



Reducing Justice System Inequality

VOLUME 28 NUMBER 1 SPRING 2018

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Reducing Justice System Inequality: Introducing the Issue

John H. Laub, issue editor

The topic of inequality in the United States has become virtually impossible to ignore, and the justice system is an important part of the discussion. Witness the recent National Research Council report on the causes and consequences of the country's high rates of incarceration, especially for minority offenders.¹ We've also heard heated debates about the stop, question, and frisk policies followed by police in New York City and elsewhere.² More broadly, legal scholar Michelle Alexander has referred to mass incarceration and other justice system policies as "the New Jim Crow" in America.³

When considering the known facts about crime, offenders, victims, and the justice system response, important complexities arise that both reflect and contribute to inequality in the wider society. The fundamental fact is that criminal offending and criminal victimization for common law crimes (which include murder, rape, robbery, assault, burglary, motor vehicle theft, and larceny) aren't randomly distributed across persons and places. Inequalities are present in the patterns of serious criminal offending and serious criminal victimization even before

any contact with the justice system. Chronic offending is also related to gender, race, and social class.⁴ We can think of these known facts as *input* to the justice system.

At the same time, the justice system's responses exacerbate inequality among young people in America. We can think of these responses as *output* from the justice system that reinforces and deepens inequalities; researchers have increasingly examined the collateral consequences of justice system involvement. The distinction between input and output suggests that while crime and justice system involvement are typically considered to be outcomes, crime and justice system involvement may also drive inequality.

Setting the Stage

Though it's vitally important to focus on fundamental inequities that occur before people become involved with justice system, this issue of *Future of Children* examines how the justice system reinforces and exacerbates inequities among children, adolescents, and young adults, and how alternative policies, programs, and practices might mitigate those effects. The issue has four distinctive features. First, it covers the

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entire justice system, starting with stop, question, and frisk by police on the street and continuing through each stage of the process—policing (arrest, booking, lockup), courts (arraignment, trial, conviction), and corrections (probation, jail, prison, and parole). Second, it devotes special attention to schools, in particular school suspensions and the role of the police—school resource officers—in schools. Third, it examines three domains that contribute to the reproduction of inequality but have received little attention from researchers and policy makers—foster care, probation, and jails. Fourth, and most important, it assesses policies, programs, and practices to reduce justice system inequality. What strategies have worked? What strategies should be tried? What strategies should be avoided?

The articles in this issue should be viewed from a life-course perspective that puts *persons in context*. Such a perspective acknowledges that individuals are embedded in broader structures, and that individual behavior is the product of interaction between personal development and social context—family, school, neighborhood, and the like. The justice system directly and indirectly impinges on these intersecting domains. These direct and indirect effects are often cumulative and can compound over time. Along with my colleague Robert Sampson, I have articulated a theory that cumulative disadvantage over the life course has a snowball effect. Specifically, early misconduct in childhood, as well as adolescent delinquency and its negative consequences (such as arrest, official labeling, and incarceration), increasingly jeopardize a child’s future development.⁵ If we can better understand the mechanisms that exacerbate inequality at the individual, family, school, and neighborhood levels, and

see how they interact and overlap, we can help identify promising interventions.

Given recent bipartisan support for criminal justice reform, now is a particularly good time to take stock of the policies, programs, and practices that may reduce justice system inequality. Each article in this issue assesses such policies, programs, and practices in detail. Thus, this issue offers a much-needed evidence-based voice in discussions of how to reform the justice system.

Summary of the Articles

Cutting Off the Pipeline

The first two articles look at schools and foster care, both of which can be viewed as *feeders* into the justice system. In “The Role of Schools in Sustaining Juvenile Justice System Inequality,” Paul Hirschfield explores how school experiences contribute to disproportionate minority confinement in the juvenile justice system. Examining the “school-to-prison pipeline,” he distinguishes between micro-level processes that affect individuals and macro-level processes that affect schools and communities. At the micro level, Hirschfield finds that black students who violate the rules are more likely to receive out-of-school suspension, experience arrests at school by school resource officers (police in schools), and be transferred to alternative schools for disciplinary reasons. Suspension elevates the risk that these students will be arrested in the community, and ultimately convicted and imprisoned. Suspension has also been linked to dropping out of school, which leads to more juvenile justice involvement.

At the macro level, a school’s racial composition affects its rates of out-of-school suspension, surveillance, and police presence.

In addition, schools with lower test scores and lower grades appear to use harsher disciplinary methods. Black students tend to attend schools that have higher rates of suspension, extensive surveillance, more police officers, and harsher discipline.

Hirschfield makes two recommendations to reduce schools' influence on juvenile justice inequality, both of which focus on reducing out-of-school suspensions, arrests in schools, and school-based court referrals. The first recommendation is to introduce school-based restorative justice practices that offer alternative forms of conflict resolution and seek to enhance students' connection to school. The second is to adopt Positive Behavioral Interventions and Supports (PBIS), a system that trains school staff in nonpunitive methods of behavior management. Under PBIS, unruly students are offered individualized supports rather than being suspended. Restorative justice and PBIS keep students in school without compromising school safety or performance. According to Hirschfield, in both cases the key to reducing disproportionate minority confinement is to target high-risk students and high-risk schools. The costs of these methods aren't trivial, nor are the challenges in implementing them, but Hirschfield points to several successful models.

In the next article, "Can Foster Care Interventions Diminish Justice System Inequality?," Youngmin Yi and Christopher Wildeman examine how the foster care system channels children and adolescents into the justice system, especially poor minority children. The child welfare system has long overlapped with the justice system, but this topic has yet to receive the attention it deserves. Just as there's

a school-to-prison pipeline, there is also a foster-care-to-prison pipeline.

Drawing on extensive research, Yi and Wildeman show that children and youth in foster care are more likely to be racial/ethnic minorities and to come from poor families. Youth in foster care are more likely to experience juvenile justice contact, and to be arrested and incarcerated once they become adults. Moreover, placement in foster care is associated with higher risks of substance abuse, housing instability, lower educational attainment and poorer job prospects, teen pregnancy, and compromised mental health. Finally, those who age out of foster care at 18 are more at risk for homelessness, unemployment, and incarceration in early adulthood. Foster care thus contributes to inequality in both the justice system and wider society.

Yi and Wildeman examine what happens to children during their stay in foster care and after they age out of the system. The authors offer strategies that could reduce justice system inequality at both stages. With respect to foster care placement, they suggest improving the stability, quality, and permanence of placements; offering more support for caregivers; and expanding and improving access to substance use and mental health treatment. As for aging out, they recommend extending foster care placement and services beyond age 18, providing legal support for foster youth, extending employment and educational support, and providing housing and health care for late adolescents and young adults.

Justice System Avoidance

The next article looks at one of the most popular reform policies for reducing justice system inequality: diversion away from the

justice system. Along with decriminalization, due process, and deinstitutionalization, diversion was a popular juvenile justice policy during the 1970s.⁶ In “Decriminalizing Racialized Youth through Juvenile Diversion,” Traci Schlesinger makes an important distinction between informal and formal diversion. Informal diversion keeps youth out of the justice system entirely, while formal diversion entails providing services to youth in the hope of minimizing their involvement with the justice system. Schlesinger argues that informal diversion is best suited for low-risk youths, while formal diversion is a better fit for those at high risk. She concludes that these two forms of diversion can reduce overall involvement in the justice system, confinement in punitive settings, and racial disparities.

Schlesinger finds obvious gaps in the research, and notes several challenges to making diversion policies successful—for example, the need for risk assessments that don’t replicate racial disparities. In addition, the strategy of formal diversion requires that youth be able to access extensive services in the communities where they live, rather than in the justice system, a condition that’s becoming more difficult at a time when cities and states face budget crises and federal funds are dwindling or have been eliminated. Finally, we must ensure that diversion programs are properly implemented and that the youth who begin diversion programs actually complete them.

Justice System Reform

The next four articles deal with various aspects of the justice system. In the first one, “‘Kids Do Not So Much Make Trouble, They Are Trouble’: Police-Youth Relations,”

Rod Brunson and Kashea Pegram focus on the police, arguably the most visible component of the justice system. Examining research on policing practices regarding children and youth, the authors find that police officers wield enormous discretion and that their encounters with youth, especially those of color, are fraught with difficulties. Considerable evidence shows that young black and Latino youth have disproportionate contact with the police, and that direct and indirect experiences with the police shape youths’ attitudes toward them. Finally, and not surprisingly, much of the tension surrounding the police and communities of color results from perceptions of the heavy-handed policing strategies—like stop, question, and frisk—predominantly used in high-crime neighborhoods that typically have a higher proportion of people of color as residents. These policies contribute to justice system inequality, especially with regard to race, ethnicity, and social class.

Brunson and Pegram offer three strategies to reduce justice system inequalities in policing. The first is the now familiar recommendation to improve trust between residents and the police. Though doing so may not be easy, the authors point to emerging evidence that the police can help residents build the collective efficacy to promote informal social control, and that increased interactions with youth can shift attitudes toward the police in a positive direction. The second recommendation involves continuing the use of consent decrees, which are legal channels to reform the police. Though consent decrees are promising, research hasn’t definitively established that they can reduce justice system inequalities and restore public confidence in the police. The third recommendation is that police chiefs should take the lead in reducing the

number of civilians killed by the police in their departments. The authors note that the Black Lives Matter movement is drawing nationwide attention to racially biased policing with respect to lethal and nonlethal police violence. They write that “substantial reductions in the number of civilians killed by officers would help assuage tensions concerning the ultimate justice system inequality.”

The second article in this set focuses on jails, which despite their ubiquity are one of the least explored aspects of the justice system. Although the US prison population far exceeds the jail population on any given day, each year more than 13 million people move in and out of America’s more than 3,000 jails. Along with this constant churn, the jail population’s composition presents its own set of challenges—for example, most people held in jail have not been convicted of a crime.

In “Jails and Local Justice System Reform: Overview and Recommendations,” Jennifer Copp and William Bales provide a comprehensive look at jails, including the facilities and operations, characteristics of those held in jail, and conditions of confinement. The authors conclude that justice system inequality is increased both by current pretrial release practices and by the lack of programs for those who have been convicted and are serving time in jail—people who are often struggling with poverty, unemployment, homelessness, poor physical health, mental illness, or substance abuse.

With respect to policy, Copp and Bales devote considerable attention to nonfinancial forms of release for those being held in jail while awaiting trial. They contend that cash bail should be used only for accused offenders who pose a legitimate flight risk

based on validated risk assessment tools. Otherwise, accused offenders, especially those who are indigent, should be allowed to stay in their communities so they can keep their jobs while awaiting trial. Copp and Bales’s other policy recommendations include adopting validated pretrial risk assessment tools, expanding pretrial services, increasing the use of diversion away from the justice system, finding alternatives to jail incarceration for convicted offenders, and expediting case processing to decrease both the time to trial and the overall length of stay. To fully implement these recommendations, more research will be needed to establish which policies, programs, and practices are best for the jail population. The authors make a convincing case that jails should be front and center in discussing reforms to downsize prison populations at the state and federal level.

The third article in this set covers probation—that is, supervision in the community instead of imprisonment. America’s exceptionally high rates of incarceration are well documented, but we also have high rates of probation. Indeed, for both juveniles and adults, probation has long been the most commonly imposed sanction in the justice system. Yet surprisingly little research has explored probation and its role in exacerbating inequality in the justice system.

In “Ending Mass Probation: Sentencing, Supervision, and Revocation,” Michelle Phelps asks whether probation is a *net-widener* (that is, whether it simply places more people under the control of the justice system) or a true alternative to imprisonment. Her answer is that it’s both. She looks at three aspects of probation—which people are sentenced to probation, the experience

of supervision, and trends in revocation of probation—and pays special attention to the ways mass probation affects individuals, families, and communities.

Phelps makes a number of policy recommendations to reduce the justice system inequality generated by mass probation. These include avoiding net-widening by embracing true decriminalization and diversion; improving supervision through smaller probation caseloads and ensuring that those on probation are appropriate candidates; and reducing the number of conditions—especially those that create hardships for probationers—as well as the time period and the overall rate of probation revocation. In particular, Phelps calls for eliminating a return to prison for technical violations of probation conditions.

The fourth and final article in this set examines how parental incarceration affects children and youth. Researchers have documented the harmful consequences of parental incarceration for children and youth across a number of domains. These effects are felt more acutely by black and Hispanic children and by children living in disadvantaged neighborhoods. In “Parental Incarceration and Children’s Wellbeing,” Kristin Turney and Rebecca Goodsell find that parental incarceration has been linked to a wide range of negative outcomes for children and youth. These include behavioral problems like aggression, educational outcomes such as being held back a grade, health outcomes such as depression, and hardship and deprivation, including homelessness and food insecurity. Many contingencies can affect these outcomes: the nature of the parent-child bond, maternal versus paternal incarceration, whether

the incarcerated parent is custodial or noncustodial, and contact with the parent during incarceration, to name a few. In their review of programs designed to improve the wellbeing of children whose parents are incarcerated, Turney and Goodsell reveal an interesting mismatch: while many programs focus on maternal incarceration, the effects of paternal incarceration appear to be more profound. Even more important, the authors suggest other types of programs that may reduce inequalities among these children, including interventions that strengthen parental relationships, enhance economic wellbeing and reduce child poverty, and improve access to substance abuse treatment.

Moving Policy Forward

As I mentioned at the outset, inequality is a prominent topic of discussion and debate in the United States today. I’ve argued that although serious inequalities exist even before justice system involvement, the justice system itself exacerbates inequality, especially for blacks and other minorities.⁷ Each article in this issue highlights justice system disparities with respect to race, ethnicity, and socioeconomic status. Moreover, the authors make it abundantly clear that justice system policies, programs, and practices affect not just individuals but also families, schools, and communities at large.

The articles discuss strategies that may well reduce justice system inequality. I’d like to make several points that put these recommendations in a broader context. First, it’s not easy to change policies to reduce justice system inequality, especially with regard to racial disparities. For example, a recent report by the Sentencing Project shows that although the number of youths sent to juvenile facilities after adjudication

dropped by 47 percent between 2003 and 2013, racial disparities didn't improve; in fact, the gap between black and white youth in secure confinement increased by 15 percent.⁸ Second, in any of the topics covered in this issue, we can't ignore the enormous variation in the treatment of youth and the consequences they experience. Such heterogeneity is evident in school experiences, foster care placements, interactions with the police, jail stays, and probation experiences at the individual, city, county, and state levels.

Third, data on crime and the justice system response are notoriously weak. We need stronger data and a broader research infrastructure to successfully translate research into effective and fair justice system policies. Fourth, there are important gaps in our data—for example, we know very little about LGBT youth in the justice system—and in our research. We need more research on such topics as alternatives to out-of-school suspensions; extending the age of foster care; the effectiveness of consent decrees in police departments; establishing the best policies, programs, and practices for the jail population; and matching youths' needs to particular diversion programming. We often lack causal evidence regarding the effects of policies, programs, and practices. Finally, we must move beyond assessing what works to assessing why something works, and for whom. To do so, we'll need to test the underlying mechanisms of our policy interventions.

In the meanwhile, we can do better. We do know that the justice system exacerbates inequality, and we must change the policies,

programs, and practices that do so. In an interesting article, Harvard economist Sendhil Mullainathan advocates a different approach to reducing inequality.⁹ Using the metaphor of headwinds and tailwinds, Mullainathan writes that “we tend to remember the obstacles we have overcome more vividly than the advantages we have been given.” A fruitful strategy might be to remove headwinds, which make progress more difficult, and at the same time promote tailwinds, which help us move forward. Indeed, the authors in this issue call for removing headwinds by such means as reducing out-of-school suspensions, ending cash bail, and lessening the conditions for probation. They also call for creating tailwinds by, for example, extending foster care beyond age 18, providing community-based alternatives to jail, and creating place-based and school-based services for the children of incarcerated parents.

My hope is that we can experiment with policies, programs, and practices to shape research and simultaneously generate new research to shape policies, programs, and practices—breaking down the barriers between the research and practice communities and creating a dynamic two-way street between them. Thus it's vital that scholars craft research agendas that are relevant for policy and practice. This idea is captured in what I call translational criminology, which offers a new view of the research enterprise by engaging practitioners and policy makers throughout the research process.¹⁰ Insights from policy makers and practitioners in the field are crucial to the research process and essential for moving policy forward.

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The Role of Schools in Sustaining Juvenile Justice System Inequality

Paul J. Hirschfield

Summary

Children's school experiences may contribute in many ways to disproportionate minority contact with the juvenile justice system, writes Paul Hirschfield. For example, research shows that black students who violate school rules are more often subject to out-of-school suspensions, which heighten their risk of arrest and increase the odds that once accused of delinquency, they'll be detained, formally processed, and institutionalized for probation violations.

Hirschfield examines two types of processes through which schools may contribute to disproportionate minority contact with the justice system. *Micro-level* processes affect delinquents at the individual level, either because they're distributed unevenly by race/ethnicity or because they affect youth of color more adversely. For example, suspensions can be a micro-level factor if biased principals suspend more black youth than white youth. *Macro-level* processes, by contrast, operate at the classroom, school, or district level. For example, if predominantly black school districts are more likely than predominantly white districts to discipline students by suspending them, black students overall will be adversely affected, even if each district applies suspensions equitably within its own schools.

Some policies and interventions, if properly targeted and implemented, show promise for helping schools reduce their role in justice system inequality, Hirschfield writes. One is school-based restorative justice practices like conferencing and peacemaking circles, which aim to reduce misbehaviors by resolving conflicts, improving students' sense of connection to the school community, and reinforcing the legitimacy of school authorities. Another is Positive Behavioral Interventions and Supports, a multi-tiered, team-based intervention framework that has proven to be effective in reducing disciplinary referrals and suspensions, particularly in elementary and middle schools. However, he notes, if successful programs like these are more accessible to well-off schools or to white students, they may actually exacerbate inequality, even as they reduce suspension for blacks.

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John Laub of the University of Maryland reviewed and critiqued a draft of this article.

Juvenile delinquency, in its most common forms, is an equal opportunity endeavor. White, black, Latino, Asian, and Native American youth all commit delinquent acts, albeit with varying frequency. But delinquents face very different risks of legal consequences depending on their racial or ethnic backgrounds. For example, in the late 1980s and early 1990s, a self-reported offense committed by a black juvenile in Rochester, NY, was about 3.6 times more likely to result in police contact than an offense reported by a white juvenile. Offenses by Latino youth were nearly twice as likely to do so.¹ Around the same time, offenses in Seattle's high-crime neighborhoods were twice as likely to lead to juvenile court referrals when the offender was a black juvenile rather than a white juvenile (and if they were drug offenses, 8.5 times as likely). Offenses committed by Asian Americans were three times as likely to lead to juvenile court.²

Studies of Pittsburgh and Chicago later in the 1990s also found that black juvenile offenders are more likely to be arrested than whites (and Latinos in Chicago), even after taking into account frequency of offending and other risk factors.³ The disparate juvenile justice outcomes facing otherwise similar youth of varying ethnic backgrounds are the central problem in the field of research and advocacy that focuses on disproportionate minority contact (DMC).

Decades of research on DMC have documented its scope and resilience. Researchers have found that compared to whites, black delinquents face an elevated risk of formal court processing (as opposed to release or diversion), transfer to criminal court, juvenile detention, and out-of-home

placement. Native American and Latino delinquents are also overrepresented at various stages of juvenile justice processing, but less consistently and less severely than African Americans are. Explanations for these disparities include biased assessments of need, threat, and blame; differential access to private treatment; geographic variation; legal factors (such as prior record) that disadvantage minorities; and extralegal factors (such as poverty, family stability, and perceived family supervision) that do the same.⁴ School experiences also vary markedly by race and ethnicity, and some school-related factors demonstrably affect the risk and intensity of juvenile justice involvement. The first purpose of this article is to review the evidence regarding how disparate school experiences contribute to DMC. Second, based on that review, along with evidence from evaluations of alternative school disciplinary and policing approaches, I will discuss school and juvenile justice reforms that could diminish the influence of schools on DMC.

Like DMC research more generally, this article focuses not on ethnic differences in behavior but on differential responses to misbehavior, and how schools deliver and facilitate such responses. Accordingly, the ways that schools likely increase racial/ethnic differences in offending fall outside the scope of this review. In brief, schools likely contribute to differences in offending by providing less engaging, therapeutic, and supportive environments to students of color, thus leading to differences in school achievement, engagement, and bonding.⁵ Because of racial and economic segregation, minorities are also more likely to attend schools that are large, disadvantaged, and/or overcrowded, with less cohesive social climates.⁶ Although these dimensions of

racial inequality are important, I'll touch on them only to the extent that they contribute to racially disparate *responses* to delinquency, and to the discussion of the impact of particular reforms—for example, reductions in DMC can conceivably be undermined by declines in school achievement and safety.

Out-of-School suspensions are prevalent, vary markedly by race and ethnicity, and demonstrably influence some forms of juvenile justice processing.

The mechanisms through which schools contribute to DMC can be divided into two main types. *Micro-level processes* elevate individual delinquents' risk of an adverse juvenile justice outcome and contribute to DMC, either because they're distributed unevenly by race/ethnicity or because they affect youth of color more adversely. For example, suspensions can be a micro-level factor if biased principals suspend more black youth or if suspensions differentially worsen juvenile justice outcomes for black youth.

Macro-level processes, by contrast, don't depend on discriminatory treatment at the individual level. Instead, they operate at the classroom, school, or community level. For example, let's say schools in County A apply punishments evenly by race, while those in County B do not. However, school principals in County A, which is predominantly black, are more punitive than principals in County B, which is predominantly white. Under this scenario, County A's racially equitable school practices may contribute more to overall

DMC than County B's racially inequitable practices.

The distinction between micro- and macro-level processes is an important one. Micro-level factors direct our attention to individual circumstances that disadvantage racial and ethnic minorities, and to organizational decisions that weigh such circumstances. Macro-level factors call for broader policy interventions, such as equalizing practices and resources or distributing white and black students more evenly across schools and communities.

Micro-Level Mechanisms Linking Schools and DMC

The race-linked school factor that has received the most attention from researchers and policymakers concerned about DMC is punishment. Out-of-school suspensions (hereafter simply referred to as *suspensions*) are particularly important because they're prevalent, they vary markedly by race and ethnicity, and they demonstrably influence some forms of juvenile justice processing. During the 2013–14 school year, 18 percent of black male and 10 percent of black female public school students in the United States received at least one suspension, rates that were 3.6 and 5 times higher, respectively, than those of white boys and girls.⁷ Native American and Latino boys (but not girls) were also suspended at higher rates, although these disparities from white boys (6 percent and 2 percent, respectively) were substantially lower than among black boys.⁸

Several studies suggest that differences in student behavior and academic performance can explain only some of the black-white gap in office disciplinary referrals and suspensions. Perhaps the most important antecedent is the frequency of behaviors

that commonly invoke school punishment, such as physical aggression and defiance. Studies have found that after controlling for teacher reports of the frequency of such behaviors, along with other predictors, substantial racial gaps in disciplinary referrals remain.⁹ A recent national study of 10th-grade suspensions reported similar residual gaps after controlling for students' self-reported school fighting, frequency of substance use, and tolerance toward various school misbehaviors.¹⁰ Statistical controls for school effects preclude that this large race effect was due to the concentration of African Americans in disorderly or punitive schools (although their concentration in such classrooms may have played a role).

A second national study found that blacks faced a higher risk of suspensions in eighth grade, after controlling for parental reports of cheating, stealing, and fighting, as well as school characteristics. However, unlike in most studies, the racial gap vanished after controlling for the average of teacher reports of misbehavior in kindergarten through third grade. Early teacher reports may capture not only behavioral trajectories but also racially conditioned reputations earned from past disciplinary experiences and carried into the middle school years. But reputations developed in third grade or earlier could plausibly influence disciplinary decisions in eighth grade only if those reputations were sustained by continued deviant involvement.

Although statistical findings about how race affects suspensions may leave some room for doubt, racial impacts also emerge in ethnographic accounts of teachers' culturally biased perceptions of threatening behavior. This was supported by a recent study showing that students with darker skin tones, especially African American girls,

are more likely to be suspended.¹¹ It bears remembering that studies limited to public schools or to single urban school districts are likely to understate the racial/ethnic gaps in suspensions, because white students disproportionately attend private and suburban schools.

In contrast to studies of the black-white suspension gap, most studies that examine the Latino-white suspension gap suggest either that the gap isn't statistically significant or that it's explained by differences in misbehavior and other risk factors.¹² At least two studies have found an Asian-white gap that remains even after controlling for factors such as teacher and school characteristics, suggesting discrimination favoring Asian Americans.¹³

The association between suspension and race merits extra scrutiny, because this particular school-related explanation for DMC is the most prominent one in descriptions of a school-to-prison pipeline. First and foremost, barring students from school gives them more unsupervised time in the community, thus leaving them more vulnerable to police targeting. A study of an urban school district—one that echoed the results of an earlier, less rigorous study of two major metropolitan areas—compared the differences between suspended and non-suspended students on school days versus on weekends and holidays, and estimated that suspensions double the risk of arrest (and increase felony arrests).¹⁴ Suspension effects were especially pronounced for African American students and were not statistically significant for Latino and Asian American students. This pattern suggests that suspensions compound the elevated police scrutiny already faced by African American youth, and/or that suspended nonblack

students experience more restraints (such as tighter supervision) on delinquency. The links between race and suspensions and between suspensions and arrest are so strong that, in a national study of teen behavior during the late 1990s, they accounted for the marginal effects on arrest of being black, net of delinquency, socioeconomic status, and dropping out.¹⁵

Suspensions are far from the only school reaction to misbehavior that can reinforce DMC. Severe or chronic misbehavior (whether it's on or off campus) often triggers disciplinary transfers to alternative schools. Following the institutionalization of zero-tolerance policies and high-stakes testing, alternative schools for at-risk youth grew nationally to as many as 20,000 by 2002.¹⁶ Not surprisingly, African American students face a higher risk of disciplinary transfer to an alternative school. A recent study of one Kentucky school district found that black students were nearly 3.5 times more likely to be placed in alternative schools than either whites or other minority groups.¹⁷

Attending a such a disciplinary school likely boosts young people's involvement with the juvenile justice system. First, police may identify alternative schools as high-risk zones and give young people in the vicinity extra scrutiny, especially if their ethnicity makes them stand out.¹⁸ Moreover, officially designated alternative schools aren't the only schools that can become hyper-criminalized. My research on Chicago high schools demonstrates that court-involved youth tend to concentrate in particular mainstream schools, and that the prevalence of such youth in many high schools far exceeds the arrest prevalence rates in the neighborhoods feeding those schools. Two processes likely produce these sites of hyper-concentrated

juvenile justice contact, which serve African American students almost exclusively. First, exclusionary policies permit Chicago schools to transfer students to other schools for disciplinary reasons and to exclude youth who are arrested off campus or who are released from secure facilities.¹⁹ Second, expanded school choice makes it harder for unsafe or underperforming schools to attract students in their own neighborhoods, leading to declining enrollments. To stem the decline, these underperforming schools become default options or dumping grounds for students who are unwelcome in other schools. Police may see students of both official and de facto alternative schools as attractive targets for stops, because those students are statistically more likely to have active warrants or probation/parole status (which subjects them to warrantless searches).

The second way alternative schools may contribute to DMC is through interagency partnerships. In 2000–01, 84 percent of public school districts with alternative schools and programs reported that they had partnered with the juvenile justice system to provide services, while 70 percent partnered with the police or sheriff's departments. Presumably, working relationships with police, and with juvenile justice workers such as probation and parole officers, make these schools relatively likely to summon these agents and relay incriminating information to them.

A strong working relationship with police isn't unusual. According to estimates stated on the website for the National Association of School Resource Officers, between 14,000 and 20,000 police officers are stationed at least part-time in nearly 30,000 US schools. When schools have police on the premises,

misbehavior is more likely to come to police attention, to be defined as a crime, and to precipitate arrest and school exclusion.²⁰ During the 2011–12 school year, public schools referred 260,000 incidents to law enforcement and police made 92,000 school-related arrests.²¹ The proportion of black students among school arrestees was 31 percent, nearly double their 16 percent share of the enrollment population.²² Latino students were proportionately represented among school arrestees, whereas white and Asian American students were underrepresented.²³

The degree to which racial disparities in school arrests help explain DMC as a micro-level factor depends largely on two things. The first is the extent to which these racial disparities reflect differential responses as opposed to legitimate behavioral explanations. The second is what happens to young people in the juvenile justice system following school-related arrests, and any racial disparities therein.

How closely do racial differences in school arrests reflect racial differences in misbehavior? Unfortunately, the research on school arrests and court referrals doesn't offer a definitive answer to this question. Nonetheless, behavioral explanations seem insufficient. Analyses of school arrests and referrals in various jurisdictions have found that the most common offenses triggering school arrests are fighting and disorderly conduct (including disruptive or disrespectful behavior).²⁴ National self-report data suggest that black 10th-graders fight in school about 35 percent more often than white, Latino, or Asian students.²⁵ But the observed racial gaps in the risk of school arrests are typically at least 100 percent, suggesting that police are more inclined to

arrest black students who fight than white ones.

Indeed, analyses of disciplinary incidents that were reported to the police in West Hartford, CT, in 2005–07 revealed that among students involved in fights, blacks were markedly more likely than whites and Latinos to be arrested: 23 percent of the black fighters were arrested, compared to 11 percent of whites and 14 percent of Latinos.²⁶ The fact that white students were more likely than black students to use illicit substances and “had higher levels of attitudes supporting deviant behavior compared with black students” also casts doubt on behavioral explanations for huge racial disparities observed in school arrests for public order offenses in Boston and in drug arrests in East Hartford, CT.²⁷ In East Hartford schools in 2005–07, “incidents involving drugs, alcohol, or tobacco” were more than 10 times as likely to precipitate an arrest when the suspected students were black or Latino rather than white.²⁸

The role of school arrests in DMC also depends on the legal consequences of those arrests. If the vast majority of school arrests lead only to release without charges or to a juvenile court case that's diverted or dismissed, then school arrests have a limited direct impact on DMC. Unfortunately, we don't know the share of total US school arrests that are referred to court, nor do we know the eventual outcomes of such cases. We do know that in Connecticut, 52 percent of the 3,183 school arrests in 2011 were referred to juvenile courts.²⁹ We also know that US schools directly referred about 31,000 truancy cases to juvenile courts in 2013 (among about 55,600 total truancy cases).³⁰ But referral practices appear to vary widely by jurisdiction. In some places, such as Texas, Arizona, and Hawaii, school

referrals represent such a small share of juvenile court or probation caseloads (less than 6 percent) that they likely explain only a small portion of overall DMC.³¹ On the other hand, school referrals elsewhere constitute a substantial share of referrals. For example, in Texas in 2009–10, only 5,349 referrals to juvenile probation (6 percent of the state’s caseload) originated from schools. But Florida schools referred 26,990 cases (an estimated 22.5 percent of all delinquency cases) to juvenile courts during the 2004–05 school year. And for a time, schools in Clayton County, GA, referred so many students to courts (90 percent for offenses formerly handled by school officials) that they constituted nearly 25 percent of the total juvenile court caseload at their peak of 1,262 in 2003.³²

Thus, in some jurisdictions, racial disparities in school-based court referrals likely contribute directly and significantly to racial disparities in court participation. But even in these places, school-based referrals may contribute little to the disproportionate confinement of minorities. In a 2012 online survey, 40 percent of juvenile court judges reported that school officials encouraged placing status offenders in juvenile detention, but that says little about how often school offenders were actually detained.³³ Out-of-home placement (including youth prisons, group homes, residential treatment centers, boot camps, etc.) is even less likely to result from a school arrest. A study of 25,580 Missouri juvenile court cases processed in 2000 found that only 8.2 percent of cases originated from schools, and 10.7 percent of those cases resulted in out-of-home placement.³⁴ Overall, school-based referrals accounted for only 2.8 percent of the juveniles receiving out-of-home placement. But even school offenses that don’t lead to substantive court sanctions may influence the court processing that follows later arrests, because

they mean that juveniles have acquired a prior record or are on probation, as I discuss below.

Several of the race-linked micro-factors I’ve mentioned may contribute to DMC by increasing the likelihood that students will drop out of school. One study found that suspensions increase the risk of dropping out even after controlling for prior delinquency and a broad set of other risk factors.³⁵ This finding accords with qualitative research documenting the way disciplinary sanctions and transfers to alternative schools often push students, especially black students, out of school entirely.³⁶ Although no known studies have examined whether school arrests independently increase school dropout, rigorous evidence supports a causal connection between juvenile justice involvement and dropping out of school.³⁷ Dropping out, in turn, consistently predicts arrest and incarceration but not self-reported offending—which suggests that, like school suspensions, dropping out makes police encounters more likely.³⁸

How School Factors Affect Juvenile Justice Decision-Making

Inequality in juvenile justice outcomes often results when African Americans and ethnic minorities are judged (rightly or wrongly) by various juvenile justice decision-makers as relatively needy, at risk, or blameworthy. The school experiences I’ve discussed are among many factors that affect such judgments and, because of their skewed racial distribution, likely disadvantage African Americans. Unfortunately, among the many studies on juvenile justice decision-making, only a handful attempt to estimate the independent effect of school factors, and even fewer assess racial variation therein.

One of the first and most consequential decisions that juvenile justice authorities must make following an arrest is whether to release or to detain pending further proceedings. Racial disparities in juvenile detention were so stark that they led to DMC provisions in federal juvenile justice legislation in 1988 and 2002. Besides those provisions, a major foundation-funded reform initiative, the Juvenile Detention Alternatives Initiative (JDAI), has been implemented in almost 300 counties across the United States.³⁹ To curb secure detention, JDAI helps juvenile courts shift from subjective judgments to certain decision criteria that are demonstrably linked to recidivism. However, some of JDAI's objective risk indicators disadvantage youth who've had certain school experiences. For example, the use of prior record, pending court cases, and active probation status makes it more likely that youth with court cases stemming from school offenses will be detained. In addition, JDAI's risk assessments generally treat current school attendance as a mitigating factor. Thus, youth who are in the midst of a long-term suspension or who have been pushed out of school face a slightly greater detention risk.

One of the first and most consequential decisions that juvenile justice authorities must make following an arrest is whether to release or to detain pending further proceedings.

Some jurisdictions still rely heavily on subjective judgments of risk. Interestingly,

research fails to show that detention decisions consider school factors. A study of detention screenings in Maricopa County, AZ, in 2000–02 found that overall, out-of-school arrestees were more likely to be detained than arrestees who were enrolled in school.⁴⁰ But once the demographic, legalistic (such as type of offense, offense history, etc.), and community-level factors were taken into account, out-of-school youth were actually less likely to be detained.⁴¹ Similarly, an analysis of one Iowa county's cases from 2003–04 found that youth who weren't enrolled in school or who had school disciplinary problems faced a lower risk of detention before adjudication—an effect that was significantly more pronounced for African Americans.

Another critical decision in the juvenile justice process is whether to handle a case informally (for example, through diversion) or to recommend it for further court processing. Most cases recommended by intake staff for further court processing are subject to a formal petition at the discretion of a prosecutor. Thus the decision to *formally process* alleged delinquency generally entails affirmative decisions on the part of both intake staff and a prosecutor. Two studies of such formal processing decisions permit us to estimate the separate effects of having disciplinary problems in school and not attending school at all. One study involved delinquency cases from three Iowa jurisdictions in 1980–91; the other involved the same Iowa county mentioned in the previous paragraph, covering 1980–2000.⁴³ Both studies found that both disciplinary problems and dropping out made intake officers more likely to recommend formal processing, although in the multi-jurisdiction study, disciplinary problems had this effect in only one of the jurisdictions.⁴⁴ The single-

jurisdiction study also examined prosecutors' decision-making, and found that it was only among African Americans that disciplinary problems significantly increased the odds that prosecutors would file a formal petition; dropping out had no effect.⁴⁵

The next major processing outcomes are generally joint products of plea bargaining and judges' decision-making. Research on adjudication tends to find minimal or even reverse racial bias at this stage.⁴⁶ The one known study that examined the independent effects of disciplinary problems and dropping out on adjudication found that neither had any effect.⁴⁷

Racial disparities are often seen at the disposition stage, however, possibly because decision-makers at this stage are explicitly authorized to consider extra-legal factors. The majority of juvenile justice professionals in two of three courts interviewed for a 1996 study said that school records should influence dispositions; also, 35 percent of the overall sample said that attending a bad school or not attending school factored into harsh dispositions.⁴⁸ Researchers have found that African American and Latino delinquents are markedly more likely than whites to be sentenced to traditional out-of-home placements such as "training schools," after controlling for a plethora of outcome-related factors.⁴⁹ Some of these studies don't control for school experiences, allowing the possibility that school factors explain some of the racial gaps. But the four known studies on dispositional decision-making that include controls for school factors largely suggest otherwise. Three studies measured the impact of school enrollment, and only one of them—the one that covered the single Iowa court from 1980 to 2000—found that school factors increased the likelihood of out-of-

home placement versus juvenile probation.⁵⁰ That study, the only one that isolates the impact of school disciplinary problems, found that those problems had no effect.⁵¹ The 2003–04 study from the same county found that a measure combining non-enrollment and disciplinary problems actually lowered the risk of out-of-home placement for African Americans.⁵²

By far the most common disposition in juvenile courts is probation. Although school factors seem to wield little influence over whether juveniles are sentenced to probation versus out-of-home placement, they often help determine the fate of juveniles on probation. Probationers must comply with specific terms of supervision or face short-term confinement in a juvenile detention center, and possibly longer-term detention or out-of-home placement if probation is revoked.⁵³ Like curfews and drug tests, school attendance is a standard condition of juvenile probation (as well as juvenile aftercare/parole).⁵⁴ Being suspended from school may also violate the terms of probation.⁵⁵ Thus differences between whites and African Americans in school enrollment and discipline may mean varying rates of noncompliance with probation terms—which, in turn, could help account for racial gaps in detention and incarceration.

No known studies have directly assessed that notion, unfortunately, but several studies collectively build a strong indirect case. First, some but not all studies have found higher rates of technical violations or revocation among African American and Latino juvenile probationers.⁵⁶ Second, because school enrollment and attendance are standard conditions of probation, not attending school is a frequent probation violation. A study in three Iowa counties in 2005–06 found

that “school issues” (which weren’t defined) were the most common probation violations noted at detention hearings.⁵⁷ Similarly, a mid-2000s study of 120 probationers in an urban Mid-Atlantic county found that noncompliance with school requirements was the third most common violation preceding a decision to revoke probation (the first two being failed drug tests and missed court hearings).⁵⁸ Third, these studies suggest not just that school issues represent frequent probation violations, but also that some judges take these violations especially seriously. For example, although the Iowa study found that a probationer’s violation of school conditions wasn’t generally an aggravating factor in detention decision-making, in the jurisdiction with the largest minority presence (a fairly even mix of African American, Latino, and Native American youth), probationers with school issues were four times as likely to be placed in secure detention at the 24-hour detention hearing, after controlling for a variety of psycho-social, legalistic, and demographic risk factors.⁵⁹ The Mid-Atlantic study above found that at revocation hearings, probation was 11.3 times as likely to be revoked when the violation was not attending school—an odds ratio that was even higher than that estimated for re-arrest (8.1).⁶⁰

Macro-Level Mechanisms Linking Schools and DMC

So far I’ve focused on processes that operate at the individual level, especially the race-linked school factors that influence decisions to discipline, arrest, and impose legal sanctions on youth. But DMC doesn’t require biased decision-making on the part of individual principals, police officers, or juvenile justice officials. Even without biased decision-making, DMC would still

result from the policies and practices of the schools, police, and juvenile courts that some racial and ethnic groups are more likely to encounter because of racial segregation.

School Disciplinary and Policing Practices

Among school policies and practices, disciplinary codes and their enforcement may exert the greatest impact on DMC. Research has shown that black students, on average, attend schools where certain behaviors are more likely to earn suspensions than the same behaviors would in other schools, and where suspensions last longer.⁶¹ Although inter-school racial variation isn’t always evident within individual school districts, which may operate under uniform disciplinary codes, vast differences prevail from district to district.⁶² Analyzing data from 2009–10, one study found that the percentage of black students strongly predicts higher suspension/expulsion rates at both the district and school level. By contrast, the percentage of Latino students was associated with lower suspension and expulsion rates.⁶³

Black students, on average, attend schools where certain behaviors are more likely to earn suspensions than the same behaviors would in other schools.

Studies have also found that schools’ racial composition often boosts individuals’ risk of disciplinary referral and suspension beyond the effect of individual risk factors (including race) and other school characteristics.⁶⁴ For

example, black students in a Midwestern state were more likely to be suspended largely because of differences in their schools' racial composition and failure rates on state math and English exams.⁶⁵ Some see such patterns as signs of fear and hostility directed toward black students (also called *racial threat*), buttressed by a recent study suggesting that an increased black or Latino presence fails to increase schools' suspension rates for white students, and actually seems to decrease it.⁶⁶ But this pattern may also result from the concentration of acutely disadvantaged, disengaged, and disruptive students (as indicated by lower test scores and grades) in districts and schools that lack the resources to cope with those students through non-exclusionary means.

Whether the cause lies in racialized perceptions of "threat" or concentrations of acute disadvantage and disengagement, African Americans more often attend schools that practice harsh discipline. Such schools increase the risk of juvenile justice involvement through other means as well. First, these schools are more likely to arrest students and refer them to court. An analysis of national data in 2009–10 shows that schools' percentage of black students (but not of Latino students) predicted their rates of court referrals and arrests, after controlling for contextual factors.⁶⁷ The analysis didn't control for student misconduct, but a previous national study found that a school's percentage of black students was positively associated with principals' self-reported use of an "extreme punitive disciplinary response" (for example, police involvement and court referrals) after controlling for perceptions of safety, as well as student delinquency and drug use.⁶⁸ Second, schools that practice harsh discipline seemingly pursue fewer

alternatives to exclusion and arrest. Using the same data and methods, another study found that higher proportions of either black or Latino students predicted that a school would use fewer restorative practices such as restitution and peer mediation.⁶⁹ However, the expansion of such practices in the years since the study data were collected (1997–98) may have altered that dynamic.

Another alternative to exclusionary practices is to secure special services and protections, by screening more troubled students for learning disabilities or behavioral disorders. Such diagnoses are more likely to lead to an alternative to exclusion and arrest in affluent school districts, which find it easier to hire and retain special education teachers. These districts also have the resources to provide required services—such as those specified under Section 504 of the Rehabilitation Act of 1973—without federal help. Accordingly, even though districts and schools with more African Americans tend to have more youth with learning and behavioral problems, those districts and schools offered fewer students services under Section 504. Schools with a higher proportion of Latino students are also less likely to offer Section 504 services.⁷⁰ The most prominent special education alternative to exclusion and criminalization is individualized services under the framework of Positive Behavioral Interventions and Supports (PBIS), which can help troubled youth build new skills and change their milieu to avoid reinforcing negative behavior.⁷¹ Lack of resources (such as sufficient counseling staff) is widely recognized as a major obstacle to successfully implementing PBIS, especially in large districts like Chicago where "the scope of students' needs broadly exceeded the resources available."⁷²

A student's school doesn't just affect the odds of suspension, arrest, or treatment following a legal or rule infraction; it also predicts the odds that an offense will come to the attention of the authorities in the first place, thanks to different surveillance and policing practices. As I mentioned earlier, disciplinary alternative schools draw extra police attention. But even students attending mainstream schools can be subjected to greater security and police scrutiny, especially students who are African American. First, inner-city public schools with predominantly African American enrollment tend to have the heaviest police and security presence. A typical rural or suburban high school student attends a school patrolled by a single officer, who may even be shared with other schools in the district. But typical inner-city high schoolers fall under police gaze many times during the school day, whether at the entrance gates, at the metal detector, on closed-circuit TV screens, or after school.⁷³ Though a heavy police presence may help such schools keep disorder and crime in check, it also means that more students are escorted out in handcuffs for such noncriminal rule violations as failing to present ID when asked, cussing out a security guard, or refusing to remove clothing that violates a dress code.⁷⁴

Research on Chicago high school students suggests that students at some predominantly African American schools may also face more police scrutiny en route to and from school, because they're more likely to have to walk or take public transportation. Furthermore, thanks to racially imbalanced neighborhood school closures, these students must often endure longer commutes that may require traversing hostile or high-crime neighborhoods.⁷⁵ Thus overall racial differences in suspensions can be partially

explained by differences between black and white students in the likelihood of attending schools that draw more intensive surveillance, coupled with more pronounced racial differences in suspensions within such schools.⁷⁶

Given that school exclusion is thought to affect DMC through numerous micro-level processes, and that differences in school and court practices can also affect DMC in multiple ways, tests of these individual links tell us little about schools' overall or cumulative effects on DMC. But a couple of studies do offer rough estimates of such overall contributions. The first of these studies, undertaken in Texas, found that in a given year, schools with higher rates of suspensions and expulsions than their demographics and achievement test scores would predict also have more students that year with juvenile court referrals. Interestingly, the study also found that among urban schools, leniency (that is, less punishment than demographics and achievement scores would predict) was also associated with more juvenile justice referrals; the same was not true of rural and suburban schools. Unfortunately, the lack of behavioral measures and a longitudinal design precludes discerning whether leniency and strictness affect delinquency or reactions to delinquency, or vice versa.

The second study was more sensitive to variation in district-level processes, because it examined the effects of variation between counties rather than between schools. It found that in Missouri, county-level racial disparities in suspensions strongly predicted counties' racial disparities in juvenile court referrals, after controlling for racial disparities in poverty and rates of black employment.⁷⁷ Unfortunately, this study also

couldn't rule out the possibility that racial disparities in the frequency of offending explain racial differences in both suspensions and court referrals (although it did demonstrate that blacks have a higher risk of suspension following a disciplinary referral).

Implications for Policies to Reduce DMC

Research evidence suggests that a host of school-related individual experiences and contextual factors help explain DMC. Reformers seeking to reduce DMC could target any number of these factors. Since I don't have space in this article to thoroughly discuss policies that could ameliorate each one, I focus on policy interventions that fit three criteria:

1. They target the school-related factors that are most clearly and strongly linked to DMC;
2. They seem well suited to reducing DMC without undermining outcomes of equal or greater social value, like school safety and performance; and
3. They are politically plausible.

The second criterion is important because policies that do otherwise are self-undermining. The third criterion means I won't be discussing policies that attack the structural roots of some of the school-related contributors to DMC. For example, if schools received funding based on the needs of the student population, schools would presumably opt for effective services over cheaper alternatives like suspensions and arrest. Likewise, if systemic residential and/or school segregation ceased, differences in racial composition and commuting conditions across disparate schools and school districts

would hardly factor into DMC. But until massive redistribution and desegregation become politically viable, discussing such policies seems premature.

School-based restorative justice practices aim to reduce misbehaviors by resolving conflicts, improving students' sense of connection to the school, and reinforcing the legitimacy of school authorities.

Based on the available research and some logical conclusions we can draw from it, the school-related factors most likely to contribute to DMC are suspensions and school-based arrests and court referrals. Suspensions appear to directly increase the risk that a student will be arrested or drop out of school; these things, in turn, directly influence juvenile justice experiences like probation. Prior evidence doesn't support such a definitive statement about the impact of school-based arrests. However, the observed impact of arrests more generally, along with the fact that school-based arrests often trigger or accompany the school disciplinary process and generate a record, justify the commonsense assumption that school-based arrests have similar effects. Policies designed to reduce suspensions and arrests should also cut enrollment in officially designated and de facto alternative schools.

Fortunately, at least two common disciplinary alternatives, when implemented properly, have been shown to reduce suspensions

without discernibly harming school safety or overall performance. School-based restorative justice practices like conferencing and peace-making circles aim to reduce misbehaviors by resolving conflicts, improving students' sense of connection to the school community, and reinforcing the legitimacy of school authorities. The Denver school district is widely heralded for its restorative justice practices. Between 2005 and 2015, as restorative justice expanded from six Denver schools to citywide, school suspensions fell 64 percent even as enrollment grew steadily.⁷⁸ At the same time, Denver schools reported impressive growth in standardized academic achievement—bucking statewide trends—and a marked reduction in the dropout rate.⁷⁹ Some Denver educators have complained of worsening disciplinary problems, which may erode support for the reforms.⁸⁰ That said, this perceived disciplinary downturn hasn't translated into increased juvenile justice involvement. Law enforcement and school-based court referrals also steadily declined in Denver, thanks in part to an agreement signed by the Denver police in 2013 to “differentiate between disciplinary issues and crime problems” and to “de-escalate school-based incidents whenever possible.”⁸¹

The multi-tiered, team-based PBIS intervention framework has proven to be even more effective in reducing disciplinary referrals and suspensions, particularly in elementary and middle schools.⁸² The first tier of interventions accomplishes this by training staff in non-punitive methods of behavior management, such as teaching behavioral expectations, rewarding positive behavior, and redirecting misbehavior. Rather than suspending students who don't respond to tier one interventions, PBIS encourages structured monitoring and intensive, individualized supports, especially for

students with chronic behavioral needs. PBIS has proliferated nationally since the early 1990s; 16,000 school teams had reportedly been trained by 2012.⁸³ Though there are formidable challenges to fully implementing PBIS, such as staff resistance and insufficient resources, once they're overcome this program can keep troubled students in the classroom and the school without endangering school safety and academic performance.⁸⁴

Restorative justice practices and PBIS can dramatically curtail school suspensions, but they reduce DMC only when they're carefully targeted to particular students and schools. If successful programs are more accessible to well-off schools or white students, they may actually exacerbate DMC, even as they dramatically reduce suspension for blacks. For example, the suspension rate for black students in Denver fell from 17.6 percent in 2006–07 to 10.4 percent in 2012–13, a 41 percent decrease.⁸⁵ But during the same period, the suspension rate for white students fell 61 percent, from 5.9 percent to 2.3 percent. As a result, blacks were three times as likely to be suspended as whites in 2006–07 and 4.6 times as likely in 2012–13. The Latino to white suspension rate ratio also grew, but only slightly.

Similar patterns have followed PBIS implementation. In 2004, Maryland mandated that schools with high suspension rates implement PBIS, or another state-approved behavioral modification program, and provided statewide PBIS training. The state became a national leader in PBIS implementation, bringing the program to 1,040 schools by 2014.⁸⁶ But universal accessibility produced a sharper drop in suspensions for whites than for blacks, so that Maryland's racial gap in suspensions

actually increased between 2009–10 and 2011–12.⁸⁷ Racial gaps have also been resilient in California, despite dramatic drops in suspensions after various large jurisdictions banned suspensions for willful defiance and expanded alternative strategies like restorative justice and PBIS.⁸⁸

Although such findings are troubling, the observed drops in suspensions still benefit a higher portion of black students and may reduce DMC. Because suspension rates are much higher for blacks, a disproportionate share of students who are spared suspension (and the negative consequences like arrest) because of reforms are black. For example, 26,411 fewer black students were suspended in California in 2015 than in 2013, a number that constituted 7.1 percent of the black public school population. The 26,685 white students who were similarly spared suspension made up only 1.8 percent of the white student population. Moreover, given that marked suspension effects on arrests are evident only among blacks, comparable declines in suspensions by race should produce greater declines in arrests and juvenile court involvement for blacks—although this hypothesis needs to be confirmed empirically.

Two central factors may explain the limited success of restorative justice and PBIS in closing discipline gaps. First, in practice, these approaches reduce punishments largely by altering how teachers and administrators respond to less serious offenses like disruption, disobedience, and fights. Students who commit more serious offenses, or whose chronic misbehavior has already designated them as unredeemable, are more likely to be considered unsuitable candidates for suspension alternatives. Thus, how much each ethnic group in a school

benefits from interventions targeting lower-risk troublemakers depends on the portion of known “offenders” in each group who qualify as lower-risk. Owing to the objectively (as well as subjectively imputed) higher levels of risk factors among black students, the risk distribution of troubled black students relative to that of their white counterparts is skewed in a manner that often ensures that a smaller portion of troubled black students (versus troubled white students) benefits from suspension alternatives.⁸⁹ The same pattern holds for any other non-exclusionary intervention that selects participants by marginally lowering thresholds for inclusion on the basis of the frequency or severity of misbehavior.

The second reason for the lingering or worsening racial gaps in suspension is that the accessibility and success of disciplinary alternatives depend on school and district resources. Individualized PBIS targets the most needy (such as high-risk) students and therefore could achieve relatively steep reductions in suspension among black students. But the schools and districts where black youth with chronic behavioral problems are concentrated are often not equipped to provide intensive, diversionary services to all needy students.⁹⁰ Those services usually require more money, personnel, time, and space than are available. They also require staff with the skills and motivation to help youth from divergent cultural backgrounds and those who are receptive to receiving this help.⁹¹ White youth with chronic behavioral needs are therefore more likely to get the culturally responsive help and support they need.

Responsibly reducing racial gaps in suspensions and school-based arrests requires districts to allocate limited resources and

culturally responsive interventions in ways that largely benefit the racial and ethnic groups that suffer most from exclusion and criminalization. There are several ways to effectively target resources and policies without selecting individual students by race. The first method, mentioned above, is to direct more resources to students with chronic behavioral problems. These students are at the greatest risk of school punishment, arrest, and intensive juvenile justice system involvement.⁹² Hiring more counselors and social workers to assist youth with behavioral problems can help schools rely less on the police. For example, after the East Side Union High School District (94 percent minority) in San Jose, CA, placed social workers in each school and doubled its counseling staff, referrals to the police fell 88 percent (from 1,745 to 214) between 2011–12 and 2013–14.⁹³

A number of strategies could help equalize access to quality services. First, states can directly expand treatment access for poor students and poor school districts using federal and state resources made available by the Medicaid expansion (and overall expanded coverage) under the Affordable Care Act. Under this law, an estimated 62 million Americans were due to acquire coverage for mental health, substance use, and other behavioral health care.⁹⁴ Connecticut exemplifies this approach. In 2016, on the heels of a statewide policy of rejecting court cases arising from “normal adolescent behavior” in schools, the Connecticut legislature mandated that state education, mental health, and juvenile justice agencies devise a plan to expand behavioral health services (available through the Medicaid expansion) to “schools and school districts with high rates of school-based arrests, disproportionate minority contact, and court referrals.”⁹⁵

Of course, some states haven’t participated in the Medicaid expansion or are disinclined to try to equalize access to treatment. But county authorities can still expand use of services and reduce school-based court referrals even without a marked increase in external funding and policy support. This approach is best exemplified by Clayton County, GA, which is 70 percent black. It essentially involves reallocating resources from back-end responses to delinquency (such as court processing, probation, and detention) to front-end responses that occur before referral to juvenile court. The chief judge of Clayton County’s juvenile court, Steven Teske, recognized that the large number of juvenile court referrals from schools reflected the fact that schools lacked capacity to address behavioral problems. In response, he spearheaded a two-pronged approach. First, he and other county officials co-sponsored the Clayton County Collaborative Child Study Team (Quad C-ST), to which schools and other agencies could refer youths who needed intensive psycho-social services. Second, in exchange, the school district and the county police chief agreed to pursue diversionary options before referring students to juvenile court for misdemeanor offenses.⁹⁶ School-based referrals to juvenile court dropped precipitously immediately after implementation, and fell more than 73 percent from 2003 to 2011.⁹⁷ The felony referral rate also declined, by 51 percent from its 2004 high, while the graduation rate had increased 24 percent by 2010.⁹⁸ Although this reform didn’t necessarily reduce DMC within the county, it plausibly reduced overall DMC in Georgia, assuming that predominantly white counties achieved much smaller reductions.

Connecticut's advocacy of targeting particular schools and school districts is in keeping with the approach pursued by the US Department of Education's Office for Civil Rights (OCR) from 2011 to 2016. In accordance with stepped-up civil rights enforcement, the Obama administration defined racial disparities in suspensions and arrests within schools (and even between schools in the same districts) as actionable claims, even without evidence of intentional discrimination. The OCR conducted 204 compliance reviews and compelled many school districts to implement reforms with the goal of closing racial gaps in suspensions and/or arrests. Typically, districts were required to target the schools deemed most responsible for racial gaps. In California, for example, the Oakland Unified School District's agreement required them to "focus immediate attention and resources on those schools with the highest disproportionality in the overall use of suspensions and in suspensions by race."⁹⁹ A report prepared for the OCR tentatively claims that whole-school restorative justice was more beneficial for black students than for white students after controlling for factors such as the type of school and students' socioeconomic status.¹⁰⁰ Among schools where restorative practices were in full swing, the black-white suspension rate ratio reportedly grew between 2011–12 and 2013–14, from 1.81 to 4.64, because white students' rates fell more steeply than those of black students. But these gaps grew even more in schools that didn't implement the reforms, from 1.19 to 6.5.¹⁰¹

Although OCR priorities have shifted under the Trump administration, policy makers (especially state and local DMC coordinators) may still pursue targeted reforms to try to reduce DMC. For example, an analysis

of DMC in Peoria County, IL, led to the discovery that arrests of African Americans for fighting at a single high school accounted for an outsize portion of arrests and school-based referrals to detention. In response, restorative practices were introduced at that school and school policies were modified to accommodate them. School-based arrests for African American students then fell 43 percent, and school-based referrals to detention dropped 35 percent.¹⁰

Such analyses may reveal not only which schools generate excess court referrals, but also which ones contribute to DMC via other outcomes like probation or parole revocations. For example, a district might discover that black youth whose probation or parole is revoked due to suspension (or dropping out following suspension or school arrest) typically attend schools that pursue more frequent and longer suspensions and arrests in response to the same offenses. Rather than continuing to unfairly penalize some students for attending more-punitive schools, county officials could consider helping those schools reduce suspensions and arrests (as in Peoria) or treating attendance in a high-suspension/arrest (or high-dropout) school as a mitigating factor when considering suspensions, school arrests, and dropping out during court decision-making.

Summary and Conclusions

Discussions of DMC tend to downplay the role of schools in favor of other explanations, such as biased decision-making, family structure, and differential access to treatment. But research suggests that schools can not only augment these processes but also independently reinforce DMC—both through differential treatment and through differential policies with respect

to suspensions, arrest and court referrals, disciplinary transfers, school choice, school closures, commuting conditions, and concentrations of court-involved youth. In addition, some juvenile court decisions—such as those regarding detention, court intake, or revocation—weigh school status in a manner that may disadvantage black youth (although opposing patterns have been observed with respect to detention and disposition).

School suspensions, the most definitive school-related contributor to DMC, appear to be the most amenable to policy intervention. Policy makers can reduce DMC without undermining school safety

and performance by offering schools that contribute most to DMC the tools needed to effectively confront behavioral problems, both minor and chronic, without resorting immediately to suspensions and arrests. Restorative justice practices and PBIS seem to be among the most promising tools. Of course, allocating more resources to keep troubled students in the classroom might be a hard sell for policy makers, especially in states that haven't expanded Medicaid, and especially if doing so imposes a greater burden on overtaxed teachers and rule-abiding students. We urgently need more research to assess the benefits of such reforms relative to the costs for schools, for communities, and for taxpayers.

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Can Foster Care Interventions Diminish Justice System Inequality?

Youngmin Yi and Christopher Wildeman

Summary

Children who experience foster care, write Youngmin Yi and Christopher Wildeman, are considerably more likely than others to have contact with the criminal justice system, both during childhood and as adults. And because children of color disproportionately experience foster care, improvements to the foster care system could reduce racial/ethnic justice system inequality. Yet the link between foster care and justice system inequality hasn't received the attention it deserves. This article represents the most comprehensive review to date on how foster care placement can affect children's risk of criminal justice contact.

Yi and Wildeman review how children come to the attention of Child Protective Services (CPS), how they come to be placed in foster care, and the risks that children in foster care face. They also examine how the child welfare and criminal justice systems intersect, with special attention to the large racial/ethnic disparities in both CPS contact and foster care placement and experiences.

The authors then examine strategies that might reduce inequality in criminal justice outcomes at two stages—during foster care placement, and after children age out of the system (that is, after they reach the age when they're no longer eligible to stay in foster care or receive attendant services). They highlight promising interventions that target five critical objectives: the promotion of stability and permanency in foster care placements; expanded and improved access to substance use treatment and mental health care services; provision of legal support for foster youth; extension of employment and educational support for late adolescents and young adults; and supports for securing housing and health care for youth who age out of foster care.

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Child maltreatment—encompassing physical, sexual, and emotional abuse, as well as neglect—is common, unequally distributed, and has lifelong negative consequences, making it one of the most pressing problems society faces.¹ The state, therefore, has practical and ethical obligations to prevent it. The most extreme state intervention involves removing children from their parents' homes and placing them in foster care. Considerable research, much of which we review below, shows that foster care placement is common, that it's disproportionately experienced by minority children, and that children who are touched by the system have a higher risk of contact with the criminal justice system.² Because of these characteristics, the foster care system has the potential to profoundly affect justice system inequality.

On the one hand, if foster care placement does increase the risk of criminal justice contact, as some research suggests, then it might exacerbate justice system inequality.³ Yet even if it had no effect on the risk of criminal justice contact, the foster care system could do harm by maintaining existing levels of inequality. If improvements to the foster care system could reduce that risk, however, then foster care could decrease justice system inequality—perhaps profoundly so—by diminishing criminal justice contact among a high-risk and disproportionately African American group of children. But as other reviews on foster care have noted, scholars who study inequality have yet to fully explore the interaction between the foster care and criminal justice systems, the implications of this linkage for criminal justice inequality, or the linkage's potential to diminish inequality in justice system contact.⁴

This article is the most comprehensive review to date on how foster care placement can affect children's risk of criminal justice contact. We examine the link between foster care and criminal justice and, more broadly, we explore how foster care placement affects children in a range of areas as they transition to adulthood. We focus on two sets of strategies: first, during placement, and second, after children *age out* of the system—that is, after they reach the age when they're no longer eligible to stay in foster care or receive attendant services. The first set of strategies is intended to diminish criminal justice system contact among children who are currently in foster care, using existing and potential resources within the infrastructure of the child welfare system. The second targets young people on the cusp of aging out of foster care, with emphasis on increasing the age at which children must leave the system.

Before proceeding, it's important to note that neither of these stages precedes removal from the home. Although we also need strategies to reduce maltreatment in the home and to support the safe preservation of families after it occurs, they fall outside the scope of this article.

Why Reducing Justice System Inequality Is Important

Criminal justice contact is ubiquitous. One recent study estimates that up to 40.3 percent of young adults have been arrested for something more serious than a traffic offense.⁵ It is also, to a high degree, unequally distributed. Disparities are especially large in terms of imprisonment. One in five African American men but only about one in 33 white men experience imprisonment by their early 30s.⁶ Criminal

justice contact is so pervasive for African Americans that scholars have begun to consider arrest, incarceration, and other justice involvement as de facto stages of the transition to adulthood for African American youth.⁷

These inequalities are all the more troubling because the consequences of criminal justice contact extend beyond the apprehended individuals themselves. Criminal justice contact shapes the wellbeing of families and neighborhoods as well as the lived realities of entire demographic groups.⁸ Studies based on in-depth interviews and systematic observation of individuals and communities tied to jail and prison inmates, including the groundbreaking work of legal scholar Donald Braman and sociologist Megan Comfort, shed light on how incarceration affects those on the outside. Braman and Comfort found that when someone receives a sentence, that person's romantic partner and children "do time" as well. They have to restructure and reallocate their time, resources, and emotional energy to maintain relationships with and support their imprisoned loved one.⁹

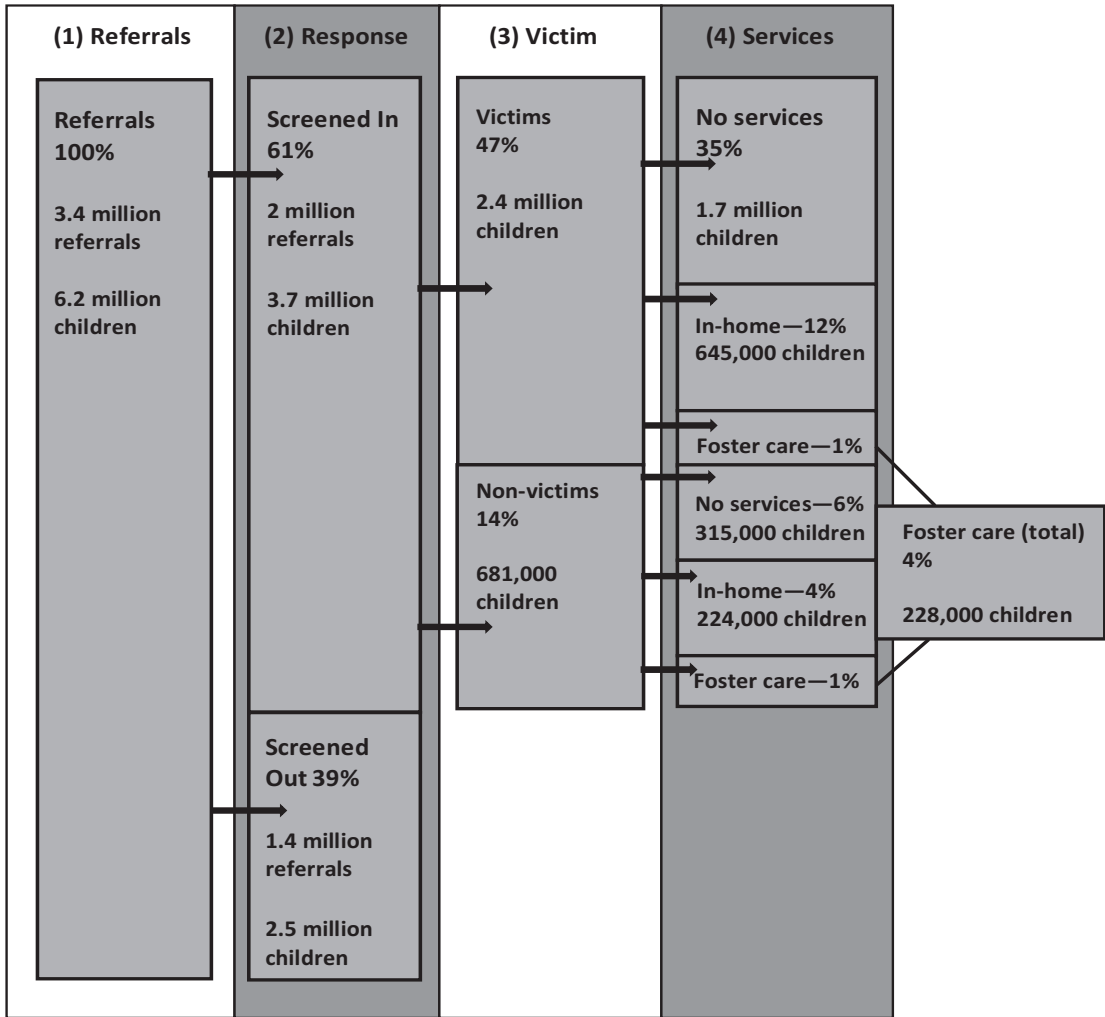
The consequences also extend across time within individuals, affecting their physical and mental health, social relationships, and economic security both immediately following release from a correctional facility and over the life course.¹⁰ Consequences extend across generations as well, to caregivers, parents, and progeny.¹¹ For example, research on the effects of parental incarceration has found that the children of incarcerated people are at higher risk of mortality, poor educational and behavioral outcomes, homelessness, and their own criminal justice contact in adulthood.¹²

How Child Welfare and Criminal Justice Intersect

Research on the prevalence, unequal distribution, and consequences of foster care placement aligns strongly with what we know about the criminal justice system. Children in foster care are far more likely than other children to belong to racial/ethnic minority groups and to be poor. Because race, ethnicity, and poverty are strong predictors of justice system involvement, their demographics alone (not to mention the many other risk factors they've been exposed to) would make children in foster care especially vulnerable to future criminal justice contact.¹³

Studies that follow foster youth over time find that they are more likely than others to experience incarceration and that incarcerated adults are disproportionately likely to have been in foster care, suggesting a foster care-to-prison pipeline. Analysis of the 2004 Survey of Inmates in State and Federal Correctional Facilities indicates that nationally, 7 percent of prisoners reported having ever been in foster care. This proportion more than doubles for young adults: 15 percent of prisoners aged 18 to 21 reported ever being in foster care.¹⁴ The Midwest Evaluation of the Adult Functioning of Former Foster Youth (known as the Midwest Study)—the largest study of its kind, which examined a cohort of children from Illinois, Iowa, and Wisconsin as they aged out of foster care—found that more than half had been incarcerated by their mid-20s.¹⁵ Other studies, using data from different locations and looking at different parts of the child welfare population, have also found dramatically high rates of criminal justice contact among current or former foster youth.¹⁶

Figure 1. Flow of Children through Child Protective Services



Source: Adapted from Christopher Wildeman and Jane Waldfogel, “Somebody’s Children or Nobody’s Children? How the Sociological Perspective Could Enliven Research on Foster Care,” *Annual Review of Sociology* 40 (2014): 604.

Notes: All victim determinations refer to unique victims, meaning that each child could be counted as a victim only once. Referrals, response, and service provision estimates all refer to duplicate children, meaning that children could be counted more than once. Because of this, percentages calculated for stages 3 and 4 of CPS contact only approximate the share of the population included in these categories and are not equivalent to the number of children in each category (for example, 2.4 million victims or 224,000 non-victims who receive in-home services), divided by the total of 6.2 million CPS-referred children.

Despite the overwhelming evidence that foster care placement is associated with poor outcomes, one positive possibility is rarely mentioned: that the foster care system could connect marginalized and severely disadvantaged children and their families with much-needed services and support. We don’t mean to imply that improving the foster

care system alone can solve the problem of mass incarceration and its spillover effects on society at large. However, given that children placed in foster care come from communities and families that are also disproportionately likely to be involved with the criminal justice system, successful interventions in the child welfare system could reduce criminal justice

inequality and minimize harm to children in foster care—or perhaps even vastly improve their lives.

A Brief Introduction to the Child Welfare System

Figure 1 provides an overview of the flow of children through child protective services (CPS), using 2013 data. It highlights four stages: referral, response, determination of victim status, and provision of services. Here we should note three things. First, many children who experience maltreatment never enter the CPS system, even though they should be referred. Second, stringent criteria must be met to confirm child maltreatment, but errors occur. For example, some children who are deemed to have experienced abuse or neglect have not—or they have, but not the type of maltreatment that CPS confirmed or not at the time indicated. Finally, some children who enter foster care have never experienced maltreatment but have either been abandoned by their parents (whether intentionally, or unwillingly through an event such as parental incarceration or deportation) or been deemed at imminent risk of harm.¹⁷ In short, though the overlap between maltreatment experience and CPS contact is strong, it is imperfect.

In 2013, CPS agencies received 3.4 million referrals for 6.2 million children. As figure 1 notes, children can be referred more than once, so we shouldn't consider the ratio of these two figures to reflect the probability that a given child in the population is referred to CPS. Still, these figures suggest that about 5 percent of American children receive a referral each year. Of these cases, roughly 40 percent are “screened out,” meaning that the CPS agency doesn't find sufficient evidence to investigate and closes

the case. If a referral isn't screened out, a CPS caseworker investigates whether the reported maltreatment occurred. Roughly one-quarter of investigated cases lead to a confirmed maltreatment case, meaning that about 1 percent of all children have a confirmed maltreatment case in any year.

Among children whose maltreatment isn't confirmed, the majority (72 percent) receive no services; 26 percent receive services—such as family therapy, referrals for substance use treatment, and assistance in accessing social safety net programs—while remaining in the home. About 1 percent of children who are not confirmed victims will be placed in foster care, usually because a sibling in the same household has experienced egregious maltreatment. Even among children whose maltreatment is confirmed, only about one in seven is placed in foster care. Roughly half of confirmed maltreatment cases receive no services, and the remainder receive in-home services. Thus only a very small share of American children—about 250,000 in 2013, representing 0.3 percent of all children—enter foster care each year.

The rate of foster care entry exceeds the rate of exit, however, meaning that at any given time more than 250,000 children are in foster care. Between the mid-1980s and 2000, caseloads more than doubled, with 276,000 children in foster care in 1985 and 568,000 in 2000.¹⁸ Two economists at the University of North Carolina at Greensboro, Christopher Swann and Michelle Sheran Sylvester, have found that much of this increase was driven by a rise in the number of incarcerated mothers and more stringent work requirements for access to cash welfare benefits. Particularly for single mothers, those two factors make provision of care and critical resources for dependent

Table 1. State Variation in Foster Care System Characteristics, Fiscal Year 2015

	United States	Alaska	California	West Virginia
Number in Foster Care per 1,000	5.8	14.2	6.1	13.1
Total Number in Care	427,606	2,653	55,893	4,959
Child Race/Ethnicity				
<i>White</i>	42.7%	27.7%	20.4%	87.0%
<i>Black</i>	28.4%	5.1%	21.8%	10.5%
<i>Hispanic</i>	21.3%	5.4%	52.8%	1.1%
<i>Asian/Pacific Islander</i>	1.4%	3.4%	2.4%	0.4%
<i>Native American</i>	4.1%	53.9%	2.1%	0.0%
<i>Other</i>	1.6%	4.9%	0.0%	0.5%
Current Placement				
<i>Pre-adoptive home</i>	3.6%	26.2%	2.4%	3.0%
<i>Kin care</i>	30.2%	23.9%	32.7%	19.9%
<i>Foster home (non-kin)</i>	45.4%	34.5%	48.0%	50.4%
<i>Institution</i>	13.3%	4.5%	11.7%	22.7%
<i>Runaway, independent living, trial home visit</i>	7.6%	11.0%	5.1%	4.0%
% Awaiting Adoption	26.0%	29.5%	25.3%	29.4%
Months in Current Placement (Standard deviation)				
<i>Median</i>	5.5	4.5	7.1	4.8
<i>Mean</i>	10.1	7.0	12.5	7.2
Total Months in Foster Care				
<i>Median</i>	14.2	12.9	15.6	9.9
<i>Mean</i>	22.6	18.4	25.4	14.3

Source: Authors' analysis of the 2015 Foster Care File of the Adoption and Foster Care Analysis and Reporting System.

Note: This table describes children who were in foster care at the end of the 2015 fiscal year.

children either more difficult or physically impossible.¹⁹

According to the most recent data available, 427,910 children were in foster care at the end of the 2015 fiscal year, indicating that caseloads fell modestly over the past decade and a half, though the last few years have seen an uptick that may be driven by the opioid epidemic.²⁰ As table 1 shows, 26 percent of these children are available for adoption, meaning parental rights have been terminated.²¹

Four percent of foster youth live in pre-adoptive homes (that is, with families that have filed to adopt them and are awaiting the completion of legal procedures); 30 percent are in foster care with family (commonly called kin care); 45 percent are in foster care with a non-family member; and 14 percent are living in an institution such as a group home. The remaining 8 percent live independently, have run away, or are on a trial home visit to see whether they can be reunited with their parents.²²

So far, we've presented national CPS estimates. However, most policy and all programmatic action in CPS occur at the state and local levels, meaning that the characteristics of CPS systems vary. The populations they serve and the challenges they face vary tremendously as well. For example, responses and system practices may differ according to variation in foster children's characteristics or the prevalence of certain types of maltreatment across jurisdictions.

In table 1 we present statistics on foster care experiences in three states that represent a range of regions, populations, and policy contexts. In West Virginia, among children in foster care at the end of the 2015 fiscal year, the average cumulative time spent in care was about 10 months; in Alaska and California it was more than a year. In all three states, racial/ethnic minority groups are overrepresented in the foster population relative to their share of the general population. In California, for example, more than one in five children in foster care is black, although blacks make up only 5 percent of the state's population.²³ Similarly, in Alaska, indigenous youth make up 54 percent of those in foster care but only 17 percent of the population under 18.²⁴

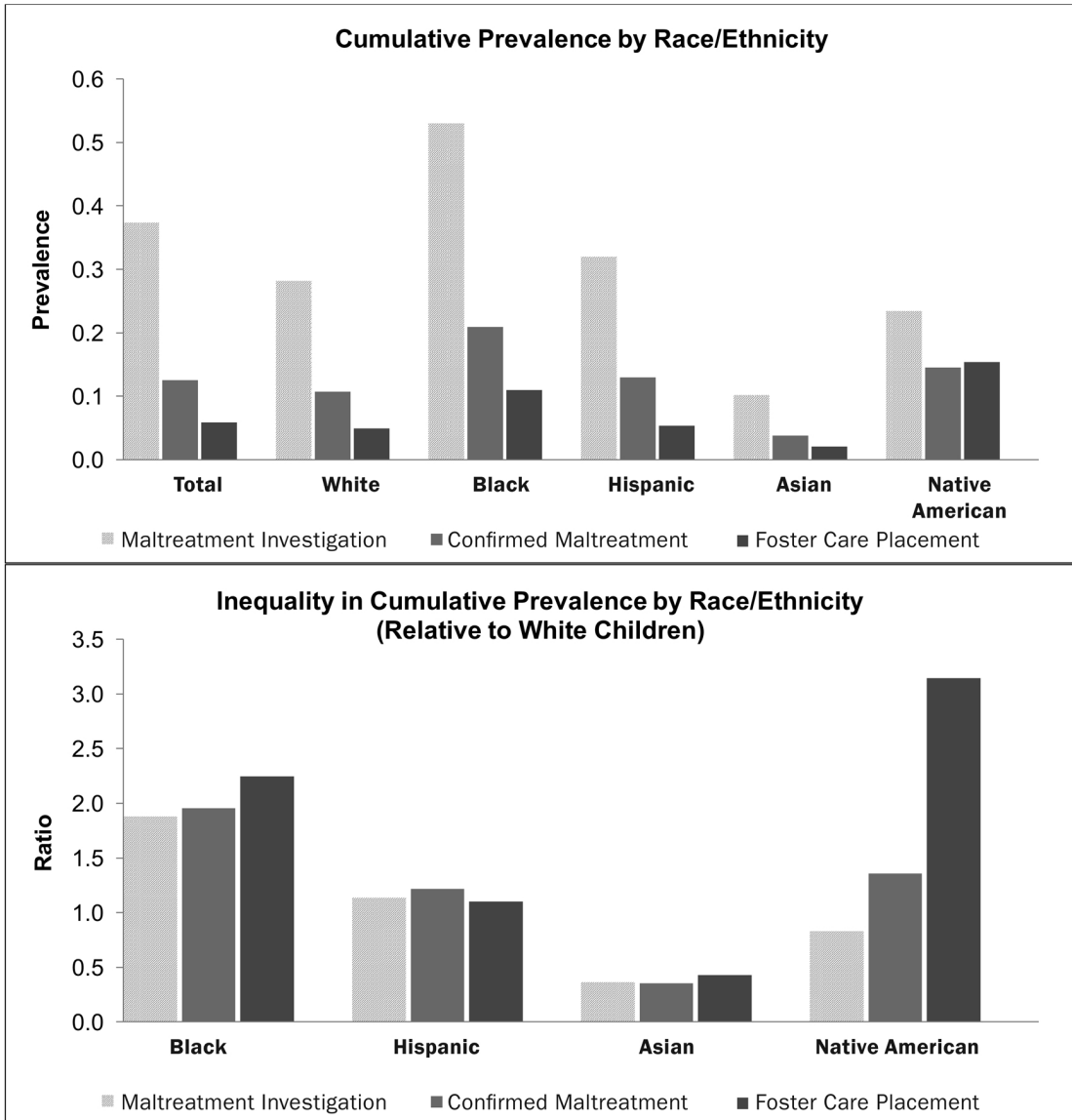
Disparities and Disproportion- alities in CPS Contact

The racial and ethnic patterning of child welfare contact is reflected not only in the demographic characteristics of foster youth but also in the experience of foster care. Among children placed in foster care, we see large racial/ethnic disparities in the age at which they're first removed

from the home, the amount of time spent in care, the degree of contact they have with their biological parents, the stability of their placements, and the quality of their placements or the parenting abilities of their new caregivers.²⁵ In figure 2, we highlight racial/ethnic disparities in CPS contact by presenting published estimates of the cumulative risk of having a CPS investigation, having a confirmed maltreatment case, and being placed in foster care.²⁶ Figure 2 also includes inequality estimates for all racial/ethnic minority children relative to white children.

As figure 2 indicates, CPS investigation is prevalent among racial/ethnic minority children. A total of 53.2 percent of African American and 32.0 percent of Hispanic children have ever had an investigation, compared to 23.2 percent of white children. Minority children are also far more likely to experience confirmed maltreatment.²⁷ The cumulative prevalence of confirmed maltreatment is 10.7 percent for white children, 20.9 percent for black children, 13.0 percent for Hispanic children, and 14.5 percent for Native American children. (Asian/Pacific Islander children, on the other hand, have a lower risk than white children, at 3.8 percent.)²⁸ Foster care placement is also unequally distributed. The cumulative risk of ever being placed in care is 5.9 percent for all children. But black (11.0 percent) and Native American (15.4 percent) children have far higher risks than their white (4.9 percent), Hispanic (5.4 percent), and Asian (2.1 percent) peers. Gender differences in confirmed maltreatment and placement are minimal.²⁹

Figure 2. Racial/Ethnic Inequality in Cumulative Prevalence of Child Protective Services



Sources: Estimates for maltreatment investigation are from Hyunil Kim et al., “Lifetime Prevalence of Investigating Child Maltreatment among U.S. Children,” *American Journal of Public Health* 107 (2017): 274–80; for confirmed maltreatment from Christopher Wildeman et al., “The Prevalence of Confirmed Maltreatment among US Children, 2004 to 2011,” *JAMA Pediatrics* 168 (2014): 706–13; and for foster care placement from Christopher Wildeman and Natalia Emanuel, “Cumulative Risks of Foster Care Placement by Age 18 for U.S. Children, 2000–2011,” *PLOS One* 9 (2014): e92785. Estimates of inequality in cumulative prevalence were calculated by the authors.

As figure 2 shows, Native American children are an especially intriguing group. They are less likely to have an investigation than whites, and slightly more likely to experience confirmed maltreatment, yet dramatically more likely to be placed in

foster care. Since the disparities in CPS contact among other groups differ little across stages of the process, this suggests that the effects of CPS contact for Native Americans may differ relative to those for the general population in important ways.

Consequences of Foster Care Placement

Prior research provides little insight into the direct effects of foster care placement on children: the few studies that use methods designed to isolate the effect of foster care placement haven't reached a consensus regarding its impact on children.³⁰ Joseph Doyle, an economist from the Massachusetts Institute of Technology, has estimated that placement has large negative effects on several outcomes, including teen motherhood and adult arrest.³¹ On the other hand, when University of Wisconsin researcher Lawrence M. Berger and his colleagues analyzed nationally representative data on CPS-involved children, they found that after accounting for characteristics that may shape children's risk of being placed in care, removal from the home isn't associated with child cognition and behavioral problems.³²

Beyond the discrepant findings, these studies fail to capture the full diversity of child welfare systems and contexts. Doyle's data come from Cook County, IL, at a time when the state had astronomically high—and hence nonrepresentative—risks of foster care placement. The data used by Berger and his colleagues, though nationally representative, offer no insight into the variation in effects across states with very different risks of placement. It's also especially perplexing—given that child protection is at the core of the CPS mission—that no study we know of rigorously considers how foster care placement affects the risk of experiencing later maltreatment at the hands of caregivers.³³

Nonetheless, it's clear that having been in foster care is associated with a wide range of negative outcomes and that some of

this association may be causal. Foster care placement is associated with an elevated risk of substance use and housing instability, lower levels of education and employment, greater likelihood of teen pregnancy and parenthood, and poorer mental health, to name just a few outcomes.³⁴ Because the purpose of foster care placement is to remove children from conditions that put them at risk of further harm, and, to some degree, turn them away from the trajectories established by maltreatment and poverty, identifying ways to diminish these poor outcomes is fundamental to the function of the CPS system. In the rest of this article, we discuss interventions at the two points we've identified—foster care placement and as youth age out of care—that could improve the child welfare system's capacity to break or weaken the tie between the foster care and criminal justice systems.

Promising Interventions for Youth in Foster Care

In any year, 4 percent of the children who are referred to CPS end up in foster care following an investigation and, usually, confirmation of maltreatment (see figure 1). Their experiences vary tremendously with respect to placement type, stability, and length; frequency of contact with their parents or previous caregivers; and the types of supports and services received, among other factors (see table 1). These placement traits are associated with outcomes including substance use, juvenile justice system contact, adult arrest and incarceration, and the children's own likelihood of becoming perpetrators of domestic violence and child maltreatment.³⁵ In addition to these more structural aspects of foster care placement conditions, the quality of foster parenting is, of course, also highly variable. Public

pressure for reform often comes after the revelation of a high-profile and seemingly Dickensian case of youths' maltreatment at the hands of their foster caregivers.³⁶

To reduce racial/ethnic inequality in child welfare experiences, and, ultimately, in future criminal justice contact, it's vital to improve placement settings. Racial/ethnic minority children are more likely to be removed from the home earlier in childhood, if ever, and also likely to spend more time in foster care, to age out of care, and to experience more volatility in placements, all of which puts them at higher risk of criminal justice contact.³⁷ Studies that attempt to disentangle the factors that shape child welfare disparities often point to the friction between racial/ethnic and cultural diversity in family structure (especially in the role of extended kin and non-kin) and the idealized structure more likely to characterize middle-class non-Hispanic white nuclear families.³⁸ This tension appears to be one factor that shapes decisions to place children in care. African American children who are removed from the home, in particular, are at much higher risk of having their parents' parental rights terminated and also of being placed in foster or group home care rather than with kin or in adoptive care.³⁹ Even among children in similar placement types, nonwhite children are substantially less likely to receive necessary services.⁴⁰

A clear way, then, to reduce disparities in foster care that are associated with inequality in criminal justice contact would be to improve placement experiences and conditions for foster youth, particularly those who are African American. But two policy issues stand in the way. First, perspectives regarding whether and how

to prioritize certain types of care, such as non-kin adoption, differ dramatically. For example, Elizabeth Bartholet, a Harvard law professor, strongly advocates faster termination of parental rights to facilitate adoption; others, such as New York University family and children's rights law professor Martin Guggenheim, strongly advocate for family reunification as the preferred response.⁴¹ Second, although some interventions—such as Multidimensional Treatment Foster Care (MTFC)—have been shown in small-group clinical evaluations to be effective in improving child outcomes, they require highly individualized treatment plans and a substantial increase in resources, which may limit the extent to which they can be replicated or scaled up.⁴²

Rather than debating which type of placement is best or advocating for a national rollout of existing small-scale comprehensive programs, we home in on the thread that underpins these perspectives and interventions: the consensus that stability and quality of placement (and home life more broadly) are critically important for all children. We identify practices, programs, and resources that target specific features of foster placement and that have been assessed for their potential impact on criminal justice contact itself, or on intermediate outcomes strongly connected to criminal justice contact. In reviewing published analyses of children's foster care experiences, we find three promising types of interventions. One set of practices considers diverse family forms as part of a more comprehensive set of options for foster care placement; the second aims to better support and train foster parents; and the third aims to ensure foster youths' access to services that cover substance use/abuse and mental health.

Comprehensive Assessment of Placement Options

As we've said above, children's foster care experiences vary in type, stability, and quality. Children in volatile situations fare worse both in the system and after leaving it.⁴³ Furthermore, certain settings are associated with worse outcomes than others: children placed in foster care with kin, for example, appear to fare better than those placed in other arrangements.⁴⁴ Because kin placements are often far less likely to be followed by additional placements, some of the benefits of kin care relative to other types of foster care may be driven simply by stability.⁴⁵ But kin placements aren't an option for all children in foster care. Family reunification, transition to adoption, and guardianship—a temporary or permanent arrangement by which children maintain legal ties to their parents but have a guardian who is assigned primary parental rights and responsibilities—can also give children stable and caring support systems following removal from the home. Practices that increase children's chances of integration into such arrangements could improve outcomes by giving them positive social control and resources—and, in the best of cases, permanent loving relationships in their own or foster families.

A wealth of evidence illustrates the benefits of kin-based care relative to other placement types and shows that existing social networks play a critical role in supporting children's wellbeing. Based on this evidence, we recommend more systematic implementation and expansion of *concurrent planning* strategies. Concurrent planning aims

to identify and evaluate all options for permanent placements, including nuclear and extended family members as well as non-relatives, as early as possible. This contrasts with the standard practice of assessing other placement settings only after eliminating the option of reunification with the child's family. Although most states technically have concurrent planning systems in place, a national evaluation suggests that inconsistent implementation across cases may render these systems ineffective—and, in fact, may exacerbate inequalities across placements that disproportionately disrupt the kin and existing social support networks of children from families of color and immigrant families.⁴⁶

Where concurrent planning systems exist, some of the challenges we've mentioned could be mitigated by improving the extent to which agencies' practices accord with guidelines put forth by the Children's Bureau of the US Department of Health and Human Services in its periodic assessment of state child welfare agencies and standardization of procedures.⁴⁷ If concurrent planning isn't part of the protocol following referral, agencies should integrate it by requiring caseworkers to obtain information about the child's relatives—both those living in the home and those who live elsewhere—as well as non-relatives who play a significant role in the child's life. Collecting such comprehensive details about the child's support landscape could shorten the time required to evaluate potential permanency options. This approach could also help institutionalize a broader understanding of what constitutes a healthy and functional care and family system, thus improving cultural

competence and awareness in the CPS system.⁴⁸

Support for Caregivers

The second set of interventions we highlight expands caregiver training and support. In the short term, these interventions can improve the quality of placements by enhancing caregivers' capacity to care for foster youth. In the long term, better parenting skills and caregiver-child relationships will make placements more stable, increase the likelihood of transition to a permanent situation, and reduce the time it takes for children to get there.⁴⁹ Scandals involving children severely abused while in foster care paint a gruesome picture. Although these cases are exceptional, it is important to note generally that foster-involved youth are disproportionately disadvantaged and often face mental, physical, behavioral, cognitive, and emotional problems that make effective parenting especially challenging. Unstable foster placements, inadequate care provided to foster children, and even maltreatment may be traced in part to the lack of support for foster caregivers.

Agencies short on funding may not be able to afford comprehensive interventions like MTFC, which generally include caregiver training and supports. But standalone programs that counsel caregivers and train them in parenting and stress management are more affordable. Such programs, including the Attachment and Biobehavioral Catch-up (ABC) intervention and the Keeping Foster and Kin Parents Supported and Trained (KEEP) program, can improve the quality of foster family placements and put kin care and even safe family reunification back on the table for CPS-involved children.⁵⁰ Both

of these interventions have been evaluated experimentally at multiple sites; they've been found to be extremely effective at best and to have mixed or null results at worst. They're also broadly consistent with the sort of two-generation interventions that look extremely promising for families, and especially children, who face material disadvantage, trauma, and other adverse early life experiences (see *Future of Children's* Spring 2014 issue for more on two-generation programs).

To support young children who have behavioral and emotional problems associated with maltreatment, ABC helps foster parents create environments that improve the child's socioemotional development and capacity to engage in healthy relationships.⁵¹ KEEP focuses on children older than five, using group discussion and practice to teach parenting strategies, especially for managing problem behaviors.⁵² Both are examples of age-specific caregiver support programs that have been deemed effective in improving placement stability, and thus child outcomes, at least in the short term. If such interventions were made available equitably across social groups, they could help diminish inequality in children's foster care experiences and later criminal justice contact.

Substance Use and Mental Health Treatment

Another area where foster children's experiences vary widely is their access to help with substance use and mental health, both of which are strongly tied to criminal justice contact. Although many studies focus on the negative impacts of foster care placement, as we've said, some youth do benefit from foster care. In the case of substance use and

mental health, the foster care system may be especially well positioned to effectively reduce children's risk of future criminal justice contact by giving them access to services and treatment.⁵³

Unfortunately, many foster youth don't receive the mental health or substance use services they need. In particular, among foster youth with known mental health conditions and substance use problems, those who belong to racial/ethnic minority groups are the least likely to report having received treatment.⁵⁴ Yet the same groups have a relatively higher risk of foster care placement and greater prevalence of mental health and substance use problems—meaning that the disparities in access to services are probably a major factor behind the higher likelihood of criminal justice contact for these youth. In fact, given that untreated mental illness and addiction strongly increase the risk of criminal justice contact, it wouldn't be surprising if these disparities explained much of the inequality in and high rates of criminal justice contact among foster youth more generally. But research has yet to establish that a lack of treatment for addiction or mental illness definitively causes risk of criminal justice contact.⁵⁵

To improve foster youth's access to treatment and care for substance use and mental health, we recommend two practices. First, eligibility conditions for federal funding and local agency oversight should incorporate a measure of whether services are effectively responding to children's needs. Investigators and caseworkers already conduct risk assessments for CPS-referred children to evaluate their needs. But while agencies do collect information on substance use and abuse and mental health, this information often isn't used later to systematically

evaluate whether children are receiving effective services. Measuring whether children's receipt of services aligns with their needs as they move through the system would help to hold caseworkers and agencies accountable.

Second, the same needs-response measure should be used to assess whether racial/ethnic disparities—specifically, in the share of mental health and substance use needs that are met—remain below a certain threshold. (Ideally, agencies would be required to meet the needs of children from all groups equally, but given the disproportionate racial/ethnic composition of foster youth, some disparity may be inevitable.) Similar needs-response measures are currently used for other foster services. For example, to claim federal funds for employment and education services rendered through the child welfare system, states must show for each case whether foster youth have either entered the labor force or are receiving education or vocational training.

Another way to improve outcomes for foster youth looks beyond the child welfare system to suggest increased cooperation between the criminal justice and foster care systems. Like all children and adolescents, some youth in foster care will engage in delinquent behaviors and/or come into contact with the juvenile justice system. Both delinquency and juvenile justice contact are strong predictors (and pathways) for later, more serious criminal justice contact. One way to keep foster youth's contact with law enforcement and the courts from escalating is to ensure that these young people have consistent, reliable, and equitable access to legal representation. Today, several states require that foster youth be provided with lawyers. But foster children who appear in juvenile courts are still less likely than

other young people to be offered probation or returned to their care settings; they're significantly more likely to be sent to juvenile detention centers.⁵⁶ Collaboration between the foster care and juvenile justice systems must be designed to overcome this "foster care penalty."

Promising Interventions for Youth Aging Out of Care

Children who enter foster care as teenagers or turn 18 while in care begin the transition to adulthood on precarious footing. Compared to foster youth who exit the system before 18, those who age out fare worse on virtually all outcomes, including homelessness, unemployment, and incarceration in early adulthood.⁵⁷ The age pattern of criminality, as well as age-related policies and practices within the criminal justice system, make this already tumultuous life stage all the more fraught. A near-universal age-crime curve—that is, a peak in criminal activity during mid-to-late-adolescence—is a widely known phenomenon.⁵⁸ Because of this peak, the age at which foster youth generally age out of care—18—is an especially difficult stage for abrupt emancipation. Legal policy also makes them vulnerable because 18 is the age at which people begin to be tried as adults by default, putting them at risk of incarceration and probation conditions that emphasize surveillance rather than rehabilitation.

Although young people are treated legally as adults when they turn 18, the actual transition to adulthood usually extends beyond that age. Many people rely on support from their families well into their mid-20s, in the form of childcare, housing, money to meet basic needs, and even leisure consumption.⁵⁹ Yet most states require foster

youth to become independent by 18. Studies of the transition to adulthood find that adolescents who receive support from their parents fare better and achieve more stable independence because they have a reliable safety net during this volatile stage.⁶⁰ It's not surprising, then, that children who have been removed from the home—and thus are significantly less likely to be prepared for the transition to adulthood—fare poorly when they're abruptly switched from state-sponsored care to independence, without the continued support that many of their peers receive.

Extending Foster Care beyond Age 18

In the face of overwhelming evidence of the disadvantages of aging out of care, there's an obvious solution: extending foster care to allow young people aged 18 and above to access the full range of child protective services, with modifications for age-appropriate needs. Fortunately, federal law already provides a substantial basis for meeting the needs of foster youth at this age. Title IV-E of the Social Security Act, the Foster Care Independence Act of 1999, and the 2008 Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections Act) established federal sources of funding for independent living services, transition planning, and the extension of foster care to age 21 at the state level. Like much of our understanding of the effects of foster care, we don't definitively know that extended care can improve early adult outcomes. However, descriptive comparisons of children who participate in extended foster care versus those who do not suggest that programs that use Title IV-E funding can reduce the likelihood of negative outcomes in early adulthood.⁶¹

Today, about half of all states have extended foster care placement and service eligibility beyond age 18.⁶² A first step toward improving the wellbeing of youth who age out of the system is to push for extending care beyond 18 in the remaining states. The 2008 legislation's provision of federal funding to expand foster care indicates that there is political will to effect this change.⁶³ For the rest of this discussion, however, we will make more modest recommendations, bearing in mind that some states may not extend care. Two types of intervention could be implemented whether or not care is extended. One is support for integrating foster youth into healthy social institutions, specifically the labor force and higher education. The other is support to ensure that the basic needs of current and former foster youth are met as they age out of care.

Integrating Youth into Healthy Social Institutions

The transition to adulthood typically includes entry into such social institutions as new families, the labor market, and higher education. But compared to other young people, foster youth are less likely to have stable family relationships, more likely to drop out of high school and experience job insecurity or unemployment as adults, and less likely to pursue or complete college.⁶⁴ Unemployment, low educational attainment, and a lack of social control and support are strong predictors of both juvenile and adult criminal justice contact.⁶⁵ Similarly, research by sociologist Robert Sampson and criminologist John Laub (the editor of this issue of *Future of Children*) has found that marriage, work, and school enrollment—and the social bonds created by these experiences—can improve the trajectories of young people who demonstrated criminal

behavior earlier in life.⁶⁶ For young people aging out of foster care, support for integration into these social institutions and the cultivation of these kinds of attachments may be especially effective in disrupting the foster care-to-prison pipeline.

It's important to have services that prepare young adults for independent living while they're still in foster care. But for such investments to translate into real improvements in adult wellbeing, young people need continued access to age-appropriate services after aging out. States should take better advantage of available funding from the Fostering Connections Act and Title IV for programs to support the transition to higher education, practical training, and stable work.

Where it's not feasible to extend foster care or work and training services, there's a more modest alternative: to conduct case-by-case evaluations with current and former foster youth after their participation in programs designed to help them transition to adulthood. Studies drawing on detailed interviews with adolescents who used independent living training services find that the young people were often left feeling unsupported and unprepared to put their training to use due to a lack of follow-up from caseworkers and counselors.⁶⁷ Individualized contact with foster youth to assess their progress after participating in a program and to guide them toward alternative resources—including those outside the child welfare system—would provide more social support. In short, if foster care can't be extended, agencies could still use available resources more effectively to help foster youth who age out of care avoid entering

the justice system at the peak of the age-crime curve.

Expanding Support for Housing and Health Insurance

Help with employment and education can give young people important ties to social institutions and networks that are integral for a successful transition to adulthood. But young adults can take full advantage of these resources and opportunities only if their basic needs are met. Unfortunately, many people aging out of care find that emancipation also means losing both stable housing and access to health care and services. Racial/ethnic minorities and the poor face these challenges disproportionately.⁶⁸

Although many policies that can make a difference in the child welfare system operate at the state or local level, federal policy plays a key role when it comes to housing and health care. The transition plans mandated by the 2008 Fostering Connections Act require caseworkers to meet with foster youth who are three months away from aging out to prepare them for emancipation by establishing an independent living plan. Available federal resources that are often incorporated into the transition plans include time-delimited housing vouchers—set aside for youth who can demonstrate that they’re working to develop independent living skills—and eligibility for health insurance through the Medicaid program through age 26. Again, extending foster care beyond 18 would be ideal, as it would give young people full access to the foster care system’s services. But if that’s not feasible, maintaining their access to Medicaid and funds for housing can give young adults who age out of foster

care a chance to transition to adulthood on a more equal footing with others at the same stage.⁶⁹

Conclusions

High rates of criminal justice contact and inequality therein are now defining features of American society. They come with lifelong multidimensional and detrimental outcomes both for individuals and for their families and communities, and they disproportionately affect racial/ethnic minority groups and the poor. Unfortunately, that’s also true for another system that overlaps substantially with criminal justice: the child welfare system. Child welfare contact is now common among racial/ethnic minority children. About one in 10 African American children—twice the rate of white children—experiences foster care placement, the most serious level of contact with CPS.⁷⁰ Such marked inequality in the risk of foster care placement matters not only because it represents differences in actual child maltreatment, but also because children in foster care fare worse in many ways, including their rates of delinquency, criminal activity, and criminal justice contact.⁷¹

This article focuses on two periods in the lives of foster youth—during foster care and aging out—and highlights five promising interventions the child welfare system might adopt to reduce inequality in criminal justice contact: promoting stability and permanency in foster care placements; expanding and improving access to substance use treatment and mental health care services; providing legal support for foster youth; extending employment and educational support for late adolescents and young adults; and helping youth who age out get housing and health care.

Many aspects of the child welfare system could be modified to better meet the needs of youth placed in out-of-home care. But our review of developmental and criminological theory, published empirical analyses, and consideration of limitations to implementation led us to these recommendations. Regarding our recommendations that apply to children during foster care, we concluded that this particular set of interventions would most effectively maximize the child welfare system's capacity to help children access critical resources that can lessen some of the most prominent risk factors for criminal justice contact later in life. As for our recommendations that apply to young people aging out of care, it's interesting to note that the supports we highlight from our review of research evidence (employment, education, and housing) are the same areas in which many US young adults receive continued support from their families and communities.⁷² These interventions, then, give foster youth the opportunity to take their first steps into adulthood with a level of stability and security much like that experienced by children never placed in care. Taken together these recommendations can provide a strong, balanced, though perhaps modest path forward.

The interventions we recommend could do more than increase the likelihood that foster youth can age into stable and healthy

social contexts and avoid contact with the criminal justice system. They also have the potential to diminish racial, ethnic, and socioeconomic inequalities in the criminal justice system—which, along with reducing child maltreatment, may be one of our most pressing societal goals. Children and adolescents in foster care are among the most disadvantaged individuals in our society and, as members of a population disproportionately composed of racial/ethnic minorities and the poor, they are at elevated risk for later criminal justice contact.

The ubiquity of criminal justice contact, the severity and persistence of its consequences, and its dramatically unequal distribution across racial/ethnic and socioeconomic groups all make reducing criminal justice inequality an imperative for the United States. If the landscape of criminal justice contact in this nation remains unchanged, we can foresee an unsustainable future characterized by fiscal strain; ineffective and often misguided strategies to reduce crime and violence; and, perhaps most seriously, entire cohorts and generations of low-income communities and communities of color condemned to lives of poverty on the margins of society. Policies and practices in the child welfare system that weaken the link between the criminal justice and foster care systems, such as those described in this article, will improve the life chances and criminal justice outcomes of some of our society's most vulnerable members.

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Decriminalizing Racialized Youth through Juvenile Diversion

Traci Schlesinger

Summary

In the context of juvenile justice, writes Traci Schlesinger, *diversion* can mean two things. *Informal* diversion includes police officers' decisions to warn and release, probation officers' decisions not to report violations, prosecutors' decisions not to prosecute, and judges' decisions to dismiss cases. Informal diversion sends youth out of the system, lets them remain at home, and asks nothing further of them. *Formal* diversion includes decisions by intake workers—including police, school resource officers, probation officers, and sometimes prosecutors or judges—to move cases away from formal court processing to programs that provide services but also include requirements.

Because diversion can keep young people from deeper involvement with the juvenile justice system, it has the potential to ameliorate the processes through which racialized youth become criminalized at much higher rates than legally similar white youth. The research evidence, Schlesinger writes, offers clear suggestions in three areas: which youth should be diverted, which officials make good gatekeepers for diversion programs, and which implementation principles are most important. Her key recommendation is that jurisdictions should use informal diversion to decriminalize low-risk youth and formal diversion to keep high-risk youth away from court processing and in their communities.

Schlesinger notes several challenges to making diversion policies successful. For one, she writes, jurisdictions must use risk assessments that don't replicate or exacerbate racial disparities. In addition, she says, formal diversion works best when youth can access services in the communities where they live, rather than in the justice system. This condition is becoming more difficult to achieve as cities and states have increasingly chosen to spend their limited funds on facilities within punitive systems rather than within communities, for example, by closing community-based mental health centers and then opening new facilities in a local jail. Finally, jurisdictions must ensure that diversion programs are properly implemented and that the youth who begin diversion programs actually complete them.

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Juvenile diversion has a unique role to play in decreasing inequality in the juvenile justice system. Research has consistently demonstrated that disproportionate minority contact (DMC) tends to be largest at the front end of the justice system, where criminal legal and juvenile justice workers make decisions with less oversight than at many other points, such as sentencing. Moreover, these front-end disparities accumulate into larger disparities throughout juvenile justice and criminal legal processing.¹ One place where researchers consistently find high levels of DMC is in juvenile arrests. Police are twice as likely to arrest black youth as they are to arrest white youth.² That has remained true even as overall levels of arrest have decreased.³ In particular, research finds that police tend to arrest youth of color at all risk levels; on average, only medium- or high-risk white youth are arrested.⁴ Informal diversion policies—for example, policies routinizing police warning and releasing of low-risk youth—could allay both the criminalization of low-risk youth and front-end DMC.

Research also finds high levels of DMC in secure confinement. In 2000, black youth made up only 15 percent of the US population, but 26 percent of arrested youth and 44 percent of detained youth.⁵ In 2005, jurisdictions continued to detain black youth and other youth of color at more than three times the rate of white youth. Confinement exposes youth to high levels of violence, including the use of excessive force and restraints by staff, sexual assault, and isolation. Since 2000, federal investigations, class action lawsuits, and reputable media investigations have documented systemic violence in juvenile facilities in 21 states.⁶ Experiencing secure confinement is also

associated with poorer educational and employment prospects.

Policymakers may worry that diverting youth rather than sending them to secure confinement is bad for public safety, but little evidence supports that concern. First, only 12 percent of youth in secure confinement are there for serious violent crimes, and many youth are in confinement simply for being unruly or defiant. Second, and even more to the point, research finds that spending time in secure confinement increases youths' self-reported delinquency and their odds of rearrest and formal court processing, compared to youth who are formally diverted and those whom court officials decline to prosecute; this effect is largest among low-risk youth.⁷ In light of these facts, jurisdictions may wish to limit their use of secure confinement. Both informal and formal diversion policies can help them do so. Informal diversion policies can create off-ramps for low-risk youth; if they need services, jurisdictions can provide them outside the juvenile justice system. Formal diversion policies replace secure confinement for most high-risk youth with diversion to community-based programs with requirements and services.

However, formal diversion of high-risk youth to community-based programs can reduce DMC in secure confinement only if black, Latino, and Native American youth are proportionately diverted to and adequately supported in these programs. Unfortunately, current eligibility rules and program requirements often lead to the de facto exclusion of youth of color from formal diversion programs, while punitive responses to small rule violations produce sometimes shockingly low completion rates.⁸ To overcome these problems will require using

race-conscious eligibility criteria, prioritizing program completion, and developing teams of practitioners and researchers to ensure that diversion workers follow protocol. If jurisdictions adopt policies that respond to the best available research, both informal and formal diversion can help them make juvenile justice systems less punitive and reduce racial inequality, while still responding to the real harms committed by youth and to criminalized youths' needs.

A Very Brief History of Diversion

During the last quarter of the twentieth century, the juvenile justice system has swung from viewing youth as children who required a rehabilitative approach to viewing them as dangerous superpredators and embracing the adult punitive model, and recently, due in no small part to an increased focus on the adolescent brain, back toward rehabilitation.⁹ Through these fluctuations, youth in conflict with the law and their families have consistently experienced the juvenile justice system as punitive. Since the late 1970s, politicians have often deployed public opinion to justify new punitive policy initiatives. Yet research finds that people are willing to pay more for juvenile rehabilitative and early intervention programs than they are for juvenile incarceration, thus complicating the vengeful public narrative.¹⁰ One possible way to rectify the tension between a justice system that sees itself as at least partially rehabilitative and youth who experience it as punitive is to recognize that the system is fragmented. Starting in the 1970s, states began simultaneously adopting both intensely punitive policies like mandatory minimum sentences and softer, more rehabilitative policies like community policing and diversion programs that rely on community partnerships.¹¹ This fragmentation also

occurred in juvenile justice policy, practice, and rhetoric. Mandatory adult transfer laws went into effect at the same time that jurisdictions were enacting juvenile diversion programs designed to steer youth away from formal processing in the juvenile justice system. Moreover, the distribution of punitive and rehabilitative sanctions varies widely from place to place. Jurisdictions with more racial segregation and inequality tend to use sanctions that are more punitive.¹²

Aiming to reduce both delinquency and youth detention, the Kennedy and Johnson administrations created the Committee on Juvenile Delinquency and the Committee on Law Enforcement Administration, respectively. In 1968, the Law Enforcement Assistance Administration established the Youth Services Bureau, which then created alternatives for court-referred youth, including diversion programs.¹³ Today, juvenile justice practitioners use the term diversion to mean two things: diversion out of the system (often called *informal diversion*), and diversion to programs with requirements and services (or *formal diversion*). Though both forms of diversion help youth avoid court processing, sentencing, and secure confinement, informal diversion does so with no further stipulations. Formal diversion requires youth to complete generally community-based programs with set requirements.

Informal diversion includes police officers' decisions to warn and release, probation officers' decisions not to report violations, prosecutors' decisions not to prosecute, and judges' decisions to dismiss cases. Informal diversion sends youth out of the system, lets them remain at home, and asks nothing further of them. Jurisdictions can use informal diversion to make their

juvenile justice systems less punitive by decriminalizing low-risk youth—for example, those who haven't had extensive prior juvenile justice contact and who weren't arrested for a felony. Because police are more likely to arrest black and Latino low-risk youth than they are white low-risk youth, with these disparities accumulating over youths' life courses, informal diversion can also help jurisdictions decrease racial disparities in their juvenile justice systems.¹⁴

Formal diversion includes decisions by intake workers—including police, school resource officers, probation officers, and sometimes prosecutors or judges—to move cases away from formal court processing to programs that provide services but also include requirements. Often, formal diversion means referral to specialty courts, also known as problem-solving courts, which seek to keep youth with mental health, social, or substance abuse problems from becoming more enmeshed in the juvenile justice system. Specialty courts—including drug courts, teen or youth courts, and mental health courts—refer youth to programs with requirements and services; in most jurisdictions, a specialty court's actions don't count as formal adjudication.

If formally diverted youth fail to complete a diversion program, juvenile justice workers send them back for formal court processing, at which point a judge could sentence them to secure confinement. Jurisdictions can use formal diversion to keep high-risk youth—for example, those who have extensive prior juvenile justice contact and who've been charged with a felony—away from court processing and in their communities, with access to the services they need. Formal diversion has proliferated throughout the United States—court officials and intake

workers divert approximately one-quarter of the youth they process.¹⁵ No reliable estimate exists of the proportion or number of youth whom police divert to programs; however, juvenile police diversion programs exist in jurisdictions throughout the country.¹⁶

Most juvenile justice outcomes are either clearly desirable, like receiving a suspended sentence or an acquittal, or undesirable, like being charged with a felony or sentenced to confinement. But being formally diverted is not clearly one or the other. If you are a low-risk youth and an intake worker formally diverts you into a long program with arduous demands and a low completion rate, the diversion program may be the mechanism through which you become likely to spend time in secure confinement. In contrast, if you are a high-risk youth and an intake worker diverts you away from near-certain secure confinement into a program with a high completion rate, formal diversion can offer a true path away from further criminalization. Formal diversion programs vary in many ways, including who can refer youth to the program, the risk level of the youth the program serves and how those risk levels are determined, the services the program provides, and their implementation. Nonetheless, research offers clear suggestions in the following areas: which youth should be diverted, which officials make good gatekeepers for diversion programs, and which implementation principles are most important.

Determining Risk

Suggesting that jurisdictions informally divert low-risk youth and formally divert high-risk youth raises two questions. First, for what are these youth at risk? In the context of diversion, jurisdictions are interested

in whether youth commit new offenses. Second, how should jurisdictions determine risk levels? The use of risk-assessment tools has caused controversy among practitioners, researchers, and the public.¹⁷ Yet a careful look at the research suggests that using risk-assessment tools to determine eligibility for diversion can help jurisdictions make their justice outcomes less punitive without increasing racial disparities.

Social scientists have made progress in developing an assessment tool that accurately predicts risk without obscuring racial discrimination.

Critics of risk assessment focus on three problems. First, risk-assessment scores may obscure racial discrimination behind seemingly race-neutral risk factors.¹⁸ Second, risk assessment may direct policymakers' attention away from structural causes of inequality in crime/delinquency to individual ones. Third, risk-assessment tools may be linked to policy solutions that make the people who suffer the harm of inequality responsible for bearing its cost. There is truth in all three concerns.¹⁹ Nonetheless, research suggests that risk-assessment tools are the best way for jurisdictions to radically decrease punitiveness and increase fairness, particularly if they tackle these three concerns through the following measures.

All risk-assessment tools obscure youths' experiences of racial discrimination. The question is one of degree. However, social scientists have made progress in developing

an assessment tool that accurately predicts risk without obscuring racial discrimination. For example, new risk-assessment tools often don't include measures of mental illness, because researchers have learned that despite many practitioners' expectations, living with mental illness doesn't predict future delinquency or criminality.²⁰ The Center for Court Innovation's recently released guidelines list predictors of recidivism in two categories, static and dynamic, noting that jurisdictions can develop strong assessment tools using only the former.

Thus, for example, even though residential instability predicts recidivism, tools that do not include this measure just as accurately predict recidivism risk. Static predictors of recidivism—including past arrests, convictions, and experiences of confinement and incarceration, as well as demographic characteristics like gender and age—are variables that are unlikely to change. These static variables reflect less accumulated discrimination than do many dynamic variables, such as whether a youth has experienced violence, residential or family instability, or intense anxiety.²¹ To limit obscuring racial discrimination, then, jurisdictions might adopt a two-stage intake process. In the first stage, intake workers would determine eligibility for informal and formal diversion by assessing youths' risk levels using only static indicators. Once intake workers decided that a youth is eligible for formal diversion, they could use a tool comprising dynamic indicators to predict which diversion program would best meet the youth's needs.²² Using dynamic variables such as residential stability at this stage wouldn't obscure discrimination, because jurisdictions wouldn't be determining either how harshly to punish youth or whether youth will be able to access services at all.

In doing so, jurisdictions gain substantially in terms of racial fairness and lose almost nothing in terms of predictive validity.

The most contentious variable category still commonly used on juvenile justice risk-assessment tools is prior juvenile justice contact. Youth with any, a certain number of, or certain types of prior convictions are often not eligible for diversion. Even if programs aren't officially closed in this way, juvenile justice workers are less likely to believe that youth with prior convictions will comply with diversion programs' requirements or that they are capable of rehabilitation. In this way, juvenile justice workers informally use prior convictions to question youths' credibility. Jurisdictions are comfortable with this practice to the extent that they presume that convictions reliably measure peoples' past criminal involvement.²³ Yet prior juvenile justice contact aggregates experiences of racial discrimination. Policing is concentrated in black and Latino neighborhoods, leading to more intense policing of black and Latino youth.²⁴ Moreover, gang registries lead police to zero in on black and Latino youth, often for reasons as trivial as who their cousin is, the corner they're standing on, or the fit of their T-shirt.²⁵ In schools, school resource officers disproportionately arrest black and Latino youth.²⁶ Studies examining racial disparities in processing youth in the juvenile justice system find that intake workers are more likely to formally adjudicate black, Latino, and Native American youth than legally similar white youth.²⁷ And judges are more likely to convict black and Latino youth and to sentence black and Latino youth to secure confinement.²⁸ This does not mean that the youth of color whose cases intake workers are considering for diversion have never engaged in delinquent behavior; it means that these youth were more likely

than were legally similar white youth to be criminalized and were criminalized more harshly at each point of contact with the juvenile justice system. When risk assessment tools include prior juvenile justice contact, then, they promulgate the accumulation of discrimination. However, because prior juvenile justice contact strongly predicts recidivism, most jurisdictions will likely want to include variables from this category in the near future, if not in the long term. Jurisdictions may look for measures of juvenile justice contact that hold the least accumulated racial discrimination, such as arrests for violent crimes (as one study suggests), or perhaps only include past convictions or experiences in secure confinement in their risk-assessment tools rather than past arrests.²⁹ Future research should continue to examine which prior juvenile justice contact variables most strongly predict recidivism while being the least predictively biased and producing the smallest racial disparities in diversion outcomes.

The Annie E. Casey Foundation is working to develop just such a predictive, non-punitive, racially fair risk-assessment tool. The foundation's Juvenile Detention Alternatives Initiative (JDAI) assessment tool doesn't rely on commonly used dynamic variables, such as past school achievement, family dysfunction, or residential stability; instead, it includes only static variables about the current crime and prior juvenile justice contact. Jurisdictions in the initiative also implement racial impact statements and continually collect data to monitor their progress. Though the JDAI assessment tool has not decreased racial disparities in detention, the 200 jurisdictions (in 39 states and the District of Columbia) that use the tool have seen a 44 percent drop in juvenile

detention as racial disparities have remained constant. This suggests that even tools that include prior juvenile justice contact can help black, Latino, and Native American youth by decreasing punitive sanctions.³⁰

To address structural inequality and the displacement of its costs onto minorities and the poor, jurisdictions can pair policies designed to decriminalize racialized youth with policies designed to transform the social conditions that produce delinquency and criminality. Because I'm writing about diversion, and thus partly about services, I restrict my arguments about structural transformation to those concerned with bringing services back to communities where youth can access them.

Reclaiming Services

During the last quarter of the twentieth century, many parts of the New Deal welfare state were abolished and a sprawling punitive apparatus grew.³¹ Over time, helped by the fragmented and decentralized nature of the punitive state, juvenile justice systems began offering youth services that were born of the welfare state. Beginning during the Reagan administration and accelerating during each subsequent economic crisis, these services disappeared from communities, only to reappear later inside juvenile justice systems.³² Sometimes this happened quickly. Between 2013 and 2015, closures of Chicago community mental health centers affected over 10,000 people.³³ Since then, Cook County has expanded funding for its mental health diversion program, the Cook County Felony Mental Health Court Program, as well as a pretrial intervention program that screens arrestees during booking and processing and diverts those with diagnosed mental illness to secure mental

health services. Most of the time, however, communities lost services slowly, and the needs created by the loss of services were greater than those originally filled by lost services. By the time services reappeared in the juvenile justice system, youth and their families may have felt relieved to be able to access them at all. In 2013, Chicago Public Schools closed 53 schools, citing budget limitations, building underutilization, and underperformance. Of the 12,000 students CPS reassigned to new schools, 94 percent were from low-income families and 88 percent were black.³⁴ Arne Duncan, former US Secretary of Education and former CEO of Chicago Public Schools, said that fixing schools labeled as failing necessitated a "little pain and discomfort." This meant closing schools, firing entire faculties and staffs, and reopening the schools as institutions, often charter schools, managed by private entities.³⁵ The city sought to close schools because of low enrollments while encouraging the development of charter schools, despite evidence that charter school enrollment was producing the low public school enrollments in the first place and that charters weren't improving educational outcomes.³⁶ Moreover, school closures disrupted parent-teacher and parent-administrator relationships in communities where these ties are often weak. Finally, many Chicago school closures forced youth to cross into rival gang territories just to go to school. There isn't enough evidence to suggest that school closures in Chicago contributed to the spike in gun violence, but many South Side youth and their parents believe that they did.³⁷ Future research should examine the complex relationships between school closures, gun violence, and the possibilities for successful diversion of youth in resource-deprived neighborhoods.

Though we don't yet know whether school

closures contributed to the recent rise in gun violence in Chicago, a meta-analysis of 200 studies finds that indicators of concentrated disadvantage—including racial heterogeneity, poverty, and family disruption—are among the strongest and most stable predictors of delinquency and criminality.³⁸ To the extent that many of the services offered through formal diversion programs address harms created by these disadvantages, policymakers who want to reduce delinquency should ensure that youth and their families can access the services they need—such as childcare, mixed-income housing, tutoring, therapy, and job training and placement—outside of the juvenile justice system before they are arrested or prosecuted for a crime. That would mean shifting city and state budget priorities back to funding public services for all and away from responding to delinquency after it happens through policing, diversion programs, and confinement.³⁹

Policymakers who want to reduce delinquency should ensure that youth and their families can access the services they need outside of the juvenile justice system.

As jurisdictions begin to informally divert low-risk youth and formally divert high-risk youth, their use of secure confinement should fall substantially, with notable financial savings; they should even be able to close detention centers. The savings could be used to create community mental health centers and other services, or to

build mixed-income housing; since racial heterogeneity and poverty are strong and stable predictors of crime, mixed-income housing is a good way to reduce both. By informally diverting low-risk youth, formally diverting high-risk youth, and using the savings to recoup services, communities can respond to youth who engage in criminalized behaviors, reduce the harm of youth criminalization, and tackle structural problems that produce these problems in the first place.

Informal Diversion: Creating Off-Ramps

As soon as the Youth Services Bureau (and thus youth diversion) was established, scholars and community members began to worry that instead of an alternative, diversion could become an additional punishment, making criminal legal sanctions more pervasive, touching more people, and becoming more a part of our everyday lives. In other words, they worried about juvenile justice *net widening*.⁴⁰ This concern is not without merit. Studies from the 1970s to the present have found that this problem may arise when jurisdictions formally divert low-risk youth whom the police might otherwise have warned and released or whose cases prosecutors or court officials might have dismissed. Other scholars worried that diversion would lead youth with only tangential juvenile justice contact further into criminality and criminalization; they called this *net deepening*. Research offers more evidence of net deepening than of net widening.⁴¹

So how do jurisdictions divert low-risk youth out of the system? One way to

do so is to see that police routinely warn and release low-risk youth. And if low-risk youth end up in case processing, jurisdictions could see that intake workers, prosecutors, or court officials routinely dismiss their cases. Policies could also encourage probation officers not to formally process low-risk youth who are on probation and who have either a new arrest or a violation in the terms of their probation. Similarly, jurisdictions can encourage prosecutors not to prosecute and judges to dismiss the cases of low-risk youth if their cases do make it to the courts' attention. Jurisdictions throughout Australia and New Zealand have enacted similar policies with substantial success.⁴²

Some juvenile justice workers may hesitate to divert low-risk youth out of the system if it's apparent that they need services. These workers should bear in mind that research shows high-needs youth struggle to complete diversion programs.⁴³ Thus, diverting high-needs, low-risk youth may well lead them to court processing and secure confinement with all the consequences that this entails. If low-risk youth need services, research suggests, intake workers should refer them to services outside of the juvenile justice system. But they can do so only if these services exist in the community where the youth live.

Finally, research suggests that juvenile justice and criminal legal system policies work best when discretion is allowed. Though risk-assessment scales can help reduce bias in intake workers' evaluations of youth, jurisdictions may want to continue to grant them discretion in making their diversion decisions. For instance, a police officer might warn

and release a medium-risk youth who has substantial prior justice system contact but whose arrest is for a nonserious charge.

Formal Diversion: What Works Best

Evaluation research for formal diversion programs highlights three consistent findings. First, programs that divert only high-risk youth are the ones that lower recidivism rates for diverted youth the most (relative to legally similar court-processed youth). Second, on average, intake workers formally divert white youth substantially more often than they do legally similar black or Native American youth. Third, completion rates of formal diversion programs vary substantially, with great consequence for the youth who participate.

High-Risk Youth Only

Jurisdictions can use formal diversion to a program with requirements and services as a way to keep high-risk youth in their communities with their families and peers, so that they have as many normal life-course experiences as possible. To make sure that diversion programs reduce secure confinement rather than widening the net, jurisdictions should formally divert only youth at high risk for recidivism and ensure that services are provided in nonsecure community settings or in the home.⁴⁴ Formal diversion programs that serve low-risk youth cut recidivism substantially less than programs that divert only high-risk youth.⁴⁵ Even within a given diversion program, high-risk youths' likelihood of rearrest in the next six months to two years following program completion decreases the most. In fact, diversion often doesn't reduce recidivism at all among low-risk youth (and sometimes increases it).⁴⁶

Of all formal diversion programs, drug courts are the least successful at lowering recidivism.

Unfortunately, many jurisdictions have formal diversion programs for which only low-risk youth are eligible.⁴⁷ Moreover, jurisdictions continue to divert low-risk youth into formal diversion programs even when they implement programs that target medium- or high-risk youth.⁴⁸ This is particularly true among black boys and among girls of all races—intake workers disproportionately divert low-risk girls and black boys.⁴⁹ Certain kinds of diversion programs are particularly likely to face these problems. For example, a review by the National Drug Court Institute found that youth drug courts often divert youth with no former justice system involvement who have been charged with low-level drug crimes and who don't have substance abuse problems.⁵⁰

Perhaps as a result, youth drug courts reduce rearrest by only 8 percent on average, while the most successful diversion programs reduce rearrest by 75 percent, relative to court processing.⁵¹ Most diversion programs leave youth in the community; drug courts often send youth to inpatient treatment, limiting their capacity to form the positive peer or community attachments that life-course research finds necessary for desistance. Since drug courts too often divert youth at low risk for recidivism and send them to high-intensity treatment, it isn't surprising that of all formal diversion programs evaluated either in recent meta-analyses or in evaluation research, they are

the least successful at lowering recidivism.⁵² Nonetheless, youth drug courts aren't hopeless. A national review of drug courts found that when drug courts divert youth with serious substance abuse problems who have notable prior arrests or convictions and whose current arrest is for a serious offense—in other words, high-need, high-risk youth—their recidivism falls substantially compared to legally and socially similar court-processed youth.⁵³

In response to problems similar to those encountered in drug courts, some counties have introduced policies that make it harder for school officials to formally divert low-risk youth. To reduce the number of complaints about unruly youth filed by schools, Steuben County, NY, now requires schools to demonstrate that they have tried to resolve the students' problems through methods like school-based services and parent conferencing before initiating a complaint. Complaints dropped 33 percent in the first year after the county adopted the new protocol and remained constant in the following three years.⁵⁴

Including Youth of Color

For diversion to help make juvenile justice systems less punitive and reduce DMC, all legally similar youth must be equally likely to be diverted away from formal processing and possible secure confinement. Currently, a combination of racial differences in case characteristics, implicit bias, and racialized eligibility and program requirements work together to produce racial disparities in diversion intake and completion.

Research on racial disparities in juvenile diversion is still young. But so far most studies find that intake workers and court officials are less likely to refer black or

Latino youth to diversion programs than legally similar white youth.⁵⁵ Specifically, when examining data from the 1990s or later, studies have found that court officials are 12 to 39 percent less likely to divert black youth than they are legally and socially similar white youth, after controlling for current charge, prior juvenile justice contact, age, and gender. Several studies also control for school performance, family type, poverty, and even sexual promiscuity; they've found that court officials are least likely to divert black youth from single-parent households, holding all legally relevant characteristics constant.⁵⁶ When researchers have examined case processing of Latino or Native American youth, they have also found that court officials favor diverting white youth. Court officials are one-fourth less likely to divert Latino youth and 20 percent less likely to divert Native American youth than they are legally and socially similar white youth.⁵⁷

Because most jurisdictions either don't collect data on race and youth case processing or don't make that data publicly available, data for studies on racial disparities in diversion come from fewer than a dozen jurisdictions. Though it's clear that court officials are less likely to divert black, Latino, and Native American youth than legally similar white youth, more (and more comprehensive) data could give us a sense of the mechanisms that produce this outcome. Perhaps, for example, court officials hold implicit biases against black youth from single-parent homes.⁵⁸ Such a finding would support racial formation theory, which argues that members of each group are likely to experience racial oppression or subjugation in different moments or because of different triggers.⁵⁹ Court officials may supplement the partial data they have with implicit bias, which is differentially racialized,

gendered, and aged.⁶⁰ Thus, for example, courts penalize young black girls for being sexually promiscuous more consistently and substantially than they do either young black boys or young white girls.⁶¹ To counter the effects of implicit bias on intake workers' decisions, jurisdictions could use risk-assessment tools, which, as I've shown, can avoid most of the dangers of obscuring racial discrimination.

Risk-assessment tools can keep implicit bias in check, but they can't overcome institutionalized barriers to diversion to services for black, Latino, and Native American youth. To do this, jurisdictions must help youth with few resources to participate in programs and open formal diversion to youth without demanding an admission of guilt. Nearly all jurisdictions require an admission of guilt as an eligibility requirement for diversion.⁶² Black and Native American youth are less likely than legally similar white youth to admit guilt.⁶³ Though many things likely lie behind this fact, three are fundamental. First, because of overpolicing of black communities and police bias in arrests, black and Native American youth who've been arrested may be more likely to be innocent.⁶⁴ Second and third: relative to white youth, black and Native American youth have a more adversarial relationship to the justice system and view the justice system as less legitimate.⁶⁵ Regardless of why black and Native American youth don't admit guilt, doing so bars them from formal diversion—increasing the likelihood that they'll experience formal court processing and secure confinement, which exposes them to violence, doesn't decrease recidivism, and does lifelong harm to their educational and employment prospects.

Guilty pleas are often taken as symbols of remorsefulness and signs that a youth is likely to comply with program requirements. But those assumptions may be highly racialized. Jurisdictions interested in decreasing DMC could pair with researchers to create and evaluate a diversion program that admits youth regardless of guilty plea. Such an evaluation study could examine whether and to what extent pleading guilty predicts program compliance or completion, as well as whether and to what extent the relationship between guilty plea and program compliance or completion (if one exists) is mediated by race or gender. If pleading guilty either fails to predict program compliance or completion for any race/gender group or predicts compliance or completion for only some race/gender groups, jurisdictions should consider eliminating the guilty-plea eligibility requirement.

Studies have found other eligibility requirements for diversion—specifically, those concerned with travel and communication—that disproportionately impede resource-deprived and thus black, Latino, and Native American youth.⁶⁶ If youth lack reliable transportation to a diversion program, jurisdictions could give them transit cards instead of excluding them from diversion. Similarly, jurisdictions could reach youth through their families', friends', or partners' phones, rather than excluding them because they don't have phone service. Finally, jurisdictions that want to increase black, Latino, and Native American youths' participation in diversion programs shouldn't charge a fee to participate and shouldn't exclude youth who can't meet financial requirements.

The Right Gatekeepers

Diversion programs with police (including school resource officers) and social workers as gatekeepers are the most likely to divert low-risk youth—even when jurisdictions design these programs to divert high-risk youth. These gatekeepers tend to see diversion programs as serving unruly but “not yet” delinquent youth—perhaps because their training teaches them that it's best to intervene before a problem develops.⁶⁷ That may be the case when interventions don't include both threats and real instances of punishment, but the research doesn't support their position when it comes to formal diversion, which is a form of criminalization, even if a soft one. Instead, jurisdictions should work to get services to unruly low-risk youth and their families through mechanisms outside of the juvenile justice system.

Police diversion programs also disproportionately divert black and Latino youth, likely because of both structural and individual factors.⁶⁸ Higher police-to-resident ratios in black and Latino neighborhoods, including the saturation of youth of color's schools with school resource officers, is intensified by police policies like hot spot policing. This inundation of black and Latino youths' lives with police is overlaid by their relative lack of access to protected indoor space. The result is the overpolicing of black and Latino youth.⁶⁹ Hot spots policing focuses on small, usually urban areas or places where crime is concentrated. Research suggests that hot spots policing decreases crime, but it also disproportionately affects disadvantaged black and Latino neighborhoods and decreases police legitimacy in the eyes of blacks and Latinos.⁷⁰ Moreover, research on policing in Seattle suggests that police departments decide what areas are hot spots using racially

saturated ideas of what constitutes a criminal problem.⁷¹ Seattle police focus on black outdoor drug markets not because of larger public health risks, public complaints, related criminal activity, or other objective criteria, but because of a racialized belief that crack is a bigger problem than other drugs, despite the lack of evidence to support this claim. In addition, police officers' implicit racial biases may direct their interactions with youth.⁷² Though we all have implicit racial bias, police diversion programs are less likely than other diversion programs to curb this bias with risk-assessment tools.⁷³

Programs with police and school resource officers as gatekeepers divert black and Latino low-risk youth who, in police officers' own words, they would have warned and released in the absence of these programs.⁷⁴ Thus, while probation officers disproportionately fail to divert high-risk youth of color away from court, the police, including school resource officers, disproportionately formally divert low-risk youth of color who are unruly into programs with requirements and services. Jurisdictions can use race-conscious eligibility requirements and risk assessment to address the first issue. To address the second, jurisdictions should consider directing resources away from front-end diversion programs, instead investing in programs in which probation officers or other juvenile justice officers make diversion decisions.

To Which Programs?

Compared to research on risk levels and recidivism or on gatekeepers and program success, evaluation research that assesses how to match youth to diversion programs is less developed, making policy suggestions in this area more tentative. But several well-crafted

studies have been conducted, and they've found that diversion can be more successful if diverted youth are carefully matched to programs that fit both their needs and strengths, using needs-assessment tools that include dynamic variables.⁷⁵

No diversion program is suited for everyone. The question is, How do jurisdictions sort youth into the programs that will help them most, given their available resources? Assessment tools can be an effective way to do so if they include dynamic variables in the categories of school participation, achievement, and discipline; prior and current mental health and trauma; substance use and abuse history; and personality strengths and future goals. Such tools can help place youth in the programs that they are most likely to complete and that are most likely to reduce their recidivism.⁷⁶

Youth who come into conflict with the law have often experienced or witnessed violence and deal with daily instability; as a result, they may struggle with anxiety, anger, and depression.

Not all youth come to diversion with the same needs. Girls who are diverted have disproportionately experienced high rates of poverty, special education tracking, and disruptions in their living situations.⁷⁷ Along with girls, diverted LGBT youth are likely to have current histories of moderate to severe depression and are disproportionately likely to have experienced sexual violence. Despite this, neither girls nor LGBT youth

are likely to have received treatment.⁷⁸ Furthermore, as among women, research documents strong ties between girls' and LGBT youths' experiences of victimization and their engagement in criminalized survival strategies.⁷⁹ For example, girls who leave home because of abuse or LGBT youth who are kicked out when they come out to their parents may engage in low-level drug trafficking, retail theft, or sex work to survive on the streets. Among high-risk youth, youth of color are less likely to receive any mental health care even when controlling for family income, functional impairment, and caregiver strain.⁸⁰ Though many states have programs or policies to help with the mental health needs of youth in conflict with the law, few of these are diversion programs.⁸¹ But some jurisdictions have begun to offer *multisystemic therapy* (MST) diversion programs, which show promise for treating both youths' mental health problems and their families' instability.⁸² Much like adults, youth who come into conflict with the law have often experienced or witnessed violence and deal with daily instability; as a result, they may struggle with anxiety, anger, and depression.⁸³ Evidence that MST works for young sex offenders is convincing.⁸⁴ Of course, only youth who have mental health and behavioral problems or are living with family trauma should be diverted to these programs. Other programs will be more effective for youth with other needs. For example, research suggests that programs that treat youths' trauma may decrease recidivism among girls and LGBT youth who've experienced sexual victimization.⁸⁵

Other promising diversion programs stem from restorative justice models. Restorative justice conferencing strives to meet the needs both of youth who have engaged in

violence and their victims.⁸⁶ A large majority of studies in this area have found that youth who are diverted to victim mediation and conferencing are less than half as likely to be rearrested in the following years than are randomly assigned or matched youth who are processed by juvenile courts. Such programs are, once again, most successful among high-risk youth. Among youth charged with violent crimes, those diverted to restorative justice programs are more than 75 percent less likely to be rearrested in the year or two following diversion than are court-processed youth.⁸⁷ Both conferencing and victim-offender mediation involve the victim and offender in an extended conversation about the crime and its consequences.⁸⁸ In conferencing programs, families, community support groups, police, social welfare officials, or attorneys may also participate.⁸⁹ Proponents of conferencing argue that including these additional people shows youth that many people care for them and instills a sense of accountability to their families, social circles, and society. In most programs, all the parties must agree to the plan for reparation, on the theory that unanimous support enhances youths' commitment by increasing the plan's legitimacy among all involved parties. Programs hope that this community consensus on the resolution, and condemnation of the unacceptable conduct, will lead the youth to internalize and adopt the community's norms and values.⁹⁰

Many jurisdictions divert youth into mediation or conferencing programs in cases of gendered harm, ranging from recess sexual harassment and inappropriate touching to dating violence and sexual assault.⁹¹ Post-conference interviews show that victims who participate are less likely to blame themselves and less likely to want to harm the perpetrator.⁹² Unfortunately, researchers ask

victims only a small number of questions and most often survey victims only immediately after their participation. To see whether mediation or restorative justice conferencing reduces trauma symptoms in the longer term, future research should assess matched groups of victims before, six months after, and at least one year after participation (or nonparticipation) in conferencing. At best, diversion programs that include therapy and conferencing may help youth transform their behavior while offering survivors a forum to voice and attenuate their trauma.

Goal: Completion for All

If formal diversion is to help jurisdictions make their juvenile justice systems less punitive and decrease racial disparities, youth must be able to complete diversion programs.⁹³ In a sample of studies on juvenile diversion published from 1975 to 2017, only 13 percent reported the proportion of youth who completed the evaluated diversion program; in those studies, completion rates ranged from 61 percent to 100 percent. These figures come from diversion programs that take a variety of approaches, including relational therapy, job training, mediation and restorative justice, and restitution and community service.⁹⁴ Still, they represent only a minuscule sampling of evaluated diversion programs—not to mention of all extant diversion programs. Thus we have little reason to believe that these rates are representative of diversion programs generally. In some programs, youth are sent back to the courts after one or two instances of noncompliance—even if they were diverted for being unruly rather than delinquent. In Nebraska, only 61 percent of cases referred to juvenile diversion successfully avoid the official court process; in other words, 39 percent of youth fail and

are formally processed by the courts.⁹⁵ Moreover, within a given diversion program, more punitive diversion leads to more delinquency. One analysis of 821 diverted youth—635 in teen court and 186 in other diversion programs—showed that increasing the number of sanctions was associated with earlier reoffending. This effect disappeared when the researchers removed youth who didn't complete the programs from the analysis, suggesting that increasing sanctions may lead certain youth to drop out of a program, and that this is associated with rearrest.⁹⁶ The jurisdiction in this study diverted youth who were unruly but not delinquent. If these youth were unable to complete the program because it was too punitive, the program then sent unruly, nondelinquent youth to the courts for processing.

Two policies can help avoid such an outcome. First, jurisdictions should formally divert only high-risk youth and informally divert low-risk youth out of the system. Second, formal diversion programs should prioritize completion. To do so, evaluation research finds that programs need reasonable requirements, early feedback and assistance, and helpful rather than punitive responses to requirement failures.⁹⁷ If a program has daily attendance requirements, program workers can check in with youth before the program starts, find out if a youth is worried about satisfying this requirement, and determine the source of the anxiety. Is one youth responsible for taking care of his younger siblings? Is another unsure that she'll be able to afford daily public transit? A diversion program set up to maximize completion will have an intake worker who helps youth solve such problems before the program begins. For example, the

program worker might help the first youth find alternate childcare and give the second a transit card.⁹⁸ And if youth commit minor violations, such as a single failed drug test, rather than sending them back to court for formal processing or ignoring the violation, program workers could ask what they need to avoid violating program requirements again and remind them about the high stakes of program completion.⁹⁹ Within the program's parameters, juvenile justice workers could decide how many missed program goals (for example, missing a mandatory program day) or what amount of new delinquency (such as being picked up for drinking) they will tolerate before tossing youth back to the courts.

Other Implementation Matters

By now, it should be clear that implementation determines much of whether and to what extent formal diversion helps make juvenile justice less punitive and reduces racial disparities. Jurisdictions should consider three additional implementation matters. First, reducing detention before adjudication is associated with substantial reductions in secure confinement after cases are adjudicated.¹⁰⁰ To avoid pre-adjudication detention, diversion must happen quickly, at the time of intake. Second, youth who receive at least two years of follow-up support show substantially larger reductions in recidivism than do youth who received only six months of support.¹⁰¹ Though longer follow-up may be costly, the larger reductions in recidivism justify the cost. Third, diversion programs thrive with consistent monitoring. To develop risk- and needs-assessment tools, and to assess disparities in diversion to a

program, completion rates and disparities in completion, and recidivism, jurisdictions require the capacity to conduct analyses. They should team with researchers and apply for grants to do this important work. If jurisdictions then make their data publicly available, we can continue to learn.¹⁰²

Conclusions

Many practitioners and policymakers want to decrease racial disparities and punitiveness in the ways they respond to the real harms committed by youth and to criminalized youths' needs. Smart use of juvenile diversion can help them achieve these goals. However, jurisdictions that wish to use juvenile diversion responsibly face three problems: austerity, overcriminalization of youth, and DMC. To respond to this context responsibly, jurisdictions should do the following three things. First, they should enact policies that promote the use of informal diversion to decriminalize low-risk youth. Second, they should enact policies that promote the use of formal diversion to keep high-risk youth in their communities, getting services they need, and away from court processing. To do so successfully, they'll need to use race-conscious eligibility criteria, prioritize program completion, and deploy implementation strategies like developing teams of practitioners and researchers. Yet these two measures aren't sufficient to ensure that informally diverted youth are able to access services and that youth need not be criminalized in order to access services. Third, then, jurisdictions must make robust social services available in the communities where youth live.

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“Kids Do Not So Much Make Trouble, They Are Trouble”: Police-Youth Relations

Rod K. Brunson and Kashea Pegram

Summary

Young people’s encounters with the criminal justice system generally begin with the police. Officers’ decisions about how to handle these encounters are affected by their on-the-spot assessments of young people’s proclivity for delinquency, prospects for rehabilitation, and overall moral character. And because most police-citizen interactions occur in public spaces, officers render these judgments with limited information, often falling back on racial and ethnic stereotypes. In this article, Rod Brunson and Kashea Pegram examine how police officers’ decisions about which young people to watch, stop, search, and arrest contribute to historical and enduring justice system inequality.

Research confirms that officers apply their discretion highly unevenly, Brunson and Pegram write, consistently exposing youth of color to a wide range of harms. Moreover, aggressive policing strategies such as stop-and-frisk disproportionately affect youths and communities of color. In many urban areas, they say, officers are a constant, inescapable, and unwelcome presence in the lives of black and Latino adolescents—especially males, who are disproportionately stopped, searched, and killed by police.

Yet the authors find reason for optimism in efforts to improve trust in minority communities and end racially discriminatory policing through practices based on procedural justice principles—that is, whether citizens believe they’re treated fairly and with respect during police encounters. Still, they acknowledge, racial disparities in policing mean that in many places, police-community relations have already suffered tremendous harm that will be extremely difficult to repair.

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The authors affectionately borrow the title phrase from Egon Bittner’s pioneering work.¹

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More than 40 years ago, renowned policing scholar Egon Bittner wisely recognized that “the working patrolman,” as a frontline law enforcement agent, is largely responsible for juveniles’ entry into the criminal justice system.² Bittner’s statement still holds true today, underscoring police officers’ critical role in addressing juvenile delinquency—and, more importantly, child wellbeing. It thus makes sense to examine whether and, if so, how officers’ decision-making practices about whom to watch, stop, search, and arrest contribute to historical and enduring justice system inequality.

Criminologists have recently begun to better understand how children interpret not only their own police experiences, but also those of family members, friends, and neighbors. They’ve consistently found that this cumulative knowledge helps shape children’s lasting perceptions of police officers and their attitudes toward them. In fact, black parents and elders report that they routinely warn children about the likelihood of police violence and tell them how to behave during interactions with officers. Interestingly, there’s no evidence that adults from other racial groups (Asian, white) similarly warn children about the dangers of unwelcome police encounters.³

Recent episodes of civil unrest following controversial officer-involved shootings of unarmed young black males are harsh reminders that contentious relations between police and minority citizens persist across the United States. Hostilities are especially pronounced in disadvantaged urban neighborhoods, where crime problems tend to cluster, where seemingly indiscriminate pedestrian stops are commonplace, and

where residents are more likely to report that they highly distrust the police. The substantial rift between police departments and many communities of color might be improved, however, by implementing police reforms grounded in procedural justice principles—the benchmark used by citizens to assess whether officers treat them fairly. In addition to increasing disaffected residents’ satisfaction with the police, community-supported crime control efforts could also reduce justice system inequality, influencing policies at the executive level where organizational objectives and philosophies are forged. Specifically, police administrators’ directives influence how rank-and-file officers comprehend and perform their daily law enforcement duties.

Discretion and Racial Disparity in Police-Youth Contacts

In the United States, juvenile delinquents are typically viewed differently from adult offenders, largely because of their emotional immaturity. For instance, in the eyes of the law, children are not held fully responsible for their transgressions. It stands to reason, then, that the concept of reduced culpability also resonates with police, leading them to intuitively embrace age as a mitigating factor when considering how best to address youths’ misdeeds.⁴ Officers weigh many contextual factors before deciding on a course of action concerning a juvenile offender, often shying away from arrest.⁵

In 1952, James B. Nolan, deputy commissioner and director of the Juvenile Aid Bureau (formerly the Crime Prevention Bureau) of the New York Police Department (NYPD), chronicled the unit’s more than 20-year history of dealing with the causes and correlates of juvenile offending. Nolan

wrote that a fundamental shift in the NYPD from crime suppression to crime prevention had stemmed from increased recognition among his contemporaries that the traditional criminal justice system responses to offending (arrest, conviction, and punishment) often failed, and that most adult offenders were also once juvenile delinquents.⁶ Therefore, to reduce the overall crime rate, Nolan directed officers to focus on averting juvenile delinquency in the first place, rather than merely relying on ineffective and potentially stigmatizing court interventions.

Because most police-citizen interactions occur in public spaces, officers often render their judgments with limited information about the suspects' circumstances.

The NYPD police could refer at-risk youth to social agencies, but several officers assigned to the Juvenile Aid Bureau held master's degrees in social work, and thus were able to provide individualized, direct services. Nolan also acknowledged the role that schools, churches, and youths' homes played in "formulating the character and moral fibre of our boys and girls."⁷ He maintained that juvenile delinquency resulted from the accumulated failures of key social institutions to effectively and positively intervene in young people's lives. He also emphasized that a dearth of play areas and too much unstructured leisure time also contributed to youthful offending, especially among inner-city children; this led to the formation of the Police Athletic League.⁸ Nolan explained

that "through [the league] we are seeking ... the development of a friendly relationship between our boys and girls and police officers; it seeks to establish respect for those who enforce the law and consequently, for the law itself."⁹ Finally, Nolan recognized that while officers should dutifully enforce the law, they should do so in ways that positively influenced children's views of procedural justice and police legitimacy.

Substantial research demonstrates that officers' arrest decisions are affected by their assessments of youths' commitment to delinquency, prospects for rehabilitation, and overall moral character. Because most police-citizen interactions occur in public spaces, officers often render their judgments with limited information about the suspects' circumstances. An observational study of juvenile officers in an industrial city underscored the relationship between suspect demeanor and the severity of sanctions.¹⁰ Detectives often avoided subjecting deferential youth to the long-term consequences of being arrested and officially charged, and spending time in custody.¹¹ But police discretion benefitted some juveniles more than others. For example, officers' behaviors were largely driven by stereotypes rather than objective evidence that a crime had been committed. Consequently, the most severe dispositions were often reserved for "Negroes" and youths who fit officers' preconceived notions of criminals. The authors noted that:

older juveniles, members of known delinquent gangs, Negroes, youth with well-oiled hair, black jackets, and soiled denims or jeans (the presumed uniform of "tough" boys), and boys who in their interactions with officers did not manifest what were considered to be appropriate

signs of respect tended to receive the more severe dispositions.¹²

Much evidence shows that officers are less tolerant of perceived disrespect from minors as a whole because of their marginalized social positions.¹³ But confounding influences—such as attire, demeanor, age, and race—may make it harder for certain youths to present themselves as law-abiding, whether or not officers have legal justification to detain them.

An examination of police actions involving gang members also found evidence that suspects' demeanor is important, confirming that youth whose attitudes officers perceived as negative were more likely to be arrested.¹⁴ In fact, suspects' demeanor was the most important factor for determining arrest, revealing that officers routinely make rash judgments about youths worth saving and those they consider irredeemable.¹⁵ The authors explained, "the boys who appear frightened, humble, penitent, and ashamed are also more likely to go free. ... On the other hand, if a boy shows no signs of being spiritually moved by his offense, the police deal harshly with him."¹⁶ Frequent police contact also made it more likely that a youth would be arrested, highlighting the cumulative impact of repeated police encounters. The researchers noted:

if he is caught for a third or a fourth time, however, the sum total of previous contacts may be enough to affect a judgment about his moral character adversely, regardless of the nature or magnitude of the present offense and regardless of the reasons he was previously contacted.¹⁷

Arrest decisions were also shaped by the officers' subjective assessments of whether

youths' caregivers were capable of preventing future delinquency. The research team observed that "the moral character of the parents also passes under review; and if a house appears messy, a parent is missing, or a mother is on welfare, the probability of arrest increases."¹⁸ Thus, youths' living and other structural conditions played key roles in officers' discretion.

Contemporary policing scholars find little evidence that today's crime-control strategies focus on averting delinquency, as Nolan's did. For example, few studies show that youth officers employ an offender-oriented approach, forgoing arrests and juvenile court referrals in an attempt to insulate adolescents from severe court sanctions.¹⁹ In the 1960s, research examining police officers' decision-making revealed a disconcerting pattern of disparate treatment involving disadvantaged youths, sometimes regardless of race. Moreover, beginning in the early 1970s, a shift in juvenile justice philosophy from treatment to punishment occurred alongside a decline in the number of white youths under court supervision.²⁰ A steady stream of recent research confirms that officers continue to apply discretion unevenly, consistently exposing youths of color to a wide range of undue harms (such as arrests, officer misconduct, intense surveillance, and excessive use of force). No matter when they were conducted, studies of youths' police experiences have found that certain children find it difficult to convince officers that they're contrite, respectful, and being raised by decent parents in wholesome households.

Substantial research confirms that aggressive policing strategies disproportionately affect youths and communities of color. In fact, many scholars have documented that black and Latino adolescents routinely experience

troubling indignities at the hands of officers, who unquestioningly enforce departmental zero-tolerance policies.²¹ The widespread use of heavy-handed policing tactics provides additional evidence that Nolan's commitment to treating precursors of youth crime is absent from many current public-safety strategies, including that of the NYPD. Because modern police leaders are increasingly evaluated on their crime-fighting effectiveness, young people of color repeatedly bear the brunt of shortsighted crackdowns, sweeps, and other police efforts to maintain order. Several explanations have been advanced to explain minority youths' disparate police treatment, including racial discrimination. In particular, recent social-psychological research shows that race plays a pivotal role in how police officers conceptualize childhood innocence.

Experiments involving police officers (and college students) have found that because of widespread dehumanization of blacks as a racial group, the time-honored benefits of childhood innocence aren't applied equally to black and white boys; rather, they're reserved for whites. Study participants were less likely to view black children as virtuous compared to children of other races, essentially denying black boys the basic protections typically afforded youth.²² The research team also investigated the relationship between youth, race, and criminal responsibility. When considering the blameworthiness of youths suspected of committing felony offenses, officers held black youths more responsible for their offenses than their white and Latino counterparts. Police officers in the study also overestimated the ages of black males by 4.53 years.²³ These findings suggest that compared to children of other races, black boys enjoy a substantially shorter period

of presumed childhood innocence. These troubling results have serious implications for how young black males manage public interactions broadly, and especially their encounters with police. In particular, if officers are more likely to view black boys as older, hardened criminals, they may also be more physically aggressive at the outset. These biases can increase the chances that officers will use excessive or even lethal force against unarmed young black males.

Police-Citizen Encounters

Youths' Attitudes toward the Police

As we said above, suspects' demeanor as interpreted by officers has been shown to influence both formal and informal juvenile justice outcomes. The relatively unchecked discretion enjoyed by officers makes it especially hard to ensure that comparable situations will be handled similarly. Efforts to reduce disparities in the criminal justice system are hampered by the fact that police-citizen encounters typically unfold on the streets, beyond the eyes of court personnel. Thus, we need to better understand how particular events and settings help shape youth-police relations.

An examination of US and Canadian adolescents' perceptions of police found that the most important factor behind both groups' attitudes toward officers was whether respondents left encounters with a negative or positive outlook.²⁴ For example, study participants who reported positive police experiences were more likely to rate officers favorably, compared to those who described their interactions as negative.²⁵ Research has also shown that youths' assessments of the police are collectively shaped by social environments (such as neighborhood structure and socioeconomic

status), adherence to delinquent subculture, and firsthand interactions with officers.²⁶

The relatively unchecked discretion enjoyed by officers makes it especially hard to ensure that comparable situations will be handled similarly.

Research into urban and suburban youths' police experiences helps show how neighborhood context shapes adolescents' evaluations of police.²⁷ Though an overwhelming majority of respondents in both contexts reported that they were dissatisfied with the police, urban youth held less favorable views of officers.²⁸ Also, teens who initiated contact with officers were more likely to express positive views of the police than those whose interactions were involuntary. The results uncovered stark racial differences among respondents. For instance, nonwhite (mostly African American) youths were more likely to disapprove of officers than were their white peers.²⁹

Sociologist Joe Feagin has argued that the "cumulative impact of racial discrimination accounts for the special way that blacks have of looking at and evaluating" public interactions.³⁰ Indeed, there's ample evidence that involuntary police contacts are particularly salient for black males. One study examined whether black men anticipate unfair treatment during police encounters because of the negative stereotypes associating blacks with crime. The study found that although black males

take precautions to distance themselves from racial stereotypes, they may appear anxious, which inadvertently heightens officers' suspicions. Conversely, white male study participants reported no such concerns about racial stereotyping. Therefore, unlike black respondents, white study participants didn't feel compelled to take precautionary measures in order to appear law-abiding.³¹

Direct Experience

Variations in law enforcement strategies across racially different neighborhoods are often attributed to contextual conditions. In particular, commentators often assert that the reason high-crime areas are policed more aggressively isn't because of the residents' racial characteristics, but because officers consider such places especially dangerous.³² Given the strong relationship between race and place for influencing youths' evaluations of officers, a research team examined the police experiences of Philadelphia adolescents, along with their views regarding the effectiveness of local crime-reduction strategies.³³ Study participants were drawn from three high-crime neighborhoods: predominantly African American, predominantly Latino, and predominantly white. While most respondents across the three neighborhoods were unfavorably disposed toward the police, largely based on previous negative interactions, youth in the Latino and white communities were more likely to express positive views.³⁴

A study of three carefully matched neighborhoods in St. Louis, MO, also attempted to disentangle the effects of race and place, while controlling for disadvantage and crime rates.³⁵ Researchers conducted face-to-face interviews with adolescent males residing in three disadvantaged

neighborhoods: one majority-white, one majority-black, and one racially mixed. White study participants were more likely than blacks to report positive relationships with officers. Conversely, black youth described being stopped by officers indiscriminately in situations where their law-abiding status should have been abundantly clear. The authors found that "white youths' risk of being stopped was heightened in three specific situations: (1) while in the company of young black males, (2) when in racially mixed or majority-black neighborhoods, or (3) while dressed in hip-hop apparel."³⁶ Black youths residing in the predominantly black and racially mixed neighborhoods reported routinely hearing racial slurs and insulting language from officers.³⁷ Finally, although white youth reported fewer direct experiences with verbal abuse, they described often seeing black youth being publicly humiliated by police.

A study of high school students from South Side Chicago neighborhoods suggests that officers are a constant, inescapable, and unwelcome presence in the lives of many black adolescents.³⁸ For instance, respondents reported that police routinely exerted dominance over them by asking offensive questions and giving degrading directives. Study participants said they constantly felt powerless, often acquiescing rather than challenging whether officers possessed the legal authority to subject them to widespread suspicion, unwarranted verbal aggression, and excessive physical force.³⁹ To remain safe, study participants ultimately decided that it was unwise to question officers' behavior.⁴⁰

As we've seen, social scientists have produced considerable research documenting young black men's disproportionate police

contact. Such studies have alerted us to many harmful byproducts of aggressive policing, but they haven't always explored how gender affects the phenomena they examine. One study looked at encounters between youths from different racial backgrounds (African American, Latino, white, and Asian/Pacific Islander) and NYPD officers and other "agents of surveillance and protection" (such as teachers, restaurant staff, and security personnel). That study uncovered important gender differences in how NYPD officers treated male and female study participants.⁴¹ In particular, while males' negative views of officers stemmed largely from concerns about being unjustly ensnared in neighborhood sweeps, female study participants reported repeated sexual harassment by officers.⁴² Similarly, a study of black male and female adolescents' police experiences in St. Louis found that although young black males were the primary targets of aggressive policing tactics, black females expressed fear of police violence in the form of sexual misconduct.⁴³ Youths' strategies for dealing with neighborhood dangers, including unwelcome police attention, were explicitly gendered.⁴⁴

Much of the research on minority youths' adverse police experiences has focused on black youths.⁴⁵ Though this research has yielded important findings, it hasn't given us enough information about how other young people of color experience and view officers. This issue warrants careful investigation, because scholars have noted that the attitudes of Latino youth toward police fall somewhere between those of their white and black counterparts. Furthermore, Latino youths' lived experiences should be considered and

valued through their own unique cultural perspectives.

A study of Afro-Caribbean (Puerto Rican and Dominican) youths' experiences with NYPD officers found that they had unfavorable views of the officers patrolling their neighborhoods.⁴⁶ The study participants described officers as generally discourteous to residents, but they also noted that the disrespect was decidedly racialized. For example, they believed that because they were "Spanish," police frequently targeted them for unjustified stops.⁴⁷ Respondents said that the racial animus they experienced stemmed from officers' unfounded suspicions about their immigration status. The authors wrote that "the police have a difficult time distinguishing between citizens from Puerto Rico and possible undocumented immigrants from the Dominican Republic," making it likely that Latino youth from many backgrounds would be viewed with suspicion.⁴⁸

Vicarious Experiences

Considerable evidence shows how direct police contacts shape adolescents' future appraisals of officers. But scholars have also increasingly acknowledged the role of insights gained by learning about others' encounters.⁴⁹ Policing research refers to accounts shared by family members and peers as *vicarious experiences*. A study examining vicarious experiences found that citizens who reported having seen or heard about police officers engaging in "impolite or rude treatment, unfair treatment when making an arrest, physical abuse, covering up another officer's wrongdoing, [or] taking sides in an argument between citizens" were less likely to see the police in a positive

light.⁵⁰ Though age and race are consistently strong predictors of citizens' negative evaluations of the police, indirect experiences have also been shown to be important. In particular, the aforementioned study found that secondhand police experiences had the greatest impact on both white and black youths' negative perceptions of officers.⁵¹

Black elders may try to insulate their own and neighborhood children from bigotry by equipping them with a set of conduct norms to use during involuntary encounters with officers. One study found that these preemptive conversations were offered because adults were convinced that simply being black posed substantial safety risks.⁵² Youth were instructed to answer officers' questions with "yes sir" and "no sir," to speak normally, and to refrain from activities that could attract police attention. The authors noted that their findings were race-specific, pertaining mostly to black children. The research team found no evidence that adults in other racial groups (Asian, Latino, or white) similarly prepare children for unwelcome police encounters.

Aggressive Policing Strategies

Much of the tension between police and communities of color stems from heavy-handed policing strategies used in high-crime urban areas, where people of color disproportionately live.⁵³ Research shows that aggressive crime-control efforts can seriously erode citizens' trust in the police. For example, many researchers have studied *stop-and-frisk* and *broken-windows* policing strategies that target low-level offenses, physical disorder, and poorly defined suspicious behavior. The effectiveness of these campaigns depends heavily on whether citizens see officers as legitimate and believe

that they will execute their duties in a procedurally just manner. Legal scholars Jason Sunshine and Tom R. Tyler define *legitimacy* as “a property of an authority or institution that leads people to feel that that authority or institution is entitled to be deferred to and obeyed.”⁵⁴ Community residents are more likely to follow directives when they believe that officers possess not only the legal authority to enforce laws, but also the moral authority. Specifically, Sunshine and Tyler write, “the legitimacy of the police is linked to public judgments about the fairness of the processes through which the police make decisions and exercise authority.”⁵⁵ The procedural justice perspective hinges on police legitimacy, emphasizing that outcomes (such as arrests and summonses) are less important than the processes officers use in reaching decisions.

Aggressive crime-control efforts can seriously erode citizens’ trust in the police.

Studies that examine citizens’ experiences with aggressive policing strategies demonstrate how such tactics undermine procedural justice principles and police legitimacy. For example, a study of youths’ involuntary police experiences in St. Louis found that black respondents reported being routinely harassed by the police, as well as knowing people who had suffered similar harms.⁵⁶ Moreover, black youths attributed their mistreatment at the hands of police to the widespread use of stop-and-frisk tactics. Although study participants complained about being frequently stopped, searched, and “harassed” by police, they took particular exception to officers’ careless use

of racist and otherwise demeaning language during encounters.⁵⁷

The NYPD is perhaps forever linked to one of the most polarizing and contested policing initiatives in the United States: stop-question-and-frisk. NYPD’s stop-question-and-frisk policy has affected tens of thousands of otherwise law-abiding black and Latino adolescents. Between 2008 and 2009, for example, NYPD officers stopped a total of 416,350 people aged 14 to 21—52.4 percent of them black and 31 percent Latino.⁵⁸ These widespread stops strained police relations with minority citizens throughout the city, but yielded contraband or weapons only 1.5 percent and 1.2 percent of the time, respectively.⁵⁹ An overwhelming majority (89.6 percent) of youths subjected to stop-question-and-frisk were not arrested or issued summonses.⁶⁰

In a survey of more than 1,000 New York City youths, 48 percent of respondents reported having had a negative police experience in the previous six months.⁶¹ Police interactions varied by race and gender. For example, black and Latino males were more likely than their white and Asian peers to report adverse police experiences. Black and Latino males were also more likely to report verbal and physical mistreatment by officers.

NYPD’s controversial stop-question-and-frisk practices are the most widely known, but research in other jurisdictions has produced similar findings. For instance, a study of young black men’s police experiences in San Francisco neighborhoods found that respondents were resigned to the fact that arbitrary stops were a “regular routine.”⁶² Participants reported that police routinely asserted dominance by conducting

physical searches of their persons.⁶³ These interactions further eroded trust between police and the community. Respondents reported feeling helpless during stops; as a result, they tried to avoid coming into contact with police altogether by adjusting their behaviors and social interactions. These avoidance strategies may have been rational responses to what the youths considered widespread police harassment. But when seen as evasive actions, they may have inadvertently attracted increased police attention, as they led officers to erroneously conclude that the respondents were engaged in criminal activity.⁶⁴

Perceptions of intense police harassment in neighborhoods besieged by officers have been shown to deter young men of color from fully participating in public life. Several studies have examined how police saturation of minority neighborhoods restricts the use of public spaces among young black and Latino males.⁶⁵ Research has found that black youths use a variety of techniques to avoid unwelcome police attention—such as not walking alone, not walking in large groups, staying indoors, avoiding eye contact, and moving with the appropriate speed.⁶⁶ And to help black youths avoid becoming victims of police violence during unwelcome encounters, their elders tell them “hold your hands up,” “don’t move suddenly,” and “never run” when stopped by the police.⁶⁷

Policing scholars use the term *hot spots* to refer to areas where crime and disorder tend to cluster. Advances in mapping technology have helped police agencies identify such areas and allocate resources to them.⁶⁸ Some hot-spots policing efforts have indeed reduced crime, but the results have been mixed when it comes to sustained effectiveness and police-minority community

relations.⁶⁹ For example, policing expert Dennis Rosenbaum cautions,

because the police have chosen to focus on removing the “bad element” and serving as the “thin blue line” between “good” and “bad” residents, these strategies can pit one segment of the community against another. ... Parents, siblings and friends of gang members and drug dealers can feel a divided loyalty and be caught in the crossfire.⁷⁰

Perceptions of intense police harassment have been shown to deter young men of color from fully participating in public life.

The potential for divisiveness, especially among communities with low levels of *collective efficacy*—defined as “social cohesion among neighbors combined with their willingness to intervene on behalf of the common good”—has so far received limited attention; researchers need to examine whether hot-spots policing can unwittingly weaken police legitimacy and erode citizen confidence.⁷¹ Broken-windows, zero-tolerance, and ordinance-maintenance policing, for example, were all once lauded as indispensable crime-fighting tools, yet recent evidence has shown that aggressively targeting low-level offenses has both direct and collateral consequences, especially for already disenfranchised populations.

Policing scholars have recently asserted that evaluations of police performance should extend beyond the two traditional measures of lawfulness and effectiveness to include

whether police operations constitute *rightful policing*.⁷² Though it respects both lawfulness and effectiveness, rightful policing is based on principles of procedural justice—that is, whether citizens believe they were treated fairly and with respect during police encounters. A focus on fairness can lead citizens to believe in the legitimacy of the police and their moral authority to enforce the law. Research has consistently shown that how people believe they were treated by officers affects their perceptions of police more strongly than such outcomes as arrests or tickets. The rightful policing framework makes a strong case for including fairness as a guiding principle for evaluating police executives.

Efforts to Reduce Justice System Inequality

Police-Community Partnerships

Community policing can help residents and the police work together, improving trust between them.⁷³ It's based on three core principles: citizen involvement, problem solving, and organizational decentralization.⁷⁴ The strategy enlists residents to identify and help solve neighborhood public safety problems. To promote mutual trust, residents and police are encouraged to interact regularly outside of officers' crime-fighting duties. It may involve a wide range of outreach, including substations, foot or bicycle patrols, and citizen satisfaction surveys.

Other policing strategies have been introduced in the hope of reducing crime and restoring citizen confidence. Many of them center on encouraging neighborhood residents to take more active roles in public safety. In Minnesota, for example, the Brooklyn Park Police Department (BPPD)

sought to increase collective efficacy among residents.⁷⁵ It implemented a crime control strategy based on: “(i) the establishment of ‘proximal relationships’ with and between residents; (ii) the development of ‘working trust’ between relevant parties; and (iii) the ‘shared expectations’ that result from that trust and compel residents to act against social problems.”⁷⁶

The BPPD initiative comprised three stages: asset identification, coalescence, and follow-up. In the first stage, officers identified community resources that could be effectively mobilized.⁷⁷ In the second stage, coalescence, officers and residents worked collaboratively to tackle persistent neighborhood problems. Specifically, officers relied on both community- and problem-oriented policing perspectives to design and implement crime-prevention strategies.⁷⁸ In the third and final stage, patrol officers not only pledged their continued support for improved public safety, but also shared with residents their plans to monitor progress.⁷⁹

One study examined how community-policing officers interacted with adolescents, compared to colleagues operating under a conventional problem-oriented policing model. The researchers found that community-policing officers were less aggressive because they had previously established positive relationships with youths in recreational activities.⁸⁰ One community-policing officer explained how his approach to apprehending a juvenile suspect differed from that of a “regular cop”:

If I know who he is and where he hangs out, we know where his friends live, and how he might run. In this way we have a better opportunity and advantage to apprehend him, and to do it relatively

quick. A regular officer [however] will pull his gun only [putting lives on the line]. [With our approach] we can prevent putting lives in danger.⁸¹

The researchers observed that secondary prevention “is generally aimed at strengthening bonds or ‘protective factors’ and/or diminishing ‘risk factors’ in order to reduce or eliminate motivation to commit crime.”⁸² While working with delinquent youth in informal settings, many community-policing officers sought to form bonds with them before they committed an offense. For example, an officer commented:

We don’t want to straighten just one kid out. We want to get a lot of them [into a positive lifestyle]. Chief T gave us the ideas. We talk to the kids. By going to see the kids in [residential treatment facilities] they see our human side. If we can get to kids while they’re young, it will make our jobs a whole lot easier in the long run.⁸³

Another study examined a pilot program that aimed to strengthen police relations with minority youth by pairing young people of color with officers to form 10-member basketball teams for a six-week tournament.⁸⁴ The goal was to examine how officers’ and youths’ perceptions of each other changed after participating in the competition.⁸⁵ The team members were questioned both before and after the program to assess their attitudes. Young people rated the officers based on whether they were “helpful, aggressive, trustworthy, racist, friendly, rude, fair, [or] strict.”⁸⁶ Officers were asked whether the youth were “trustworthy, aggressive, proud, racist, outgoing, disrespectful, strong, [or] lazy.”⁸⁷

Both the young people and the officers scored their own teammates favorably. But

although officers rated the youths more positively after the intervention than before, the youths’ overall perceptions of the police didn’t change.⁸⁸ It’s possible that six weeks wasn’t enough time for meaningful interaction to develop between study participants outside of practices and games. It’s also plausible that minority youths’ views of officers remained unchanged because people’s negative police experiences, whether firsthand or indirect, have such long-lasting effects on their global assessments of officers.

Despite historical rifts between the police and communities of color, there’s reason for optimism.

If police executives were to publicly acknowledge past harms and offer heartfelt apologies, that could go a long way toward improving relations between police and minority communities. In 2012, the Community Oriented Policing Services in the US Department of Justice published a report on racial reconciliation that encouraged candid dialogue between police leaders and community stakeholders, recognizing that traditional crime-control efforts have been ineffective and have undermined police legitimacy.⁸⁹ By asking residents to help police disseminate anti-crime messages, reconciliation efforts can also underscore the fact that community members play a critical role in public safety.

Despite historical rifts between the police and communities of color, there’s reason for optimism. For example, since 1994, a loosely allied group of activist black clergy,

the Ten Point Coalition (TPC), has partnered with the Boston Police Department (BPD) to try to reduce youth violence and improve police relations with the city's minority community. The collaboration helped improve police legitimacy and created stronger relationships between officers and residents of Boston's African American community. As a consequence, the TPC became a vital component of Operation Ceasefire, which aimed to reduce gun violence. Specifically, the TPC was instrumental in providing "[compassionate] voices at offender call-ins and help[ing] to connect social services to gang youth and their families."⁹⁰ The TPC and BPD had to work together for several years, however, before their longstanding mutual distrust subsided. Nonetheless, the strongest and deepest relationships developed between individuals, not organizations.⁹¹

Consent Decrees

Beyond policing strategies, reforms are sometimes pursued through legal channels, specifically through consent decrees, which arose from the 1994 Violent Crime Control and Law Enforcement Act.⁹² The legislation was spurred by the brutal videotaped assault of motorist Rodney King by Los Angeles Police Department officers in 1991.⁹³ Section 14141 of the act, commonly known as the Law Enforcement Misconduct Statute, grants the US Department of Justice the authority to file lawsuits against entire police departments rather than individual officers to "pursue equitable and declaratory relief against police engaged in a 'pattern and practice' which deprives individuals of their constitutional rights."⁹⁴

Consent decrees usually have five key elements: modification of policies and

procedures; increased reliance on data; implementation of new training programs; investigating instances of alleged police misconduct; and administrative oversight.⁹⁵ Agencies subject to consent decrees are routinely required to revise or create department policies involving several highly scrutinized law enforcement actions (such as the handling of citizen complaints, racial profiling, vehicle pursuits, search and seizure, high-tech surveillance, and use of force).⁹⁶ Using data to guide departmental policy is critical, because it improves oversight of officers' activities. Also, the decrees often compel police departments to address training and managerial deficits in areas like cultural sensitivity, homelessness, and mental illness.⁹⁷ Under a consent decree, a court-appointed federal monitor files quarterly progress reports.

Over the past two decades, Justice Department investigators have examined the policies and practices of several US police agencies in response to unsettling allegations of civil rights violations. Though many police departments have been or currently are under consent decrees, we know little about the effectiveness of this process.⁹⁸ Some of what we do know is discouraging. For example, a study involving claims of racial profiling against the Los Angeles Police Department, the New Jersey State Police, and the NYPD found:

The data collected from three consent decrees of significantly disparate design, strictness of requirements, and level of monitoring have shown no cognizable effect on racial disparity in police stops and searches. Therefore, at least as currently structured, such consent decrees are not by themselves effective weapons against racial disparity in policing.⁹⁹

Another study, one that investigated whether community response to a consent decree in Pittsburgh, PA, affected officers' and citizens' perceptions, produced mixed findings.¹⁰⁰ Some residents believed that policing had improved, but others saw no change. Moreover, a small percentage of civilians said that policing had actually gotten worse.¹⁰¹ The research team also found that the overwhelming majority of police personnel held negative views about the consent decree, citing its perceived adverse impact on employee morale.

Using consent decrees to reduce injustices and restore public confidence in the police is a major undertaking whose benefits have yet to be empirically documented. Unfortunately, the lack of research evidence hasn't prevented some observers from treating consent decrees as a panacea for dysfunctional police culture. For the time being, consent decrees have the support of those who are calling for increased police accountability and transparency. For example, legal scholar Noah Kupferberg argues that data about police activities have been "made available solely through consent decree provisions, and where consent decrees or other forms of outside monitoring do not exist, the public will often have no idea what individual officers or police departments are up to."¹⁰² But critics of consent decrees have pointed to the sobering financial costs. For instance, the Los Angeles Police Department consent decree cost an estimated \$250 million dollars over five years.¹⁰³ Still, a Harvard University research team reported several encouraging organizational changes as a result of the decree.¹⁰⁴ The researchers cautioned, however, that even federally mandated court interventions are limited without "both strong leadership and strong

police oversight."¹⁰⁵ Regrettably, by the time consent decrees are put into place, police-community relations may already have suffered tremendous and perhaps irrevocable harm.

Conclusions

The Egon Bittner phrase we borrowed for our article's title fittingly suggests that because of the imperfect nature of police work and the unbridled folly of youth, numerous young people will inevitably find themselves under police scrutiny. Officers are given great discretion when deciding whether to arrest suspects or impose informal sanctions. Though such discretion is essential to the working policeman's toolkit, the unchecked use of extralegal factors has proven disastrous for young black and Latino males, who are disproportionately stopped, searched, and killed by police. Because officers are the frontline agents of the criminal justice system, they're also largely responsible for setting in motion other processes that contribute to persistent racial disparities. But as formal organizations, police departments have the capacity to develop and implement policies grounded in procedural justice principles.

Research demonstrates that both direct and indirect police experiences help to shape youths' long-term attitudes toward police. Furthermore, several studies have shown that the settings in which encounters unfold are profoundly important. This comprehensive understanding has inspired pioneering research on race, place, and policing. In particular, several researchers have attempted to disentangle the impact of race from that of neighborhood conditions, illuminating racially discriminatory policing practices.

The Black Lives Matter movement has intensified public discourse about racially biased policing and other forms of justice system inequality. In 2012, Black Lives Matter launched a social media campaign after George Zimmerman, a neighborhood watch volunteer in Sanford, FL, fatally shot Trayvon Martin, an unarmed 17-year-old black male.¹⁰⁶ After police officer Darren Wilson shot and killed unarmed teenager Michael Brown in Ferguson, MO, in August 2014, Black Lives Matter increased its virtual and physical presence as a national organization. The group uses impassioned chants and direct action to publicly condemn what it considers to be America's proven disregard for black lives, evinced by the overrepresentation of blacks among those killed by the police. On the other hand, law enforcement officers and others have criticized the organization for not expressing comparable outrage about the devaluing of black lives when people other than police pull the trigger.

Franklin Zimring, a law professor at the University of California, Berkeley, somberly asks, "How much do police chiefs care about whether the civilians their officers shoot live or die?"¹⁰⁷ He asserts that "radical changes" in the behavior of rank-and-file officers, especially as it relates to lethal shootings of civilians, will emerge from police leaders rather than from city hall, labor unions, or federal or state courts. He reasons that "until police departments

become willing to spend time, money, and management effort on resolving conflicts without killings, nothing significant can happen."¹⁰⁸ In particular, Zimring argues that the number of people killed by police might drop if administrators were to implement departmental policies focused on decreasing the number of unnecessary rounds discharged (the "just to make sure" shots), limiting single-officer assignments, and, legal justification aside, using greater restraint before firing on suspects flourishing knives, other sharp devices, and blunt instruments. Zimring also implores agencies to form research collaborations in the hope of collecting better data on police shootings. Substantially reducing the number of civilians killed by officers would help reduce tensions concerning the ultimate justice system inequality.

Police departments across the United States have tried to enhance public safety and improve police legitimacy. Unfortunately, the threat of police violence (both lethal and nonlethal) is among the myriad challenges that confront young people of color growing up in dangerous neighborhoods. We remain hopeful, however, that policymakers are committed to strengthening the fragile relationships between the police and the minority community so that the future of all children will no longer require sobering instructions from elders about how to stay safe when approached by police officers.

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Jails and Local Justice System Reform: Overview and Recommendations

Jennifer E. Copp and William D. Bales

Summary

Over the past three decades, the number of people housed in local jails has more than tripled. Yet when it comes to reforming the nation's incarceration policies, write Jennifer Copp and William Bales, researchers, policymakers, and the public alike have focused almost exclusively on state and federal prisons.

If you took a snapshot on a single day, the prison population would far exceed the population of local jails. But, the authors show, compared to prisons, roughly 18 times more people are admitted to and released from jails every year. Furthermore, about two-thirds of jail inmates have yet to be convicted of a crime, and they often languish behind bars only because they can't afford to pay bail. And although jails are intended for adults, on any given day roughly 4,000 young people under age 18 are confined in local jails.

In this article, Copp and Bales provide a broad overview of US jails, including facilities and operations, characteristics of inmates, and the conditions of confinement, and they make a number of suggestions for policy and practice. In particular, they argue that the justice system should slash the use of money bail, which disproportionately harms the poor and minorities. Specifically, they recommend that jurisdictions adopt validated risk assessment tools to help make decisions about who should and shouldn't be detained before trial; expand pretrial services that can, among other things, monitor compliance with release conditions; divert more people away from the criminal justice system; consider alternatives to jail, such as probation, for convicted offenders; and expedite case processing to decrease the time to trial and thus the overall length of jail stays.

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Over the past 45 years, the US prison population grew from about 200,000 to more than two million—an increase characterized as “historically unprecedented and internationally unique.”¹ The social toll of America’s system of mass incarceration has been staggering. Imprisonment reduces future earnings and job opportunities, limits civic participation, contributes to mental and physical health problems, destabilizes families, and further disadvantages economically marginalized communities. The fiscal costs of penal expansion have also been burdensome. Corrections spending accounts for an increasing share of government budgets, taking funds away from education, health care, and other services. Despite these human and economic costs, incarceration has done little to reduce crime and improve public safety.² Accordingly, a political consensus is emerging that we need strategies to downsize the number of people housed in state and federal prisons. Yet local jails are often missing from discussions of our nation’s overreliance on incarceration. Given that jails represent a huge portion of the growth in incarceration, that oversight is shocking.

As the gateway to the criminal justice system, jails are a ubiquitous part of the American criminal justice experience. Remarkably, although the daily population of prisons outnumbers the jail population, nearly 18 times as many people are admitted to jails annually.³ On any given day, roughly 730,000 people are held in more than 3,000 jails across the country; of these, the majority are awaiting trial and have not been convicted of a crime.⁴ That includes nearly 4,000 juveniles confined in adult jails. An additional 34,000 youth

are housed in more than 900 juvenile detention centers and correctional facilities nationwide.⁵ The overuse of jails exacts a toll like that of prisons on individuals, families, and communities, exacerbating inequalities across social, economic, and political lines. Paying for jails has also overwhelmed many communities. Growing jail populations have increased personnel and operational costs, in addition to the costs associated with building new facilities. Yet jails remain largely ignored by researchers and relatively misunderstood by the general public.

Despite similarities in the social consequences and economic burden of jail and prison incarceration, jails differ from prisons in many ways, and it’s important to understand these differences in order to guide policy. We begin by describing contemporary US jails, including the varied nature of their operations and facilities, inmate populations, and conditions of confinement. Next, we suggest future directions for policy. In particular, we assess pretrial release practices and discuss alternatives to pretrial detention for juveniles and adults awaiting trial. We also consider the potential for reform among those convicted and serving time in local jails. Recognizing that people who cycle in and out of our nation’s jails are disproportionately struggling with poverty, poor health, mental illness, and substance abuse, we discuss how the criminal justice system can work with local service providers to more effectively meet the needs of this population and reduce justice system inequality.

We also suggest that it’s unlikely the US jail and prison populations can be cut in tandem. Prison downsizing almost necessarily means transferring authority

for some convicted felons from the state to the county level. In the long term, counties would be expected to reduce their jail populations by connecting people to the programming and services they need, and by investing in rehabilitation and prisoner reentry. Yet many counties are ill equipped to manage the influx of prisoners (and parolees), and thus we can expect these shifts to further strain local communities. Drawing on examples of how decisions to downsize at the state and federal levels have affected local justice systems, we emphasize that researchers and policy makers should carefully consider the role of local jails as they pursue broad-based criminal justice reform.⁶

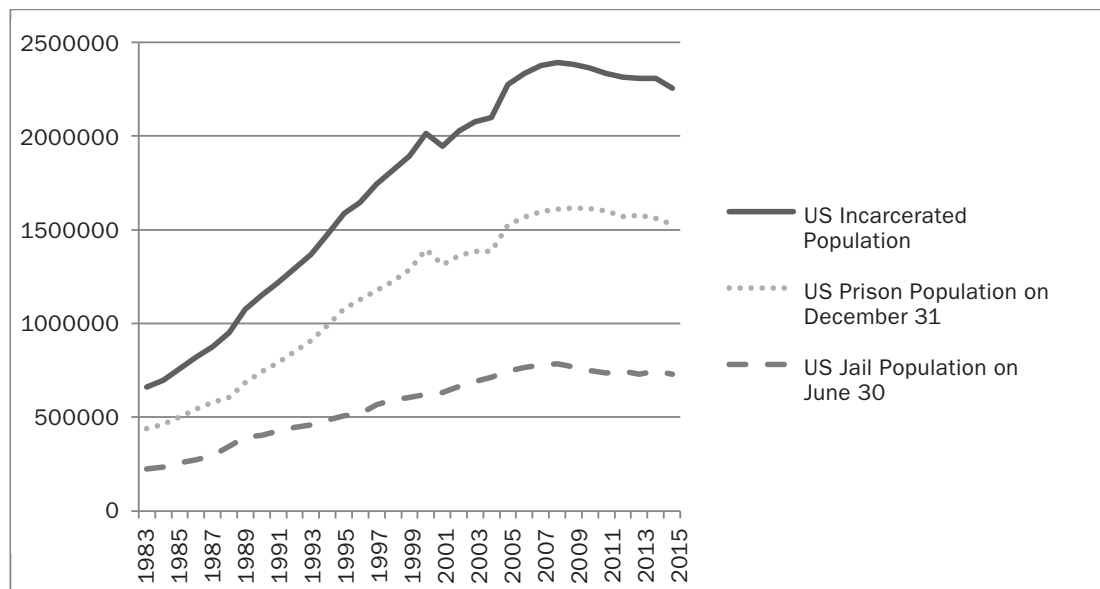
Jails in the United States

Issues related to prisons, inmate populations, and the wider consequences of incarceration are well documented, but jails have been a neglected topic. This is due, in part, to the complex and dynamic nature of jail functions and populations as compared to the relatively uniform state and federal prison systems. Prisons and jails both house people who are serving time following a criminal conviction. But jails do more than that: they also hold people awaiting trial or sentencing, transfer inmates to state or federal facilities, detain people with serious mental illness, house those who are scheduled to testify in court, temporarily house juveniles pending transfer to juvenile authorities, and hold inmates for overcrowded state, federal, and other facilities.⁷ Whereas prisons are operated at the state or federal level, most jails are managed by county governments and/or local law enforcement (except in Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont,

where both prisons and jails are operated by state-level corrections authorities).⁸ As a result, funding for jails comes not from state or federal budgets, but from the tax-supported budgets authorized by local funding authorities. It's hard to paint a broad portrait of US jails, since each of the more than 3,000 jails across the country is unique in terms of the composition of its population, the amount of resources available, and how those resources are allocated. In the following sections, we provide key facts and figures about jail facilities and operations, inmate populations, and conditions of confinement, noting that local jails vary immensely nationwide.

Jail Facilities and Operations

In 2013, 3,163 jail facilities existed in the United States, down slightly (4 percent) from the previous census in 2006. That drop is misleading, however, as it was largely driven by decisions to consolidate jail jurisdictions, not by cuts in jail populations. In fact, from 1983 to 2015, the number of confined jail inmates more than tripled, to an average daily population of 721,300 (see figure 1).⁹ This number appears relatively small when compared to the year-end population of our nation's state and federal prisons, which is 1,526,800.¹⁰ Yet the number of people who enter and exit jails each year far outpaces the number of prison admissions and releases. In 2008, 738,631 people were admitted to state and federal prisons, and 13.6 million were admitted to jails.¹¹ Given the relative stability of inmate populations from year to year, this means roughly 1.5 million admissions and exits combined among the state and federal prison systems and 27 million admissions and exits among jails that

Figure 1. Trends in the US Incarcerated Population 1983–2015, by Facility Type

year—suggesting that about 18 times as many people entered and exited jails as prisons during that period.¹²

To demonstrate the turnover in jails relative to state prison systems, we compared the New York City jail system to the state prison system of New York. In 2011, the New York state prison system had a year-end population of 55,436 inmates, compared to an average daily population of 12,790 in the NYC jail system. However, those figures mask the enormous churn in and out of the NYC jail system, which admitted 87,515 people that year.¹³ The state prison system admitted just 23,257 inmates—one-fourth of the city jail system’s total. And the 12,790 average daily population of the city jail system exceeded the number of inmates incarcerated in 25 of the other 49 states’ prison systems.¹⁴

Jails in America’s largest urban centers, like New York City’s, receive the most national attention. That’s unsurprising, as crime is often painted as an urban problem, and the major US population centers are responsible

for the country’s largest jail systems, as well as some of the most notorious jails (such as Rikers Island in New York, Cook County Jail in Chicago, and the Los Angeles County Jail). Yet the jail incarceration rate is actually lower in large cities than in most smaller jurisdictions. In fact, small counties (those with fewer than 250,000 people) have contributed the most to the quadrupling of the jail population since 1970.¹⁵

These trends reflect how the jail population trajectory has diverged across the urban-rural divide. Big cities have successfully reduced their jail populations through concerted systemic changes. But in smaller counties, the pretrial population has risen at the same time that other authorities have increasingly contracted with rural jails to house inmates. The limited tax base of smaller counties, and rural counties in particular, constrains their ability to offer alternatives to incarceration because they lack the resources to support effective programs and services. In many jurisdictions across the country, jails rely on “pay-to-stay” programs and other fines and

fees—shifting correctional costs to inmates and thus disproportionately burdening the indigent and racial/ethnic minorities.¹⁶ The lack of resources also creates an incentive to expand jails: many rural facilities have added capacity to take in out-of-county boarders. On the one hand, the influx of state prisoners and undocumented immigrants has brought in money to help sustain struggling jurisdictions. But adding beds and building new facilities also encourages greater use of pretrial detention. The different reactions to growing jail populations across the urban-rural divide (that is, downsizing versus expansion) show that reform efforts should target all counties, and that a one-size-fits-all approach is unlikely to be effective.

The trends we've described help give context to the enormous financial burden that jails place on local communities, and show that this financial burden may be particularly onerous in resource-deprived areas—including many small, rural counties. In fact, jail expenditures are one of the most significant sources of community spending on public safety. Based on recent estimates, US communities spent \$22.2 billion on jails in 2011.¹⁷ That figure vastly understates the true taxpayer cost of jails, however, because it excludes the resources provided by other local and government agencies.¹⁸ It also obscures considerable variability in local correctional budgets. For example, we recently examined a selection of allocated budgets for fiscal year 2015 and found that the estimated daily cost per inmate ranged from \$40 in the Mobile County Jail in Alabama to \$368 in the Montgomery County Jail in Maryland.¹⁹ We have little evidence to suggest that jail budgets alone indicate the quality of care and services or the outcomes of released offenders. But budgetary considerations necessarily affect decisions

about the types of educational programming, health care, and rehabilitative services available to inmates, as well as the upkeep of jail facilities.

Inmates

Jails are also distinguished by the tremendous diversity of their inmate populations. While a given prison typically holds individuals of the same gender, conviction status, and custody level, jails must manage and care for a much broader cohort of people. And because jails serve as the gateway to the criminal justice system, people arrive with a range of physical and mental health conditions—often stemming from problems associated with severe poverty, unemployment, exposure to trauma or abuse, mental illness, and substance abuse. Jails also house people accused (and convicted) of a broad range of offenses. Still, the majority of jail inmates are incarcerated for nonviolent traffic, property, drug, or public-order offenses. More specifically, about one-third of jail inmates are being held for misdemeanors and other minor offenses, with the remaining two-thirds behind bars for felonies.²⁰ Although felony offenders include people accused of violent crimes, three-quarters of jail inmates, including pretrial detainees and convicted offenders, are in jail for nonviolent offenses.²¹

Approximately 85 percent of jail inmates are men, but women make up a growing share of the jail population. From 2000 to 2015, the female jail population increased from 11 percent of the nationwide total to more than 14 percent, corresponding to a female incarceration rate of roughly 70 per 100,000 in 2014.²² The majority of jail inmates are members of racial or ethnic minorities, and racial disparities in jail populations are particularly marked. For example, African-

Table 1. Characteristics of Jail Inmates, Midyear 2014

Characteristic	Percent
Gender	
Male	84.8%
Female	14.6%
Age	
Adult	99.4%
Juvenile	0.6%
Held as Juvenile	0.1%
Held as Adult	0.5%
Race/Ethnic Origin	
White	47.2%
Black/African	35.8%
Hispanic/Latino	14.8%
American Indian/Alaska Native	1.4%
Asian/Native Hawaiian/Other Pacific Islander	0.7%
Two or More Races	0.2%
Conviction Status	
Convicted	38%
Unconvicted	62%

Source: Todd D. Minton and Zhen Zeng, *Jail Inmates at Midyear 2014* (Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, June 2015).

Americans make up 13 percent of the US population but account for more than 35 percent of the jail population. In contrast, roughly three-fifths of Americans identify as non-Hispanic white, yet this group accounts for less than half of jail inmates (see table 1).²³ In fact, the jail incarceration rate among black Americans is four times that among whites. In many places we see even greater disparities; for example, in New York City, blacks are held in jails at 12 times the rate of whites.²⁴

Poverty, unemployment, and low educational attainment are common among the jail population. In 2002, only about half of jail inmates had been employed full time before their arrest; nearly one-third were unemployed. Approximately three-fifths of inmates reported a monthly pre-incarceration income of less than \$1,000.²⁵ Recent reports suggest that the jail population is not only

more disadvantaged than the US population as a whole, but also significantly poorer than the population of state prisons. A number of reasons account for this, including the widespread use of money bail and jail sentences for failure to pay fines and fees. Jail inmates are also much less likely than the general population to have completed high school—nearly half of jail inmates have less than a high school education.²⁶

Although jails are intended for adults, on any given day roughly 4,000 youth under age 18 are confined in local jails. That number has fallen considerably in recent years; according to the Bureau of Justice Statistics, the number of juveniles in adult jails peaked in 1997 at 9,105.²⁷ In response to an increase in serious violent offenses during the late 1980s and 1990s, states adopted legislation permitting the transfer of youth to adult courts, producing a corresponding increase

of juveniles in adult correctional facilities. Over the past decade states began to reverse those decisions, raising the age of adult court jurisdiction for juvenile offenses. The most recent state to pass raise-the-age legislation was New York, which did so in April 2017. Before that, New York was one of two states (along with North Carolina) to automatically view 16- and 17-year-olds as adults in criminal court.²⁸

Most youth who are arrested are handled by the juvenile justice system. On any given day in 2013, 17,800 youth were being held before trial in juvenile detention facilities. Yet just as churn exists in the adult system, hundreds of thousands of youth may cycle through pretrial detention centers each year. Pretrial detention is intended for youth who are likely to either commit another crime before trial or fail to appear in court, but many who are detained don't meet these criteria.²⁹ In fact, most youth in detention are being held for nonviolent crimes, including property, drug, and public order offenses, or for technical violations (for example, violation of a valid court order). A small number (3 percent) are being held for status offenses—that is, behaviors that wouldn't be crimes if conducted by an adult, such as persistent truancy, incorrigibility, curfew violations, and such. After they go to court, many youth are sent to juvenile correctional facilities or other out-of-home placements (such as group homes and inpatient facilities). In 2013, more than 35,000 youth were held in juvenile correctional facilities on court orders. In contrast to the pretrial population, a greater share (roughly 40 percent) of committed youth is held for violent offenses, and a substantial minority, roughly one in five, is serving time for technical violations or status offenses.³⁰

The majority of detained and committed youth are male (86 percent) and 15 or older (87 percent). Although far fewer younger children and adolescents end up behind bars, the figures vary slightly between the detained and committed population. Specifically, nearly one detained youth in five is under 15, compared to roughly one in 10 among committed youth. As in the adult jail population, the juvenile detention and commitment populations are marked by sizable racial disparities. African-Americans make up just over 16 percent of the total juvenile population but nearly two-fifths of youth in juvenile facilities. In contrast, approximately three-fourths of all juveniles are white, yet whites represent less than one-third of all detained/committed youth.³¹ Juvenile commitment rates have been falling across the country, but not all groups have equally benefited from these trends. Strikingly, black youth are more than four times as likely to be committed as their white counterparts. The driving force behind this difference is the growth in arrest disparities.³²

Conditions of Confinement

Conditions in jails have consequences for inmates' health and wellbeing. Yet correctional institutions have largely failed to meet inmates' needs for services. Recidivism rates in the United States are staggering: roughly two-fifths of those discharged from parole or conditional supervision return to jail, and one in six jail defendants is rearrested before their case is resolved. Although it's hard to track recidivism rates among people serving sentences in jails, we do know that more than three-fifths of people released from state prison are rearrested within three years.³³ Local jails present a unique opportunity to identify and treat some of the factors underlying individuals'

continued involvement in offending behaviors.³⁴ Yet we know very little about which programs and services could help jail inmates the most.

One of jail inmates' most pressing service needs is mental health treatment. In 2005, more than three-fifths (64 percent) of jail inmates showed indications of a mental health problem. That included a clinical diagnosis or treatment by a mental health professional and/or symptoms that met the criteria of a mental disorder based on the DSM-IV, a standard classification of mental disorders used by US mental health professionals. Inmates with mental health problems were more likely to have been previously incarcerated, to report substance abuse and dependency, to have been homeless in the year before their arrest, and to have experienced physical or sexual abuse.

Most jails don't have the facilities or services to offer the mental health treatment this population requires. Mental health professionals are seldom involved in classifying inmates' mental health status, and fewer than one in five inmates with documented mental health problems receives treatment.³⁵ Mental health conditions often occur together with alcohol and drug abuse. In 2007–09, more than two-thirds of jail inmates reported substance abuse or dependency, but only one in five received substance abuse treatment after entering jail.³⁶ Inmates also have trouble finding legitimate work because of their low levels of education and limited job experience and training.³⁷ Jail inmates are more likely than state and federal prison inmates to have dropped out of high school and less likely to have obtained a GED; nearly half the inmates in local jails didn't finish high school or its equivalent. Yet only 14 percent of jail

inmates take part in educational classes and fewer than one in 10 (7 percent) participates in vocational training.³⁸ And less than half (46 percent) of jails nationwide offered a work release program in 2006.³⁹

Because jails are short-term facilities, it's a contentious issue whether treatment and other programming should be made available to inmates—particularly those in pretrial detention. Yet precisely because people often stay in jail only briefly before returning to the community, many practitioners suggest that jails can offer a critical opportunity to focus on inmates' immediate needs, such as detoxification, housing, transportation, financial assistance, or maintaining existing services. Such attention could reduce recidivism and contribute to the inmates' overall health and wellbeing. For example, although jail inmates may not stay long enough for more intensive substance abuse programs, counselors and staff members could screen them to determine their need for detoxification services. Improved mental health screening and assessment would ensure that inmates receive appropriate care in that area.

An even more fundamental concern is whether jails can provide for the basic safety of their inmates. A chief worry here is inmate sexual assault. In 2011–12, an estimated 3.2 percent of jail inmates reported experiencing sexual victimization in the past 12 months (or since admission). The prevalence of inmate sexual victimization varied considerably across jails, however, ranging from 0 to 8 percent.⁴⁰ In 2003, Congress passed the Prison Rape Elimination Act (PREA), which established prison rape and sexual assault as a top priority in American jails and prisons. PREA requires that corrections facilities adopt a zero-tolerance policy toward all

forms of sexual abuse and harassment. It also calls for adopting a variety of standards, including training staff to stop sexual assaults and to use proper reporting procedures, and providing sexual assault victims with rape kits and counseling. States that don't comply with PREA standards can lose 5 percent of the federal grant money designated for corrections purposes. But local facilities don't face the same penalty, so there's less oversight for PREA compliance in jails. Despite the lack of a standardized compliance monitoring or enforcement mechanism for jails, however, several factors do encourage jail compliance. For one, certain agencies are prohibited from entering into contracts with noncompliant facilities. States may also independently decide to require local facility compliance. Further, jails that are housing federal prisoners, and jails seeking accreditation by organizations that receive federal grant funds, are required to adopt PREA standards.

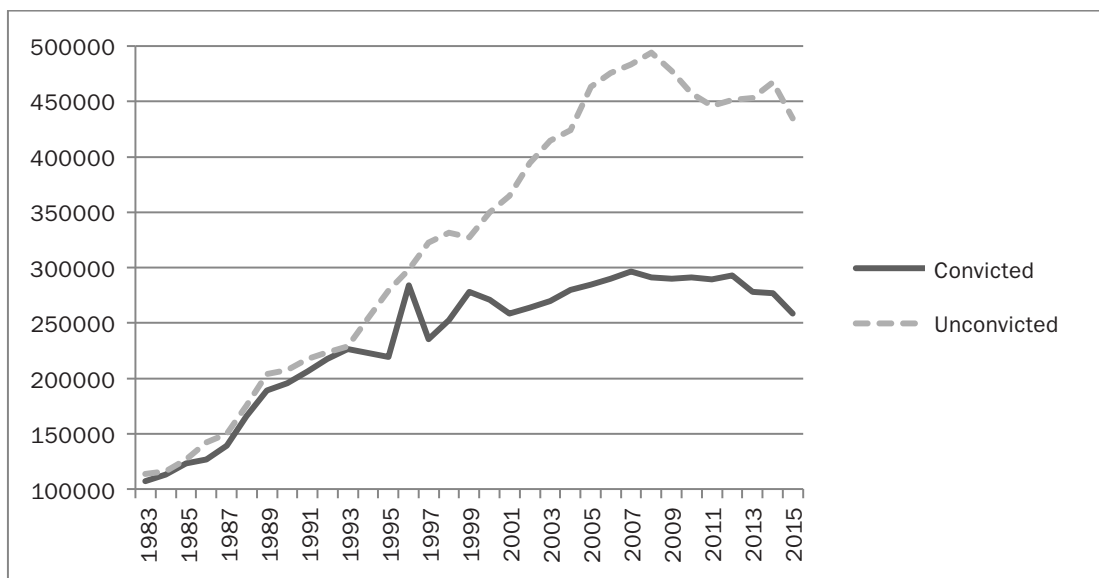
In addition to shining a spotlight on prison rape, PREA standards explicitly address the safety of juveniles in adult jails and prisons. Compared to other groups, juveniles have the greatest risk of experiencing sexual assault in adult facilities, and are significantly more likely than other age groups to be violently victimized—including at the hands of facility personnel.⁴¹ PREA mandates that all inmates under age 18 must be “sight and sound separated” from adults, and given the opportunity to participate in educational and employment programs. Yet two-fifths of adult jails don't provide educational programming, and fewer than one in 10 offers young people job training.⁴² In addition, separating juvenile and adult populations is impracticable in some facilities, which has led to placing youth in isolated settings, including solitary confinement. Thus sheriffs, correctional

officials, and others have advocated for keeping juveniles in the juvenile system, often citing the financial burden of noncompliance.

Inmate suicide is another key safety concern in jails. A recent report found that suicide has been the leading cause of jailhouse deaths since 2000; in 2013, more than one-third of all inmate deaths in jails were suicides.⁴³ This corresponds to a suicide rate of 46 per 100,000 inmates—three times greater than the suicide rate in prisons. Most jailhouse suicides occur before trial, among inmates who have yet to be convicted of a crime. In fact, the suicide rate of pretrial detainees is seven times higher than for convicted inmates. Wide variation in suicide rates across facilities suggests that some jails do a much better job than others at screening for suicide risk. The rates tend to correlate with jail size—between 2000 and 2007, the suicide rate in the smallest jails was 167 per 100,000, compared to 27 per 100,000 in the largest jails.⁴⁴ Suicides are also frequent among juvenile populations; the suicide rate for juveniles in adult jails was eight times greater than the rate for youth in juvenile detention facilities, and five times greater than the rate among youth in the general population.⁴⁵

Few facilities appear to have the necessary staff and resources to meet the needs of their often vulnerable and high-risk inmate populations. That remains true despite pressure from the federal government to improve conditions (for example, to fix identified problems and constitutional violations, including failure to provide adequate medical and mental health care, protection from harm, use of force, and suicide prevention) in the form of consent decrees and other formal agreements between the Department of Justice and a

Figure 2. Trends in the US Incarcerated Population 1983–2015, by Conviction Status



number of jails and juvenile facilities across the country.⁴⁶

Reforming the System

The justice system has become an important part of the national conversation regarding inequality. Researchers, activists, and policy makers have told the public about the collateral consequences of involvement with the justice system—from police contact to incarceration—and outlined how America’s harsh penal policies disproportionately affect poor, minority communities. This has led to debates about stop-and-frisk, police brutality, and mass incarceration, among other topics. But for too long, jails have been missing from the conversation. As we’ve shown, millions of people cycle in and out of our nation’s jails every year, and many of them are too poor to post bail, suffer from mental illness or substance abuse, and have been accused of nonviolent offenses. Reducing our nation’s overreliance on incarceration—including deliberate steps to address the unequal impact on low-income and minority

communities—must start at the local level.

To cut the jail population and shorten jail stays, we suggest a number of strategies:

- adopt validated pretrial risk assessments;
- expand pretrial services, including pretrial supervision and monitoring and court date notification;
- divert people away from the criminal justice system using civil citation and other diversion programs;
- consider alternatives to detention for people who are sentenced to jail, including community corrections; and
- expedite case processing to decrease the time to trial and overall length of stay.

Most of these strategies are equally relevant for juvenile and adult populations. But we also recommend paying explicit attention to the juvenile justice system,

including decriminalization, diversion, and deinstitutionalization.

Pretrial Detention and Release

Since 2000, the main factor driving jail population growth has been the increase in pretrial detainees (see figure 2). By the end of 2015, more than two-thirds (63 percent) of all jail inmates were awaiting trial (and thus legally presumed innocent). The share is much higher in some jurisdictions; for example, 85 percent of San Francisco’s jail population is made up of people awaiting trial or case resolution.⁴⁷ Unnecessary pretrial detention is expensive; the direct cost to county governments of pretrial detention practices alone is an estimated \$9 billion annually.⁴⁸

So how do authorities determine whether a person is released or detained before trial? Pretrial release decisions are most often made by a judge, a magistrate, or a bail commissioner, who typically has three choices: release on bail, release without bail (that is, on the accused’s own recognizance), or hold in jail until trial. In most states, the court must determine whether the accused poses a serious risk to the safety of the community, and how likely it is that he or she will appear in court. As a proxy for such determinations, it’s common practice to set a monetary bail amount to help ensure that defendants appear in court. Money bail has become increasingly widespread since the 1980s and is now the primary pretrial release mechanism in the United States.

In 1992, release on recognizance was the most common pretrial release option. But by 2006 its use had declined by one-third. The same period saw a corresponding increase in the use of money bail. In 2006, 70 percent of people suspected of a felony were assigned

money bail. And average bail amounts have increased substantially. By 2006 the average bail was \$55,500, and half the people who remained in jail until trial faced a bail amount of \$40,000 or more.⁴⁹ The Bail Reform Act (1984) introduced the notion that defendants should be released under the “least restrictive conditions” that provide reasonable assurance that they’ll neither flee nor pose a risk to the community.⁵⁰ Yet because many people can’t pay bail, they’re unable to benefit from such conditions. The disparate impact on the poor is particularly troubling, as pretrial incarceration can affect employment, housing, and family economic stability. Pretrial detainees may also feel pressure to plead guilty in a plea bargain so they can be released sooner and thus avoid losing a home or job, or resume care of a family member or children.⁵¹ Pretrial detainees also fare worse at the trial stage. Compared to those released before trial, they’re more likely to be convicted of a felony, receive a sentence of incarceration, and receive longer sentences.⁵² The focus on money leads to arbitrary pretrial release decisions that deprive people of liberty, often unjustifiably, and produce excessive jail costs. Let’s take a look at our recommended strategies in detail.

Adopt pretrial risk assessment tools. One way to limit the number of inmates awaiting trial is to prioritize the pretrial detention of dangerous defendants—and increase the use of personal recognizance and unsecured bonds—by adopting validated pretrial risk assessment tools.⁵³ Such tools can assess the defendant’s likelihood of appearing in court and reoffending during the pretrial period; they can also help identify treatments and interventions that could reduce the likelihood of committing a new offense. In contrast, pretrial decisions based on money bail hinge on the defendant’s ability to pay,

which indicates neither guilt nor risk in release. Though validated risk assessments are available, only 40 percent of county jails use them at booking.⁵⁴ And fewer than 10 percent of jurisdictions use empirically based, data-driven pretrial risk assessments. Counties that have successfully developed and implemented pretrial risk assessment tools report drops in both their jail population and the average monetary bond; such successes have been reported in both the adult and juvenile justice systems.⁵⁵

But not all pretrial risk assessments are created equally. For example, relying on data from defendant interviews can be time-consuming, expensive, and inaccurate. Many risk assessments were designed using data from one jurisdiction. Some risk tools are proprietary, and the criteria they use aren't readily apparent; some may contain criteria that serve as proxies for race or other extra-legal factors.

Over the past few years, the Laura and John Arnold Foundation has worked to develop a national model for pretrial risk assessment, the Public Safety Assessment (PSA), to guide pretrial release decisions. The PSA doesn't include factors such as race, gender, or socioeconomic status. Instead, it focuses on objective information related to the defendant's current offense and offending history to give three scores: one for the likelihood of new criminal activity, one for the likelihood of failure to appear, and one for the likelihood of new violent criminal activity.⁵⁶ However, the PSA assesses only risk, not defendants' needs. And many jurisdictions that have adopted the PSA and other pretrial risk assessment tools still continue to use money bail.

Expand pretrial services. Since the 1960s, pretrial services programs have gathered information on defendants, given the courts key information for risk assessment, and supervised defendants released on bail, including monitoring compliance with release conditions. In jurisdictions without pretrial services programs, judges must make release decisions using very limited information (for example, they may know only the current charge and a partial criminal history) and with few options for supervision and monitoring during the release period. These judges are more likely to rely on money bail. Pretrial services programs help judges make more informed release decisions, and also provide a range of individualized options to help manage the risks presented by defendants. These options range from notifying low-risk defendants of their court dates via text messaging to supervising release (that is, monitoring compliance with release conditions such as check-ins, curfews, and drug testing) for those who face more serious charges or have been determined to pose a flight risk. As a result, pretrial services programs can help jurisdictions use jail resources more efficiently by decreasing pretrial detention rates and reducing the average length of stay, leading to substantial cost savings.⁵⁷

Divert people from the criminal justice system. A third strategy to reduce the pretrial population is to reconsider the criminal justice system's role in responding to misdemeanor offenses more generally. For example, the Misdemeanor Justice Project at John Jay College has objectively analyzed low-level offenses to promote data-driven policy initiatives, including the decriminalization of certain minor offenses in New York City. As part of the city's Criminal Justice Reform Act, these changes

encourage police officers to issue fines and summonses for eligible offenses, instead of making arrests. Many states have statutes permitting civil citations, including citation and release before and after arrest. The New Orleans Police Department is one of many that has increased its use of citation and release. In 2008, the New Orleans City Council mandated the use of a summons in lieu of arrest for municipal offenses (such as public intoxication, disturbing the peace, or criminal trespassing), with the exception of domestic violence. As a result, summonses are being issued in 32 percent of municipal offenses, and 41 percent of municipal offenses other than public intoxication.⁵⁸ By offering an alternative to pretrial detention, such citation and release policies can lower pretrial detention rates and reduce costs to local jails by diverting people who pose little risk to the community and are likely to appear in court.

Another option for misdemeanors is diversion. Diversion programs were first used in the juvenile justice system and became an alternative to prosecution for adults during the rehabilitative movement of the 1960s and 1970s.⁵⁹ Such programs operate at different stages of the criminal justice process, but pre-arrest diversion programs are the ones most likely to affect jail populations. These pre-arrest programs rely on police officers to divert people suspected of low-level crimes to community-based treatment or services. A good example is Seattle's Law Enforcement Assisted Diversion (LEAD) program, which encourages police officers to direct people suspected of minor crimes, including drug offenses and prostitution, to treatment. Preliminary research finds that LEAD participants were significantly less likely to commit new crimes, suggesting that such programs can not only benefit people

accused of low-level crimes but also save money for local correctional systems.⁶⁰ Many jurisdictions are also teaching police officers and other first responders how to handle people who appear to be mentally ill or under the influence of alcohol or drugs, often coordinating with mental health professionals to help connect such people with community services (see Traci Schlesinger's article in this issue for more on diversion).⁶¹

Civil citations and pre-arrest diversion programs are particularly appealing because they help people avoid criminal justice sanctions, and often connect them to the local services they need. Despite these advantages, such programs can have unintended negative consequences. Many people can't pay the associated fines, which may ensnare them more deeply in the criminal justice system. Local jurisdictions have increasingly used monetary sanctions over the past several decades, at the same time as the incarcerated population has grown.⁶² Judges and other court officials have little flexibility when it comes to these monetary sanctions. That is, the amount is usually based on the offense and not the defendant's ability to pay, and sanctions can rarely be revoked or altered.⁶³ A sanction that a person can't pay is neither useful nor fair. It is indefensible that people who meet the eligibility criteria for diversion programs can be remanded to jail because they can't pay fines or fees.

Consider alternatives to jail for convicted offenders. Many of the strategies we've presented help defendants avoid criminal sanctions entirely, consistent with the principle of minimizing the collateral consequences of contact with the criminal justice system. When these options aren't suitable, community corrections can be an

alternative to jail (for more on this topic, see the article by Michelle Phelps in this issue). Community corrections—which may include probation, a split sentence of incarceration and probation, or part of a custodial sentence served on parole—accounts for the largest share of the US correctional population, and it is the most obvious alternative to incarceration for convicted offenders.⁶⁴ The decision to use community corrections is made by a sentencing judge, who typically requires the offender to follow certain conditions. Probation officers or supervising agencies can establish additional rules and guidelines, including program participation (for example, transitional housing programs, anger management, alcohol and drug counseling, and mental health counseling) and frequency of check-ins. Those who violate the conditions of probation may face sanctions, including a return to jail.

Some jurisdictions use validated risk and needs assessment tools to guide the conditions of probation. This individualized approach increases probationers' chances of success. Although a number of states have mandated that state agencies use risk and needs assessments to guide supervision, the use of these assessments at the local level is more limited. Instead, local jurisdictions often apply a standard set of guidelines to probationers, which can increase the odds that rules will be violated.⁶⁵ According to a recent report from the Vera Institute of Justice, using validated risk and needs assessment tools for people placed on probation is "the most important change needed to improve supervision and reduce recidivism."⁶⁶

Expedite case processing. A final way to reduce the number of people in jail and decrease the average length of stay for jail

inmates is to expedite case processing. That can mean limiting the time between arrest and first appearance hearings, for example, by using video conferences. Other strategies include reduced continuances and vertical prosecution, which is a case organization method that encourages judges and attorneys to stay on the same case until it's completed. Large jail systems might also consider hiring a jail release coordinator who ensures that cases awaiting trial are moved along, and coordinating with local social service agencies and service providers to see that inmates are released to appropriate programs, facilities, and treatment centers.⁶⁷ The fact that jail turnover in small jurisdictions is three times higher than in the largest jails suggests that lessening the burden of case processing, as well as the burden of admissions and releases, could help reduce inmates' overall length of stay.⁶⁸

A Focus on Juveniles

The juvenile justice system has always been oriented more toward rehabilitation than the adult system. We must maintain that orientation so that kids get prevention and treatment resources early in life to derail problem behaviors before they become firmly entrenched. Promisingly, over the past several years many states have begun to reconsider policies regarding the transfer of juveniles to adult court that were enacted during the Get Tough movement. Juveniles should be treated as juveniles, and juvenile processing should occur in the juvenile court system. Similarly, to interrupt the school-to-prison pipeline and mitigate the collateral educational damage caused by harsh school sanctions, we must reverse the trend toward zero-tolerance policies and decriminalize infractions that occur in schools.⁶⁹ The diversion programs described above, which

allow eligible first-time offenders to avoid formal sanctions, are promising. But such opportunities must be equally available to all youth, so that they don't contribute to racial disparities. Finally, commitment to correctional institutions—whether juvenile or adult facilities—must be a last resort. Among the wide-ranging consequences of juvenile detention are an increased risk of recidivism and poorer physical and mental health. Pretrial detention of youth also increases the likelihood that their cases will be handled formally and that they'll receive an out-of-home placement. Yet detention's most detrimental effect in the long term may be its impact on educational attainment and later employment. Keeping youth out of detention facilities and in the community gives them a better shot at achieving their educational goals and avoiding future involvement with the criminal justice system.⁷⁰

Jails in an Era of Criminal Justice Reform

Prison Downsizing and Jails

Trends in prison and jail population growth over the past few decades appear to be closely related. Accordingly, as criminal justice reform became a viable possibility, it seemed plausible that decarceration would reduce jail and prison populations alike. Recent evidence, however, suggests that the size of prison and jail populations are not inherently linked.

As a result of a 2011 US Supreme Court decision, *Brown v. Plata*, California was ordered to downsize its prison population by 25 percent within two years. To comply with this order, Governor Jerry Brown signed the Public Safety Realignment Act (A.B. 109), which effectively transferred

authority for people convicted of certain “non-non-nons” (nonviolent, nonsexual, nonserious offenses) from the state prisons and parole to county jails and probation. The idea behind this shift is that local communities are better suited to promote rehabilitation and reentry. Yet for California's realignment experiment to succeed, counties must be able to bear the burden the state placed on them.

Counties received state funding to help care for the increased number of offenders occupying local jails and under community supervision. They were also granted considerable discretion in managing these funds—in terms of both allocation and setting priorities. But the statewide initiative was rolled out with little warning, and it overwhelmed many communities. A number of problems have cropped up. For example, because only the current conviction is considered when determining whether to place offenders on state parole or county probation, counties have seen an influx of people who committed serious and violent offenses in the past. As a result, local probation offices are facing unmanageable caseloads, and community responses have tended toward surveillance rather than rehabilitation. Observers have also worried about public safety. Given the complex needs of the growing number of offenders under local authority, communities are struggling to provide essential health care and social services, including mental health care and substance abuse treatment. County officials must also deal with growing jail populations and lengthened jail sentences. Jails are typically used to house convicted offenders for up to one year, but sentences are now extending beyond that, raising the question of whether local jails are suited to longer-term confinement.

Although a key objective of realignment was to support community-based programming, a portion of the funds was to be used for county jail construction—suggesting that increases in the jail population were anticipated.⁷¹ Coupled with longer jail sentences and the jails’ inability to provide adequate services and treatment, the rise in jail populations calls into question the effectiveness of realignment as a decarceration strategy. Stanford University legal scholar Joan Petersilia has characterized what happened under realignment as “trans-incarceration”—that is, simply shifting the population of convicted offenders from one type of institution to another.⁷² That’s particularly troubling in California, where realignment was driven by a Supreme Court order to rectify the violation of prisoners’ constitutional rights. Early evidence suggests that instead of being remedied, those constitutional violations have simply been passed from the state to the county level. California’s experiment with prison downsizing is important to keep in mind as we devise future prison reforms.

Conclusions

In the national debate about the high costs and deleterious consequences of the US criminal justice system, we’ve reached a general consensus that we need to scale back the number of men and women housed in our state and federal prisons. Yet somehow, despite the fact that millions of people cycle in and out of our nation’s jails, these local facilities remain at the periphery of the discussion and outside the purview of most criminological research. This oversight has allowed jails to keep operating in ways that are both costly and unjust, and that often contradict scientific evidence.

Our review of the research shows that jails touch the lives of millions of people each year, the majority of whom face problems such as poverty, homelessness, unemployment, substance abuse, and mental or physical illness. Furthermore, although jails take billions of dollars to operate, their design is often at odds with the populations they serve, given that they were intended for short-term stays. Limited access to physical and mental health care and substance abuse treatment is especially problematic. Because mental health problems and substance abuse often underlie offending behaviors, the failure to treat those issues translates to high rates of recidivism and high costs to local correctional systems.

Strikingly, two-thirds of those detained in our nation’s jails have yet to be convicted of a crime. Pretrial detention is intended for people who pose a threat to public safety or are unlikely to appear in court. Yet as many as nine in 10 pretrial detainees remain in jail because they can’t post money bail. This practice, which keeps people behind bars despite the legal system’s presumption of innocence, costs communities roughly \$9 billion a year. Numerous studies have documented pretrial detention’s cascading effects on decisions made at other stages of case processing. And these consequences aren’t evenly distributed, because members of racial/ethnic minorities are less likely to meet bail. Thus pretrial detention and money bail further contribute to inequality in the criminal justice system, and exacerbate the problems of those at the margins by jeopardizing homes, jobs, relationships, and mental and physical health.

Fortunately, we have alternatives. Because money bail policies and practices are the greatest contributors to the jail population,

we must first take steps to reduce the use of financial forms of release. The research we reviewed makes clear that money bail doesn't meet the standards of evidence-based practice. No empirical evidence suggests that putting up a cash bond increases public safety or the odds of court appearance. Many jurisdictions have already moved to eliminate cash bail. For example, Washington, DC, uses money bail in just 5 percent of cases, cutting out the need for for-profit bail bonding companies. Instead, DC jails rely heavily on a risk assessment model and pretrial service system, and they operate at 45 percent capacity. Similar changes are coming in New Orleans, where a recent vote jettisoned bail for most minor offenses. Statewide reforms have also been implemented in Colorado, Kentucky, Maryland, and New Mexico. Most recently, New Jersey joined the list of states that have taken a more evidence-based approach to pretrial release. Using a validated risk assessment tool to guide release decisions, New Jersey judges set bail in only three of the 3,382 cases processed during the first month after reform.

In addition to eliminating money bail, jurisdictions should adopt validated risk assessments to determine whom to release and under what conditions. Jurisdictions should also make use of pretrial services agencies wherever they're available. Such agencies perform a variety of functions: they gather information and conduct risk assessments to make release recommendations to court officials; and they also handle supervision, treatment, and court date notification to monitor defendants and improve compliance during the release period. Studies confirm that it's more cost-effective to provide these services in the community than to detain defendants

before trial, so it may be worthwhile to use pretrial services agencies more extensively.

Police officers can also help manage pretrial incarceration levels. In particular, jurisdictions can enlist police officers to participate in pre-arrest diversion programs by empowering them to steer people suspected of minor offenses to community-based treatment and services in lieu of arrest. Some jurisdictions are now training officers to respond to people with behavioral health problems. Police departments are also forming partnerships with mental health professionals to connect people with community-based services. Another way that police can reduce arrests and detention levels is to issue more civil citations. With citations and summonses, officers can circumvent the process of arrest and booking by releasing people suspected of certain offenses who pose little risk to the community and are likely to appear in court.

We must also evaluate the use of jail incarceration for convicted offenders, most of whom are serving sentences of up to one year for nonviolent offenses related to traffic, property, drugs, and public order. In particular, we must consider whether confining people convicted of relatively minor offenses in settings with few rehabilitation programs is the best way to use local resources—especially when affordable and effective alternatives to jail are available. For example, given the low-level nature of the crimes committed by most jail inmates, communities could further cut their jail populations by using community corrections.

In our review, we've discussed these alternatives in detail and identified many

successful examples—both for pretrial detainees and convicted offenders. But there's a real dearth of research and evaluation on jails and these alternative practices. Thus communities are implementing programs and services without a clear understanding of what works best for jail inmates. We need research and evaluation to take a serious look at current practices and identify what works, under what conditions, and for whom. Just as importantly, we must invest in the infrastructure, programs, and services that do work, and abandon those that don't.

We're encouraged by recent attention to local justice systems and, in particular, by the Safety and Justice Challenge, a massive initiative funded by the John D. and Catherine T. MacArthur Foundation that supports local jurisdictions across the country as they devise strategies to reduce jail incarceration. We look forward to the knowledge and policy changes generated

by efforts like these. Still, we believe that funding agencies, scholars, policy makers, and practitioners should devote substantially more attention to local jails: improving their operation, reducing their inmate populations, and identifying what practices and interventions work best in these correctional systems. If we continue to neglect the study of jails and postpone the implementation of evidence-based practices, local governments will continue to spend millions of dollars on programs that may be not only ineffective but even detrimental to inmates.

Finally, we urge researchers and policy makers to keep jails in mind when discussing large-scale decarceration. California's experiment with prison downsizing suggests that it's a mistake to omit jails from strategic efforts to reduce America's prison population, given the central role that local correctional systems play in rehabilitating offenders and helping them reenter society.

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Ending Mass Probation: Sentencing, Supervision, and Revocation

Michelle S. Phelps

Summary

The United States' high incarceration rate gets a lot of attention from scholars, policy makers, and the public. Yet, writes Michelle Phelps, the most common form of criminal justice supervision is not imprisonment but probation—and that's just as true for juveniles as for adults.

Probation was originally promoted as an alternative to imprisonment that would spare promising individuals from the ravages of institutionalization, Phelps writes. But instead, it often serves as a net-widener, expanding formal supervision to low-level cases. Like mass incarceration, she demonstrates, mass probation is marked by deep racial and class disparities, and it can have devastating consequences for poor and minority communities.

In her review, Phelps covers three aspects of probation supervision—who is sentenced to probation, what they experience, and when and why probation is revoked (that is, when probationers are sent to jail or prison for violating the terms of supervision). She then presents policy recommendations for each of these three stages that could reduce the harms of mass probation. They include scaling back the use of probation, offering probationers more meaningful help to improve their lives, and raising the bar for revoking probation. Though probation reform may not be a cure-all, she writes, it could reduce the scale of our criminal justice system and temper its detrimental effects.

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In recent decades, the US criminal justice system has expanded in reach and intrusiveness, from arrests to mass imprisonment. Much of the research on mass penal control has focused on prisons, yet the most common form of supervision is probation.¹ Between 1980 and 2007, the number of adults under probation supervision in the United States grew from 1.1 million to 4.3 million.² The number has fallen modestly in recent years; by 2015, 3.8 million adults were under probation supervision, accounting for 56 percent of the 6.7 million adults under criminal justice control.³ In juvenile justice, too, probation continues to play an outsized role, although juvenile incarceration rates rose less steeply during the penal build-up and have been falling for longer.⁴ At the peak in 1997, more than 700,000 young people were placed on probation, compared to under 200,000 sent to residential placement.⁵ By 2013, the total number of annual delinquency cases had fallen by nearly half, and probation remained the most common sentence.⁶

How do we make sense of the expansion of probation? Originally designed and promoted as an alternative to imprisonment that would spare promising individuals from the ravages of institutionalization, probation has often served instead as a net-widener that expands formal supervision for low-level cases.⁷ Though it's frequently dismissed as a slap on the wrist, probation can entail fairly onerous requirements, including frequent reporting and drug testing, expensive fines and fees, and tedious rules and regulations. Probationers often fail to meet the multitude of conditions; when they do, they can be sent back to jail or prison. As University of Wisconsin legal scholar Cecelia Klingele notes, community supervision often

represents a delayed path to prison rather than a true alternative.⁸

Thus, probation is both a potential alternative sanction (which could, in theory, help to reduce incarceration rates) and, as Yale law professor Fiona Doherty puts it, “part of the continuum of excessive penal control.”⁹ Yet this opportunity or risk is not spread evenly; race, class, and gender all influence whether people are diverted to probation (instead of prison) and whether they can successfully complete supervision without revocation (a return to jail or prison for violating the terms of release).¹⁰ And at the state level, policy choices shape the degree to which increasing probation rates are associated with more or less growth in imprisonment rates. Policies that promote real diversion of prison-bound cases and lower revocation rates can reduce the net-widening effect of probation.¹¹ Yet as I show below, current practices in many probation departments deviate sharply from these ideals.

Given the scale of mass probation, scholars and policymakers alike should be attuned to its causes and consequences. For young people in vulnerable communities, the cumulative effect of aggressive policing, repeated criminal infractions, and the piling on of sanctions can be disastrous.¹² For adults, mass probation is one more example of the United States' uniquely punitive criminal justice system.¹³ In this review, I concentrate on three critical aspects of probation—sentencing, supervision, and revocation—followed by policy recommendations for each. Though probation reform isn't a panacea for the harms of mass incarceration, it can reduce the scale and detrimental effects of our criminal justice system.

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Getting on Probation

Unlike parole (the other common form of community supervision), which is typically granted by a parole board or required as a mandatory condition of prison release, probation terms typically begin with a sentence from a judge. Probation sentences for adults have expanded enormously over the past three decades. Between 1981 and 2007 (the year with the highest probation rate), entries to probation increased by 214 percent, maxing out at over two million annually.¹⁴ The increase was driven in large part by the rise in criminal convictions, which sent more people to both probation and prison.¹⁵ Over the same period, the proportion of probationers under supervision for a felony hovered around 50 percent, increasing to 57 percent by 2015 as misdemeanor probation was scaled back and felons were increasingly diverted to probation in some places.¹⁶ For juveniles, the number of delinquency cases processed by the courts fell rapidly through the 2000s and even more quickly in the early 2010s, while the percent of adjudicated delinquency cases with a sentence of probation increased from 57 percent in 1985 to 64 percent in 2013.¹⁷

The chances of diversion aren't spread evenly across individuals. First, there are deep

race and class disparities in who commits the kinds of actions punished through the criminal justice system (predominantly "street crimes" associated with poor neighborhoods) and who gets arrested for criminal wrongdoing (for example, racial disparities in arrests for drug offenses). Second, personal characteristics—particularly race, age, gender, and socioeconomic status—interact with legal variables (including prior record and severity of the offense) to directly and indirectly affect sentencing. Researchers have found these effects across a variety of entry points to the adult criminal justice system, including bail and pretrial detention, guilty pleas versus trials, the decision to incarcerate or not, and sentence length.¹⁸ As Arizona State University criminologist Cassia Spohn notes, research on sentencing disparities has moved from a simple descriptive account of racial (and other) differences to sophisticated models that trace the direct and indirect effects of race (and other factors), which are compounded through each stage of the criminal justice system.¹⁹ This reinforcing system of inequalities creates a cascade of cumulative disadvantage that's particularly disastrous for young black men who grow up in low-income and high-crime urban neighborhoods.

Research on the juvenile justice system has seen a similar trend—the most robust findings suggest that disadvantaged young black men are less likely to be diverted to rehabilitative programs and more likely to be punished with confinement.²⁰ This trend may partly reflect the biases of the probation officers; examining the presentence investigation reports written by probation officers, researchers have found that black youth are more likely than similarly situated white youth to be described as fully culpable for their offenses.²¹

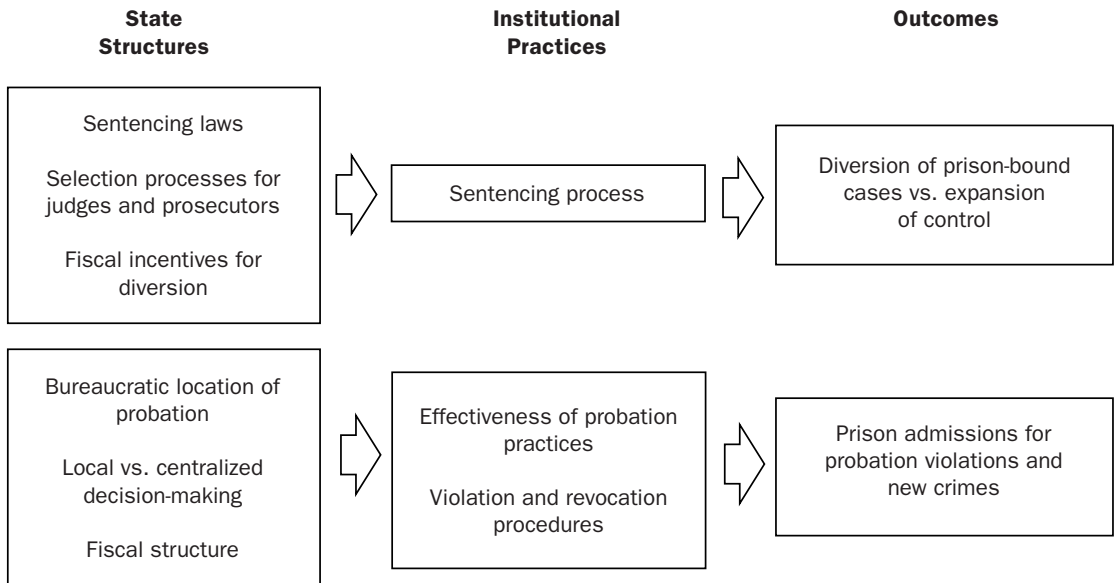
As a result, true diversion from prison is more likely for relatively privileged defendants, even as the probation population is skewed toward young men of color. In 2014, 36 percent of juveniles ordered to probation and 30 percent of adults under probation supervision were identified as black, proportions that far exceed the US black population of roughly 13 percent.²² According to a household survey conducted in the early 2000s, 19 percent of young (aged 20–34 years) black men without a high school diploma reported being on probation in the prior year.²³ Fully 46 percent of 24- to 32-year-old black men without a high school degree report having been on probation at some point in the past.²⁴

Data also reveal large differences in probation across state lines. For example, in 2010, Minnesota reported an annual probation admission rate of more than 1,200 per 100,000 residents; New York's rate was just 175 per 100,000.²⁵ Even counties in the same state may vary significantly. For example, in a random sample of state courts meting out felony sentences in 2004, the bottom fourth of counties assigned probation as the most serious sentence outcome in under 10 percent of cases, compared to more than 40 percent for the highest fourth. The same range in sentencing can be seen within crime categories (for example, aggravated assault, larceny, drug trafficking, etc.), suggesting that variation in types of crime doesn't explain the variation in probation sentencing.²⁶

What does explain these state and county disparities? Most sentencing research has looked at individual case outcomes, finding that individual-level variables, such as the crime's severity, prior sentences, age, race, gender, etc., explain most of the variation. Yet contextual variables matter as well, including

jail crowding and the overall severity of the average sentence in a given county.²⁷ Other researchers have found that states' racial composition, violent crime rates, political ideology, and region all reliably predict incarceration rates.²⁸ Yet the same isn't true for probation rates, which are only loosely correlated with states' imprisonment rates. In my own work, I've shown that two disconnected trends lie behind this variation. First, some high-incarceration states are underreporting their misdemeanor probation population, meaning that their reported probation rates are artificially low. Second, some low-incarceration states have surprisingly high probation rates, a fact not easily explained by crime or political leanings.²⁹ These trends likely reflect probation's conflicted identity as both a progressive alternative sanction and an additional mode of punitive state control.

The variation in probation rates prompts a question: Does expanding probation reduce or expand imprisonment? In other words, is probation a net-widener or an alternative? The answer is that it's both. Although the average relationship is positive (indicating net-widening), some states show a neutral or even negative relationship between growth in the annual probation rate and changes in the imprisonment rate in following years. (Note that the probation rate is shaped by both the number of people sentenced to probation and the length of their supervision, which determines how long they're subject to conditions and possible revocation. I'll turn to supervision length in the next section.) As figure 1 shows, two processes mediate the relationship between probation and incarceration rates: sentencing and supervision. Policies that promote more diversion in sentencing (measured by a higher proportion of probationers convicted

Figure 1. The Paradox of Probation Model: Understanding the Probation-Prison Link

of felony-level offenses) and curtail the probation-to-prison pipeline (measured by revocation rates) reduce the net-widening effect of probation.³⁰

Each of these outcomes is in turn shaped by structural factors at the state level, including sentencing laws, election processes for judges and prosecutors, and fiscal incentives. When these conditions shift, the net-widening effect of probation can change. For example, Michigan's Community Corrections Act of 1988 created fiscal incentives for sentencing felons to probation; by 2010, the prison commitment rate for new felonies had dropped by 40 percent.³¹ In recent years, California redefined certain low-level, nonviolent felonies as misdemeanors, shifting supervision for individuals convicted of these crimes from the state to the county level and, as a result, increased diversion to probation.³² As figure 1 shows, the other two key mechanisms for shifting the probation-prison relationship are the quality of probation supervision and the policies and

practices around probation violations, both of which I discuss below.

The picture for juvenile probation is likely similar to what we see in figure 1, but research to test this hypothesis has not yet been conducted. One key difference is that juveniles can be tried in either juvenile courts or, under certain circumstances, adult courts. Given the lower rates of imprisonment in juvenile court and the broader range of alternatives available (see Traci Schlesinger's article in this issue), the push to try older juveniles in adult courts (and to punish them in prison alongside adults) has profound implications for young people. Transferring juveniles to the adult system is strongly associated with a higher risk of imprisonment, longer terms of confinement, and more recidivism after release.³³ Following the Supreme Court's 2005 decision in *Roper v. Simmons* to end capital punishment for crimes committed by juveniles under the age of 18, some states have partially rolled back legislation that allows for sentencing juveniles in adult

courts. At least seven states (Connecticut, Illinois, Louisiana, Massachusetts, Mississippi, New Hampshire, and South Carolina) now try most juveniles in juvenile court. North Carolina is an unusual holdout, continuing to automatically try juveniles aged 16 or older as adults.³⁴ Based partly on psychological evidence that young people take many years to mature into full adulthood, some advocates have recently suggested expanding juvenile court jurisdiction to anyone under the age of 21.³⁵

Experiencing Supervision

The structure of community supervision varies widely from place to place. In some jurisdictions, a single state agency (typically the department of corrections) administers adult probation supervision. In others the process is decentralized, and a multitude of local agencies are responsible (including courts and private supervision companies). In 2015, 460 agencies responded to the Bureau of Justice Statistics' annual probation survey, and that number is likely too low.³⁶ In addition, more than 2,400 juvenile probation courts nationwide report on juvenile sentencing outcomes.³⁷

Across jurisdictions, probation rates diverge widely, driven in large part by sentencing trends, as I noted above. Yet the length of supervision varies as well.³⁸ The average is just under two years nationally, but state statutes vary greatly with regard to the maximum length of felony probation—from under five years in a handful of states to a lifetime in others.³⁹ Research consistently finds that long supervision is an ineffective use of resources: most recidivism happens in the first year or two of supervision.⁴⁰

As figure 1 suggests, each agency has its own supervision style, which in turn shapes

the effectiveness of supervision. In a recent review, George Mason University criminologists Faye Taxman and Stephanie Maass note, “Probation is compatible with restorative justice, rehabilitation, alternatives to incarceration, retribution, and incapacitation. In some jurisdictions, it is viewed as either enforcement (monitoring conditions assigned by the court) or social work (service provisions), or something between.”⁴¹ By setting supervision and revocation policies, developing hiring and promotion guidelines, and more, departments can substantially influence the tone of probation supervision. Even within one department, probationers often experience supervision quite differently, depending on the orientation of the officer and the level of their supervision (from small and intensive specialized caseloads to informal or paper-only and fine-only probation).⁴² Most officers supervise huge caseloads—more than 100 probationers on average.⁴³

Still, evidence from across the nation suggests key commonalities in supervision. Most important, while probation is described as a more rehabilitative alternative, community supervision in the United States is uniquely punitive.⁴⁴ Probationers are typically subject to a list of 10 to 20 conditions, including abstaining from drug and alcohol use, avoiding contact with known felons, paying fines and fees, reporting regularly to the supervising officer, participating in programming, abiding curfew and movement restrictions, finding or maintaining employment, and avoiding arrest. Former Massachusetts Probation Commissioner Ronald P. Corbett Jr. refers to these hamstringing conditions as the “burdens of leniency.”⁴⁵ For vulnerable individuals in high-crime communities, who

already face overwhelming challenges in finding employment, housing, and meeting their basic material needs, satisfying all of these obligations is close to impossible. These burdens may be particularly severe for young people who haven't yet reached psychological or social maturity.

Community supervision in the United States is uniquely punitive.

The breadth of probation conditions— together with officers' wide discretion— means that they effectively amount to an exhortation to “obey all laws and be good,” as Doherty puts it.⁴⁶ Failure to meet these many conditions leads to supervision violations and, potentially, revocation to prison for the entire length of the suspended sentence—the topic of the next section. As a result, defendants often report preferring a short stint in jail or prison to a longer period of probation supervision in the community.⁴⁷

Probationers also typically receive few of the kinds of supportive services that could help them overcome histories of trauma, addiction, unstable housing and homelessness, and underemployment.⁴⁸ A survey published in 2007 found that only a minority of community corrections agencies offered transitional housing (24 percent) or vocational training (23 percent); an even smaller proportion of the average daily probation population participates in these programs.⁴⁹ Many services for probationers have moved out of the state's control and into “therapeutic spaces, church basements, and community centers of the inner city,” a process that University of Chicago social

welfare scholar Reuben Miller dubs “carceral devolution.”⁵⁰

In addition, probationers and probation officers alike are subject to many layers of bureaucracy and governmental authority (for example, courts, schools, or other social service agencies), which can hamper officers' ability to be productive and supportive.⁵¹ These overlapping constraints lead probation and parole officers to frame supervisees as responsible for their own rehabilitation, providing little more than a “tough love” attitude in lieu of meaningful material support.⁵² Still, at least one study found that compared to parole officers, probation officers were more likely to have a caring approach that probationers perceive as genuine and helpful. But this approach was undercut by the officers' emphasis on control in the name of public safety.⁵³

Further, probationers often perceive the programming they receive as both punitive and counterproductive. For example, an ethnographic study of women in a halfway house in Chicago found that the reentry narrative favored by many criminal justice programs didn't fit the lives of the adults it sought to transform.⁵⁴ For example, avoiding “people, places, and things” associated with addiction is difficult when women's friends, families, and neighborhoods were both their source of intimacy and support—and steeped in drug use, past and present. Many reentry programs also routinely forced probationers to accept a tainted identity as a person beset by criminal thinking errors, while providing few structural solutions for severe material deprivation.⁵⁵ As a result, supervisees often reshaped and resisted the narratives that were foisted on them.⁵⁶

Even in juvenile courts, which are typically more oriented toward rehabilitation, we see some of the same patterns. Juvenile probation officers, for example—and particularly younger officers—report holding strongly punitive attitudes toward their charges.⁵⁷ Temple University criminal justice scholar Jamie Fader describes the challenges young men face in trying to achieve successful adult lives after incarceration. She highlights the disconnect between the rehabilitative programming provided in juvenile institutions (typically found in white rural areas) and the daily realities that young people (who are disproportionately black boys) face in urban communities before and after incarceration.⁵⁸ Other research finds that young people on probation perceive the justice system as fundamentally unfair, especially toward black and Latino youth.⁵⁹ This perception of unfair treatment is propelled not just by probation and corrections officers, but also a larger “youth control complex” that includes parents, teachers, police officers, and counselors, who together criminalize, ostracize, and punish youth in low-income communities.⁶⁰ More optimistically, however, research suggests that at least some juvenile court systems have been more effective than their adult counterparts in diverting young people to noncustodial programs. In addition, some juvenile courts have developed robust restorative justice programs, which provide mediation for convicted youth and victims (and/or community representatives) and give the youth opportunities to repair the harm of their offense.⁶¹

Last, probationers face many of the same barriers to success as other criminal justice populations, including the stigma and other consequences of a criminal record. The collateral consequences of conviction include

monetary fees and penalties; exclusion from public housing, social services, and public participation through voting; loss of parental rights; difficulty obtaining state identity documents; and bans on employment in certain sectors (such as healthcare).⁶²

While such penalties are often associated with felonies, even misdemeanors can entail severe consequences.⁶³ People with a criminal record may also face discrimination from employers, lenders, and landlords.⁶⁴ Such challenges create barriers for probationers and, by extension, their families, and communities.⁶⁵

Perhaps not surprisingly, criminologists have found that when it comes to employment and recidivism, adults sent to probation often fare as poorly as similarly situated adults sent to prison.⁶⁶ In other words, there is little evidence that probation in the United States is more rehabilitative than incarceration.⁶⁷ Shawn Bushway, a criminologist at the State University of New York at Albany, argues that the details of supervision (interactions with officers, programming options, etc.) may matter more than whether a person is sentenced to prison or probation.⁶⁸ And the poor results of both probation and imprisonment (which make future life success more difficult) suggest that for many low-level offenses the public would be better served by a criminal justice system that did less—in other words, true diversion away from formal supervision.⁶⁹

In recent years, probation departments have introduced a range of supervision reforms to respond to these concerns. Most of these reforms follow the *risk-need responsivity model*, which promotes evidence-based interventions that are targeted to individuals' specific risks and needs.⁷⁰ Supervisees first receive an assessment, which is then

used to tailor a supervision plan. For example, based on evidence that low-risk individuals fare better with no or minimal supervision, states are working to reduce or eliminate supervision for such cases.⁷¹ Many jurisdictions have done so by shifting such individuals to fine-only probation and by changing reporting from in-person interactions to electronic kiosk check-ins. Such reforms allow officers to concentrate on people who are rated as high-risk and those who are new to supervision. However, risk-need assessments are often misused, badly administered, manipulated (or overridden), or poorly tailored for specific supervision populations, limiting their effectiveness.⁷²

Reforms to the juvenile justice system have moved increasingly toward a system of benign neglect for low-risk cases and more targeted and supportive supervision for high-risk cases.

Another reform has been to shorten the length of supervision, which gives probationers a positive incentive at the same time as it reduces the department's caseload. Research in this area has led to a new approach called *dosage probation*, in which the length of probation is determined by the number of hours needed for intervention; probationers can terminate supervision early if they complete their case-management plan and avoid getting arrested.⁷³ Other states have introduced credits for each successful month on supervision; each credit shortens the supervision term.⁷⁴ In Missouri, an

earned compliance-credit program reduced the community supervision population by nearly 20 percent without affecting recidivism rates. Other states have started to change statutes and policies that allowed adults to be sentenced to lifetime terms of probation.⁷⁵ However, in some jurisdictions probationers can't complete their terms early unless they've paid all fines and fees, an impossible goal for many probationers.⁷⁶

Reforms to the juvenile justice system have largely followed the same trends, moving increasingly toward a system of benign neglect for low-risk cases and more targeted and supportive supervision for high-risk cases.⁷⁷ In addition, diversion programs and treatment services have been better developed for juveniles than for adults. In stark contrast to the small decline in adult imprisonment rates, the rate at which juveniles are sent to residential placements fell by more than half between 2001 and 2013.⁷⁸ Two exciting models are the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, which works to bring down detention rates and disproportionate minority confinement while improving conditions behind bars and Positive Youth Justice, a "strengths-based" model that builds on young people's existing resources and their ties to their peers, families, and communities.⁷⁹

Violations and Revocation

As noted above, probationers frequently fail to meet the many requirements of supervision and/or are arrested for a new crime, which can lead to revocation to jail or prison.⁸⁰ Depending on the state, revocation decisions may be made internally by the probation department or be subject to a brief court hearing. Regardless of

the mechanism, revocations are typically easier for officers to pursue than are new criminal charges filed by a prosecutor. (As a result, distinguishing between admissions for technical violations—that is, violations of the terms of supervision—versus new crimes can be difficult.⁸¹) Probationers face several challenges in avoiding future criminal justice contact, including increased scrutiny, behavior restrictions, a smoothed pathway to incarceration through revocation, and heightened sentencing penalties if convicted for a new crime. This probation-to-prison pipeline, together with the lack of meaningful diversion, helps to explain why probation too often functions as a net-widener rather than alternative to prison.

Among adults, the number of probationers incarcerated for supervision violations has increased significantly. Between 1980 and 2000, the proportion of state prison admissions for new court commitments fell from over 80 percent to roughly 60 percent, with entries for parole and probation violations making up most of the difference.⁸² By the 1990s, more than one-fifth of prisoners were on probation at the time of arrest, compared to 12 percent in 1974.⁸³ The number of probation violators in local jails increased as well, growing by 50 percent between 1990 and 2004.⁸⁴ As of the early 2000s, 23 percent of state and federal prisoners and 33 percent of jail inmates had been on probation at the time of arrest.⁸⁵

Many probationers are incarcerated for technical violations (or breaking the rules of supervision) rather than new criminal offenses.⁸⁶ Among inmates in the mid-2000s who were on probation at the time of their arrest, 75 percent of jail inmates and 30 percent of prison inmates had not been convicted of a new crime.⁸⁷ Roughly a quarter

of jail and prison inmates were incarcerated for violating supervision conditions without any new arrests, including failure to report, drug use, and failure to pay fines and fees.

The juvenile revocation rate has received less attention from researchers, yet 16 percent of juveniles in residential placements in 2010 were incarcerated for technical violations of probation and parole supervision. In more than 10 states, technical violations represented a larger share of detained juveniles than violent (or person) offenses.⁸⁸

Although research on violations and revocation is less extensive than that for sentencing decisions, we know that not all supervisees face the same risk of revocation. Studies of jurisdictions across the country have found that probation revocation is associated with the same characteristics correlated with sentencing outcomes and other criminal justice indicators, including gender, age, employment status, and race.⁸⁹ The Urban Institute recently found that black and Hispanic probationers faced substantially higher revocation rates in the four jurisdictions it studied, which were only partially explained by legal factors like risk assessment scores and probation violation charges.⁹⁰ As criminologists Celesta Albonetti and John Hepburn argue, these characteristics often are mutually reinforcing: “social disadvantage may condition the effects of other offender characteristics (such as age, race, and gender), incident offense characteristics, and treatment conditions on probation failure.”⁹¹ As a result, although the demographic profile of probationers in the community is fairly different from that of prisoners, incarcerated probation violators are demographically indistinguishable from other kinds of prisoners.⁹²

Several mechanisms may underlie disparities in revocation, the most obvious of which is that poor people find it harder to meet the requirements of supervision, which include maintaining employment, meeting regularly with the probation officer, and paying fines and fees.⁹³ Failure to meet these obligations—including financial penalties in some jurisdictions—can lead to imprisonment, creating a loophole for legal prohibitions against debtors’ prisons.⁹⁴ Relatively poorer probationers and racial minorities are also more likely to be rated as high-risk on actuarial risk assessments, and therefore may face greater supervision burdens.⁹⁵ Last, relatively more disadvantaged probationers may lack the interpersonal skills and experience to negotiate successfully with their probation officer (such as a deferential tone, routine reporting of personal circumstances, etc.); they may also face implicit or even explicit discrimination in the officer’s supervision style and use of discretion.⁹⁶

In recent years, jurisdictions have increasingly come to see high revocation rates as a departmental failure. As figure 1 shows, departments have two ways of shaping revocation rates: the first is to improve supervision and the second is to change violation and revocation policies and practices. Departments are increasingly moving from a “trail them, nail them, and jail them” (or *risk containment*) model to one focused on promoting success (or *risk reduction*).⁹⁷ This new orientation to supervision includes better access to supportive services and more respectful and collaborative relationships between supervisees and officers.⁹⁸

This orientation is also reflected in changes to how some jurisdictions respond to

violations. For example, working through the Justice Reinvestment Initiative, Arizona gave counties financial incentives to reduce probation violations, cutting the probation revocation rate to both jails and prison by about one-third between 2008 and 2011.⁹⁹ Another reform gaining traction is expanding alternative sanctions for violations, giving officers more options when a supervisee breaks probation conditions.¹⁰⁰ These sanctions can include additional reporting burdens, participating in programming, half-day or short-term confinement in violation centers, and extending the length of probation. In many cases, the idea is to intervene earlier in a supervisee’s history of violations, providing a mild sanction immediately following a violation rather than ignoring a series of violations and then filing for revocation. Research suggests that alternative sanctions can be just as effective as jail stays in reducing future violations, while easing local budgets.¹⁰¹ Not sending probationers to jail for violations can also improve their employment outcomes, which helps them contribute to their families and communities.¹⁰²

One prominent example of a policy reform designed to reshape how departments respond to probation violations is Hawaii’s Opportunity Probation with Enforcement (HOPE) program, which automatically responds to all program violations with “swift, certain, and fair” sanctions—typically a few days in jail.¹⁰³ The thinking is that swift but moderate responses to violations will give probationers an incentive to comply with supervision requirements and gradually earn more freedom over time. Initial evaluations of the pilot in Hawaii were positive. Yet recent attempts to replicate the program have shown disappointing results, perhaps in part because the replications did not

devote enough attention and resources to support services for probationers and instead focused only on “zero tolerance” enforcement.¹⁰⁴

Policy Recommendations

The US criminal justice system has reached a massive scale, with devastating consequences for the poor and disproportionately minority communities most affected by criminal justice contact. Increases in prison, jail, probation, and parole populations continued until the late 2000s, despite more than a decade of falling crime rates. Placing a large number of adults on probation for lower-level offenses has likely done little to improve public safety, yet has increased the burdens of state surveillance in the most disadvantaged neighborhoods. Piling sanctions, restrictions, and obligations on vulnerable adults more often impedes rather than supports their ability to productively contribute to their families and communities. Frequently imprisoning probationers for low-level supervision violations that would not be crimes absent supervision disrupts communities and creates churn in jails and prisons. Emerging evidence from localities and states—outlined above—suggests that we can do better, not only without compromising public safety and community wellbeing but also perhaps improving them. Below I offer policy recommendations for each of the three areas I’ve discussed: sentencing, supervision, and revocation.

Increase Real Decriminalization and Diversion in Sentencing

To reduce the profound inequalities reproduced and exacerbated by probation policies, we must first seek to radically scale back criminal justice operations. In addition

to reforms happening in some states today (including diverting nonviolent drug cases and increasing parole release rates), we must promote decriminalization and diversions that do more than widen the net. For low-level offenses, supervision is largely unhelpful to both probationers and their communities; when fewer such cases are summarily sentenced to probation, we can do more with probation for those who have committed serious offenses.

Diversion starts with fewer individuals experiencing police contact and facing arrest for low-level crimes of poverty, including “quality of life” crimes, minor drug offenses, and nonpayment of fines and fees. Rather than being funneled through the misdemeanor system, which comes with legal limits and collateral consequences, such people should be released without arrest.¹⁰⁵ Through legislative reforms, low-level criminal offenses could be redefined as noncriminal or civil offenses akin to a parking ticket. In cases where arrest is warranted, we should encourage judges to release more individuals with no sanctions or supervision, including alternatives to jail and prison like moderate community-service obligations or restorative justice processes. For many low-level offenses, court processing and a criminal record are sufficiently punitive. Piling supervision and restrictions on top of such punishment is unnecessary for public safety.

Second, scaling back the punitive build-up would require us to be more lenient even for more serious cases. In addition to bumping the lowest-level probationers off supervision, people who commit less serious felonies (such as lower-level burglary, assault, and drug possession cases) who otherwise would be sentenced to

prison should instead be bumped down to community supervision (as California has done).¹⁰⁶ The conditions imposed on their probation, which can lead to revocation if violated, should be limited to restrictions that are related to the individual's success in the community rather than a laundry list of wishful aspirations.¹⁰⁷ In addition, the length of supervision—even for serious offenses—should be trimmed (and lifetime probation should be eliminated), so that probationers can complete supervision when they meet their obligations. Financial obligations shouldn't be a cause for continuing probation; such obligations can be monitored without supervision (and, in the case of the many who are unable to pay, forgiven by departments or courts).

In this respect, the adult system could take a cue from the juvenile justice system, which has successfully cut both delinquency cases and youth confinement in half over the past decade. Researchers need to study this transformation more thoroughly to find how it was accomplished (in terms of both policy details and political willpower) and how those lessons might be applied to the adult system. Yet more could be done to ensure that juveniles receive fair, equitable, and parsimonious treatment. In particular, status offenses (or crimes that violate the law only because of the person's age, such as truancy, running away from home, or violating curfew) and lower-level delinquency cases should never be the reason to lock up a young person. As they carry out such reforms, both the adult and juvenile systems need to take a hard look at equity, as diversion programs often disproportionately benefit white Americans with more social privilege (see Traci Schlesinger's article in this issue).

Improve Supervision for Smaller Caseloads

If officers had smaller, more focused caseloads, community supervision could move away from a law enforcement framework and back toward a social work perspective, providing meaningful assistance to probationers. Drawing on evidence of what works from decades of criminological research, such reforms would provide more support to probationers while reducing the severe restrictions, intense surveillance, and tough responses to violations that have proliferated. Such assistance and support should lighten the burdens of supervision rather than add frequent program attendance (and payments for such assistance) to the long list of demands probationers face.¹⁰⁸ In this vein, a recent policy report by leading correctional experts and academics recommends that probation “impose the least restrictive sanctions necessary,” while recognizing “our common human capacity both to make mistakes and to make a change for the better.”¹⁰⁹

But how do we improve supervision for those who will remain on probation? As I noted earlier, we can use risk-need assessments to assign individuals to supervision levels. Such assessments can help to limit probation overtreatment and direct attention to the probationers who most need supervision and assistance—though fairness and equity in their implementation remains a concern.¹¹⁰ They can also help identify factors associated with recidivism, which can then be addressed during supervision. However, risk assessment can tell practitioners only where to focus their efforts, not how to adjust their supervision strategies.

Reforms that draw on the desistance model improve relationships between probationers and officers by building a more respectful and collaborative dynamic.

One promising method is to give probationers incentives to desist.¹¹¹ Shadd Maruna, a criminology professor at the University of Manchester, defines desistance as “long-term abstinence from crime among individuals who had previously engaged in persistent patterns of criminal offending.”¹¹² Maruna frames desistance as a continual process of recovery, which assumes occasional relapses and requires continual maintenance, and he stresses the importance of “making good,” or contributing to family and community. Research on desistance has shown that most people mature out of criminal offending, aided by internal processes (including new skills and a personal narrative of transformation) and external ties, pressures, and opportunities (including positive relationships, especially marriage and employment).¹¹³

Reforms that draw on the desistance model—which have gained more traction in Europe than in the United States—improve relationships between probationers and officers by building a more respectful and collaborative dynamic framed around helping individuals improve their social and economic circumstances.¹¹⁴ A desistance model also encourages positive behavior rather than just punishing poor behavior. An even more positive framework would

incorporate the strengths of probationers’ families and communities rather than cleaving them from their networks and communities. Last, desistance-based reforms must provide material support to counter the factors that can lead to recidivism, including stable housing, employment or help finding work, medical care, and more. As an additional benefit, research suggests that by treating probationers with dignity, respect, and fairness, probation officers can help build up the legitimacy of (and ultimately compliance with) the law.¹¹⁵ However, to enact such reforms (especially in the United States) will require significant work to rewire probation officers’ orientation toward their clients.¹¹⁶

Reduce Revocation Rates and Disparities

Finally, probation departments should improve responses to supervision violations. This is perhaps the recommendation where the most headway has already been achieved. One piece of this puzzle is reducing the number and onerousness of probation conditions and improving access to supportive services that encourage desistance. The other is changing the way that officers and departments respond to the violations that will inevitably occur. Promising reforms include developing graduated sanctions, reducing individual officers’ liability for revocation (for example, requiring supervising officers to sign off on violations or changing department policy regarding when to file for revocation), increasing incentives to keep probationers in the community, and eliminating returns to prison for technical violations of the conditions of supervision. These reforms reduce cycling in and out of jail and prison, which can destabilize probationers’ lives.

We should also be concerned about disparities in revocation patterns—an area that researchers and policymakers have paid less attention to. We need to ensure that departments respond to probationers in a fair and unbiased manner, and that they are doing more to support the poorest and most marginalized probationers (and not simply criminalizing poverty). Efforts to reduce the number and severity of probation conditions and restrict revocations for low-level supervision violations should both bring

down the revocation rate and reduce the role of officer bias in revocation decisions.

In short, both scholars and policymakers are developing promising reforms to make probation sentences more proportional, fair, and parsimonious and to improve supervision. If implemented at scale, these reforms could make the criminal justice system less harmful and more beneficial for probationers, their families, and communities.

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Parental Incarceration and Children's Wellbeing

Kristin Turney and Rebecca Goodsell

Summary

A half century ago, relatively few US children experienced the incarceration of a parent. In the decades since, incarceration rates rose rapidly (before leveling off more recently), and today a historically unprecedented number of children are exposed to parental incarceration. In this article, Kristin Turney and Rebecca Goodsell walk us through the evidence that parental incarceration impairs children's wellbeing throughout the life course. Given the fact that already vulnerable children are also the most likely to experience having a parent behind bars, they write, these trends increase inequality among children.

After documenting the scope of parental incarceration, Turney and Goodsell review mechanisms that may link parental incarceration to children's wellbeing, such as the parent's physical absence, the trauma associated with the criminal justice process, and the stigma of having a parent in jail or prison. They also review research into how parental incarceration affects four aspects of children's wellbeing: behavior, education, health, and hardship and deprivation. In each of these areas, parental incarceration has detrimental consequences for children.

The authors then turn to programs designed to improve the wellbeing of children of incarcerated parents. Interestingly, they note, despite the fact that fathers' rather than mothers' incarceration appears to have worse consequences for children, many such programs focus on incarcerated mothers—although some aim to treat both parents, or the family as a whole. Yet, they find, few such interventions have been conclusively shown to improve children's wellbeing during and after parental incarceration. Turney and Goodsell suggest three other types of interventions that might help reduce disparities among children of incarcerated parents: programs that strengthen parents' relationships, increase families' economic wellbeing, and treat parents' substance abuse.

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Incarceration rates in the United States increased fivefold from the mid-1970s through the turn of the 21st century. And although the rates have stabilized and even declined slightly since then, incarceration remains a relatively common experience for poor and minority adults in this country.¹ The men and women who are confined in local jails and state or federal prisons are connected to their families before, during, and after their incarceration. They are sons and daughters, romantic partners, and parents, and they contribute to households financially, emotionally, and in other ways.

The rapid rise in incarceration over the past half century has meant a precipitous increase in the number of children exposed to parental incarceration. Currently, 2.6 million children—or 4 percent of the population under age 18—have a mother or father behind bars, and many more children have experienced a parent's incarceration at some point in their lives. Given the considerable number of children exposed to parental incarceration, many of them vulnerable long before their parents were confined, it's not surprising that scholars have increasingly investigated incarceration's intergenerational consequences.

How does a parent's incarceration affect children's wellbeing? Research suggests that the incarceration of parents, and especially of fathers, is associated with poor outcomes for children. By and large, parental incarceration has negative consequences—even after taking into account the other vulnerabilities that endanger these children, such as family instability, poverty, parental substance abuse, and living in disadvantaged neighborhoods. Compared to other children, those who experience

parental incarceration suffer impairments across four domains of wellbeing: behavior, education, health, and hardship and deprivation.² Increased awareness of parental incarceration's negative intergenerational consequences has led to interventions that aim to reduce inequalities between children with incarcerated parents and those without.

Demographic Trends in Incarceration

Incarceration was relatively rare in 1970, affecting about 161 of every 100,000 US adults. That proportion increased steadily over the following decades, to a peak of 767 per 100,000 adults in 2007. Today, 670 of every 100,000 adults are confined to jails and prisons.³

As incarceration has grown, more and more children have been exposed to parental incarceration. About half of all inmates have at least one child.⁴ Parental incarceration is no longer a rare event experienced by only the most disadvantaged children. Recent nationally representative estimates from the 2011–12 National Survey of Children's Health show that 7 percent of children under age 18 have experienced the incarceration of a parent with whom they live. Since some children in the sample were quite young, it's almost certain that more children will experience a resident parent's incarceration at some point in childhood. And if we consider specific groups of children, parental incarceration is even more common. For example, estimates from the Fragile Families and Child Wellbeing Study—a sample of urban children born to mostly unmarried parents around the turn of the 21st century—show that by age nine, about one-third experienced paternal incarceration and one-tenth experienced maternal incarceration.⁵

Just as incarceration is more common among some groups of people than others, children have different risks of experiencing parental incarceration. The most commonly reported risk factors are race/ethnicity and social class. Recent estimates suggest that by age 17, 24.2 percent of non-Hispanic black children and 10.7 percent of Hispanic children—but only 3.9 percent of non-Hispanic white children—will experience parental incarceration. When we add social class to the mix, we see even more striking disparities. For example, among children of parents without a high school diploma, 62.1 percent of non-Hispanic blacks are exposed to parental incarceration, compared to 17.4 percent of Hispanics and 14.6 percent of non-Hispanic whites.⁶ Parental incarceration is also concentrated among children in rural areas, children with unmarried parents, children living in disadvantaged neighborhoods, and children whose parents have been previously incarcerated or have a history of substance abuse or violence.⁷

Parental incarceration massively strains family life, with cascading consequences for children.

Linking Parental Incarceration to Child Wellbeing

Parental incarceration may be bad for children for a number of reasons. To begin with, a parent's physical absence from the household may be traumatic for children. The circumstances surrounding the incarceration—such as witnessing criminal activity, arrest, or judicial proceedings—may also be traumatic. The trauma experienced

by the children, as well as the corresponding loss resulting from the incarcerated parent's physical and emotional absence, may hinder children's behavioral and cognitive development.⁸ Children of incarcerated parents may also experience stigma and shame that impede their social interactions and learning.⁹

Parental incarceration also massively strains family life, with cascading consequences for children. For example, it increases families' economic hardship. Incarcerated parents, many of whom were helping to support their families financially before their confinement, can't earn substantial income during incarceration. At the same time, they accumulate fines, fees, and legal debts. Upon release, the stigma of a criminal record makes it difficult for them to find work and makes them more likely to avoid mainstream institutions such as banks, hospitals, and schools. Parental incarceration also increases the likelihood that parents will separate or divorce, and heightens conflict among couples who remain together. It also impairs the parenting and mental health of the incarcerated parent and the children's caregivers. Because income, relationship stability, parenting, and mental health are all crucial for children's wellbeing, it's likely that parental incarceration leads to poor outcomes for children through all of these mechanisms.¹⁰

Selection into Parental Incarceration

Trauma, stigma, and strain are commonly suggested as other mechanisms through which parental incarceration harms children's wellbeing. But an alternative explanation is that children of incarcerated parents have suffered from disadvantages

even before their parent's incarceration, and that these disadvantages—not the parent's incarceration per se—are what harms their wellbeing.¹¹ To be sure, before their parent is incarcerated, such children have generally experienced many hardships at higher rates than their peers, including family and caregiver instability, poverty, exposure to violence, parental substance abuse, and parental criminality. Thus the association between parental incarceration and children's wellbeing may stem from these experiences. And some children—for example, children of violent or substance-abusing parents—may even benefit from (or at least not be harmed by) parental incarceration.

Paternal versus Maternal Incarceration

Another possibility is that paternal incarceration affects children's wellbeing differently than maternal incarceration does. On the one hand, maternal incarceration may be more consequential, because a mother's incarceration may bring more family instability than a father's. Children often continue to live with their mother when their father is incarcerated, but children of incarcerated mothers usually experience a complex set of living arrangements—perhaps with their fathers, with extended family members, or in foster care. The household instability produced by a mother's incarceration could be especially consequential for children's wellbeing.

On the other hand, paternal incarceration may be more consequential to children's wellbeing. Incarceration isn't unusual for poor and minority fathers, but it's less common among poor and minority mothers, likely because of policy and practice decisions. And mothers who

are incarcerated are likely to be more disadvantaged on average than fathers who are incarcerated. Thus it's possible that fathers' incarceration has harmful consequences for children directly, whereas the association between maternal incarceration and children's wellbeing results not from the incarceration itself, but rather from such factors as poverty, substance abuse, and mental health problems that are associated with incarceration.¹²

Consequences of Parental Incarceration

What are parental incarceration's consequences for US children? It can be difficult to separate the ways parental incarceration impairs children's wellbeing from the disadvantages those children experience before their parents are incarcerated. Identifying causal relationships between parental incarceration and children's wellbeing would require a study that randomly assigned children to have incarcerated parents or not—an experiment that would be both unethical and infeasible.

Given the barriers to experimental studies, researchers have relied almost exclusively on nonexperimental data. Below we review key findings from this research across the four domains we named above: behavior, education, health, and hardship and deprivation. Though most of the research we review can't show causality, it's clear that children of incarcerated parents are worse off in a number of ways than children whose parents aren't incarcerated.

Behavior

The most consistent finding is that parental incarceration, and especially paternal incarceration, has harmful consequences for

children's behavior. Several studies find that children exposed to paternal incarceration are more likely to exhibit externalizing behaviors, such as destroying things or demanding a lot of attention. For example, one study used data from the Fragile Families and Child Wellbeing Study to examine behavioral differences between five-year-old children who had and had not experienced paternal incarceration in the previous two years. Using a rigorous methodological approach to strengthen causal inference, the study found that children of incarcerated fathers more often exhibited physically aggressive behaviors, defined as destroying things, getting in fights, and physically attacking people, as reported by caregivers. Other researchers have reached similar conclusions. For example, another study using Fragile Families data suggests that the consequences of paternal incarceration extend to other types of behavioral problems among nine-year-old children—for example, caregiver-reported attention problems and internalizing behaviors, such as being withdrawn or anxious, or child-reported delinquency.¹³

Fewer researchers have looked into the relationship between maternal incarceration and children's behavior. One recent study, again using Fragile Families data, examined the link between maternal incarceration and caregiver- and teacher-reported behavioral problems at ages five and nine. Differences in behavioral outcomes between children who did and didn't experience maternal incarceration largely disappeared after accounting for such factors as the mothers' race/ethnicity, socioeconomic status, and substance abuse. Another study used data from the National Longitudinal Study of Adolescent to Adult Health (Add Health) to find that maternal incarceration in childhood or adolescence was associated with depressive symptoms in

young adults. Taken together, these studies suggest that the harmful behavioral effects of maternal incarceration may emerge over time.¹⁴

Education

Recent studies provide some evidence that children with incarcerated parents, and particularly those with incarcerated fathers, have trouble progressing through school. For example, paternal incarceration during early or middle childhood has been associated with poorer cognitive outcomes among nine-year-old children, as measured by reading comprehension, math comprehension, and memory. Research also suggests that, in elementary school, children of incarcerated fathers are more likely to be held back a grade, placed in special education, or suspended. Their previously incarcerated fathers (though not their other caregivers) are also less likely to be involved in the home or school, which stems at least partly from a broader proclivity to avoid involvement in social institutions such as schools, hospitals, and political organizations. And other research suggests that older children of previously incarcerated fathers have lower educational attainment, poorer academic performance, and more school absences than children whose fathers were never incarcerated.¹⁵

As with behavior, fewer researchers have focused on how mothers' incarceration affects children's education. By and large, the research so far suggests that maternal incarceration isn't independently associated with educational outcomes among young children. One study found that the observed association between maternal incarceration and verbal ability among nine-year-old children disappeared after controlling for

pre-incarceration characteristics.¹⁶ Two other studies, drawing on 12 years of data on elementary school children in the Chicago Public School system, found that maternal imprisonment wasn't associated with changes in reading or math scores. And surprisingly, children of imprisoned mothers were less likely to be held back a grade. However, those two studies compared children exposed to maternal prison incarceration to children exposed to maternal jail incarceration. Children exposed to maternal incarceration may not be the most appropriate comparison group, as even a short jail stay can disrupt family life in a way that has cascading educational consequences.¹⁷

As with behavioral outcomes, research on older children has found maternal incarceration to be associated with a lower chance of college graduation, suggesting that the harmful educational consequences of maternal incarceration may increase over time. The same study also found that children whose schoolmates have incarcerated mothers may suffer consequences even if they themselves don't have incarcerated mothers.¹⁸

Physical Health

In the context of parental incarceration, researchers most often study children's behavioral and educational outcomes. But some studies have considered the relationship between parental incarceration and children's physical health. Using data from the 2011–12 National Survey of Children's Health, one descriptive study found that children exposed to residential parent incarceration had more physical health problems, such as asthma (14 percent versus 8 percent) and obesity (21 percent versus 15 percent). This study had certain

limitations—it didn't look at changes over time, it didn't distinguish between maternal and paternal incarceration, and it didn't capture the incarceration of nonresidential parents. Still, its findings suggest that children of incarcerated parents are at risk for poorer health. And studies using Add Health data that followed children into young adulthood found that parental incarceration during childhood was associated with a later risk of high cholesterol, asthma, migraines, HIV/AIDS, overall fair/poor health, and, among women, obesity.¹⁹

Children whose schoolmates have incarcerated mothers may suffer consequences even if they themselves don't have incarcerated mothers.

Hardship and Deprivation

Finally, recent research suggests that parental incarceration is associated with hardship and deprivation, even after accounting for factors that preceded incarceration. Research on this topic initially examined the economic wellbeing of children's households, mostly focusing on the financial consequences of fathers' incarceration. Incarcerated men contribute less to households economically, whether in the form of earnings or formal and informal child support.²⁰ The consequences of paternal incarceration also extend to the economic wellbeing of the children's mothers, increasing their material hardship (for example, via eviction) and reducing their assets (for example, via losing homes to foreclosure).²¹ Additionally, research finds that children exposed to paternal incarceration, especially those living

with their father prior to his incarceration, are more likely than their counterparts to experience food insecurity and homelessness.²² Parental incarceration is also associated with a greater likelihood of unmet health-care needs among children.²³

Sources of Variation

Parental incarceration may not have equal consequences for all children. For example, research consistently shows that negative consequences are most strongly concentrated among boys, and among children whose incarcerated parent was living in the home with them before incarceration.²⁴ Other research finds no evidence that associations vary by race/ethnicity.²⁵ Still, because parental incarceration is concentrated among minority children, the consequences of parental incarceration can increase overall racial/ethnic inequalities in children's wellbeing.

Relatedly, not all children have similar risks of exposure to parental incarceration. Some—such as children who have married parents or live in wealthier neighborhoods—are at low risk. But children who are living in poverty or whose parents have substance abuse problems, for example, have a high risk. These different risks of exposure to parental incarceration shape children's responses. Research shows that the consequences of both maternal and paternal incarceration are strongest among children who have the lowest risk of exposure. For these children, parental incarceration may be a particularly consequential turning point, leading to additional problems such as material hardship and family instability. Among children with a high risk of exposure, the associations between parental incarceration and wellbeing are smaller,

suggesting that these vulnerable children experience adverse outcomes whether or not their parents are incarcerated.

Limitations of the Research

Research on the intergenerational consequences of parental incarceration has several limitations that may affect policies, practices, and programs. First, it relies on non-experimental data and therefore can't draw causal conclusions. The fundamental problem of causal inference is that one person can't be observed simultaneously in two states. In this case, an individual child can't be observed both experiencing and not experiencing parental incarceration. Another problem is that the most appropriate comparison group isn't clear. Most research compares children of incarcerated parents to children of parents who aren't incarcerated, but a more appropriate comparison might be to children of parents with a propensity for criminal activity (such as those who've been arrested but not incarcerated) or children exposed to other types of family instability (such as their parents' breakup).

The most rigorous studies suggest that there's a causal association between parental incarceration and children's wellbeing, especially their behaviors, and researchers should continue to use rigorous methods to understand the relationship. To better guide policies, practices, and programs, we need to document the causal relationships between parental incarceration and children's wellbeing, as well as the magnitude of these relationships. If parental incarceration directly causes harmful outcomes for children, it follows that reducing incarceration rates would diminish inequalities between children who do and don't experience parental incarceration. But

if parental incarceration is merely correlated with harmful outcomes, and if the cause of those outcomes can be traced to other factors such as economic instability or substance abuse, the most effective social policies might involve promoting employment or treating substance abuse.

Second, even though theory suggests that trauma, stigma, and family strain are the primary mechanisms that link parental incarceration to children's wellbeing, few researchers have tested these mechanisms, because of limitations in existing data. This is unfortunate, as understanding the mechanisms that underlie the associations would help to guide policies, practices, and programs. For example, if the key pathway linking parental incarceration and children's wellbeing is economic hardship, then decreasing economic hardship among children with incarcerated parents might be the best policy choice. But if the key pathway is family instability, then children might derive more benefit from policies that target parents' romantic or co-parenting relationships.

Finally, we lack sufficient data to comprehensively examine variation in the treatment of parental incarceration and in its consequences. For one thing, incarceration experiences can vary widely (for example, in such factors as frequency, duration, facility type, and custodial status). There's good reason to expect that different incarceration experiences have different consequences for children's wellbeing. For example, jail incarceration and prison incarceration may affect children differently. Jails are often closer to children's homes, making visitation easier and less expensive.²⁶ In another vein, any number of characteristics—such as family size, children's age, the gender

composition of children in the household, and the school or neighborhood context—might moderate the association between parental incarceration and children's wellbeing. If we learn what type of parental incarceration is most consequential and which groups of children are most harmed, we can target interventions toward the children who need them most.

Ameliorating the Consequences of Parental Incarceration

Given the adversities faced by children of incarcerated parents, there's a critical need to develop and implement programs to reduce inequalities between these children and others. Interestingly, though the most rigorous research generally finds that fathers' rather than mothers' incarceration has intergenerational consequences, many interventions focus on incarcerated mothers, mostly by teaching parenting skills. In the following section we review three groups of interventions: programs for mothers, programs for both mothers and fathers, and programs for parents and their children.

Programs for Mothers

Programs designed for incarcerated mothers most often aim to increase the mothers' parenting knowledge. The curricula combine objectives in several broad categories, among them improving communication, mental wellbeing, alliance with caregivers, attitudes toward parenting, child development, discipline, and behavior management. The four programs we describe below show that incarcerated mothers can benefit from such interventions.

The first, a 15-week program for incarcerated mothers, was based on the Nurturing Parenting curriculum. Researchers evaluated

eight sessions and found that overall, participants showed significant improvements in self-esteem. Participants also showed improvements in their attitudes about their expectations of their children, corporal punishment, and family roles. And in interviews conducted with some participants three months to four years after their release, mothers said that the course helped them reunite with their children.²⁷

The second was a 10-week course based on the Systematic Training for Effective Parenting program. Incarcerated mothers met weekly for 90 minutes to learn about communication, discipline, self-esteem, and appropriate ways to manage child behavior. Compared to mothers released before they could participate, incarcerated mothers who attended the program significantly increased their knowledge of child development and behavior management.²⁸

The third was an eight-session parenting class using a curriculum that aimed to reduce parenting stress, increase alliance with caregivers, develop better patterns of communication with children, and improve mothers' emotional wellbeing while incarcerated. Researchers found that compared to those who remained on a waiting list, incarcerated mothers who attended these parenting classes did not improve their alliance with caregivers, nor did they write more letters to their children. However, they did experience less distress about upcoming visitations compared to those wait-listed.²⁹

Last, researchers evaluated a 12-session general parenting class, designed to be discussion-based and experiential (for example, with mothers recording audio messages or writing letters to their

children). The course covered topics related to incarceration (such as knowledge of legal rights) and improving parental communication, self-esteem, and attitudes toward parenting. Compared to assessments before they took the course, participants significantly improved their legal knowledge, self-esteem, and parenting attitudes.³⁰

Programs for Mothers and Fathers

We found few rigorous evaluations of parenting programs for incarcerated fathers only, but we did examine two programs designed for both mothers and fathers. One of them, *Helping Your Child Succeed*, was based on the Family Nurturing Program, which teaches democratic parenting techniques—advocating that all members of the family have a voice in family decisions. The program, which requires 10–20 hours of coursework, springs from the notion that parents must improve themselves before they can improve the way they interact with their children. Researchers measured parenting knowledge and attitudes among a sample of incarcerated mothers and fathers, and also assessed parents in programs such as substance abuse rehabilitation and community parenting. The evaluators found that all mothers and fathers (whether incarcerated or not) improved their parenting knowledge and attitudes; all fathers also improved their empathy and attitudes toward the use of corporal punishment.³¹

Another program for both mothers and fathers, *Parenting from Prison*, had a 20-session curriculum designed to strengthen family relationships and increase positive behaviors, with an emphasis on reunification after incarceration. Evaluators found that participants significantly increased their self-esteem, self-mastery, parenting attitudes,

confidence, and satisfaction, as well as frequency of communication with their children.³²

Programs for Parents and Their Children

Programs for incarcerated parents and their children usually aim to improve their interactions and move beyond knowledge to practice. One such program is based on the Rebonding and Rebuilding curriculum, designed to teach incarcerated parents who may not have experienced effective parenting themselves. Tailored for use in jails, this 24-session program focuses on such topics as child development, discipline, and communication. This program also incorporates extended structured visitation and bonding time for incarcerated mothers and their children. An evaluation found significant positive changes among participants, particularly in the areas of communication, child development, discipline techniques, ability to deal with crises, confidence in parenting ability, feelings of emotional and social support, and parenting attitudes. These findings suggest that encouraging participants to practice the knowledge and skills learned in class can effectively improve outcomes for incarcerated parents and their children.³³

Two other programs focused on improving parenting skills through interaction therapy and emotion coaching, with an emphasis on preparing mothers for their release. The first was a seven-session parent-child interaction therapy (PCIT) course with classroom activities and role-playing exercises to train participants in such areas as self-esteem, communication, and discipline. The mothers were encouraged to practice these skills outside the classroom

through various forms of communication with their children, such as letter-writing and phone conversations. An evaluation showed that mothers who completed the PCIT course had better parenting skills compared to mothers who completed a non-PCIT class. However, mothers who completed the PCIT course knew less about child development than those in the standard parenting class.³⁴

The second course was a 15-session program that taught incarcerated mothers emotion regulation and emotion coaching skills in preparation for their release. An evaluation, which included a follow-up six months after the mothers were released, found that, compared to a control group, participation reduced mothers' criminal behavior; improved their emotion regulation, depressive and mental health symptoms; and improved their ability to manage and respond to their children's emotional distress.³⁵

Another approach uses video visitation. The Messages Project, for example, facilitates communication between parents and their children by having incarcerated mothers and fathers record messages for their children to watch. An evaluation of the program found that when parents were in a bad mood before making the recording, compared to when they were in a good mood, they displayed more negative emotions on the video, and caregivers (usually a relative, partner, or former partner of the incarcerated parent) reported that the children were in worse moods after viewing.³⁶ Another evaluation found that when parents displayed a positive attitude toward the caregiver, children were more likely to have a positive mood after viewing.³⁷ These displays of positive attitude seem to indicate a positive co-parenting alliance between the incarcerated parent and the caregiver. However, the study also

found that incarcerated parents' perception of their frequency of contact with children and alliance with caregivers was more positive than that reported by the caregivers themselves, indicating unclear or inadequate communication between parents that could have adverse effects on their children.

Many programs would benefit from incorporating the hands-on application of acquired skills such as communication.

Limitations to Parenting Program Evaluations

We've highlighted a number of comprehensive parenting programs with positive implications for parents and children. But these programs and their corresponding evaluations have several limitations. For example, relatively few studies randomly assigned parents to participate in a particular program or in a control group. And the programs' effectiveness has mostly been evaluated while the participants were still incarcerated or shortly after release. We need to know more about medium- and long-term outcomes to understand how these programs influence children's and parents' wellbeing.

Many programs would also benefit from incorporating the hands-on application of acquired skills such as communication. For example, though incarcerated mothers who took a general parenting class reported improved parenting attitudes (for example, increased empathy for their children), those mothers had limited contact with their children and thus few chances to practice the skills they learned.³⁸ On the evaluation side,

studies of parenting programs, especially those that measure parenting attitudes and communication, could also measure children's perceptions of their interactions with parents. That could lead to a greater understanding of how changes in parents' attitudes and communication affect children.³⁹

Other Programs for Vulnerable Children

Most evaluations of ways to help incarcerated parents and their children focus on parenting programs. But children of incarcerated parents face many adversities. Some of those problems exist even before their parents' incarceration, while others come as a direct result of incarceration. Thus children of incarcerated parents may benefit from programs related to other aspects of the family environment. We identify three additional areas of intervention (often evaluated outside the context of incarceration) that are important for reducing childhood inequalities: strengthening parental relationships, increasing economic wellbeing, and treating substance abuse.

Relationship Strengthening

Since the 1990s, US policies have aimed to increase family stability by promoting two-parent families, using educational programs and economic incentives. In fact, the Administration for Children & Families—part of the US Department of Health and Human Services—has given more than a dozen grants to programs that aim to support families both during the father's incarceration and after his release. Rigorous longitudinal evaluations by the nonprofit research organization RTI International examined several such family-strengthening programs, focusing specifically on relationships between

parents. Among the programs evaluated were a one-time weekend couples' retreat, a 12-week relationship education course, and a reentry-focused program that incorporated reentry case management from social workers and nonprofit workers on topics such as relationships, parenting, and domestic violence.

All the programs showed some positive results, though occasionally these were mixed with negative outcomes. Parents who participated in the couples' retreat reported greater stability both in their relationships and in their co-parenting. The 12-week relationship education course improved parents' communication skills and reduced the likelihood of physical abuse. More than a year after release, fathers who participated in the reentry-focused program were less likely than the comparison group to be rearrested, but couples reported less relationship stability and therefore less contact between the previously incarcerated fathers and their children.⁴⁰

Other recent interventions that seek to improve family stability include childbirth education programs such as Family Foundations, which focuses on co-parenting, parents' mental health, parent-child relationships, and infant emotional and physiological regulation. An evaluation of Family Foundations found significant positive effects on parental support, reduced maternal depression and anxiety, and better parent-child relationships.⁴¹ One review of relationship-strengthening programs and their effects on children's development found that such interventions have significant positive *indirect* consequences for children. Because marital conflict and poor parent-child relationships can negatively affect children, this finding suggests that a

family systems approach may be better than just individual therapy.⁴² Another review found that the best predictor of a father's involvement with his children was the quality of his relationship with the children's mother.⁴³ Because incarceration can strain parents' relationships and contribute to negative outcomes for their children, relationship-strengthening interventions for incarcerated parents may indirectly reduce inequalities between their children and others.

Economic Wellbeing

Economic hardship and deprivation shape early childhood development and have repercussions for wellbeing later in life.⁴⁴ Some policies to improve economic wellbeing for low-income families have been incorporated in initiatives to promote responsible fatherhood, while other policies and benefit programs target poverty more directly. Evaluations of these programs often show that increasing parents' income can improve their children's wellbeing.⁴⁵ Several studies have examined the Earned Income Tax Credit (EITC), a refundable tax credit for workers with low to moderate income. Using 1986–2000 data from the children of the National Longitudinal Survey of Youth (NLSY79 Children and Young Adults), one such study found that an increase of \$1,000 in annual family income, including money provided by the EITC, was associated with an increase in combined math and reading test scores in the short term. It brought the largest gains to children from disadvantaged families, younger children, and boys. One advantage of this study was that its methodology allowed it to measure the short-term effects of increased income on test scores, linking test score improvement to schedules for

EITC payment increases. Because a parent's transition to and from jail or prison often puts immediate and short-term strain on family finances, these findings suggest that an income boost may be especially helpful for children in such families.⁴⁶

Evaluations of other ways to increase family income, such as tribal casino payments for households with at least one Native American parent, show that boosts in household income are correlated with long-term increases in educational attainment when children reach young adulthood, and with decreases in minor criminal offenses. Findings from the Great Smoky Mountains Study of Youth, a longitudinal study that includes both Native American and non-Native American children in rural North Carolina, suggest that improved educational attainment and reduced criminal behavior outcomes for children in households that received tribal casino payments likely stemmed from improved parenting brought about by reduced household stress.⁴⁷ As we said above, the hardship and deprivation experienced by many children of incarcerated parents is one factor that contributes to the inequalities between such children and others; improving their economic security may help mitigate some of these disparities.

Substance Abuse Treatment

Many children of parents who have substance abuse disorders also experience parental incarceration, but few programs that target parental substance abuse have been rigorously evaluated. The research conducted so far has found that for child wellbeing, the most effective parental substance abuse programs target parenting practices and family functioning; also,

long-term programs are more effective than shorter ones.⁴⁸ One study examined the long-term outcomes of Focus on Families, a program for parents in methadone treatment and their children. Boys who participated in the program were less likely to develop a substance abuse disorder later in life, but no such effect was shown for girls.⁴⁹ Another study evaluated how therapy for men receiving outpatient substance abuse treatment (both individually and with their partners) affected their children's psychosocial functioning. Compared to other tested approaches, behavioral couples therapy—which seeks to improve relationships and change behaviors that lead to substance abuse—led to the greatest improvements in children's psychosocial functioning, fathers' substance use, and couples' satisfaction with their relationships.⁵⁰

These findings suggest that when substance abuse treatment programs for parents incorporate dimensions of parental wellbeing, such as relationship-strengthening and parenting practices, they can help improve outcomes for children. However, we need further rigorous evaluations of such programs.

Conclusions

The rise in incarceration rates in recent decades, especially among racial/ethnic minorities and the poor, has made parental incarceration a common event for already marginalized children. The trauma and stigma involved, as well as the economic and relationship strains faced by family members, often lead to harmful outcomes for children across the domains of behavior, education, health, and hardship and deprivation. Parenting programs during incarceration often focus on improving

general parenting knowledge, parenting attitudes, communication, and self-esteem. Other interventions target different factors that affect children exposed to parental incarceration, such as relationship strain, economic wellbeing, and substance abuse. Yet despite the many interventions that seek to improve the wellbeing of children from fragile families, we need more-comprehensive programs and rigorous evaluations to better understand how to help these children. We also need to develop and rigorously evaluate school- and community-based programs.

Future interventions should learn from the research on outcomes for children of incarcerated parents and aim to ameliorate social problems that occur before, during, and after incarceration. In addition, parenting programs to help incarcerated parents shouldn't operate as if in a vacuum. These programs need to tackle some of the most prominent factors that affect child wellbeing both during and after incarceration: relationships, co-parenting, economic hardship, and substance abuse. Because fathers' incarceration is consistently associated with deleterious outcomes for children, interventions should aim to include fathers. And they should also address the challenges associated with a parent's reentry after incarceration and undergo evaluation in the reentry period.

Future interventions should aim to ameliorate social problems that occur before, during, and after incarceration.

Finally, to thoroughly assess the intergenerational consequences of parental incarceration and the effectiveness of interventions, we need to ensure that the data we use is well suited to the evaluation. For example, administrative data may help overcome some of the limitations of surveys, which can be affected by social desirability bias and attrition. Administrative data may also offer more complete information about incarcerated parents' contact with various services (such as government financial assistance and child protective services). And because administrative data covers entire populations, it may help us evaluate how children in rural areas are affected by parental incarceration, compared to children in urban areas for whom survey data is more likely available.⁵¹ We also need more long-term data. Following up with participants over time would tell us more about interventions' impacts as children grow older and become adults. Promising programs that are found to mitigate parental incarceration's harmful consequences should be scaled up to reach a wider population.

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