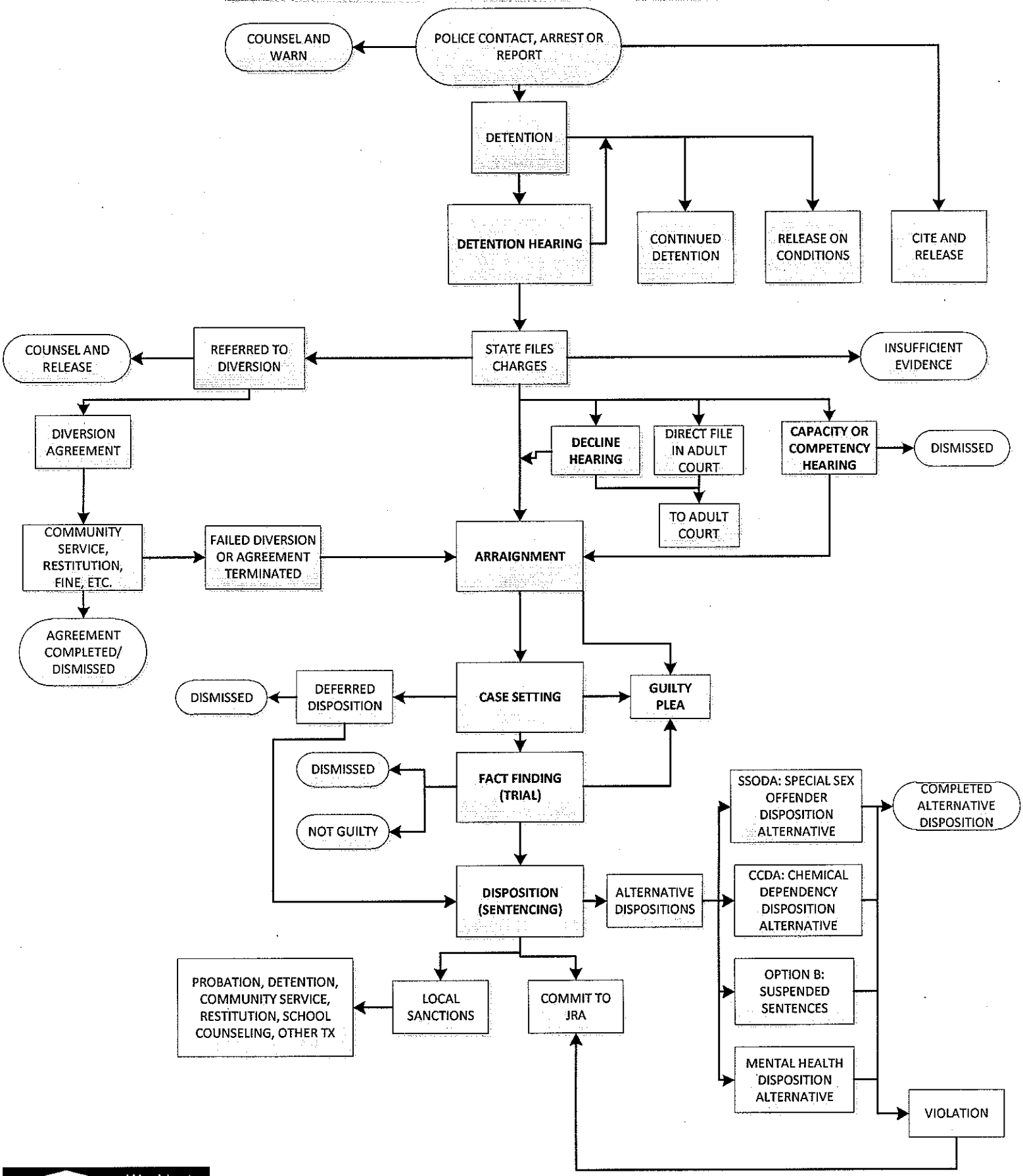
7. Create policies and fund programs for responding to misconduct that keep students engaged and on track to graduate and that reduce out-of-school discipline and other periods of exclusion from school.

8. In collaboration with local districts and detention facilities and the Juvenile Rehabilitation Administration, create policies and fund intervention programs that ensure that juvenile justice involved youth are fully reintegrated into public schools, supported academically in their transitions, and on track to graduate.

APPENDIX A

I. JUVENILE JUSTICE SYSTEM FLOW CHART

Juvenile Justice System Flow Chart



Washington Defender Association

Updated 3.16.2012

II. Standard Definitions for Each Stage in the Juvenile Justice System

Stage in the Juvenile Justice System	Definition
Arrest	Youth are considered to be arrested when law enforcement agencies apprehend, stop, or otherwise contact them and suspect them of having a committed a delinquent act. Delinquent acts are those that, if an adult commits them, would be criminal, including crimes against persons, crimes against property, drug offenses, and crimes against the public order.
Referral	Referral is when a youth is sent forward for legal processing and received by a juvenile court as a result of law enforcement action.
Diversion	The diversion population includes all youth referred for legal processing but handled without the filing of formal charges. In Washington, a youth must be offered a diversion for his or her first misdemeanor referral. Additional misdemeanors and some felonies may also be diverted at the discretion of the prosecutor.
Detention	Detention refers to youth held in secure detention facilities at some point during court processing of delinquency cases (i.e., prior to disposition). In some jurisdictions, the detention population may also include youth held in secure detention to await placement following a court disposition. For the purposes of DMC, detention may also include youth held in jails and lockups. Detention should not include youth held in shelters group homes, or other non-secure facilities.
Filing of Charges	Formally charged juvenile offender cases are those that appear on a court calendar in response to the filing of an information by a prosecutor.
Adjudication of Guilt	Youth are adjudicated guilty during fact-finding hearing sin juvenile court. Being adjudicated guilty is roughly equivalent to being convicted in criminal court. It is a formal legal finding of responsibility. If found guilty, youth normally proceed to a disposition hearing where they face local sanctions (e.g. county detention, probation) or commitment to a state Juvenile Rehabilitation Administration facility (JRA)).
Probation/Community Supervision	Probation cases are those in which a youth is placed on court-ordered supervision following a juvenile court disposition. Conditions such as school attendance, no drugs or alcohol, counseling, curfew etc. are court-ordered and monitored by a juvenile probation counselor (JPC)).
Confinement in secure correctional facilities	Confined cases are those in which, following a court disposition, youth are placed in secure residential or correctional facilities for juvenile offenders.
Declined to adult court	Declined cases are those in which a youth is either transferred to criminal court as a result of a judicial finding in juvenile court (discretionary decline) or filed on directly in adult court for certain serious offenses (automatic decline)

III. HOW WASHINGTON'S JUVENILE JUSTICE SYSTEM WORKS

A. An Overview of Juvenile Court

Juvenile courts are a division of the Superior Court in Washington, and Superior Court Judges and Commissioners hear cases.

[55] In counties where there is more than one Superior Court Judge, it is common for judges to rotate assignments, spending anywhere from a day to several years as a juvenile court judge, before returning to adult court. Although some smaller counties share juvenile courts, there are still several dozen juvenile courts in Washington's thirty-nine counties. While the JJA binds them all, practice and institutional culture differ widely from county to county.

Three types of cases are heard in juvenile court:

- Dependency cases
- Status offenses (e.g. truancy, children in need of services and 'at-risk' youth petitions)
- Offender matters (also referred to as delinquency)

Juvenile court jurisdiction generally extends over children under the age of 18 for offender matters,[56] but it may be extended up to an offender's 21st birthday.[57] By law, children under the age of eight years are incapable of committing a crime and in no case may be charged in juvenile court.[58] A child at least eight years old and under twelve years of age is presumed to be incapable of committing a crime, but this presumption may be rebutted by the prosecution with clear and convincing evidence that, at the time of the alleged crime, the child was capable of forming the intent necessary to commit the crime charged. This "Capacity Hearing" must include an analysis of the child's maturity and capabilities.[59]

A child who is mentally incompetent cannot be tried for alleged crimes in juvenile court, regardless of his age. Washington juvenile court law, Title 13 of the Revised Code of Washington, contains no statute relating to the competency of juveniles; hence, the laws regarding adult's mental incompetence also apply to children.[60] The Washington Court of Appeals has given some flexibility to juvenile courts in applying the adult competency statute, however, in *State v. E.C.*, the Court found that the adult statute is "generally applicable" only if it is not inconsistent with the rules and statutes applying to juvenile offense proceedings.[61] Furthermore, the Court gave broad authority to the juvenile court to respond to the needs of a particular offender when there is a conflict between the adult statute and the JJA, holding that "[i]f the needs of a particular incompetent juvenile

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[55] WASH. REV. CODE §13.04.030.

[56] This definition excludes offenders who have been previously transferred to or are otherwise under the jurisdiction of adult court. WASH. REV. CODE §§13.40.010, 020(14).

[57] Proceedings must be pending and an order of the court extending jurisdiction must be entered. For purposes of enforcing an order of restitution or a penalty assessment, jurisdiction extends for ten years after the offender's eighteenth birthday, and can be extended an additional ten years during the initial ten year period. WASH. REV. CODE §§13.40.190, .300.

[58] WASH. REV. CODE §9A.040.050.

[59] *Supra* note 14, for Washington case law related to the issue of capacity.

[60] WASH. REV. CODE §10.77.050.

[61] State v. E.C., 922 P.2d 152 (1996).

offender require early dismissal of the charges with prejudice, we hold the juvenile court retains the authority to do so."[62]

B. Procedure in Washington's Juvenile Courts

1. *Arrest and Detention*

In Washington State, a juvenile may be arrested either by court order, or more commonly, by a law enforcement officer if "grounds exist for the arrest of an adult in identical circumstances."[63] An arresting officer makes the initial decision to detain or release a youth pending charges being filed. If the officer decides to detain a youth, he or she is then taken to the county detention facility where "intake and risk assessment standards" are used to further analyze whether the youth should be detained.[64] Some counties require a police officer to call and discuss the case with a detention screener at the county detention facility before taking a child to detention.[65]

If a juvenile is held in detention after arrest, there must be a court appearance by the end of the next court day. At this "First Appearance" or "Probable Cause" hearing, a judge must use a two-step decision-making process. First, the judge decides if there is probable cause that a crime occurred, and that this youth committed it. The judge typically reviews a brief sworn, signed statement from the arresting officers, alleging the basic elements of a crime and the youth's involvement. A judge may also hear live testimony. Second, upon deciding there is probable cause that a crime was committed, the court must analyze anew whether the youth should be held. A young person can only be held in detention when there is probable cause to believe that he or she:

- is likely to fail to appear for further proceedings,
- needs protection,
- is a threat to community safety,
- will interfere with the administration of justice,
- committed a crime while another case was pending,
- is a fugitive,
- has had parole suspended, or
- is a material witness.[66]

Under certain circumstances, however, a juvenile may be released upon posting a probation bond set by the court or by depositing cash or posting other collateral in lieu of a probation bond. The juvenile's parent or guardian may sign for the probation bond or deposit cash or collateral on behalf of the juvenile if approved by the court.[67]

2. *Charging*

Police "refer" a case to the county prosecutor's office for a charging decision. The JJA requires the prosecutor to screen the case for legal sufficiency and jurisdiction. If a case is legally sufficient, the prosecutor may file charges in the form of an "Information" with the

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[62] *Id.*
[63] WASH. REV. CODE §13.40.040.
[64] WASH. REV. CODE §13.40.038.
[65] *Id.*
[66] WASH. REV. CODE §13.40.040(2).
[67] WASH. REV. CODE §13.40.040(5).

juvenile court.[68] If a juvenile is held in detention, the Information must be filed by the county prosecutor within 72 hours, excluding weekends and holidays.[69]

In 2009, 41,725 cases were referred to county prosecutors in Washington. Thirty-nine percent of the referred cases had charges filed, 38% were referred to Diversion and for 10% of cases referred to prosecutors, no action was taken.[70]

3. Diversion

Although a case may be legally sufficient, the JJA requires that, under certain circumstances, the prosecutor may not file charges, but instead must "divert" the case out of court. The JJA recognizes that young, minor offenders are best dealt with outside of formal court settings and, thus, requires diversion of cases in which the "alleged offense is either a misdemeanor or gross misdemeanor, and the alleged offense is the offender's first offense or violation."[71] In addition, prosecutors are given discretion to divert a juvenile's second misdemeanor, as well as certain non-violent and property-related Class C felonies.

Diversion is based upon an agreement between a youth and a Diversion unit (often composed of community-based boards). The youth does not have to admit wrongdoing, but must agree to do one or more of the following: perform community service of less than one hundred fifty hours; make restitution to the victim; attend up to ten hours of counseling; and/or up to twenty hours of educational or informational sessions at a community agency. A monetary fine of up to $100 may also be imposed. Additionally, it is common for Diversion agreements to include restrictions, such as curfews, times to be spent in school or at home, as well as exclusion from specified places. At the request of a victim or witness, an agreement not to contact specified individuals may also be added.

A diversion agreement may last up to six months, but an extension for the purpose of paying restitution is permitted. If the youth successfully completes the Diversion agreement, charges will not be filed in juvenile court. If the juvenile fails either to appear for the initial Diversion meeting or fails to complete the Diversion agreement, however, the case is sent back to the prosecutor for the filing of an Information. In some jurisdictions, a juvenile may be given a 'second chance' at completing the Diversion after the matter is filed in juvenile court.

4. Arraignment, Pre-trial Hearings, Fact Finding and Adjudication

The evolution of a juvenile court case is procedurally comparable to that of an adult's case in the state. Speedy trial requirements dictate that a detained youth shall have a trial within 30 days, and a youth out of custody within 60 days. At the arraignment hearing, the charges are read, and the youth enters a plea. A pretrial hearing is held during which hearings for motions and pleas can be argued by counsel. If a juvenile chooses to dispute the charges, the bench trial is called a "Fact Finding," with a judge or commissioner hearing the case. Youth in juvenile court do not have the right to a jury trial. Conviction is termed "adjudication;" a youth found guilty is an "adjudicated youth;" and sentencing is

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[68] WASH. REV. CODE §13.40.070.

[69] As a result of the weekend/holiday exclusion, a juvenile could be arrested on a Thursday and if the following Monday is a holiday, not be guaranteed release until Wednesday of the next week. WASH. REV. CODE §13.40.050(1).

[70] *Washington State Juvenile Justice Annual Reports: 2010, supra* note 9.

[71] WASH. REV. CODE §§13.40.070(6)-(7).

called "disposition." Despite the similarities of process in juvenile court to adult court, the different terms are evidence of what are, or at least originally were, very real differences in the two courts.[72]

5. *Sentencing: Disposition of the Case*

Washington uses a presumptive, determinate sentencing scheme[73] that is like no other in the nation. The JJA lays out a table through which one factors the seriousness of the current offense and a juvenile's prior criminal history to determine a sentence.

Juvenile Offender Sentencing Grid: Standard Range

CURRENT OFFENSE CATEGORY	A+	180 weeks to age 21 for all category A+ offenses				
	A	103-129 weeks for all category A offenses				
	A-	15-36 weeks (Except 30-40 weeks for 15-17 year olds)	52-65 weeks	80-100 weeks	103-129 weeks	103-129 weeks
	B+	15-36 weeks	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks
	B	Local Sanctions (LS)	LS	15-36 weeks	15-36 weeks	52-65 weeks
	C+	LS	LS	LS	15-36 weeks	15-36 weeks
	C	LS	LS	LS	LS	15-36 weeks
	D+	LS	LS	LS	LS	LS
	D	LS	LS	LS	LS	LS
	E	LS	LS	LS	LS	LS
PRIOR ADJUDICATIONS		0	1	2	3	4 or more

The vertical axis of the grid plots the ascending seriousness of a class of crime.[74] The horizontal axis represents the juvenile's criminal history. The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Prior felony adjudications count as one point, prior misdemeanors count as one quarter of a point.

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[72] In 2010 the legislature amended RCW 13.04.011 to establish a distinction between and adult "conviction" and a juvenile "adjudication".

[73] WASH. REV. CODE §13.40.0357.

[74] The classification of crimes, in large part, is the same as that for adults. For example, a Robbery in the First Degree is a Class A. Shoplifting, which is simply a gross misdemeanor in the adult system is classified as a "D" crime in the juvenile scheme.

The dispositions on the grid are divided into "local sanctions" and "commitment" time. The less serious the violation and the shorter the criminal history, the more likely a standard disposition will involve only local sanctions. Local sanctions may include: 0 to 30 days of confinement at the county detention facility, 0 to 12 months of community supervision (commonly referred to as probation), 0 to 150 hours of community service, and/or up to a $500.00 fine. The more serious the current crime and the more prior adjudications (convictions), the more likely a juvenile is "committed" to a state detention facility, for a sentence with a specific range measured in weeks, not days.[75]

For example, a juvenile who is found guilty of Shoplifting and has no history of prior offenses will face a sentence of local sanctions. If the judge determines the sanctions should include detention time, the sentence will specify the number of days (up to thirty) to be spent at the local detention facility, along with other sanctions the court deems appropriate. If that same juvenile is found guilty of the serious crime of Robbery in the First Degree, a Class A felony, the sentence will be from 103 to 129 weeks incarceration at a state facility, regardless of the juvenile's prior offence history. However, for a youth adjudicated guilty of a Class B felonies -- Burglary, Arson in the Second Degree or Malicious Mischief in the First Degree -- the disposition will greatly depend on his or her criminal history. With no prior criminal history, the standard sentence would be local sanctions. With four or more criminal history points, the presumed range would be 52 to 65 weeks at a state Juvenile Rehabilitation Administration (JRA) facility.

6. Sentencing (Dispositions) Outside the Grid

The JJA provides for exceptions to the standard range dispositions laid out in the grid. "Option A" is the presumed sentencing grid and is commonly referred to as "the standard range."

"Option B" is the Suspended Disposition Alternative, a law that went into effect in July 2003. Option B allows a court to impose the standard range and suspend the disposition on the condition that the offender complies with one or more local sanctions and any educational or research-based "best practice" treatment programs. Some serious charges or offender history can make a youth ineligible for this option.

"Option C" is the Chemical Dependency Disposition Alternative. Under certain restricted circumstances, the court may impose the standard range sentence and suspend it, imposing a disposition of treatment in lieu of incarceration sanctions.

"Option D" allows the court to impose a sentence outside of the standard range, if the court believes that a standard range sentence would result in a *manifest injustice* (M.I.). The youth, the prosecution or the court itself may make an M.I. motion for a sentence above or below the standard range. The JJA lists mitigating factors that would permit a sentence below the standard range and aggravating factors that would allow a sentence above the range.[76] Mitigating factors include if the offender's conduct did not cause serious injury; whether he or she acted under "strong and immediate provocation;" whether he or she suffered from a mental or physical condition significantly reducing culpability; or whether, prior to detection, the youth made a good faith attempt to compensate the victim for the injury or loss. Aggravating factors include if the offender inflicted or attempted to inflict serious injury; if the offense was committed in an

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[75] Washington's facilities are run by the Juvenile Rehabilitation Administration (JRA).
[76] WASH. REV. CODE §13.40.150.

especially heinous manner; if the victim was particularly vulnerable; or if the offender is a leader of several people involved in a criminal enterprise, among others. The factors listed in the JJA are not all inclusive. In fact, the list of aggravating factors concludes with an explicit "catch-all:" if the standard range is "clearly too lenient considering the seriousness of the juvenile's prior adjudications," a sentence departure upwards may be made. At an M.I. hearing, the court must make findings on these factors based on clear and convincing evidence. Also, a sentence outside the standard range may be appealed to a higher court, but a sentence within the standard range may not.

Washington case law clarifies the use of the manifest injustice, emphasizing the importance of "avoiding narrow, semantic interpretations [of the JJA] that defeat the purposes of the legislature" which include both rehabilitation and punishment.[77] The JJA requires courts to take into consideration a host of factors that may not be relevant to the sentencing of adults.[78] In addition to the aforementioned list of factors, other evidence may be considered in determining whether a standard sentence would be manifestly unjust, such as parent involvement, parental effectiveness, the child's participation in treatment, and status in school.

While the juvenile court is allowed to consider a variety of factors in sentencing youth, the JJA expressly forbids the consideration of factors, such as race, gender, religion and economic status, to determine punishment. Furthermore, the JJA prohibits a court from considering a youth's status as a dependent child or the lack of facilities, including treatment facilities, in the community to determine punishment or impose commitment.

Although judges may dislike the lack of judicial discretion in determinate sentencing, few venture outside the sentencing box. In 2011, there were a total of 10,211 dispositions. Juvenile court judges sentenced offenders within the presumptive standard range 97% of the time. Of the 3% sentenced outside the range, 70% received a sentence that was higher than the standard sentence, and only 27% received a sentence below the standard range.[79]

Other alternative dispositions provided in the JJA include the Special Sex Offender Disposition Alternative (SSODA), the Mental Health Disposition Alternative (MHDA) and by far most used alternative, the Deferred Disposition.

The Deferred Disposition provides a first time offender with an opportunity to avoid any detention time and have his/her record automatically sealed upon successful completion of a term of community based supervision.[80]

The Special Sex Offender Disposition Alternative allows the court to suspend any disposition during a period of community based sex offender specific treatment.[81] Upon successful completion of the treatment, supervision will be terminated. Registration as a

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[77] State v. Crabtree, 66 P.3d 695 (2003).
[78] *Id.*
[79] *Juvenile Disposition Summary 2011,* WASH. STATE CASELOAD FORECAST COUNCIL (2012), http://www.cfc.wa.gov/PublicationSentencing/StatisticalSummary/Juvenile_Disposition_Summary_FY2011.pdf (last accessed March 11, 2012). *See also, 1997 Revisions to Washington's Juvenile Offender Sentencing Laws: An Evaluation of the Effect of Local Detention on Crime Rates,* WASH. STATE INST. FOR PUB. POLICY (2002).
[80] WASH. REV. CODE §13.40.127.
[81] WASH. REV. CODE §13.40.162.

sex offender and school notification requirements remain in force indefinitely until removed by the court.

The Mental Health Disposition Alternative was added to the JJA in 2003 to allow offenders suffering from a mental illness to participate in community based treatment and counseling in lieu of a commitment to JRA.[82] This disposition alternative has rarely been sought and never successfully completed due to highly restrictive eligibility criteria and lack of community based resources.[83]

7. Children in Criminal Court

Children may be tried in adult criminal court under two circumstances: a case may be either transferred (or "declined") to adult court after a hearing before a juvenile court judge, or it may be automatically transferred with no judicial decision.

Discretionary transfer has existed since the creation of the Juvenile Justice Act. The law gives authority to juvenile court judges to transfer children charged with crimes to adult criminal court. A decline hearing must be held when there is either a motion to transfer jurisdiction[84] or the age of the juvenile and the type of crime alleged render such a hearing mandatory by law.[85] Although the decline *hearing* is mandatory under certain circumstances, the *decision* to transfer remains discretionary. In a decline hearing, the judge reviews facts, examines records, listens to expert opinion and hears arguments regarding whether it is appropriate to transfer the youth to criminal court.[86]

The importance of the decline hearing in juvenile proceedings can hardly be overstated. Decline hearings require precise, specific findings by the court. In *Kent v. U.S.,* the U.S. Supreme Court delineated eight factors to be considered by a juvenile court in a decline hearing.[87] Those factors, known as the "*Kent* Criteria," require a close look at the youth

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[82] WASH. REV. CODE §13.40.167.

[83] WASH. STATE CASELOAD FORECAST COUNCIL, *supra* note 79.

[84] A motion to transfer a juvenile case for adult criminal prosecution can be made by the prosecuting attorney, the respondent or the court itself.

[85] A decline hearing is mandatory when

> (a) The respondent is fifteen, sixteen, or seventeen years of age and the information alleges a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony;
> (b) The respondent is seventeen years of age and the information alleges assault in the second degree, extortion in the first degree, indecent liberties, child molestation in the second degree, kidnapping in the second degree, or robbery in the second degree; or
> (c) The information alleges an escape by the respondent and the respondent is serving a minimum juvenile sentence to age twenty-one. WASH. REV. CODE §13.40.110.

[86] Note that a mandatory decline hearing can be waived with the agreement of the court, the parties, and their counsel. The court must still enter an order.

[87] The factors to be considered by a judge in deciding whether to decline juvenile court's jurisdiction are:

> 1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
> 2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
> 3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.

and his or her "maturity, home, environmental situation, [and] emotional attitude." A decision to transfer a child to adult court cannot be made solely on how serious the crime is or the need for judicial efficiency, but should take into close consideration the specific facts of the case and the youth's prospects for rehabilitation.[88]

Until the mid-1990's, juvenile court had original jurisdiction over all children committing crimes. However, after a historical peak in the rates of juvenile arrests for violent crimes, the state law was changed in 1994 and 1997.[89] Legislators were motivated by the prospect that increased penalties would reduce violent crimes committed by youth. As a result, Washington law now requires the automatic transfer of some juveniles to adult court.[90] Sixteen and seventeen year olds charged with certain violent felonies go straight to the adult criminal system, having had no individual review of the facts of the case or the youth's life circumstances.[91] However, not only serious violent crimes result in automatic transfer to adult court. Lesser offenses can also be a path to automatic adult court

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4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the [prosecuting attorney]).
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in [criminal court].
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living.
7. The record and previous history of the juvenile, including previous contacts with [social service agencies], other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to [the court], or prior commitments to juvenile institutions.
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court. Kent v. U.S., 383 U.S. 541 (1966).

[88] N. Rodriguez, *Youth Transfer Decisions: Exploring County Variations*, 54 JUV. AND FAM. CT. J. 33 (2003).

[89] The highest rate of juvenile arrest in Washington State occurred in 1994 when the annual arrest rate was nearly 95 per 1000 youth. The rates have dropped dramatically since then. In 2009, juvenile arrests were at an all time low at 41 arrests per 1000 youth, the lowest rate since at least 1982. *Washington State Juvenile Justice Annual Reports: 2010, supra* note 9, at 112.

[90] Automatic transfer results when "the juvenile is sixteen or seventeen years old and the alleged offense is:

(A) A serious violent offense as defined in RCW 9.94A.030;
(B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately;
(C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;
(D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or
(E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

In such a case the adult criminal court shall have exclusive original jurisdiction." WASH. REV. CODE §13.04.030(1)(e)(v).

[91] These offenses are the "serious violent" offenses defined at RCW 9.94A.030(37). They include crimes such as murder, rape and kidnapping.

jurisdiction, depending on a young person's juvenile offender history.[92] As a result, 16 and 17 year olds accused of certain crimes no longer benefit from the rehabilitation originally intended for them.

The costs and benefits of transferring youth to adult court has been and continues to be debated across the country and continues to be informed by emerging research.[93] The Washington State Institute for Public Policy released a preliminary report in January 2003 examining the impact of these changes in jurisdiction. The report finds "...we cannot attribute the decrease in juvenile arrest rates for violent crimes in Washington State solely to the automatic transfer laws." The Institute found that the automatic transfer laws have resulted in a three hundred percent increase in the number of juvenile cases transferred to adult court since 1992. Despite the large increase in cases being transferred to criminal court, the report found on "very preliminary examination," that there was "no consistent evidence that sentencing youth to adult court either increases or decreases the likelihood of recidivism." [94] The Washington State Institute for Public Policy has yet to update this study.

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[92] The list of less serious offenses and other requirements for automatic transfer is found at RCW 9.94A.030(45) and 13.04.030(1)(e)(v). Raising this issue is not intended to understate the seriousness of crimes against persons. However, several of the crimes that are not in the "serious violent offense" category, but by this law can lead to automatic transfer, are not of a most serious nature. For some crimes in this category the result of the crime or the intent/culpability of the offender is much less than what should be required to warrant the extreme measure of removing a youth from the jurisdiction of juvenile court and, thereby, denying that individual any real opportunity for rehabilitation. For example, Robbery in the Second Degree is defined as the unlawful taking of "personal property from the person of another against his will by the use or threatened use of immediate force..." WASH. REV. CODE §9A.56.190.

A scenario fitting that definition, and one not uncommon to adolescent criminal proclivities, is a purse snatching where the victim is shoved, or the perpetrator just even says "I'll punch you if you come after me...." Although a single current charge of Robbery 2 cannot be the basis for automatic transfer, the right combination of criminal history and a current charge of Robbery 2 could be. A charge of Manslaughter in the Second Degree, while resulting in one of the most serious and dire criminal effects, the level of culpability is low: merely engaging in an act that is negligent (i.e. one *should have known* that a risk of harm existed—not even that one did in fact know that a *risk* existed) is the mental state required for a conviction. As a result, a judge is not allowed any discretion to assess complex factual patterns or the needs of the community or youth as was carefully set out by the U.S. Supreme Court in *Kent*. *See supra* note 51.

[93] R. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, JUVENILE JUSTICE BULLETIN, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (2010), https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf (last accessed March 11, 2012).

[94] R. Barnoski, *Changes in Washington State's Jurisdiction of Juvenile Offenders: Examining the Impact*, WASH. STATE INST. FOR PUB. POLICY 5, 9 (2003).

IV. GLOSSARY

ARY - At Risk Youth	At Risk Youth – refers to a juvenile court civil proceeding initiated by parents. RCW 13.32A.191, et seq. Petition requests court oversight of child who is 'out of control'. Court order often contains house rules like curfew, etc. Parents can request that child be held in contempt for violating the order, which could include up to 7 days in detention on for every violation of court order.
BECCA	Refers to statute and court proceedings that deal with youth status offenses. Includes Child in Need of Services ("CHINS"), At Risk Youth ("ARY"), and truancy proceedings.
Capacity/Capacity Hearing	Children under the age of eight years are legally incapable of committing crime. Children aged eight but under age twelve are presumed to be incapable of committing a crime, but the state may overcome this presumption by proving at a hearing that the child had sufficient capacity to understand the act or neglect, and to know that it was wrong. RCW 9A.04.050
CASA or VGAL	Court Appointed Special Advocate or Volunteer Guardian Ad Litem. Usually a non-attorney appointed by a judge in a dependency or family law proceeding to investigate and report back on the best interests of the child(ren).
CDDA	Chemical Dependency Disposition Alternative. This is a type of juvenile offender disposition that allows a youth to participate in treatment instead of commitment to a JRA facility.
CHINS	Child in Need of Services – refers to a juvenile court civil proceeding under RCW 13.32A.140, et seq. Parent, child, or DSHS can file a petition to request court to get placement or services and court oversight of reconciliation efforts. The CHINS is intended to be short –term (6 months) and lead towards reconciliation. Some CHINS turn into dependencies after 6 months. There is a threat of up to 7 days in detention for contempt if child violates court order.
CLIP	Children's Long Term Inpatient treatment – Refers to a set of children's residential treatment programs in Washington State for children with mental health issues. These beds were created by the legislature. Local mental health providers may refer high needs youth to these programs. Applications are reviewed by a state CLIP committee. Children placed in CLIP may stay as long as one or two years.
Decline	Decline or Decline Hearing refers to a process in juvenile offender and criminal matters. Youth who commit crimes are typically handled in juvenile court. For certain serious crimes, youth are automatically prosecuted in the adult criminal system even if they are under 18. For some crimes or if the youth is younger, a youth might get a hearing

	before the juvenile court who will determine whether it will "retain jurisdiction" (hear the case) or *decline* to hear the case and send it to the adult criminal justice system. The law spells out which crimes and the age range that would warrant either a decline hearing or an automatic decline to adult court. RCW 13.04.030(1)(v); 13.40.110.
Diversion	Diversion refers to a process in juvenile offender matters where a youth avoids the formal juvenile court process and the matter handled through a less formal process. Youth who go through diversion might have to successfully complete a period of time on community supervision. If youth make it through diversion, they may avoid having the matter appear on their juvenile criminal record.
EBP	Evidence Based Practice
WPCJJ	Washington Partnership Council for Juvenile Justice – this is Washington's State Advisory Group under the JJDPA – Members are appointed by the Governor.
JPC	Juvenile Probation Counselor. Employed by the counties in Washington State to provide supervision to youth who are involved in juvenile court because of offender behavior. Also sometimes referred to as "PO". Not to be confused with Parole Officer. Parole Officers are employed by the state and supervise youth who have been released from one of the state's Juvenile Rehabilitation Administration facilities.
JRA	Juvenile Rehabilitation Administration is also a division of the Department of Social and Health Services. JRA is in charge of the longer term incarceration of offender youth. JRA institutions are Echo Glen, Green Hill, and Naselle as well as a number of group home settings.
MI	Stands for "Manifest Injustice" and comes up in the context of a juvenile offender's disposition hearing. Washington State has determinate sentencing that proscribes a set standard of consequences (punishment) for particular crimes and criminal history. Generally, the more serious the crime, the harsher the punishment - which often means more days of incarceration. The youth or the state/prosecutor) can ask the court to consider ordering a punishment above or below the standard range. This request is called an "MI up" or an "MI down" and is based on an argument that it would be a "*manifest injustice* to impose the standard range, and the court should order a greater/lesser punishment.
MST/FFT/ART	Referred to as the "3 T's" – Individually, they are Multi-systemic Therapy, Functional Family Therapy and Aggression Replacement Training. They are treatment programs that have rigorous research showing that they reduce recidivism in certain populations. These

programs are short-term, intensive treatments. They are considered EBPs or Evidence Based Practice.

MDDA Mental Health Disposition Alternative - this is a special sentencing (disposition) option in juvenile court that allows a youth to remain in the community (instead of incarceration) in order to get mental health treatment.

OJJDP Office of Juvenile Justice and Delinquency Prevention. OJJDP was founded in 1974 as a result of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 (Pub. L. No. 93-415, 42 U.S.C. 5601 et seq.). Through formula and block grants to states and local governments, OJJDP seeks to set standards for and improve juvenile justice systems across the country.

OSPI Office of the Superintendent of Public Instruction – Oversees school districts and their implementation of basic and special education.

SODDA Sex Offender Disposition Alternative – this is a special sentencing (disposition) option in juvenile court that allows a youth to remain in the community (instead of incarceration) in order to get sex offender treatment.

Truancy One of the Becca proceedings. Schools are required by statute to file a truancy petition if student is absent 7 days in a semester or 10 days in a year. Students who don't comply with the truancy order face up to 7 days in detention for contempt.