

# 2 THE KEEPER AND THE KEPT



**DECEMBER 2009**

*Reflections on Local Obstacles to Disparities Reduction  
in Juvenile Justice Systems and a Path to Change*



**W. Haywood Burns Institute**



# THE KEEPER AND THE KEPT

---

*Reflections on Local Obstacles to  
Disparities Reduction in Juvenile  
Justice Systems and a Path to Change*

2

**JAMES BELL**

*Executive Director*

**LAURA JOHN RIDOLFI**

*Law and Policy Analyst*

**MICHAEL FINLEY**

*Senior Program Associate*

**CLINTON LACEY**

*Site Coordinator*

Edit & Design | Shadi Rahimi  
Cover Images | Steve Davis

## ABOUT THIS SERIES

The W. Haywood Burns Institute (BI) works in more than 40 jurisdictions to protect and improve the lives of youth of color, poor children and their communities by ensuring fairness and equity in youth-serving systems. Through its programs, services and national network, the Community Justice Network for Youth (CJNY), it provides support to organizations that offer alternatives to detention for youth of color, and arms jurisdictions with the data, methods and training to engage and strengthen disparities reduction efforts. This publication is the second in a series, following “Adoration of the Question: Reflections on the Failure to Reduce Racial and Ethnic Disparities in the Juvenile Justice System,” which endeavors to address all aspects of reducing disparities in the juvenile justice system.

### **W. Haywood Burns Institute (BI)**

**James Bell**, Founder and Executive Director

**Michael Harris**, Deputy Director

**Shadi Rahimi**, Communications Director

**Ophelia Williams**, Executive Assistant

**Michael Finley**, Senior Program Associate

**Laura John Ridolfi**, Law and Policy Analyst

**Clinton Lacey**, Site Manager

**Tshaka Barrows**, CJNY Program Director

**Christina Gomez**, CJNY Program Manager

**Malachi Garza**, CJNY Technical Assistance Manager

### *About the Authors:*

**James Bell** is a national leader in devising and implementing strategies to reduce disparities in the juvenile justice system. Prior to founding the BI, Bell represented incarcerated youth as a staff attorney at the Youth Law Center in San Francisco for more than 20 years. He is the recipient of awards including the Livingstone Hall Award for Outstanding Juvenile Advocacy from the American Bar Association and Advocate of the Year from the U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention (OJJDP).

**Laura John Ridolfi** provides technical assistance to BI sites and assists in developing local strategies to reducing disparities. Prior to the BI, Ridolfi worked for several juvenile and criminal justice organizations and was a Fulbright Fellow in Kenya.

**Clinton Lacey** came to the BI after nine years at Friends of Island Academy (FOIA) in New York, where he served as Associate Executive Director working with youth involved in the juvenile and criminal justice systems.

**Michael Finley** came to the BI after working as the Disproportionate Minority Confinement Coordinator with Maryland’s Governor’s Office of Crime Control and Prevention (GOCCP), where he worked with local and state leaders to develop plans to reduce racial and ethnic disparities throughout the state.

### *Acknowledgements:*

The images on the cover are from the project “Captured Youth,” by Steve Davis. [www.stevedavisphotography.com](http://www.stevedavisphotography.com).

©2009, The W. Haywood Burns Institute

180 Howard Street, Suite 320  
San Francisco, CA 94105  
[www.burnsinstitute.org](http://www.burnsinstitute.org)

415.321.4100 ph  
415.321.4140 fax  
[info@burnsinstitute.org](mailto:info@burnsinstitute.org)

# Table of Contents

<b>I. Preface.....</b>	<b>1</b>
<b>II. Introduction.....</b>	<b>2</b>
<b>III. Piercing the Facade of Intractability.....</b>	<b>3</b>
A. Systemic Lack of Accountability.....	4
<b>IV. The Long Journey to Equity.....</b>	<b>7</b>
A. Negotiating Race and Ethnicity .....	8
1. Justice by Geography.....	8
2. Gang affiliation.....	9
3. Immigration Status and Language.....	9
B. The Myth of Detention as “Service” .....	10
1. Youth, Families and Community.....	11
<b>V. An Intentional Approach to Reducing Disparities.....</b>	<b>13</b>
A. Jurisdictional Assessment.....	13
B. Form a Governing Collaborative.....	14
1. Collaborative Distractor.....	14
2. Secure a Local Coordinator.....	14
C. Establish Consistent Meetings.....	15
D. Develop a Work Plan.....	15
E. Data Collection and Decision Point Analysis.....	16
F. Defining Success and the Purpose of Detention.....	18
G. Objective Decision-Making.....	19
H. Examining Case Processing.....	20
I. Creating Alternatives to Detention.....	21
<b>VI. Conclusion.....</b>	<b>22</b>

## PREFACE

Our institute is named for the late W. Haywood Burns, who was a beacon of light for all who believe the battle for human rights and justice can be won through activism, humility and dedication.

W. Haywood Burns served as general counsel to Martin Luther King's Poor People's Campaign in 1968 and was a founder of the National Conference of Black Lawyers. He helped defend the Attica Rebellion prisoners and others struggling for self-determination. He served as dean of the City University of New York (CUNY) School of Law. He died in a car accident while attending the International Association of Democratic Lawyers conference in Cape Town, South Africa.



There is no more fitting a person in whose memory we work at the Burns Institute (BI). It is through the example of W. Haywood Burns that we continue to advocate for orphans of opportunity — youth of color who make up almost 70 percent of this nation's incarcerated youth. To date, we have worked in more than 40 jurisdictions and achieved significant results in reducing disparities. Through our programs, services and national network, the Community Justice Network for Youth (CJNY), we provide support to organizations that offer alternatives to detention/incarceration for youth of color and poor youth, and arm jurisdictions with the statistics, methods and staff training to engage in policy work and strengthen disparities reduction efforts.

Over the past six years, we have become intrigued by the difficulty and intractability associated with racial and ethnic disparities reduction in the juvenile justice system. We have watched in disbelief as the national numbers of youth of color confined skyrocket. At the same time, we have witnessed measurable results resulting from our model for disparities reform, which includes a thorough examination of race, ethnicity, politics, perceptions, public safety and use of confinement.

This publication is the second in a series that endeavors to comprehensively address all aspects of reducing disparities in the juvenile justice system. The release of this report comes on the 35th anniversary of the enactment of the Juvenile Justice and Delinquency Prevention Act (JJDP), which provides states with critical funding for delinquency prevention and is the only federal legislation that gives states significant guidance on juvenile justice practices. Originally passed in 1974, and most recently reauthorized with bipartisan support in 2002, the JJDP is currently overdue for Congressional reauthorization.

We support the JJDP's reauthorization and strengthening to protect youth from being sentenced to adult prisons and other harms. However, we also believe it is necessary for jurisdictions to undertake the work to effectively reduce racial and ethnic disparities in their local juvenile justice systems. This series represents part of our effort to plant that seed.

-James Bell  
*Executive Director*  
*W. Haywood Burns Institute*

# INTRODUCTION

*“Human rights violations are not accidents; they are not random in distribution or effect. Rights violations are, rather, symptoms of deeper pathologies of power and are intimately linked to the social conditions that so often determine who will suffer abuse and who will be shielded from harm.” - Paul Farmer*

**M**ore than a century after the earliest juvenile justice system was established, juvenile justice practitioners and communities of color continue to be confronted with the inequitable and unjust treatment of youth of color and poor youth in trouble with the law. What is different today is that most child-serving professionals are well aware of racial and ethnic disparity in child welfare, education and juvenile justice systems. Thus, the question that looms over us all is, “What are we going to do about it?”

In our previous publication, *Adoration of the Question: Reflections on the Failure to Reduce Racial and Ethnic Disparities in Juvenile Justice Systems*, we explored the deep historical roots that manifest today in widespread and persistent inequities for youth of color and poor youth in the juvenile justice system. *Adoration* also examined the superstructure that established the frame for addressing racial and ethnic disparities at the national and state level. In essence, we argued that 20 years of federal and state efforts to “address” disproportionality were ineffective in overcoming a legacy of structural racism.

Youth of color and poor youth coming into contact with the law find themselves pulled deep into an ever growing industry of confinement, which forces them to negotiate a labyrinth of laws, policies, practices and attitudes. These juvenile justice systems are upheld by “keepers,” who believe that secure confinement is an appropriate response to nonviolent and first offenses, and to provide youth with services. We promote a shift in thinking – to using secure confinement as the *exception*, or the rare instance for *all* youth, not just White or privileged youth coming into contact with the law.

Equity and fairness in the application of justice are vital cornerstones for democratic institutions. The application of justice should never be determined by one’s race, ethnicity, gender, geography or class. At the BI, our quest for a just and humane approach for youth of color and poor youth in trouble with the law leads us to explore how our society can transform the system into positive service-oriented interventions and consequences that are delivered equitably, while also maintaining public safety.

This publication is the second in our series, and explores local obstacles to achieving measurable reductions in racial and ethnic disparities, and our intentional approach to reform. We begin by examining the ecology of the local juvenile justice systems that together as semi-autonomous organisms in approximately 3,100 counties make up the “juvenile justice system.” We then provide the strategies for disparities reform that we find work best to promote equity for *all youth* in local juvenile justice systems.

## Our quest for justice

**Equity and fairness in the application of justice are vital cornerstones for democratic institutions. Whether one receives health care, education and justice should never be determined by one’s race, ethnicity, gender, geography or class. At the BI, our quest for a just and humane approach for youth of color and poor youth in trouble with the law leads us to explore how our society can transform the juvenile justice system.**

# PIERCING THE FACADE OF INTRACTABILITY

The “juvenile justice system” is often referred to colloquially as a singularly governed federal system. In actuality, the federal government provides funding and broad statutory mandates, while states enact criminal and procedural statutes that are implemented at the local level. Therefore, most *counties* enjoy far-reaching discretion in developing local policies and practices in their probation and law enforcement departments, juvenile courts and juvenile detention facilities. Thus, the true power to impact racial and ethnic disparity in the “juvenile justice system” rests at the local level.

We at the W. Haywood Burns Institute (BI) believe that any effort to reduce racial and ethnic disparities must engage the idiosyncrasies of an individual county and its leaders. This process includes a

thorough examination of the “structural ecology” of the local juvenile justice system, which we view in each of the nation’s approximately 3,100 counties as semi-autonomous organisms with mutually interdependent parts (i.e. law enforcement agencies, probation and juvenile courts, and other related agencies and child-serving systems). Each of these organisms, or local juvenile justice jurisdictions, manifest their

structural values through their policies, practices and procedures. Most often, each organism and its interdependent parts will resist any attempt to change those values.

Thus, when we work with a local juvenile justice system to reduce disparities – with a methodology proven to improve the life outcomes of *all youth* coming into contact with that system – our first obligation is to address this inherent resistance to change by instilling in stakeholders<sup>1</sup> the belief that it is possible to reduce disparities while maintaining public safety. Skeptical or resistant attitudes relegate disparities reform work to a recycling of half-hearted or ill-informed efforts that often fail,

<sup>1</sup> Refers to individuals or organizations with a vested interest in the juvenile justice system.

further perpetuating the commonly expressed belief that “nothing works” to create positive change. We work to pierce through the widespread misconception that juvenile justice systems are intractable – or too difficult, complex or omnipotent to reform.

We often hear juvenile justice system stakeholders lament how their efforts have not produced measurable results. Indeed, the numbers can be disheartening. Today, youth of color make up only one third of the U.S. youth population, yet remain two-thirds of youth in detention nationwide. Our organization is dedicated to demonstrating that reducing such widespread disparity is an achievable goal. We believe local juvenile justice systems can make great strides toward transforming their daily operations in the interest of equity, while acknowledging that detention reform cannot be achieved without a willingness to examine attitudes and change beliefs, procedures, practices and policies.

Dozens of juvenile justice jurisdictions around the country that we are working with have embraced this challenge and are achieving significant results. In these places, stakeholders we have convened into governing collaboratives<sup>2</sup> are examining systemic disparities without defensiveness or accusation, and are asking tough questions about how they do business. They are examining their arrest patterns, intake decisions, case-processing time, their options for “alternatives to detention,” and their relationships with the education, health and child welfare systems.

Many other jurisdictions are also taking an active role in working to reduce racial and ethnic disparities by participating in our partners’ innovative efforts, the Annie E. Casey Juvenile Detention Alternatives Initiative and the John D. and Catherine T. MacArthur Foundation’s Models for Change Initiative. Many of these jurisdictions have similarly achieved success in reducing disparities, enhancing public safety, while also securing substantial savings to taxpayers.<sup>3</sup>

<sup>2</sup> See page 14 for how to create a collaborative.

<sup>3</sup> Mendel, R. *Two Decades of JDAI -From Demonstration Project to National Standard*. (Annie E. Casey Foundation: 2009)

**We work to pierce through the widespread misconception that juvenile justice systems are intractable – or too difficult, complex or omnipotent to reform.**

In this report, we continue our examination of disparities as introduced by our first publication, *Adoration of the Question*, with an overview of the lack of accountability in local jurisdictions, followed by an examination of the structural ecology of juvenile justice as impacted by politics, geography, gangs, immigration status, and an overreliance on detention. We conclude by discussing our model for reform, which we will illustrate further in 2010 in a case study that will make up our third report.

### A. Systemic Lack of Accountability

A major part of our work involves negotiating an institutional culture that is characterized by a steadfast lack of accountability regarding deep-rooted systemic bias in juvenile justice decision-making processes, and a disregard for the life outcomes of youth of color and poor youth.

We believe that in order to deconstruct who is securely detained and why, stakeholders must first examine how their justice system operates, and determine its impact on youth of color through the use of data and analysis. This is not currently regular practice in most juvenile justice jurisdictions, where the institutional culture does not include using data to drive decisions. The obstacles that such a culture presents are in direct conflict with effective strategies to reduce disparities, and yet, challenging them leads to resistance and defensiveness. Acknowledging such reactions to reform processes is not an indictment of a system and the individuals within it, but rather a reflection on how much dedication the transformation of a local juvenile justice system requires.

At the same time, we must also note how little society demands in terms of accountability for the systems that hold in its custody more than 90,000 youth on any given night.<sup>4</sup> The federal agency that oversees local juvenile justice systems provides very little incentive to improve the life outcomes of the children and families impacted. It is rare that good justice systems are rewarded and bad justice systems are punished. And it is unusual for the citizenry of any county to demand a “report card” on

the efficacy of their local justice system. Generally, residents are unaware of the overall benefit to the community of operating a juvenile justice system that treats children well.

Today, local juvenile justice systems rarely have to account to anyone for the expense of their operations, or the societal detriments that result from treating youth poorly or unfairly. States spend approximately \$5.7 billion each year imprisoning youth, even though the majority are held for non-violent offenses. Instead, most youth could be supervised safely in the community with alternatives that cost substantially less than incarceration and that could lower recidivism by up to 22 percent.<sup>5</sup>



*Girls and boys flirting on Coney Island's boardwalk in Brooklyn, N.Y.*  
© 2005 Richard B. Kohn, flickr.com/photos/richj32

Seventy percent of youth in the juvenile justice system are held in state-funded, post-adjudication residential facilities at an average cost of \$240.99 per day per youth. By contrast, programs like multi-systemic therapy and functional family therapy have been shown to yield up to \$13 in benefits to public safety for every dollar spent.<sup>6</sup>

However, states have chosen not to use their dollars wisely by using less expensive and more effective alternatives to detention, and our society has not benefitted from the exorbitant spending on incar-

4 Sickmund, Melissa, Sladky, T.J., and Kang, Wei. (2008) *Census of Juveniles in Residential Placement Databook*. Available: <http://www.ojjdp.ncjrs.gov/ojstatbb/cjrp/>

5 Justice Policy Institute. *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense*. (Washington, DC: May 2009).

6 Ibid.

cerating youth with lower recidivism rates.<sup>7</sup> Moreover, youth in juvenile justice systems have not benefitted with better life outcomes.<sup>8</sup>

Excellent juvenile justice systems are so rare they have almost become tourist attractions – admired by colleagues but rarely duplicated. Why is this so? Simply put, as a society we do not demand nor expect excellence, fairness, rationality or accountability from our juvenile justice systems, perhaps because the public is conflicted.

Research shows that even when arrests of juveniles for violent crime are decreasing, the public still believes that juvenile crime is increasing.<sup>9</sup> It is a common belief that the system does not hold youth accountable for their actions and instead lets detained youth back on the streets without effective

interventions or rehabilitating. At the same time, the public also has great concern about what happens to youth in the juvenile justice system and overwhelmingly supports a focus on prevention and rehabilitation.<sup>10</sup>

Many juvenile justice practitioners are similarly conflicted; largely aware of all of the problems but still operating in a manner that reflects a systemic value that no matter the conditions, as long as the lights turn on and there

are 8' by 6' rooms for “those children” (a majority of whom are youth of color), the local system

*should* continue to detain them.

When confronting such challenges, reform can be difficult to inspire because the systemic culture of juvenile justice is one that does not encourage self-examination and innovation. By viewing change in the form of new programs and practices as risky or threatening, system stakeholders, as individuals, are reinforcing a long-standing structural imperative to maintain the status quo. This results in little appetite for the intentional hard work that is needed to reduce disparities.

One probation officer's candor is noteworthy because it illustrates a wider problem. When asked why he believed that Black youth were over-represented in his facility, he replied, “It's easier to lock Black kids up for offenses that White kids would not be locked up for.” He explained that Black parents do not show up to complain and the community largely believes that incarceration for minor misbehaviors of Black youth is not unusual.

There was no entity or individual to hold this probation officer or his colleagues accountable for their decisions. Thus, in his jurisdiction, similar to many others nationwide, the probation officer *accepted* the practice of disproportionately incarcerating Black youth in his system for minor misbehaviors. His attitude regarding disparities is not dissimilar from that found in other jurisdictions nationwide, and, in a growing number of locations, Latino and Native youth could be substituted in this real-life explanation.

Most importantly, the probation officer's observation illustrates a larger point: Youth of color are securely detained in numbers that cannot be explained by crime alone. Our experience, as well as a growing body of research, demonstrates that the age old rationale of youth of color “doing the crime,” accounting for their overrepresentation in “doing the time” does not hold up to scrutiny.

For example:

- In a recent analysis of federal data, the Urban Institute found that low-income Black adolescents were less likely than low-income White adolescents to sell drugs or destroy property. However, Black



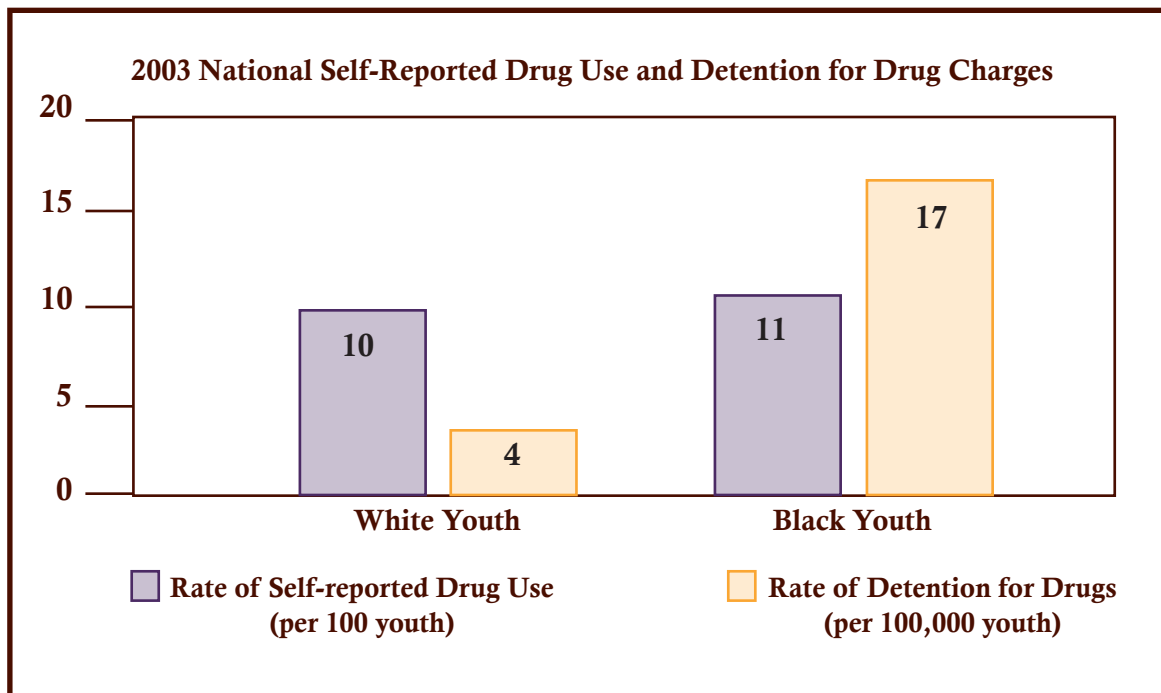
Medium-maximum juvenile facility © 2005  
Steve Davis, [stevedavisphotography.com](http://stevedavisphotography.com)

7 Ibid. Ten years of data on incarceration and crime trends show that states that increased the number of youth in juvenile facilities did not necessarily experience a decrease in crime during the same time period.

8 Ibid. Youth who are imprisoned have higher recidivism rates than youth who remain in communities, both due to suspended opportunities for education and a disruption in the process that normally allows many youth to “age-out” of crime.

9 Soler, M. and Garry, L. *Reducing Disproportionate Minority Contact: Preparation at the Local Level*. (Office of Juvenile Justice and Delinquency Prevention: 2009)

10 Ibid.



youth are more likely to be detained for drug and property offenses.<sup>11</sup>

- Although White youth report carrying weapons to school at slightly higher rates than Black youth,<sup>12</sup> Black youth are more than twice as likely to be arrested for weapons possession.<sup>13</sup>

- Although White youth, Black youth, and Latino youth report using drugs at similar rates,<sup>14</sup> Black youth are detained for drug offenses at almost 5 times the rate of White youth (*as illustrated in the chart above*), and Latino youth are detained at twice the rate of White youth.<sup>15</sup>

Thus, while research indicates that youth of color

engage in delinquent behavior at similar or even lower rates than White youth, the result remains that youth of color are more likely to become involved in the juvenile justice system.

At the BI, we know that every jurisdiction that works seriously to reduce racial and ethnic disparities will have to engage in activities that will strain the cultural norms of its justice system. That is why it is so difficult to be successful without assistance from objective outside experts who will respond to such barriers with tact and patience.

Our experience has shown that jurisdictions that follow the approaches described in our publications will be well positioned to begin achieving and sustaining reductions in disparities. While the journey may be difficult, the results are powerful and transformative, often leading to significant improvements in overall system operations – in addition to equity for *all youth* in the system.

The third report in our series will be an in-depth case study of our model for change. For the purpose of this discussion, we will begin at the start of the long road to successful disparities reduction.

11 Macomber, J.E., Pergamit, M., Vericker, T., et al. *Vulnerable Youth and the Transition to Adulthood: Youth From Low-Income Families*. (Washington, D.C.: 2009).

12 National Center for Juvenile Justice. *Juvenile Arrest Rates by Offense, Sex, and Race*. (Washington, D.C.: 2007).

13 Snyder, Howard N., and Sickmund, Melissa. *Juvenile offenders and victims: 2006 national report*. (Washington, DC: Office of Juvenile Justice and Delinquency Prevention)

14 SAMHSA (2005). *Results from the 2002 National Survey on Drug Use and Health: Detailed Tables. Prevalence Estimates, Standard Errors, and Sample Sizes*.

15 Sickmund, Melissa, Sladky, T.J., and Kang, Wei. (2008) *Census of Juveniles in Residential Placement Databook*.

# THE LONG JOURNEY TO EQUITY

We are often asked how jurisdictions first become engaged in the hard work of reducing racial and ethnic disparities. In our experience, local engagement most often begins as a result of the commonly used terms “heat” and “light,” which we will explain further in this section. Often, one or both of these elements must be powerful enough to move local juvenile justice systems to overcome their systemic opposition to accountability, in particular regarding the treatment of youth of color and poor youth.

“Heat” manifests in a juvenile justice system typically when system stakeholders are prompted to engage in disparities reduction work by well-organized community organizations or advocacy groups that push for accountability regarding disparities. In such cases, a community (as represented by an organization or collective of groups) feels that its youth are unfairly overrepresented in the local juvenile justice system, and demands to know what is accounting for the disparity.

One site that we currently assist achieved results through this approach when a collective of community members began to notice substantially disproportionate numbers of Latino youth in the local juvenile justice system. Over a few years, Latino community advocates began pressuring juvenile justice officials to account for the disparity. After what the community considered inadequate responses from officials, individuals approached the county governing board official who represented the majority Latino district.

The official responded to her constituents’ requests by demanding that the probation department identify the racial and ethnic disparities in the local juvenile justice system, and develop a plan to address them. The department responded to the official’s request because the county board controlled a significant portion of its budget. This is an example of heat.

By contrast, “light” can bring about systemic involvement in disparities reduction work when an individual in a position of power demands an examination of the policies and practices of the juve-

nile justice system. In such cases, a judge, a chief probation officer or other highly placed department official driven by a moral obligation to “do the right thing” works to enforce as official policy the analysis of disparities in the system.

An example of achieving success with light occurred in another site we currently assist, when the chief probation officer volunteered to collect and analyze the department’s levels of disparity. The officer then made it departmental policy to examine the impact on disparities of all their policies and practices, and utilized our models and processes to develop an institutional response.

At the BI, we typically enter a jurisdiction after the elements of heat or light have brought the problem of disparities into focus. Once a jurisdiction decides to engage in reform efforts, then the hard work begins. Rarely do stakeholders, even those invested in ensuring “equal justice under law,” grasp the full measure of the amount of work, leadership and courage necessary to reduce racial and ethnic disparities. Passion and drive to make change are commendable; however, it is rare that juvenile justice system stakeholders can negotiate the combination

## ***Added Incentive: Financial Support From the State to Drive Local Engagement in Disparities Reduction***

*The State of California uses a multi-faceted approach of direct service, education, support and advocacy to reduce the overrepresentation of youth of color coming into contact with the juvenile justice system. Beginning in 2005, California’s Corrections Standards Authority issued a request for proposal for all counties to participate in local efforts to reduce disparities that would be supported through significant funding. Funds made available through this grant support local work to understand and identify disparities, with a goal of equipping localities with the tools and resources needed to reduce disparities. This has resulted in the most concerted, strategic and measurable engagement of racial and ethnic disparities in the state’s history, and has evolved into widespread engagement not only with probation but also, schools, law enforcement and other significant stakeholders.*

of race, ethnicity, confinement institutional culture without strategic assistance.

### A. Negotiating Race and Ethnicity

The first step in our reform work with local system stakeholders and community members is to assess how racial and ethnic politics manifest in their locale and how politics impact the culture of its local juvenile justice system. We have yet to encounter one jurisdiction that does not have political issues around race and ethnicity that impact its juvenile justice system – whether they are on the surface, or require some digging to uncover.

Most juvenile justice professionals are well-meaning and fair, nonetheless, ferreting out issues of race and ethnicity will most likely surface issues of personal and structural bias. Exploring how racial and ethnic disparities manifest in a local juvenile justice system must be handled deftly, and all system stakeholders involved in the process must strike a delicate balance between uncovering disparities and respecting the decision-makers involved, without scapegoating or blaming. Our job is to create a safe space so that all involved can deconstruct sensitive issues and move forward collectively and constructively.

It is important to note that although people of color are increasingly occupying positions of power – issues of race, ethnicity, youth, crime and punishment still push buttons of fear in the U.S. Research shows that the public believes juvenile crime is increasing and that youth who break the law will commit other crimes in the future.<sup>16</sup> If politics is defined as competition between interest groups or individuals vying for power and leadership, then racial politics is the process of emphasizing and exploiting such tensions and fears as a means toward political ends. In this context, it is the upholding of inequitable juvenile justice policies and practices that lead to – among other problems – the overrepresentation of youth of color.

#### 1. Justice by Geography

Data gathered from the juvenile justice systems that

<sup>16</sup> Soler, M. and Garry, L. *Reducing Disproportionate Minority Contact: Preparation at the Local Level*. (Office of Juvenile Justice and Delinquency Prevention: 2009)

we assist reveals that most youth of color entering secure detention come from identifiable neighborhoods that all present challenging life conditions including high poverty rates, an absence of community services, poor schools, high unemployment, and disproportionate levels of contact with police because of high rates of calls for service and deployment decisions.



Oakland, California | Aris Jerome, [flickr.com/photos/arisjerome](https://www.flickr.com/photos/arisjerome)

This last challenge most directly results in the overutilization of law enforcement and detention in response to adolescent behaviors that are often ignored or handled informally – without the use of detention – in well-resourced neighborhoods.

For these reasons, residing in a particular neighborhood is a contributing factor to the overrepresentation of youth of color in local juvenile justice systems because of the public perception of their inherent criminal pathology – which is easily exploited for political agendas. Often, the pervasive political mantra of being “tough on crime” and “dedicated to public safety” become proxies for the use of the juvenile justice system early and often for youth of color. The result is the widely accepted falsehood that youth of color pose an imminent threat to public safety and the early use of detention is the best solution.

Another geographic problem common to juvenile justice systems across the country is the deep divide between those who dispense justice and those on the receiving end. While there are some exceptions,

very few juvenile justice officials live in the neighborhoods most represented inside juvenile justice systems, and even fewer have children or relatives involved in the systems.

This lack of experiential insight creates a disconnect between the system and the community, which can be rectified in part by inviting community members to play significant roles in reform, and incorporating the ideas of youth impacted by the system in the disparities reform process. We will discuss these methods further in this report.

## 2. Gang Affiliation

Another issue of race and ethnicity impacted by politics is the ubiquitous use of the term “gangs.” Legislation aimed at youth activity in groups often entails sweeping definitions that have significant impacts on youth of color. As evidenced by the language in the box below, from a California police department, the definition of a “gang member” can be applied to all manner of youth behavior.

*“Not all gang members are obvious in their dress or manner. Asian gangs, for example, are not immediately recognizable by their attire. Also, they may not display gang characteristics while in school. They are respectful to staff, do not disrupt activities, do not drop out of school and maintain their grades. In such cases, gang affiliation is often not known until a criminal incident occurs.”*

No society is enhanced by organized criminal activities. However, political agendas and fear of gangs often lead to widespread support for gang suppression and interdiction laws that can actually slow or prevent concerned stakeholders from gaining traction in their efforts to address disparities in their juvenile justice systems.

Too often, gang suppression laws ignore documented best practices for gang prevention in favor of political rhetoric.<sup>17</sup> For youth of color, restrictions on whom they can associate with as a condition of pro-

bation most often leads to unnecessary arrests and pressure to detain low level youth offenders with alleged gang ties. Local juvenile justice systems must be vigilant against allowing arrests for low-level offenses related to “gang suppression” distract them from engaging in disparities reform work.

## 3. Immigration Status and Language

Immigrants comprise more than 12 percent of the U.S. population and their children comprise more than 20 percent. If current trends continue, children of immigrants will make up at least a quarter of all U.S. children by 2010.<sup>18</sup> Despite this burgeoning population of citizens and non-citizens living in the U.S., no reliable data has yet been collected regarding what percentage of undocumented youth are involved in juvenile justice systems, and how they are impacted separately upon contact with juvenile justice systems.

Since September 11, government agencies have invested heavily in immigration enforcement. Today, U.S. Immigration and Customs Enforcement (ICE) is increasingly deputizing local law enforcement officials<sup>19</sup> to enforce immigration laws in ways that include random inspections of juvenile detention facilities. There are currently only 63 active Memorandum of Agreements between ICE and counties,<sup>20</sup> but even though a majority of juvenile facilities are not contractually obligated to provide ICE access to youth in detention, many facility operators are under tremendous political pressure to comply.<sup>21</sup> We have been told by advocates, experts, and facility operators that when juvenile justice officials comply with ICE requests for access to youth in detention, youth with Hispanic surnames are subsequently targeted and investigated to determine their citizenship status.

18 The Urban Institute. *Children of Immigrants: Facts and Figures*. (Washington D.C.: 2006).

19 Appleseed. (2006). *Forcing Our Blues into Gray Areas: Local Police and Federal Immigration Enforcement*.

20 U.S. Immigration and Customs Enforcement. (August 18, 2008). *Delegation of Immigration Authority Section 287(g): Immigration and Nationality Act*. Available online at: [www.ice.gov/partners/287g/Section287\\_g.htm](http://www.ice.gov/partners/287g/Section287_g.htm).

21 Junck, A. (2008). *Powerpoint: Immigration and Juvenile Delinquency. As presented at the JDAI Annual Conference* (Washington D.C.: August 6, 2008)

17 Greene, J. and Pranis, K. *Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies*. (Justice Policy Institute: July 2007)



Benito | Steve Davis

In some jurisdictions, immigration authorities are contacted at the time of a felony arrest of a youth, which in some cities has led to heated political debate.<sup>22</sup> Many juvenile facilities across the country are also more reluctant to release Latino youth because of suspicion they may be undocumented. This results in a chilling effect for immigrant families when contacted by a juvenile justice system. Latino youth are often held in detention unnecessarily because their parents are too afraid to visit the detention facility or attend court hearings. All of this drives immigrant families further away from – and conversely, their children deeper into – a local juvenile justice system.

Advocates at the intersection of juvenile justice and immigration also speak of how racial and ethnic disparities can result from language barriers. Spanish, Southeast Asian, East Africans and other language minorities are increasingly over-represented in detention because of a lack of translators, translated court documents and signs or bi-lingual staff.

### B. The Myth of Detention as “Service”

We believe that secure confinement should be utilized only when a youth presents a safety threat to the community, and – in the case of pre-adjudication detention – is a flight risk, and no less restrictive alternatives are available. Our belief is based on a substantial body of research indicating that secure confinement is, on the whole, harmful to youth.<sup>23</sup> Despite such overwhelming evidence, detention continues to be over-utilized to provide services to youth of color and poor youth.

We know that many juvenile justice professionals entered the field in order to help children whose

life circumstances are troubled. Utilizing juvenile justice systems to help troubled youth is a practice that dates back to the nation’s first children’s court, which was rooted in the idea that the juvenile justice system is obligated and is best-equipped to stabilize, correct, punish, treat, rehabilitate and redirect troubled youth.

Today this pillar is grounded in a liberal American tradition that maintains the misguided belief that large segments of communities of color are so impoverished, deprived, depressed and aggrieved that they are incapable of engaging and nurturing their own youth safely into adulthood.<sup>24</sup> Implicit in this belief is the idea that such communities lack the social, familial, emotional, intellectual and material resources to properly parent their young.

The logical conclusion of such thinking is the necessity of reliance on the State to provide what communities of color apparently cannot, which in turn results in “helping” youth of color by pulling them deeper into the juvenile justice system. This form of “help” is deeply detrimental to youth.

This myth of detention as service, coupled with a real lack of alternatives to detention, contributes to an overreliance on detention as a vehicle to provide youth of color and poor youth with services. This reaction to a particular segment of youth in need is in stark contrast to the treatment of White and well-resourced youth who come into contact with the law for similar offenses.<sup>25</sup> In his book, “The Careless Society: Community and its Counterfeits,”<sup>26</sup> John McKnight deepens this discussion of the impact of our culture of “professional help” and helpers:

**This myth of detention as service, coupled with a real lack of alternatives to detention, contributes to an overreliance on detention as a vehicle to provide youth of color and poor youth with services.**

22 In San Francisco, the Board of Supervisors and the Mayor were battling at the time of this report’s release over legislation that states undocumented youth should not be turned over to federal immigration officials upon arrest.

23 Holman, B. and Ziedenberg, J. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Congregate Facilities*. (Baltimore, Maryland: Annie E. Casey Foundation).

24 Moynihan, D.P. (1965). *The Negro Family: The Case for National Action*. U.S. Department of Labor. [www.dol.gov/asp/programs/history/webid-meynihan.htm](http://www.dol.gov/asp/programs/history/webid-meynihan.htm).

25 The National Council on Crime and Delinquency. *And Justice for Some: Differential Treatment of Youth of Color in the Justice System*. (Washington D.C.: 2007).

26 McKnight, John. *The Careless Society: Community and its Counterfeits*. (Basic Books: 1995)



*Young boy performing an informal rap session, Elizabeth, N.J., Labor Day © 2005 Richard B. Kohn, flickr.com/photos/richj32*

“[T]he nature of profession is inherently elitist and dominant. As professions have become integrated into large-scale specialized systems, financed by public funds and insurance plans, the professional has increasingly secured a guaranteed income. The consequence is that the client’s residual role as a volitional purchaser of service, or even as a human being in need, has disappeared and the professional is free to use the client without pretense of humanistic service.”

McKnight argues that today’s providers are steeped in well-meaning arrogance, which results in modernized systems of assembly-line multiservice “care” that isolates the providers from basic humanity. The foundation of the structure of today’s local juvenile justice systems personifies this deficit-based view of communities of color by adopting an ethos that accepts incarceration as an unfortunate but necessary by-product of providing youth of color and poor youth with services.

A large number of advocates of color are bringing a sense of urgency to this problem by working with youth and families impacted by juvenile justice systems, and arguing that simply because a youth has mental, emotional or psychological needs does not mean they are in need of secure confinement. We believe that many systems would benefit greatly by redirecting a portion of their justice funding to culturally-relevant alternatives to detention, and by supporting the existing

community-based organizations in the neighborhoods that youth of color reside in.

Ultimately, the underlying presumption of the widespread overreliance on detention is that the administration and delivery of services are superior if delivered by a juvenile justice system and its corps of experts rather than by families or within communities. Rather than allowing perception, deep-rooted myths and fears to dictate our actions, we must look instead to data and research that demonstrates that detention has a profoundly negative impact on the mental and physical well being of all youth, as well as their education and employment opportunities.<sup>27</sup>

## 1. Youth, Families and Community

One of the core values of our reform model is to address racial and ethnic disparities through the participation of community leaders from the neighborhoods most impacted by the local juvenile justice system. Community-based, non-traditional stakeholders bring information and insight regarding court-involved youth that system stakeholders sometimes lack. Furthermore, many communities operate viable and under-utilized alternatives to detention, and have residents and organizations that can offer supervision and intervention modalities to help reduce disparities in the local juvenile justice system.

It is important to note that while powerful decision-makers can achieve significant reductions in disparities, such reductions can be negatively impacted by leadership changes and a lack of funding. Partnerships with communities can help ensure long-term success, as we have witnessed in jurisdictions including Louisville, KY; Tucson, AZ; Santa Cruz, CA; and St. Paul, MN.

Another fundamental value of our model is the significant value of incorporating into decision-making the voices of youth impacted by the system. This is not tokenism. We are continually surprised to learn how many system stakeholders are unaware of the chaotic inner workings of incarcerated youth’s daily

<sup>27</sup> Holman, B. and Ziedenburg, J. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*. (Justice Policy Institute: 2006).



*Young boy with used needles, inner city Philadelphia © 2005 Richard B. Kohn, flickr.com/photos/richj32*

lives. Many are further confused and frustrated by the numbers of youth of color being truant from school, divorced from community services and seemingly disinterested in youth development activities.

Our approach creates a space to hear the voices of youth of color and poor youth impacted by the system, who often communicate a cultural divide wide and deep, and daily struggles to

interpret and negotiate tough environments. Understandably so.

Today's youth of color and poor youth are the recipients of government policies that shifted limited resources away from neighborhoods. Both they and their parents' formative years were impacted by armed warfare in the streets; the dissipation of viable employment opportunities; the loss of social services; the decomposition of communities; and the proliferation of the prison industrial complex.

Furthermore, youth of color and poor youth are still bearing the brunt of remnants of the late eighties wherein John Dilulio, a Princeton political scientist, coined the phrase, "super-predators."<sup>28</sup> Soon thereafter politicians and the media adopted this phrase and ushered in an avalanche of draconian laws based on anecdote and worse-case scenarios rather than actual data or research. Those laws remain today, perpetuating and continuing the dire statistic that dictates much of our work – two-thirds of the youth in detention are held for non-violent offenses. A majority of those confined are youth of color.<sup>29</sup>

Thus, the cryptic cultural codes and hidden nuances of "Ebonics" and "Spanglish" espoused by today's youth of color correctly articulates that they have been left to fend for themselves. What appears to some as a lack of values and amoral behavior should instead be viewed as coping responses for negative self-images, internalized hopelessness and mangled concepts of success.

Addressing these difficult issues in a proactive manner means finding alternatives that build on youth interests and cultural strengths rather than finding such influences destructive. Jurisdictions that successfully engage disparities reform not only listen to youth voices, but also try to incorporate them in amendments to their policies and practices. Such understanding and action is important for reducing recidivism, for maintaining public safety, and for program efficacy.



*In San Francisco, the Center for Young Women's Development partners with the Juvenile Probation Department and the city's Department of Children, Youth and Their Families, to name a few agencies. It utilized the experiences, voices and ideas of its members to develop a "Mother's Bill of Rights" for incarcerated young women that is now utilized in the city's juvenile hall. | [www.cywd.org](http://www.cywd.org)*

<sup>28</sup> Muschert, G.W. *The Columbine Victims and the Myth of the Juvenile Superpredator*. Youth Violence and Juvenile Justice. Vol. 5, No. 4. (2007).

<sup>29</sup> See Sickmund, M., Sladky, T.J., and Kang, W. (2004), "Census of Juveniles in Residential Placement Databook, [www.ojjdp.ncjrs.org/ojstatbb/cjrp/](http://www.ojjdp.ncjrs.org/ojstatbb/cjrp/).

# An Intentional Approach to Reducing Disparities

In order to achieve significant strides in disparities reform, decision-makers from law enforcement, intake, supervision, facility management or operations and courtroom personnel should examine how their decisions impact disparities. The remainder of this publication will outline our approach, which we have seen work to achieve the reduction of racial and ethnic disparities in local juvenile justice systems across the country.

The key elements of our approach that will be discussed in this publication include:

- Jurisdictional Assessment
- Form a Governing Collaborative
- Secure a Local Coordinator
- Establish Consistent Meetings
- Develop a Work Plan
- Data Collection and Decision Point Analysis
- Collecting the Appropriate Data
- Analyzing and Interpreting the Data
- Establishing an Institutional Response
- Defining Success and Purpose of Detention
- Objective Decision-making
- Examining Case Processing Issues
- Creating Alternatives to Detention

## A. Jurisdictional Assessment

The first step on the path to equity in juvenile justice systems is assessing the local jurisdiction's capacity for success. We have developed an assessment process that measures a jurisdiction's ability and willingness to engage in disparities reduction work. Our assessment provides an objective view of the jurisdiction's policies and practices, and how they may be impacting disparities. This assessment provides system stakeholders the opportunity to examine the contextual issues raised in the first portion of this publication – institutional culture; racial and ethnic politics; and the purpose of and utilization of detention.

Specifically, the assessment identifies the strengths, weaknesses, assets and challenges that may impact the jurisdiction's ability to engage in an effective disparities reduction effort. This analysis often in-

### *Readiness Assessment Consultation (RAC):*

*Often, our first step toward addressing racial and ethnic disparities in a local jurisdiction is to conduct a Readiness Assessment Consultation in order to better understand internal and external factors that may be contributing to the jurisdiction's disparity issues. The RAC is comprised of a series of on-site interviews with key system and community stakeholders; a review of all pertinent available data; and an evaluation of the policies and practices employed by the juvenile justice system.*

*The RAC focuses on several key areas including:*

- a. State of DMC/racial and ethnic disparities*
- b. The purpose and utilization of detention*
- c. The availability and use of data*
- d. Collaboration*
- e. Current juvenile justice policy & practice*
- f. Other factors*

*After the assessment is completed, we produce a report with our findings and recommendations. This report is then presented at a debriefing meeting held in the jurisdiction, during which the stakeholders determine how they want to proceed in their disparities reduction work.*

*For example, in 2006, we conducted an intensive assessment in Norfolk, Virginia, to better understand the jurisdiction's readiness to substantively address racial disparities in its system. We analyzed local data and interviewed a diverse group of people, including representatives from the court, detention center, school system, intake staff, law enforcement, prosecutor's office, defense bar, probation, local government and the community.*

*Based on the interviews and data, we presented Norfolk's stakeholders with a written report that included a specific set of recommendations. The stakeholder group overcame any initial defensiveness and implemented aspects of the recommendations to help them develop a more focused and strategic DMC work plan. The RAC served as a precursor for a working relationship between our organization and Norfolk that continues to this day.*

cludes measuring the level of urgency present regarding disparities reduction; local media coverage of the problem of disparities; the jurisdiction's power dynamics, technology and data capacity; and the surrounding community's demographics and infrastructure. The assessment components include specific data analysis, extensive on-site interviews, and an analysis of the jurisdiction's policies and practices.

Stakeholders often find this form of assessment extremely helpful in analyzing local dynamics and crystallizing issues that must be addressed before launching into disparities reduction work.

## **B. Forming a Governing Collaborative**

Once an assessment is complete, we recommend that jurisdictions establish a governing committee responsible for examining local policies and practices, and directing the disparities reduction work. Our approach requires assembling a collaborative of traditional and non-traditional stakeholders that include the juvenile court judge, prosecutors, defenders, law enforcement, and probation; *as well as* community representatives including organizations, schools, advocates, parents and youth. Such a unique deliberative body is meant to ensure efforts to reduce disparities are fully discussed, are timely and are monitored.

An important element of our collaborative approach is the inclusion of community representatives who are provided the structural support to act as equally respected decision-makers. Such supports include allowing the time to familiarize non-system participants with the language, acronyms, processes and positions that make up the local juvenile justice system. Armed with an understanding of the information necessary to participate effectively in deliberations about disparities reduction, we have seen community participants deliver great value to the collaborative process.

We believe that collaborative decisions should be made by consensus. While a consensus-based process is often time-consuming, we find it produces better results than a majority vote, which alienates a minority that may end up sabotaging the process. When the decision is made by consensus, all indi-

viduals have signed on and its implementation is more likely to move forward more smoothly. Furthermore, while all stakeholders are important for the overall success and sustainability of the disparity reduction effort, the juvenile court judge and probation chief's leadership and commitment are particularly important. Both stakeholders have broad discretion regarding how law is interpreted and how local policy is implemented. Thus, hostility or disinterest from the judge or probation chief can be an overwhelming obstacle that halts the process. While neither stakeholder has to chair the effort, both the judge and probation chief must participate consistently and send a signal to other stakeholders that this work is important to powerful people within the system.

### **1. Collaborative Distractor**

Problems can arise in the governing collaborative when stakeholders favor niceties and platitudes over an honest and challenging conversation regarding why local policies and practices contribute to racial and ethnic disparity. This "culture of politeness" becomes a proxy for inaction. Stakeholders become wary of addressing the real issues on the table, which maintains the status quo. It is rare that jurisdictions can correct this problem on their own. The BI has facilitated collaborative meetings confronting the "culture of politeness" in order to move forward.

### **2. Securing a Local Coordinator**

Soon after the governing collaborative is formed, stakeholders need to secure an individual to staff and manage the disparity reduction effort on a full-time basis. This coordinator must be comfortable interacting with a broad range of stakeholders. They should possess knowledge about the workings of the local juvenile justice system and the community providers. Additionally, they should be a good public speaker and comfortable working with data.

Minimally, the prospective coordinator is responsible for organizing governing collaborative and committee meetings, preparing meeting minutes, organizing and assisting in presenting data, and monitoring compliance with the disparities work plan (*see subsection D*). Of course, the collaborative must provide the

### ***Successful Collaborative: Pima County, AZ***

*Pima County has an impressive collaborative that has been meeting for almost five years and represents all the communities of color that populate detention. Additionally, they have members from behavioral health, service providers, state agencies, county elected officials and the University of Arizona. The collaborative is co-chaired by the presiding Juvenile Court Judge and the president of the local chap-*



*Judge Patricia Escher and Clarence Boykins, chair of the local chapter of the Black Chamber of Commerce | An image clip from our new DVD, "Working for Justice."*

*ter of the Black Chamber of Commerce. The collaborative has an all-day annual retreat that reviews the prior year's work plan and establishes the work plan for the upcoming year regarding disparities reduction. This focuses the work on specific populations of youth of color that has proven to bear measurable results. Thus far, the work of the collaborative has resulted in the establishment of two alternatives to detention and the reduction of the average daily population in juvenile detention by half.*



*The Pima County governing collaborative*

coordinator with the necessary equipment, support and salary to perform these functions. Our experience indicates that the more time and support the local coordinator is given to perform these functions, the better the overall results.

### **C. Establish Consistent Meetings**

Even seemingly minor elements of the disparities reduction process are vital. A consistent meeting schedule with adequate time for deliberation and consensus needs to be established in order to ensure progress. The collaborative should also consider the location of the meeting because it affects attendance and participation. Meetings held at the courthouse during the work day is very convenient for key systems people, for example, but often places a burden on community members, young people and parents or guardians. Some jurisdictions schedule their governing collaborative meetings after work hours or conduct them at community-based agencies to ensure participation.

### **D. Develop a Work Plan**

The governing collaborative should develop a work plan for the first year of its disparities reduction activities that should enumerate the specific tasks the collaborative plans to complete. Additionally, the plan needs to have deadlines by which the tasks should be accomplished, and the individuals responsible for completing the tasks. Specificity and measurable outcomes regarding engaging racial and ethnic disparities ensure the work plan is a useful tool. For those jurisdictions dually involved in the Annie E. Casey Foundation's Juvenile Detention Alternative Initiative (JDAI), it is also important to assure the work plan incorporates the disparities tasks explicit in JDAI's "Milestones for Success."<sup>30</sup>

Work plans need to be specific and have realistic time frames. Work plans that are too ambitious, for example, fail to take into account how nearly all work comes to a standstill during the local budget season. Additionally, governing collaboratives are simply not as active between the summer and the Thanksgiving holiday, and near the end of the calendar year. We work with jurisdictions to help

<sup>30</sup> <http://www.aecf.org/Home/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx>

BURNS INSTITUTE DELIVERABLES			
Quarter 1: _____		Location: _____	
Deliverable	Persons Responsible	Site Responsibility	BI Responsibility
Hire Site Coordinator	Advisory Board BI Site Manager	(1) Hire Site Coordinator in a timely manner.	(1) Assist in hiring of the Site Coordinator
Train and Orient Site	Advisory Board BI Site Manager	(1) Ensure Site Coordinator is accessible for training and orientation	(1) Provide training and orientation to site coordinator
Collect Quantitative Site	Site Coordinator	(1) Collect background data pursuant to BI model. <ul style="list-style-type: none"> <li>• County population</li> <li>• Overall youth population by race</li> <li>• Youth referral to detention data by race</li> <li>• Pre-adjudication diversion data by race</li> <li>• Admission to detention data by race               <ul style="list-style-type: none"> <li>o Further disaggregate by age</li> <li>o Further disaggregate by gender</li> <li>o Further disaggregate by residence zip code</li> </ul> </li> </ul>	(1) Enumerate DMC Background Data to be collected  (2) Provide Data Collection Template to guide site in the collection and reporting of data

*A snapshot of a nine-grid chart of one quarter of a four-quarter plan.*

stakeholders strike the all important balance between progress and paralysis.

### E. Data Collection and Decision Point Analysis

A fundamental value of our approach is that sustainable and systemic reform efforts to reduce disparities in the juvenile justice system must be based on consistent and reliable data. Data collection and analysis is necessary to provide a description of disproportionality. It provides the foundation for identifying whether, to what extent, and at which decision-making points disproportionality exists, and where strategies for change can be developed.

Using data to drive the reform effort ensures that policy and practice change is informed and based on neutral and accurate information, rather than impulse, anecdote and politics. Consistent collection and analysis of reliable data on key indicators of disproportionality enables juvenile justice system stakeholders to evaluate the effects of their current policies and practices, and to assess the relationship between modifications of these policies and practices and subsequent reductions in racial and ethnic disparities.

Often, a significant gap lies between the under-

standing of the complexities in juvenile justice processes and the information systems that capture data about youth. It is not uncommon for systems information staff to possess technical skills with regard to data collection and analysis, yet lack a clear understanding of the system processes that youth are experiencing that contribute to disparities – and vice versa for juvenile justice management and line staff. Moreover, stakeholders and information systems staff often do not know the appropriate data-related questions to ask to drive the reform initiative forward. Thus, we recommend three data-related goals:

**Goal One:** Collect the appropriate data necessary to ascertain whether and to what extent racial and ethnic disparity exists in the jurisdiction;

**Goal Two:** Analyze and interpret data in a meaningful way so that policy, practice and procedure recommendations to reduce racial and ethnic disparities are based on objective data; and

**Goal Three:** Develop an institutional response to using the data analyzed to make changes that would impact racial and ethnic disparity.

#### **Goal One: Collecting the Appropriate Data**

DATA COLLECTION CHECKLIST DETENTION ADMISSIONS			
	Data Collected in Info System	Capacity to Include in Info System	CANNOT Collect
<b>Youth Demographic Data</b>	✓		
Race and Ethnicity	✓		
Gender	✓		
Date of Birth	✓		
Residence Zip Code	✓		
<b>Detention Screening &amp; Admission Data</b>			
Date of Intake	✓		
Most Serious Offense Charged at Intake		✓	
RAI Score Level ( <i>High, Medium, Low</i> )		✓	
Detention Decision ( <i>Release, Conditions, Admit</i> )		✓	
Automatic/Policy Hold Reasons		✓	
Discretionary Override Reasons		✓	
Total Days in Detention Pre-Adjudication	✓		
Total Days in Detention Post-Adjudication	✓		

For further examples see our report, “Collecting and Analyzing Data on Racial and Ethnic Disparities: The Peoria Pilot Project.” (Chicago: Models for Change).

To meet the objectives of goal one, we work with a jurisdiction to map its decision-making process to determine how its local system flows and where data collection is necessary. We have developed two tools to assist with identifying the appropriate data to collect: (1) a policy and practice mapping guide; and (2) a data collection checklist.

We use the policy and practice mapping guide to learn more about the options the juvenile justice decision-makers have at key junctures in their system, and the policies and practices that drive which options are utilized. The purpose of the mapping guide are twofold. First, it is used to identify which data elements should be collected and included in the data collection checklist.

Second, the mapping guide explores where policy deviates from practice. Often, jurisdictions have written policies at key junctures in the juvenile justice process that are not followed in practice. As data are used to identify disparities at these key junctures, it is important for the governing collaborative to know whether local policy, local practice or both are driving disparities, so that they know where to target their reform strategies.

Once the policy and practice mapping guide is

complete, we modify the data collection checklist (*to the left*) to ensure that all relevant juvenile justice decision-making points are included. We then use the data collection checklist to identify which data are available in the jurisdictions’ information systems and which data are currently not available. This information serves two purposes:

- 1) To identify the decision-making points that should be investigated to ascertain whether racial and ethnic disparity exists in the jurisdiction; and
- 2) To make recommendations regarding how existing information systems can be improved to allow for a more meaningful and comprehensive analysis of disparities.

While a comprehensive system of data collection is valuable for beginning the work to reduce disparities, the quest for a case management system with full capacity for analyzing racial and ethnic disparities should not prevent the collaborative from moving forward. Jurisdictions around the nation have been successful in using data to drive reform with even limited resources and out-dated information systems. (See page 18 box: “Driving Reform Without a Centralized Database”).

### Goal Two: Analyzing and Interpreting the Data

To meet the objectives of goal two, we have developed tools that allow a jurisdiction to view a snapshot of disproportionality in their juvenile justice system, including a data collection and analysis template for key front-end decision-making points in the juvenile justice system. Using this template enables jurisdictions to analyze various stages within the juvenile justice system processing, with an eye on racial and ethnic disparities.

The template assists jurisdictions in identifying key data to be tracked on an ongoing basis, and identifies areas within certain decision-making points that, by virtue of their high levels of disparities, warrants deeper analysis of policy and practice. We have also developed tools to assist jurisdictions in monitoring these data on a consistent basis, measuring progress reducing disparities at key decision-making points, and evaluating whether policy

and practice modification have had a measurable impact in reducing racial and ethnic disparities.

### ***Goal Three: Establishing an Institutional Response***

Once racial and ethnic disparities are identified, it is incumbent upon local officials to exercise the leadership and political will necessary to embrace data as an important element in driving policies and practices. Thus, integral to the collection and analysis of data is the ability to use those data to develop and implement policy and practice change to reduce racial and ethnic disparities. While jurisdictions are often successful in their effort to collect and analyze data to identify disparities, system stakeholders often struggle with developing a local vehicle for using data to create change.

Thus, to meet the objectives of goal three, we work with jurisdictions to develop an institutional response for using their data. For some jurisdictions, this response is as basic as ensuring that when key indicators of disproportionality are reported and discussed at collaborative meetings, and important questions arise, there is a vehicle for digging deeper to learn more about why the disparities exist and where policy and practice change might be appropriate.

### **F. Defining Success and Purpose of Detention**

During this data-gathering process, the governing collaborative must also reflect on what success will mean in their forthcoming work on disparities. A conversation around defining success begins with an examination of the existing baseline level of racial and ethnic disparities in a particular jurisdiction. Often, governing collaboratives define success as having the proportion of youth of color in their overall jurisdictional youth population reflected at parity in the detention population. However, we have seen jurisdictions significantly reduce detention utilization for youth of color without changing the overall proportion of youth of color detained.

Further, in some jurisdictions, significant reductions in the detention population resulted in an increase in the proportion of youth of color detained. What would this mean in terms of “success” in your jurisdiction?

### ***Driving Reform Without a Centralized Database:***

*Despite the lack of a centralized database that includes all necessary DMC variables, the Santa Cruz County Probation Department in California remains a national leader in using data to reduce racial and ethnic disparities.*

*The department has a long history of using data to ensure that policies and practices are implemented with equity and fairness, but its collection and analysis of data on race and ethnicity was inconsistent. Several staff conducted studies on disparities in the system, but these analyses were typically ad hoc and not reported on a consistent basis. Moreover, the reports based on the analyses were often not disseminated to other staff. As a result, important data on racial and ethnic disparities was not used in a productive way. The department lacked an institutionalized response.*

*With our assistance, the probation department developed a system of tracking key indicators on racial and ethnic disparities within each unit of the department. Today, the department follows the following process:*

- (1) Unit supervisors regularly review indicators noting trends and anomalies*
- (2) Unit supervisors and managers review summary reports at regularly scheduled monthly meeting*
- (3) Unit supervisors and managers report at all unit supervisor and manager meetings held every six weeks regarding:*

### ***Status of DMC indicators:***

- Has disproportionality increased or decreased?*
- Has the number of youth impacted increased or decreased?*

### ***Unit Response to Status of Indicators:***

- What can explain the increases or decreases?*
- Is a deeper investigation under way to identify what could be contributing to increases in disproportionality?*
- Are there findings from a deeper investigation?*
- Are there recommendations based on these findings?*
- Should a policy/practice change be adopted? How will that policy/practice change address the findings of what is contributing to disproportionality?*
- How has policy/practice change impacted disproportionality?*

More important than a reduction in percentages of detained youth is the reduction of inappropriate detentions. The collaborative should review data to collectively determine whether low-risk youth who are detained in their system could instead be safely supervised in the community. Our analysis of data in jurisdictions has found that youth of color make up the overwhelming majority of detained youth who pose a low-risk for future criminal behavior. Such populations of youth are often in high-need of services or intervention.

Studies also show that when pre-adjudication detention is used to punish, teach a lesson or provide services to youth of color, the result is their overrepresentation in the juvenile justice system today, and in the criminal justice system tomorrow.<sup>31</sup>

Regardless of the levels of disparity, the governing collaborative must hold discussions regarding the results of the disparities reduction work its members seek (*see box to right: Defining Success as Key Component of Reform*). A threshold question must be posed regarding whether the collaborative agrees that youth of color in their jurisdiction are being inappropriately detained. Such a difficult discussion is vital and should be informed by the data collected, not driven by anecdote or belief.

If after examining the preliminary data the governing collaborative determines that reductions are necessary, the collaborative should debate whether it aims to achieve a percentage reduction or an overall numerical reduction. Each approach has its merits and weaknesses. A numerical reduction would involve reducing the overall detention population and identifying how many youth of color would benefit. A percentage reduction would involve a measurable sustained reduction in the percentages of youth of color detained.

We know from experience that jurisdictions must be high functioning in order to achieve a sustained percentage reduction for youth of color detained, while also maintaining public safety. That is, the local system must be gathering and analyzing data

### ***Defining Success As Key Component of Reform:***

*One of the key components of any successful effort to address disparities is the process of clearly defining success. This process is important because stakeholders engaged in system reform need clear goals, objectives and measuring standards to assess their progress and overall success.*

*On the surface, it is simple enough to define success as the reduction or ultimate elimination of racially or ethnically disparate treatment and outcomes for youth of color in a given juvenile justice system. However, success can come in various forms. Key examples of success may be defined as follows:*

- a. Reduction of the percentage of over-representation (disproportionality)*
- b. Reduction of actual numbers of youth at a particular decision point (e.g. in detention)*
- c. Increased collaboration between system stakeholders (e.g. sharing pertinent data)*
- d. Community engagement (incorporating and empowering non-traditional stakeholders in the reform process)*

*In most cases, these various forms of success complement one another and contribute to the larger goal of sensible, fair and equitable treatment for all youth.*

efficiently, collaborating well, involving community members in the collaboration and consensus decision-making, and must also host a range of alternatives to pre-adjudication detention.

Once the governing collaborative determines how to define success in a way that includes an analysis of the purpose of detention, its members should create a written statement that will guide the work of their disparity reform effort. This statement should guide the collaborative through the obstacles its members may encounter in their engagement of disparities issues.

### **G. Objective Decision-Making**

A key innovation for disparities reduction work established by the Juvenile Detention Alternatives Initiative (JDAI) is an objective instrument for the initial decision to detain. This instrument measures a

<sup>31</sup> Holman, B. and Ziedenburg, J. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*. (Justice Policy Institute: 2006).

youth's risk of failing to appear, or risk of re-offending if released prior to adjudication of their case. The purpose of this tool is to apply objective criteria, such as the nature of the offense and the youth's offense history, to produce a score that indicates the youth's suitability for secure detention; release; or referral to an alternative to detention program.

Local jurisdictions should develop their own objective screening tool by using a balance of accepted design principles, test protocols and local practice. Although objective screening tools should increase fairness and efficiency in the detention screening process, they must also be monitored and updated at designated intervals. Jurisdictions should visit the online JDAI Helpdesk<sup>32</sup> for more information.

We have worked in various JDAI sites to examine the JDAI objective screening instrument's impact on race and ethnicity, working from the development of the instrument through to its final impact. A finding we sometimes encounter is that local decision-makers ignore the objective screening instrument and detain youth of color for behavior that is deemed "low-risk." Data reveals the most common reason that system stakeholders "override" a low score in order to detain a youth of color is to provide that youth services, or because a parent/guardian cannot be located.

Other structural and institutional drivers that propel low risk youth of color disproportionately into the justice system include housing policies resulting in neighborhood gentrification and lack of healthcare and mental health services. In fact, research shows that 70.4 percent of youth in the juvenile justice system meet the criteria for at least one mental health disorder. Of those, "disruptive disorders" such as conduct disorder are most common (46.5 percent). Moreover, researchers estimate that 20 percent of the youth in the juvenile justice system have severe mental disorders.<sup>33</sup> Joseph Penn, a child psychiatrist at the Texas Youth Commission, has said what many advocates know to be true, "Jails and juvenile justice facilities are the new asylums."<sup>34</sup>

32 [www.jdaihelpdesk.org/Pages/Default.aspx](http://www.jdaihelpdesk.org/Pages/Default.aspx)

33 Cocozza, J.J. and Shufelt, J.L. *Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study*. (National Center for Mental Health and Juvenile Justice: 2006)

34 Moore, Solomon. "Mentally Ill Offenders Strain Juve-

nile System." New York Times. (August 9, 2009).

While there is no demographic research showing how many youth in detention with mental health needs are youth of color or poor youth, local research does indicate that Black youth are more often placed in juvenile jails whereas White youth with resources and similar mental disorders, offenses, criminal histories, and mental health problems are placed in residential treatment centers.<sup>35</sup>

In decision-making we see the impact of racial and ethnic politics; engagement with stakeholders outside of the courts and probation; and the use of detention in lieu of or to provide youth with services. Governing collaboratives must be prepared to confront detention utilization policies in order to address the low risk/high need override phenomenon and to effectively reduce racial and ethnic disparities.

#### H. Examining Case Processing Issues

The governing collaborative should also work with judges, prosecutors, public defenders and probation officials to analyze how cases are processed in their jurisdiction and whether that process is leading to disparities. The key question is: How efficiently do cases move through the system subsequent to the detention decision? The goal of successful detention reform as articulated by the JDAI is to process cases efficiently in order to reduce the length of stay in detention, and to decrease the average daily population in detention.

**While there is no demographic research showing how many youth in detention with mental health needs are youth of color or poor youth, local research does indicate that Black youth are more often placed in juvenile jails whereas White youth with resources and similar mental disorders, offenses, criminal histories, and mental health problems are placed in residential treatment centers.**

35 The Maryland Juvenile Justice Coalition noted that in 1998, 120 White youth in Maryland were sentenced to treatment and 223 White youth were jailed. At the same time, 132 Black youth received treatment, while 672 were confined with no treatment. As cited in The National Center on Education, Disability and Juvenile Justice article, *Differential Treatment of African American Youth*. (Reclaiming Youth, Healing Racism: 2000).

The collaborative should measure the impact of racial and ethnic disparities at the key case-processing points. Our experience has revealed that much waste and delay rests in court processing, which is particularly detrimental to youth of color and poor youth and is directly related to the services available to youth and a sense of urgency regarding access to those services. Too often, paperwork and other bureaucratic delays result in youth languishing in detention unnecessarily.

## **I. Creating Alternatives to Detention (ATD's)**

Alternatives to detention (ATD's) are an important element of disparities reduction work. Once a jurisdiction has identified a population of youth of color that can safely be released, alternative supervision must be established or improved upon in the community. We work with jurisdictions to create or better utilize a variety of alternatives. The JDAI monograph of ATD's<sup>36</sup> is an excellent primer and resource for information about the varieties of alternatives available to jurisdictions.

At the BI, we stress the importance of alternatives to detention being targeted for specific populations of youth of color and being safe, accessible, culturally competent and linguistically appropriate.

Jefferson Parish in Louisiana, for example, is in the process of implementing a “trackers program” to serve as an alternative to detention for both its pre-adjudicated population and youth on the back-end of the court process. Traditionally, two key elements of a tracker program are consistent contact and supervision of the youth and open lines of communication between the tracking service providers and its system partner (usually probation). Many successful tracker programs also feature a series of culturally-appropriate services including mentoring, counseling and family-based services.

Jefferson's tracker program will provide opportunities for pre-adjudicated youth to be released back to the community upon intake with the support of a “tracker” to assist them in reporting to court, so that they do not incur new offenses by missing court dates. Trackers will also provide an alterna-

tive to detention for probationers who are having problems staying compliant with the terms and conditions of their probation. This latter group is a key contributor to Jefferson's detention population. Therefore the tracker program is expected to help to reduce the parishes' use of detention.

Another example is Baltimore City, Maryland, where stakeholders used data to identify a difficult-to-serve population of youth who were regularly failing the community detention alternative for reasons including non-compliance or prior violations. In partnership with the Department of Juvenile Services, the Mayor's Office of Employment Development and the Family League of Baltimore City, the stakeholders developed a detention alternative called the Pre-Adjudication Coordination and Training Center.

Similar to an evening reporting center, the Pre-Adjudication Coordination and Training Center's purpose is to ensure that youth appear for scheduled court hearings, avoid arrest prior to the court appearance and are prepared in court with a comprehensive needs assessment with an individualized service plan designed to assist the court, the youth's family and their case managers in finding community-based resources to help the youth avoid further system involvement.

During its second year of operation, 97 percent of the Center's youth appeared for their subsequent court hearings. Further, 100 percent of the youth received the individualized service plan at the time of their court hearing.

It must be noted that another issue the governing collaborative should examine is whether the jurisdiction's probation department operates such alternatives or if they should contract with a community agency. Regardless of which approach is used, the governing collaborative should monitor the alternative's impact on disparities.

Ultimately, no publication can detail all the obstacles, nuances and issues that stakeholders may encounter. However the approaches we have outlined provide the key elements we believe necessary to gain traction in working to reduce disparities.

<sup>36</sup> <http://www.aecf.org/KnowledgeCenter/PublicationsSeries/JDAIPathways.aspx>

## Conclusion

Over two centuries ago, German philosopher Johann Christoph Friedrich von Schiller introduced his immutable law of events, stating that “into today already walks tomorrow.”

As professionals and community members vested in the future of the next generation, we cannot allow the over-incarceration of youth of color to go unchecked. Our mandate must be to create fair, equitable and humane approaches for children in trouble with the law, which have positive, service-oriented interventions and consequences, and maintain public safety.

Tools and technologies alone cannot bring about disparities reform without understanding and engaging the structural ecology in which the politics of race and ethnicity manifest in a particular locale. As we discussed, juvenile justice systems should be viewed as living organisms that reinforce values through structural policies, practices and procedures. They are not objective institutions, but rather a conglomeration of interdependent child-serving entities that protect their turf, attack their enemies and perpetuate themselves. Successful reform work requires an awareness of institutional culture and strategic thinking about the rules and limitations of the system.

**Civil rights leader Cesar Chavez once said that “the love for justice that is in us is not only the best part of our being but it is also the most true to our nature.”**

That said, any jurisdiction that implements the processes enumerated in this publication will be excellently positioned to achieve marked results in their effort to reduce racial and ethnic disparities in their local juvenile justice system. Our ultimate goal, as an organization that helps jurisdictions embark on such reform work, is to help reduce widespread inequities nationwide that have resulted in the confinement of 70 percent of youth of color, though they comprise only 38 percent of the total U.S. youth population. We believe it is important to lend our institutional talents to naming and ending the practice of incarcerating low and medium-risk youth of color and poor youth in lieu of an appropriate place for services or parental care. We continue to lift up our voices to bring a sense of urgency to this critical problem.

Civil rights leader Cesar Chavez once said that “the love for justice that is in us is not only the best part of our being but it is also the most true to our nature.” Justice demands that we be ever vigilant about who suffers and who is shielded from harm.

*All youth* deserve to be treated fairly by the systems meant to serve and protect them. By undertaking the efforts described in this publication, we believe the system and its players will be taking steps closer to a juvenile justice system that no longer over-utilizes detention for nonviolent and first-time offending youth, who we know are better served in community-based alternatives to detention that are less costly, offer opportunity for change, and better outcomes for public safety.



*Pinhole photograph taken by female inmate at Remann Hall Juvenile Detention Center, Tacoma, WA | Steve Davis.*





## **W. Haywood Burns Institute**

180 Howard Street Suite 320  
San Francisco, CA 94105  
415.321.4100  
415.321.4140 fax  
[www.burnsinstitute.org](http://www.burnsinstitute.org)