

# Examining Racial Disparities in Juvenile Justice

Barbara Robles-Ramamurthy, MD, and Clarence Watson, JD, MD

Decades of research have focused on understanding and addressing racial disparities that occur at every stage of processing in the juvenile justice system. Leaders in the field have raised concerns about the differential treatment and selection of youth based on race. Taking into consideration Sussman and colleagues' results regarding the use of manifest injustice in Washington State, we review briefly the legislative changes that have occurred nationally to address the problem of disproportionate minority contact. We also consider data and hypotheses that have increased our understanding of why and how these racial disparities occur.

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The idealistic principle that justice should be administered blindly in criminal matters arguably has no better place than within the juvenile justice system, where a focus on rehabilitation instead of punishment might positively alter the life course of a minor. However, research has documented the existence of racial disparity in the treatment of youth involved in the juvenile justice system for several decades. Studies from the 1980s and 1990s demonstrated that black juveniles were detained and confined at higher rates compared with white youth,<sup>1</sup> and that black youth were more likely to be sent to correctional facilities compared with white youth, who were more likely to be sent to psychiatric hospitals.<sup>2</sup> Additionally, recent studies have documented the continued trend of overrepresentation of minority youth in the juvenile justice system.<sup>3-5</sup> Such studies have prompted national leaders to enact changes in the requirements imposed on local and state agencies in charge of youth involved in the justice system.

## National Attempts to Address Disparity

Beginning in 1974, Congress enacted the Juvenile Justice and Delinquency Prevention (JJDP) Act,

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Dr. Robles-Ramamurthy is Assistant Professor, Long School of Medicine, University of Texas Health San Antonio, Texas. Dr. Watson is Director of the Forensic Psychiatry Fellowship and a Clinical Associate Professor of Psychiatry, Perelman School of Medicine, University of Pennsylvania, Philadelphia, PA. Address correspondence to: Clarence Watson, JD, MD, Two Bala Plaza, Suite 300, Bala Cynwyd, PA 19004. E-mail: cwatson@watsonforensics.com.

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which led to the supportive role of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to help local and state agencies prevent delinquency and improve the juvenile justice system. In 1988, the JJDP Act was amended to demand that state and local agencies monitor and assess disproportionate minority confinement. Subsequently, in 1992, disproportionate minority confinement was elevated as a core requirement, resulting in 20 percent of federal formula funds being withheld from states that did not comply. Most recently, the Act was amended in 2001 to broaden the matter of racial disparities from disproportionate minority "confinement" to disproportionate minority "contact" as more evidence demonstrated that racial disparities were present at every level of processing within the juvenile justice system.<sup>6</sup>

Through the JJDP Act, the OJJDP requires that states gather race and ethnicity information at nine different juvenile justice contact points, which include arrest, referral, diversion, detention, petitions or charges filed, delinquency findings, probation, confinement in secure correctional facilities, and transfer to adult court. It also requires that states submit a report delineating how they are addressing disproportionate minority contact through identification of racial disparities, assessment of factors contributing to racial disproportionality, implementation and evaluation of the efficacy of interventions to reduce racial disparities, and monitoring of changes in racial disparity trends over time.<sup>7</sup> However, there are no specific requirements about what types of in-

terventions must be put in place to decrease racial disparities in the juvenile justice system. Additionally, there have been limited studies looking at the progress made since the enactment of this Act and its amendments.<sup>8</sup> A 2014 report prepared under the OJJDP showed that nine jurisdictions were successful in achieving a reduction of disproportionate minority contact at different juvenile justice stages for African-American youth, Hispanic youth, and Native American youth. They interviewed stakeholders to learn about strategies used to attain these outcomes and noted that common efforts included focusing on data, increasing collaboration with other agencies and community organizations, changing institutional culture, affiliating with national juvenile justice reform initiatives, creating alternatives to formal system involvement, concentrating on disproportionate minority contact reduction, making use of leadership at the local and state level, and making disproportionate minority contact reduction a long-term priority.<sup>9</sup>

### **Addressing Injustice**

Washington State's manifest injustice provision permits judges to weigh whether a juvenile's disposition within the standard sentencing range would be considered a manifest injustice and authorizes judges to impose a disposition outside the standard range. The legal standard by which judges make that determination is clear and convincing evidence.<sup>10</sup> Sussman and colleagues sought to evaluate how manifest injustice has been used by judges across racial groups in youth within the Washington State Juvenile Rehabilitation Administration (JRA). The authors hypothesized that manifest injustice would be used more frequently to decrease the sentences of white youth and increase those of minority youth.

Aggregated data were gathered from the Washington State JRA residential population for all youth in custody on January 11, 2016. Race (i.e., Caucasian, African American, Hispanic, and multiracial) were examined in relation to manifest injustice status (i.e., MI Up, MI Down, MI In). A fifth race category was created to include all minority groups to increase the power of statistical analysis. Manifest injustice can be used in three ways: MI Down reduces the sentence below standard sentencing range, MI In results in institutionalization, and MI Up increases the length of sentence above standard sentencing ranges. For this study's purpose, MI Up and In were combined

into one category (i.e., MI Up/In) because they are both viewed as unfavorable dispositions.

The JRA population was compared with the general Washington State youth population. The study found disproportionate minority contact with the juvenile justice system for all minority groups, which is consistent with previous research. They found that African-American youth were seven times more likely to be in JRA custody than Caucasians; multiracial youth were three times more likely, and Hispanic youth were almost one and a half times more likely. For youth detained within the JRA, there was no statistically significant difference between groups in the use of MI Down, but results trended toward a decreased use of MI Down for African-American and multiracial youth. When looking at youth from the entire state, African-American youth were five times more likely to have their sentence reduced through MI Down. However, it is important to note that youth who received adjudication with MI Down and were not committed to a residential placement were not included in the study. Additionally, MI Down occurred infrequently, in about 25 percent of manifest injustice sentences, which underpowered the statistical analysis for racial group comparison.

Out of all youth in Washington State, each minority group had an increased risk of being adjudicated with manifest injustice to intensify their sentence. Among all Washington State youth, African-American youth were four times as likely as Caucasian youth to be sentenced with MI Up/In. But within the JRA population, African-American, multiracial and "All Minority" groups had a significantly lower likelihood of having their sentences intensified using MI Up/In, with African-American youth being half as likely to have MI Up/In compared with Caucasian youth. Hispanic youth were not statistically different compared with Caucasian youth receiving MI Up/In.

The authors provide possible explanations for the unexpected finding that JRA Caucasian youth were actually more likely to have their sentences increased through the use of manifest injustice compared with African-American and multiracial youth. They note that African-American and multiracial youth are more likely to live in liberal urban areas where judges may hold progressive views regarding juvenile rehabilitation. On the contrary, Caucasian youth are more likely to live in rural areas where judges may be more conservative and use more traditional sentenc-

ing parameters and, therefore, deliver harsher sentences. Additionally, rural areas are less likely to have community programs that can be used by judges to avoid institutional placement. Finally, the authors argue that some judges may perceive the use of MI Up/In as having greater benefits for youth who live in areas where community programming is not widely available to take advantage of the more intensive treatment programs available in residential settings. Such an approach is consistent with the concept of therapeutic jurisprudence, which has been well documented in the criminal justice literature.<sup>11</sup> The limited community programs in rural areas likely explains why Hispanic youth are as likely as Caucasian youth to have their sentence intensified, as they are also more likely to live in rural areas.

The phenomenon of minority youth receiving leniency at adjudication is not new to the disproportionate minority contact literature.<sup>12</sup> Some have argued that there is a correction or reversal effect, with conscientious judges trying to reverse the race effect placed on youth at earlier stages of processing.<sup>12-14</sup> Because the data used by Sussman *et al.* only included youth who were in residential facilities, it is not surprising to see no race effect of these youth on manifest injustice status. It would be interesting to look at the rates of preadjudicatory detention for these youth, as this has been associated with more severe dispositions.<sup>14</sup>

### **Differential Offending versus Selection**

Several theories have been proposed to understand better the occurrence of racial disparities within the criminal justice system. Two main theories look at the problem from the perspective of differential offending as opposed to differential selection by the justice system. Some studies have found greater offending rates in serious crimes against persons by minority youth.<sup>15</sup> However, other studies have shown that, although minority youth have higher rates of serious offenses, this difference would not explain the full picture of minority overrepresentation throughout the justice system.<sup>16,17</sup> Studies looking at self-reported offenses demonstrate that these self-reports do not match the rates of minority representation on official records. Findings from the National Longitudinal Survey of Youth demonstrated that African-American youth were more likely to have been arrested and to have been arrested multiple times compared with white youth. This ra-

cial disparity could not be explained by self-reported rates of drug-related and other illegal behaviors, suggesting that differential treatment of minority youth plays an important role.<sup>18</sup> Other research has controlled for legal (such as crime severity) and extralegal (such as gender and age) factors and have found that racial disparities within the juvenile justice system persist.<sup>5</sup>

In a review of 72 studies that examined the processing of youth at nine different decision points, there was a positive race effect toward the differential treatment of minority youth in 82 percent of the studies.<sup>12</sup> Most importantly, evidence of a race effect was greater at the earlier stages of the process, including arrest, referral to court, and placement in secure detention. Relevant to the results of Sussman *et al.*, lower race effects were found in formal court processing, adjudication, and postadjudication.<sup>12</sup> Further analysis of the data from Sussman *et al.* could add to the literature providing evidence of either of these two theories, specifically when looking at later stages of processing. For example, examining crime data, pretrial detention, and other extralegal factors known to affect disposition could help determine whether differential treatment or selection was at play.

Furthering the theory of differential selection, the Group Threat Hypothesis looks at the relationship between the characteristics of the youth and the decision-maker's perceptions. This theory argues that, as a minority group population increases or poses a social threat to the majority population in a certain area, the latter may use a more punitive approach when the minority interacts with the legal system.<sup>19</sup> Evidence for this theory has been mixed. For example, data analyzed from the Department of Juvenile Justice in South Carolina demonstrated support for the Minority or Group Threat Hypothesis, showing that more punitive sanctions were used for black defendants, and there was a positive correlation between larger black populations and increased use of punitive sanctions.<sup>20</sup> However, other data analyses have not found support for this hypothesis.<sup>21</sup> Implicit bias has been at the core of discussions regarding differential treatment of youth, and it has also been associated with higher referral of black youth to the juvenile justice system through the school-to-prison pipeline.<sup>22</sup>

### Study of Race Effects

Sussman and colleagues add to the literature attempting to untangle the complexity of disproportionate minority contact. Their results are consistent with some previous studies in that, although there are trends showing a positive effect of race on judicial decisions, the differences have not been statistically significant. Zane *et al.*<sup>23</sup> studied the impact of race on the juvenile waiver decision, finding a positive effect that was not statistically significant. The intricacies of racial disparities in the juvenile justice system are difficult to study because of the close relationship between crime and many of the social factors affecting communities in which minority youth are likely to be raised.

Black and Hispanic populations have higher rates of poverty than whites.<sup>24,25</sup> Black students are more likely to attend schools with zero-tolerance policies and law enforcement presence on campus, and this increases a student's chance of being arrested at a young age, expelled, or suspended. Minorities are more likely to have lower income than whites; therefore, minority children are more likely to live in low-income households.<sup>26</sup> Given the racial disparities within the justice system, minority children are often faced with parental incarceration and family separation.

### Effects of Justice Involvement

Although the juvenile justice system is deemed to focus on the rehabilitation of youth and their successful reintegration into their communities, data have shown that justice-involved youth face grave consequences in the long term. Justice-involved individuals have lower high school graduation rates and higher unemployment rates than the general population. They also experience higher rates of homelessness and eviction.<sup>26</sup> Most importantly, a link between detention and increased rates of recidivism has been documented.<sup>27</sup> All of these factors, among others, perpetuate the racial disparities seen in the justice system, as individuals find themselves in a cycle of poverty, unemployment, low educational attainment, and justice involvement.

### Conclusion

Sussman and colleagues offer data that may shine a light on the possibility of small but powerful improvements in reducing disproportionate minority

contact. There is hope that the research data on disproportionate minority contact and the long-term negative effects associated with detention in correctional facilities are reaching judges and others in charge of the rehabilitation and reintegration of youth into their communities. As collaboration between systems increases, and more grassroots organizations continue to support evidence-based community treatment programs, judges will expand their repertoire of dispositions and eventually resort to detention only for appropriate cases. Ultimately, addressing the social factors that are at the root of disproportionate minority contact will result in significant benefit in reducing racial disparities within the juvenile justice system.

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