

Use of Manifest Injustice in the Washington State Juvenile Rehabilitation Administration

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In the Washington State Juvenile Code, the Manifest Injustice (MI) provision allows judges to sentence youth outside of the standard guidelines. We compared rates of Juvenile Rehabilitation Administration (JRA) involvement and MI between racial minority youth and Caucasian youth. Although not statistically significant, there was a trend toward African American and multiracial youth having MI used to decrease their sentence less frequently than Caucasian youth. African American youth were about half as likely to have MI used to intensify their sentence compared with Caucasian youth (rate ratio = .49, $p = .002$), whereas multiracial youth were 42 percent less likely (rate ratio = .58, $p = .04$). More African American youth reside in urban and liberal parts of the state where judges may be more progressive and less likely to use MI to intensify sentences. More diversion programs targeting minority youth exist in urban areas of Washington, and more African American youth are transferred to adult court; both reduce the likelihood of minority youth receiving MI. Judges in rural areas of the state, which have fewer treatment resources, may be using MI to access services only available to court-involved youth. It is imperative that community behavioral health services are available so that youth and families can be justly served.

J Am Acad Psychiatry Law 47(1) online, 2019. DOI:10.29158/JAAPL.003816-19

The juvenile justice system traditionally takes a more benevolent approach than its adult counterpart. The mission statement of the Office of Juvenile Justice and Delinquency Prevention, part of the United States Department of Justice, states that it “provides treatment and rehabilitative services tailored to the needs of juveniles and their families.”¹ The majority of the juvenile codes throughout the United States identify treatment or rehabilitation as a goal.² The Washington State Juvenile Rehabilitation Administration (JRA) is the state agency serving youth who are committed to residential custody by county juvenile courts and during community reentry. JRA emphasizes accountability and rehabilitation.

In Washington State, there exists a provision in the juvenile code that allows judges to sentence youth

outside of the standard sentencing guidelines, known as Manifest Injustice (MI).³ If the standard sentencing guidelines yield a sentence that would be an injustice to the offender or risk the safety of the public, the judge can use MI to impose an alternative disposition. “MI Down” sentences the youth to a term shorter than the standard sentencing range, “MI In” sentences the youth to institutionalization (e.g., to a residential detention facility, when guidelines would not do so), and “MI Up” sentences the youth to a term longer than the standard sentencing range.

In theory, MI allows judges to adjudicate youth according to the more altruistic nature of the juvenile court with both the youth’s and the public’s best interests in mind. In the juvenile justice system, efforts have been made to integrate the assessment of potential risks and treatment needs in determining the most appropriate disposition for youth.^{4,5} Youth in the juvenile justice system also have higher rates of mental illness than their peers in the community.⁶ The use of MI is likely related to a number of factors related to both the nature of the crime and the characteristics of the youth. Risk factors for reoffending, family and community supports, and perceived mental health treatment needs could contribute to a

Published online February 8, 2019.

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Disclosures of financial or other potential conflicts of interest: None.

judge choosing to use MI, although ideally the systems involved in caring for these youth could address these issues in the least restrictive setting possible. It is critical that community resources be equipped to serve youth so that MI is not used for the sole purpose of accessing supports that are not available in the community.

Although other states may have initiatives comparable with MI, their use has not been systematically evaluated. There is racial discrimination throughout all levels of the criminal justice system, and racial inequality in juvenile justice sentencing is also well established.⁷ This investigation evaluates how MI is used across racial groups among Washington youth in JRA. Given the sentencing inequities throughout the criminal justice system within the United States, it was hypothesized that MI would be used more frequently to decrease sentences of Caucasian youth and increase sentences of minority youth.

Methods

JRA Data

We obtained the unidentified and aggregated administrative data of the Washington State JRA statewide residential population for all youth in custody as of January 11th, 2016 ($n = 436$ subjects). From these data, race and MI status were examined.

We included the youth in JRA who identified as Caucasian, African American, Hispanic, or multiracial in our comparisons across racial groups. Given the relatively low numbers of minority youth compared with Caucasian youth, a fifth category was created to include all minorities in an effort to increase the power of the statistical analysis; this group will now be referred to as "All Minorities." Asian and Native American racial groups were excluded due to their extremely low numbers in JRA ($n = 9$ and $n = 14$, respectively), which limited our ability to compare MI rates for these groups. MI status is displayed as youth receiving MI Down, which reflects a reduced or more favorable sentence, whereas MI Up and MI In were grouped together because they both reflect an increased or less favorable sentence.

Washington State Youth Demographics

To compare racial demographics of youth in JRA to all youth within Washington State, data from the Washington State Office of Financial Management, Forecasting, and Research were referenced. Within

this data set there were two age ranges that were considered most relevant to the JRA population: 10–14 years and 15–19 years. The 15–19 year age range captured the majority of youth within residential facilities as 84.2 percent of the JRA population fell within this range. The 15–19 year age group was therefore selected as the comparison sample representing the racial makeup of all youth in Washington State. For consistency with the JRA data, only youth who identified as Caucasian, African American, Hispanic, or multiracial were included in this reference group.

Data Analysis Strategy

The aim of our analysis was to identify and compare rates of JRA involvement and MI for racial minorities and Caucasian youth in Washington State. To conduct this analysis, we first estimated the proportions of Washington State youth by race (Caucasian, African American, Hispanic, or multiracial) by calculating the percentage of each racial group within the 15–19 year age category. Second, we used the data from the JRA census to calculate the percentage of each racial group in JRA with respect to their corresponding racial group outside of JRA. Third, we compared the proportions of each minority group that were in JRA to that of the Caucasian youth using rate ratio tests. Finally, for each racial group we calculated the percentage of youth in each MI status (Down or Up/In) with respect to both the JRA population and the entire Washington State population. As noted above, MI Up and MI In were combined into one category because they are both viewed as less favorable dispositions. Again, rate ratios were used to compare the proportions of Washington state and JRA-involved minority youth who received MI Down or MI Up/In versus Caucasian youth.

Results

Washington State Youth Demographics

The reference population of all youth (15–19 years old) in Washington State was predominantly Caucasian ($n = 277,554$, 68.22%). Hispanics ($n = 79,270$, 19.48%) were the largest minority group, followed by Asians ($n = 34,343$, 8.44%), multiracial ($n = 30,856$, 7.58%), African American ($n = 19,166$, 4.71%), and American Indians/Alaska Natives ($n = 7,988$, 1.96%). However, Asians and American Indians/Alaska Natives comprised a small

proportion of Washington State youth within the JRA system, and as noted above they were not included in subsequent analyses. Of note, the percentage values of the remaining racial groups were computed by excluding the American Indian and Alaska Native adolescents.

JRA Involvement

Minority teenagers between the ages of 15–19 years in Washington State were significantly more likely to be involved with JRA than their Caucasian peers (Table 1, Column “In JRA”). African American youth were more than seven times more likely to be in JRA than Caucasians (RR = 7.85, $p < .0001$), whereas multiracial youth were three times more likely (RR = 3.17, $p < .0001$), and Hispanic youth were 40 percent more likely (RR = 1.40, $p = .01$). Collapsing this analysis across these three minority groups, youth in the “All Minorities” category were almost three times more likely to be residing in a JRA facility compared to Caucasian youth (RR = 2.78, $p < .0001$).

MI Down

Once youth were in JRA, none of the racial groups had significantly different rates of being sentenced with MI when it was being used to reduce sentences. However, there was a trend toward African American and multiracial youth in JRA having MI used to decrease their sentence less frequently than Caucasian youth (see Column “MI Down,” Rows “% of in JRA”). However, of the entire Washington State youth population, African American youth were five times more likely to be given MI Down sentencing compared with their Caucasian peers (RR = 5.04, $p = .0001$). Youth from the All Minorities group in Washington State were twice as likely to have their sentence reduced with MI (RR = 2.05, $p < .0001$; see Column “MI Down,” Rows “% out of WA”).

MI Up/In

Once youth were in JRA, African American and multiracial groups as well as the All Minorities group had a significantly lower likelihood of being sentenced with MI when it was used to intensify their disposition, either by increasing their sentence lengths or by a disposition resulting in institutionalization when it was not indicated by standard sentencing guidelines, compared with Caucasian youth (see Column “MI Up/In,” Rows “% of in JRA”).

Table 1 Manifest Injustice Sentencing of Minority Youth Versus Caucasian Youth

	WA			JRA			Manifest Injustice Down			Manifest Injustice Up or In				
	<i>n</i> = 406,846	%	<i>p</i>	<i>n</i> = 436	%	<i>p</i>	<i>n</i> = 45	%	RR	<i>p</i>	<i>n</i> = 130	%	RR	<i>p</i>
Caucasian	277,554	68.22%		190	0.068%		23	0.008%			68	0.024%		
African American	19,166	4.71%	<.0001	103	0.537%	7.85	8	0.042%	5.04	.0001	18	0.094%	3.83	<.0001
Hispanic	79,270	19.48%	.0131	76	0.096%	1.40	8	7.8%	0.64	.26	18	17.5%	0.49	.002
Multiracial	30,856	7.58%	<.0001	67	0.217%	3.17	9	0.011%	1.37	.42	30	0.038%	1.54	.047
All minorities	129,292	31.77%	<.0001	246	0.190%	2.78	9	11.8%	0.98	.95	30	39.5%	1.10	.57
							5	0.016%	1.96	.17	14	0.045%	1.85	.04
							5	7.5%	0.62	.31	14	20.9%	0.58	.04
							22	0.017%	2.05	<.0001	62	0.048%	1.96	.0001
							22	8.9%	0.74	.28	62	25.2%	0.70	.02

Total numbers reflect the sums of Caucasian, African American, Hispanic, and multiracial youth, not including other minority groups (e.g., American Indian/Native Alaskan, Asian) due to low numbers. RRs and *p* values are computed with Caucasian Youth as the reference group. RR, rate ratio; WA, Washington State; JRA, Juvenile Rehabilitation Administration.

African American youth were about half as likely to have MI Up or MI In sentencing compared with Caucasian youth (RR = .49, $p = .002$), whereas multiracial youth were 42 percent less likely and the All Minorities group was 30 percent less likely, (RR = .58, $p = .04$ and RR = .70, $p = .02$, respectively). There was no statistical difference between the Hispanic group's rate and the Caucasian group's rate of having MI used to intensify their sentence.

Looking across all youth in Washington State (i.e., including those not residing in JRA facilities), each of the minority groups had an increased risk of being adjudicated with MI to increase or intensify their sentence (see Column "MI Up/In," Rows "% out of WA"). This finding was greatest for African American youth, who were almost four times more likely than Caucasian youth to be sentenced with MI Up or MI In (RR = 3.83, $p < .0001$), whereas multiracial youth were almost twice as likely (RR = 1.85, $p = .04$) and Hispanic youth were 54 percent more likely (RR = 1.54, $p = .047$). Collectively, youth within the All Minorities group were almost twice as likely to have this outcome (RR = 1.96, $p = .0001$).

Discussion

Washington State Youth Demographics

The youth of Washington State are predominantly Caucasian and reflect the overall demographics of the state. Importantly, the distribution of minority groups within Washington State is not geographically uniform. The counties surrounding Seattle-Tacoma contain the largest share of the African American and multiracial minority groups.⁸ The highest concentrations of Hispanic populations are in the counties in Eastern Washington, where the climate is conducive to agricultural industries.

JRA Involvement

Although there was disproportionate minority contact with the juvenile justice system for all minority groups, this finding was strongest for African American youth. 71.2 percent of the African American population of all ages resides in the Seattle-Tacoma counties, which are significantly more urban than other parts of the state. Residing in an urban area may lead to more involvement with gangs and violent crime, ultimately serving as a risk factor for contact with law enforcement. In contrast, the large majority of Hispanic youth residing in more rural

areas may be protected against involvement with the juvenile justice system.

MI Down

Of note, youth who were adjudicated with MI Down such that they were not committed to a residential placement (i.e., they remained in the community) were not included in this analysis because our data only included youth in detention. MI Down occurred less frequently overall (25.7% of MI sentences); the low numbers led to this outcome being underpowered and unable to detect a difference between racial groups. Notably, within JRA the trend was for African American and multiracial youth to be adjudicated with MI Down less frequently than their Caucasian peers. The finding that African American youth outside of JRA were still five times more likely to receive a MI Down disposition is again a reflection the grossly disproportionate minority contact with the juvenile justice system.

MI Up/In

Finding that Caucasian youth in JRA were more likely than African American and multiracial youth to have their sentences increased or intensified was contrary to what was hypothesized; however, there are several potential explanations for this finding. As previously described, the distribution of minorities within Washington State is not homogeneous; similarly, the ideological landscape across the state of Washington is variable. In Western Washington, where Seattle and other metropolitan areas are located, the ideological climate is more liberal, whereas rural areas in Eastern Washington are more conservative.⁹ African American and multiracial youth reside in the more liberal urban centers where judges may likely be more progressive, whereas judges in more rural areas may have more traditional sentencing practices that are reflected in the harsher sentences, as with the use of MI Up/In, of the predominantly Caucasian youth they adjudicate.¹⁰

Furthermore, judges' decisions to use MI to lengthen sentences or to send youth into facilities when they otherwise would remain in the community may be related to perceived benefits beyond simple containment. The prevalence of mental health needs of adjudicated youth has led to an evidence-based Integrated Treatment Model in each of the residential facilities that "provides dialectical behavior therapy, anger-replacement training, cultural

programming, and sex offense–specific and inpatient chemical-dependency treatment.”¹¹ As in many rural areas, community mental health resources for youth are limited; judges may be using MI to access residential treatment for these youth. This may also explain why Hispanic youth are being adjudicated with MI Up/In more frequently than other minorities, given that they predominantly reside in more rural counties that have less access to community resources.

Another potential reason why fewer African American and multiracial youth were sentenced with MI Up/In could be that they are not being adjudicated by judges in the juvenile justice system at all. King County, which has the state’s largest youth minority population, has implemented a number of programs and initiatives to reduce racial and ethnic disparities. Since 2004, the county has worked with the Juvenile Detention Alternative Initiative (JDAI) to implement system-wide improvement initiatives aimed at keeping youth in the community and addressing disparities; since 2008, the Washington State Legislature has invested funds to expand this program.¹² More recently, programs to reduce disproportionate minority contact with the juvenile justice system, focused policies to address inequities, implementation of restorative principles, and the expansion of diversion programs have all contributed to a decrease in the number of minority youth being detained.¹³ Evidence-based programs such as Multi-systemic Therapy/Family Integrated Transition (MST/FIT), Functional Family Therapy (FFT), and Aggression-Replacement Training (ART) are only available to court-involved youth.¹⁴ The success of such diversion programs may be decreasing the number of African American youth being presented for adjudication in the courts and therefore not being sentenced with MI. Furthermore, Washington State funds the Community Justice Accountability Act, which provides MST, FFT, and ART in some juvenile courts around the state, which are available only to youth involved with the court because these programs are not available through the community mental health system. Given the success of these programs, it is not difficult to envision a judge using MI Up or MI In to extend the duration of these services to a delinquent youth. Despite the many efforts to divert youth away from the justice system, nationally more African Americans are transferred into the adult criminal justice system and are given more se-

rious charges than their Caucasian peers for the same behaviors, which essentially decreases their likelihood of getting sentenced with MI in the juvenile system.¹⁵

Implications

The use of MI for youth in Washington state is not used uniformly. Overall, judges appear to be less likely to use MI Down. MI Up or MI In are used more often with Caucasian youth, which effectively means they have services in the community for longer periods of time or their placements at residential facilities are extended. These outcomes both restrict their freedom while also allowing for critical interventions. Ideally, rehabilitation should be accessed in community-based programs for all but the most dangerous delinquent youth. While there exist a plethora of community-based programs whose goal is to equitably serve the needs of all youth presenting to the court, the most robust and intense individual treatment is accessed through JRA’s residential facilities. If, even in only some cases, the use of MI In is related to the perceived treatment needs of the youth, then lawmakers and clinicians need to be aware of it and decide whether this an appropriate use of the law. We could not evaluate this directly in our data set, but future work is needed to investigate the role of perceived treatment needs and desired systemic interventions in judges’ use of MI. Housing youth within JRA is costly, and investing in community resources would likely be a better investment.

Limitations

This investigation looked at differences in the ways in which various racial and ethnic groups are adjudicated in Washington State with regard to a specific code in the law, Manifest Injustice. There are significant limitations to this work, as many important and potentially impactful details of cases (e.g., age, offense, sex offender status, mental health diagnoses, substance use) could not be accounted for within the aggregated data. The variations in patterns of sentencing based on geographical regions would likely yield critical information, as would considering distinct ideological differences throughout Washington State. Assessing the intentions of judges when they use MI would also be illustrative because it is unclear whether they view the use of MI as a punishment or as the key to rehabilitation, which is often

a focus in the juvenile system. In addition, no recidivism rates or clinical outcome data were analyzed.

Conclusions

Future research should seek to incorporate some of the aforementioned aspects of the individual cases to better characterize how and why Manifest Injustice is being used across racial and ethnic groups throughout Washington State. Using MI in the juvenile justice system to access family services or mental health treatment is not just. Instead, non-juvenile justice systems of care must be available and responsive to youth and family needs. Outcome data could help guide judges' use of MI or inform a revision of standard sentencing guidelines so that MI is no longer needed. In theory, allowing for some recourse for judges outside of the standard sentencing guidelines is appropriate, but this power needs to be exercised in an equitable and just manner.

Acknowledgments

The authors would like to thank Sarah Veele and Jim Larson for their assistance with this project.

References

1. Office of Juvenile Justice and Delinquency Prevention: Mission statement. Available at: <https://www.ojjdp.gov/about/missionstatement.html>. Accessed November 15, 2017
2. Bishop D: Public opinion and juvenile justice policy: myths and misconceptions. *Criminal Pub Pol'y* 5:653–64, 2006
3. Wash. Rev. Code. RCW § 13.40.160.2 (2011)
4. Mulvey EP, Iselin AM: Improving professional judgments of risk and amenability in juvenile justice. *Future Child* 18:35–57, 2008
5. Slobogin C: Risk assessment and risk management in juvenile justice. *Crim Justice* 27:10–25, 2013
6. Teplin LA, Abram KM, McClelland GM, *et al*: Psychiatric disorders in youth in juvenile detention. *Arch Gen Psychiatry* 59:1133–43, 2002
7. Piquero A: Disproportionate minority contact. *Future Child* 18:59–79, 2008
8. Washington State Office of Financial Management, Data, and Research: Executive summary: population by race and Hispanic origin: 2010 and 2016. Available at: http://www.ofm.wa.gov/pop/asr/race/ofm_pop_race_2010_and_2016_summary.pdf. Accessed October 2, 2017
9. Morill R: New geography. How polarization plays out in Washington state: voting for president and the same-sex marriage. Available at: <http://www.newgeography.com/content/003400-how-polarization-plays-out-washington-state-voting-president-and-same-sex-marriage>. Accessed October 11, 2017
10. Morill R: New geography. Stories from the census: race and ethnic change in Washington state. Available at: <http://www.newgeography.com/content/002220-stories-2010-census-race-and-ethnic-change-washington-state>. Accessed October 11, 2017
11. Washington State Department of Health and Human Services: Juvenile Detention Alternatives Initiative. Available at: <https://www.dshs.wa.gov/ra/office-juvenile-justice/jdai-juvenile-detention-alternatives-initiative>. Accessed April 11, 2018
12. Washington State Department of Health and Human Services: Secure Facilities. Available at: <https://www.dshs.wa.gov/ra/juvenile-rehabilitation/secure-facilities>. Accessed April 11, 2018
13. King County Government: Juvenile Justice in King County. Available at: <https://www.kingcounty.gov/depts/executive/performance-strategy-budget/performance-strategy%20/criminal-justice-strategy-policy/youth-justice.aspx>. Accessed May 20, 2018
14. King County Government: Evidence-based programs. Available at: <https://www.kingcounty.gov/courts/superior-court/juvenile/art-fft-mst.aspx>. Accessed May 20, 2018
15. Arya N, Augarten I: Critical condition: African-American youth in the justice system. Campaign for Youth Justice policy brief: race and ethnicity series, volume 2. Available at: <http://www.campaignforyouthjustice.org/documents/AfricanAmericanBrief.pdf>. Accessed November 20, 2017