

Punitive Juvenile Justice Policies and the Impact on Minority Youth

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WHILE JUVENILE crime, including violent crime, has decreased in recent years,¹ legislators throughout the country have supported increasingly punitive responses to youthful misconduct. Thus, despite the fact that in an average year less than one-half of one percent of juveniles in the U.S. are arrested for a violent offense, more than 40 states have changed their laws to allow increased prosecution of juveniles in adult criminal court. They have done this in a variety of ways: 1) by increasing the number of offenses for which juveniles can be transferred to adult court after a judicial hearing; 2) by lowering the age at which juveniles can be transferred; 3) by designating certain offenses for which juveniles are automatically prosecuted in adult court; 4) by saying that for some offenses there is a presumption that the juvenile should be prosecuted in adult court, but the juvenile can try to prove that he is amenable to treatment, and get waived into juvenile court; and 5) by giving prosecutors the authority to decide in individual cases whether young people should be charged in juvenile court or adult court.

In a related "get tough" effort, Congress has enacted legislation through the appropriations process which requires that states consider further changing their laws to allow for easier transfer of youths to the adult criminal justice system. In addition, as of October 1999, Congress is also considering legislation which would allow juveniles in the federal system to be held in adult jails, right next to (and subject to verbal harassment from) adult inmates (H.R. 1501, 1999).

These legislative changes are taking place despite clear evidence that more punitive approaches do not reduce crime. Indeed, careful research in Florida, New York, and New Jersey has demonstrated that juveniles sent into the adult system are significantly *more* likely to be rearrested than those kept in juvenile court, commit new offenses *sooner*, and commit *more serious* offenses than juveniles kept in juvenile court.² Yet many legislators and other policymakers ignore the research, and there is little informed public debate on juvenile justice issues. Equally disturbing, the evening news is regularly filled with stories of young (usually minority) perpetrators, sometimes even referring to these youth as "superpredators."³ Consequently, the public consistently ranks "fear of crime" among its highest concerns, drops in crime notwithstanding.⁴

Minority Youth Get Hit the Hardest

The great weight of these punitive juvenile justice policies falls disproportionately on minority youth, who are overrepresented at every stage of the juvenile justice system. For example, although African-American youth age 10 to 17 constitute 15 percent of the U.S. population, they account for 26 percent of juvenile arrests, 30 percent of delinquency referrals to juvenile court, 45 percent of juveniles detained in delinquency cases, 40 percent of juveniles in corrections institutions, and 46 percent of juveniles transferred to adult criminal court after judicial hearings.⁵ As the numbers indicate, the disproportionality is greater as youth go deeper into the system. In 1997, the custody rate for African-American youth in residential facilities was nearly five times the rate for white youth.⁶ Thus, little has changed since 1995 when minorities constituted over 68 percent of the incarcerated population in training schools—the most restrictive, most secure public institutional environment for juveniles—and yet they were just under 32 percent of the general youth population.⁷

It would be easy to simply attribute this large discrepancy to the fact that young people of different racial groups commit different types of crimes. In fact, among *all offense categories*, black youth were more likely to be detained than white youth during every year between 1987 and 1996.⁸ Minority youth are also more likely to be removed from their families than white youth. For example, between 1987 and 1991, out-of-home placements for *non-white* youth *increased* significantly for property, drug, and public order offenses (29 percent, 30 percent and 32 percent, respectively). During that same period in these same categories, out-of-home placements for *white* youth noticeably *decreased* (by 1 percent, 29 percent and 15 percent, respectively).⁹

These same trends are evident when looking at the number of detained youth. Thus, the number of minority youth held in detention centers increased by 71 percent from 1987 to 1996, while the number of white youth increased by only 18 percent.¹⁰ In a single-day census of all youth detained in residential facilities on October 29, 1997, minorities made up *two-thirds* of the population.¹¹ Indeed, a study of the juvenile justice system in California found that Latino and African-American youth consistently receive more severe dispositions than white youth and are more likely to be committed to state institutions than white youth *for the same offenses*.¹²

Importantly, African-American youth are not the only juveniles disproportionately impacted by the juvenile justice system. Research in this area specific to Latino youth, how-

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ever, is scant because many state and national studies place Latino youth in inconsistent categories. Thus, the Office of Juvenile Justice and Delinquency Prevention's 1996 national report on juvenile offenders and victims, reflecting data collected by the states, includes Latino youth as "white" when counting violent crime and transfers to adult court, then lists them as "minority" in its confinement statistics. As a result, data on the extent to which Latino youth are overrepresented in the juvenile system are incomplete.

Nevertheless, the 1996 OJJDP report found disproportionate confinement of Latino youth in secure detention facilities and in secure corrections institutions in a majority of the states that provided separate data. The states with the largest proportions of Latino youth in their adolescent populations—New Mexico, California, Texas, and Arizona—all reported disproportionate confinement of Latino youth in secure detention, or secure corrections, or both.¹³

The disproportionate impact of the justice system on minority youth raises particular concerns in the context of the new laws increasing prosecution of juveniles as adults. The changes in state "transfer" laws (and the changes proposed by pending federal legislation) will allow for the continuation of a disturbingly large number of children, particularly minority youth, to be detained in adult prisons. More than 12,000 juveniles are transferred to adult court by judges each year, and many more are prosecuted as adults as a result of increased direct filings in criminal court by prosecutors. The most recent data indicate that more than 200,000 children a year are prosecuted in general criminal courts nationwide; in June 1997 over 7,000 children who were being prosecuted in the general criminal justice system were held in adult jails (more than double the number in 1993); and in 1995 more than 11,000 children were in adult prisons and other long-term adult correctional facilities, with more than 2,600 of them under 16 years of age.¹⁴ In 1996, African-American youth represented nearly half of all judicially waived cases, including 70 percent of transfers for persons offenses, 75 percent of drug offenses, and 78 percent of robbery offenses.¹⁵

Unfortunately, with the trend towards increased use of "prosecutorial waiver," both in the states and possibly in the federal system as proposed by Congress, we should expect to see many more youth of all races prosecuted and incarcerated in the adult criminal justice system in coming years. For example, Florida is in many ways the pioneer (and one of 15 states) which currently employs a system of "prosecutorial waiver" where the prosecutor makes the decision of whether a youth is tried in juvenile court or adult criminal court.¹⁶ The experience in Florida demonstrates that turning this critical decision over to a prosecutor, as opposed to a neutral judge making the final decision, results in many more youth being sent to the adult system. Thus, in 1995 alone Florida prosecutors sent 7,000 youth to adult criminal court, nearly matching the 9,700 cases waived by judges nationwide.¹⁷

The effect of these incredibly high rates of incarceration on minority families and communities is profound. These disparate rates of involvement in the juvenile justice system,

leading to incarceration, have a dramatic impact on minority youth as they become adults. The Sentencing Project has reported that one-third of all African-American males age 20 to 29 in the United States are under the jurisdiction of the criminal justice system—either in jail, in prison, on probation, or on parole.¹⁸ In some cities, such as Baltimore and Washington, DC, the number actually approaches 50 percent.¹⁹ The primary factors contributing to this extraordinary level of social control over young black men are drug enforcement policies and prior criminal records of minority defendants. Since minority youth are disproportionately impacted by the juvenile justice system, where they pick up those prior records, the juvenile system in effect acts as a feeder system for minority youth into the adult criminal justice system.

Moreover, a consequence of an adult felony conviction in most states is the loss of voting rights for a period of time, and sometimes for life. Thus, as a result of increasing numbers of young black males being supervised in the criminal justice system, currently approximately 14 million black males (which represents 14 percent, or one in seven, of the 104 million black males of voting age) are now either currently or permanently disenfranchised from voting.²⁰ It is clear that the cumulative impact of such large numbers of black males being excluded from the electoral process will increasingly dilute the political power of the African-American community. Another significant impact of incarceration (or even simply arrest) is the reduction of potential future wage earning and employability. For example, Richard Freeman's study of the impact of imprisonment on earnings potential concluded that among a sample of youth incarcerated in 1979 there was a 25 percent reduction in the number of hours worked over the next eight years.²¹ Therefore, as we see increasingly disparate and astoundingly high rates of incarceration for minority youth and adults, the result is likely to be a similarly disparate and devastating impact on the minority communities in which many of these young men live, with the removal of large numbers of potential wage earners, a disruption of family relationships, and a growing sense of isolation and alienation from the larger society.

Unfortunately, at the same time that policy makers at the federal level are considering changes which will likely result in more minority youth being transferred to the adult system, they are also considering repealing the current federal disproportionate minority confinement (DMC) language requiring states to assess whether and why minority youth may be disproportionately represented in their juvenile justice system, and to develop intervention strategies to address the causes for disproportionate minority confinement. Thus, the Senate-passed bill in the 106th Congress deletes all reference to "minority" and instead refers to "segments of the juvenile population." By removing the language of the current law, the widespread disparity in treatment would be significantly minimized and current efforts in the states to collect this data and remedy the disparate treatment of minority youth would be seriously undermined.

States are unlikely to continue to address the problem in the absence of the DMC language in current law.

Dangers of Incarcerating Youth in Adult Facilities

Youth who are detained in the adult system face a very real threat of danger from the adult population. A 1997-98 survey of state adult correctional systems conducted by Amnesty International found that 40 states reported housing children in the general population. Further, most of these states did not provide the children with age appropriate programs.²² Children placed in adult institutions are five times as likely to be sexually assaulted, twice as likely to be beaten by staff, 50 percent more likely to be attacked with a weapon, and eight times as likely to commit suicide as children confined in juvenile facilities.

These statistics can only begin to illustrate the senselessness of horrible tragedies that could have been avoided. For example, a 15-year-old girl in Ohio ran away from home and returned voluntarily, but was ordered into the county jail for five days by a judge "to teach her a lesson." On the fourth night she was sexually assaulted by a deputy jailer. Seventeen-year-old Chris Peterman was held in the jail in Boise, Idaho, for not paying \$73 in traffic fines. Over a 3-day period, he was tortured and finally murdered by other prisoners in the cell. Robby Horn, 15 years old, was repeatedly ordered into jail in Kentucky for truancy and running away from home. After an argument with his mother, he was ordered back into the jail by a juvenile court judge. Within half an hour, he hanged himself. Kathy Robbins, also 15, was locked in the county jail in rural California for being in the town square on Saturday night after the 10:00 p.m. curfew. After a week in jail, she hanged herself. Another girl in Indiana was locked in jail for stealing a bottle of shampoo. She had a history of mental health problems, but the staff did not pick that up, and she, too, hanged herself (S. Rep. No. 105-108, 1997). More recently, in Ohio, six adult prisoners murdered a 17-year-old boy while he was incarcerated in the juvenile cellblock of an adult jail (Delguzzi, 1996).

Policy makers must recognize that the placement of children into adult facilities in the presence of adults is an invitation to rape and assault; locking them up in "protective" isolation or administrative segregation for long periods (many have multi-year sentences) is a guarantee of severe mental and physical deterioration.

Beyond the Statistics

While clearly these numbers tell the story of a generation of minority youth being arrested and incarcerated at frightening rates, this is really only part of the story. What the numbers do not and cannot reveal is the physical brutality, danger, and hopelessness of a system that treats young minority youth as if they are animals needing to be restrained and placed in cages. Yet, without actually seeing the inside of an institution or talking with a youngster who has been confined in an adult facility, we cannot really

appreciate these statistics. Minority youth are not ignorant of the rehabilitative goals of the juvenile system. One study revealed that youth recognized that the juvenile system "is all about rehabilitation and counseling. ... [and] we have people to listen to when you have something on your mind... and need to talk. They understand you and help you."²³ Conversely, youth who were placed in the criminal system expressed the view that in the adult system "they tell me I am nobody and I never will be anybody." And what about what is happening on the streets of our nation's cities? Knowing that a black youth in Baltimore is 100 times more likely to be arrested for a drug offense than a white youth is clearly disturbing, but these numbers don't tell the story of young black and Latino youth being harassed, intimidated, and sometimes beaten in the name of curfew enforcement and neighborhood drug sweeps. The numbers also do not tell the story of what is happening on "the other side of town," and how the treatment of white youth in our communities and justice systems may "look and feel" decidedly different from the way minority youth are treated.

Building a Constituency for Change

To have a reasonable chance of successfully addressing the challenges discussed above will require a multitude of sustained and varied strategies. Since there are no models to reduce minority overrepresentation at either the state or federal level, the importance of multi-faceted efforts to address the problem cannot be overstated.

In an effort to move forward effectively in these areas, the Youth Law Center has developed a major new initiative to protect minority youth in the juvenile justice system and promote rational and effective juvenile justice policies. Titled "Building Blocks for Youth," the initiative combines research on the impact of new adult-court transfer legislation in the states; assessment of the legal and policy issues in privatization of juvenile justice facilities by for-profit corporations; analyses of decisionmaking at critical points in the justice system; direct advocacy on behalf of minority youth in the system, particularly with respect to conditions of confinement and effective legal representation; constituency-building among African-American and other minority organizations, as well as religious, health, mental health, law enforcement, corrections, and business organizations at the national, state, and local levels; and development of effective communications strategies to provide timely and pertinent information to these constituencies. Each of these components "builds" on the prior ones. Thus, the research, analysis of decisionmaking, and direct advocacy will all yield information and products that will support the constituency-building and communications components.

In this multi-year effort, the Center will collaborate with a coalition of organizations, including the Communications Consortium Media Center, the Juvenile Law Center, Pretrial Services Resource Center, the National Council on Crime and Delinquency, the Center on Juvenile & Criminal Justice, Minorities in Law Enforcement, and the Center for Third

World Organizing The effort will be funded by several major foundations and federal agencies. Fortunately, more initiatives are being created to address this issue throughout the nation.

As part of the Building Blocks initiative in Seattle, an advisory board consisting of law enforcement officials, prosecutors, defenders, city council members, judges, community groups, and youth was created to analyze how choices made by the police and other key decisionmakers may have a disparate impact on minority youth. The board will help develop alternative decisionmaking criteria to address this problem. In addition to the Youth Law Center's work, many states are attempting to address the issue of disproportionate confinement of minority youth.

In North Carolina, Disproportionate Minority Confinement committees were established in ten pilot counties after an initial study revealed that minority youth were overrepresented at each stage of the juvenile justice process within those counties.²⁴ The committees worked to identify factors contributing to the overrepresentation problem, to develop and implement new policies specific to that issue, and to improve the overall delivery of services to youths in the system.

Similarly, in one county in Oregon, minority juvenile justice specialists worked with young minority offenders to provide counseling and additional mentoring support in response to analysis that indicated that African-Americans were overrepresented at every stage of the juvenile justice process. This effort is part of a larger statewide effort that has led to a 3 percent reduction in the number of African-American youth inmates over the past five years.

In Iowa, although African-Americans represented 2 percent of the population, research demonstrated that they were overrepresented in secure facilities and they tended to be confined in secure facilities for longer periods of time than white juveniles. Consequently, a task force of juvenile justice professionals collaborated with state agencies to develop community-based solutions.

Officials in Arizona created a partnership between a behavioral health provider, city and state agencies, the Arizona Supreme Court, the Arizona Juvenile Justice Commission, and the Governor's Division for Children to address inequities in the juvenile justice system. In addition to expressing the need for better training of staff, better wages, and improved cultural diversity programming, officials have established classes such as Street Spanish language for corrections employees who deal with Hispanic gang members.

All of these promising efforts include the participation, on some level, of the local community. Any potential solution should involve local staff who are more knowledgeable about the dynamics of their community and who are aware of the availability of resources to address the problem of the disproportionate confinement of minority youth. Moreover, any effort to address this problem must include all of the key stakeholders in the system, including law enforcement officials, probation officials, corrections officials, judges, prosecutors, and defenders.

Conclusion

Clearly, a small percentage of youth need to be placed in secure facilities for the sake of public safety. However, even these young people should never be mixed with adults. Politicians and policymakers must recognize that senseless tragedies, such as those described above, can be avoided by never mixing children and adults. In addition, our elected officials must stop using fear and stereotypes to justify an increasingly and unnecessarily punitive juvenile justice system that disproportionately impacts minority youths and communities. Instead, our nation's leaders must work with advocates and key stakeholders on the national, state, and local level to incorporate the concept of rehabilitation and detention alternatives back into a juvenile justice system that has come to represent a system of hopelessness and despair for too many people.

NOTES

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²Donna M. Bishop, et al., "The Transfer of Juveniles to Criminal Court: Does It Make A Difference," 42 *Crime and Delinquency*, 171 (1996); Jeffrey Fagan, "Separating the Men From the Boys: The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders," *A Sourcebook on Serious, Violent and Chronic Offenders* (Sage Press 1995).

³DiIulio, J. (1995, November 27) The coming of super-predators *Weekly Standard*, 1, 23-28.

⁴Frank D. Gilliam, Jr. and Shanto Iyengar, "Super-Predators or Wayward Youth? Framing Effects in Crime News Coverage," *The Dynamics of Issue Framing: Elite Discourse and the Formation of Public Opinion* (Cambridge Univ. Press, In press); Franklin D. Gilliam, Jr., et al., "Crime in Black and White: The Violent, Scary World of Local News," 1 *Harvard International Journal of Press/Politics* (1996); Franklin Gilliam, Jr., and Shanto Iyengar, "Violence and Race in Television News Coverage of Crime: Does It Matter?" (Paper prepared for the Benton Foundation Conference on Media and Society, September 1995); Lori Dorfman and Katie Woodruff, "Local TV News, Violence, and Youth: who Speaks? (Paper prepared for Media Matters: The Institute on News and Social Problems, September 1995).

⁵Howard N. Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: 1999 National Report* (Office of Juvenile Justice and Delinquency Prevention 1999).

⁶*Id.* at 197. Note: Residential facilities include 3,401 youth in private facilities for whom state of offense was not reported.

⁷Melissa Sickmund, Howard Snyder and Eileen Poe-Yamagata (August 1997). *Juvenile Offenders and Victims: 1997 Update on Violence*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, p. 42.

⁸Sickmund and Snyder, p. 154.

⁹James Austin, Barry Krisberg, Robert DeCorno, Sonya Rudenstine, Dominic Del Rosario (September 1995). *Juveniles Taken Into Custody: Fiscal Year 1993*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, Figure 3-17, p. 77.

¹⁰Sickmund and Snyder, p. 154.

¹¹*Id.* at 195.

¹²Jones and Krisberg, *Images and Reality*, at 6.

¹³Donna Hamparian and Michael J. Leiber. *Disproportionate Confinement of Minority Juveniles in Secure Facilities: 1996 National Report*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, p. 14-15.

¹⁴Amnesty International, *Betraying the Young*.

¹⁶Sickmund and Snyder, p. 171-73.

¹⁶Griffin, P., Torbet, P., and Szymanski, L, 1998

¹⁷Butts, J. and Harrell, A., 1998.

¹⁸ Marc Mauer (January 1997) Intended and Unintended Consequences: State Racial Disparities in Imprisonment. The Sentencing Project.

¹⁹*Hobbling a Generation: African American Males in the District of Columbia's Criminal Justice System* (NCIA, Washington, DC, March 1992); *Hobbling II, African American Males in Baltimore's Criminal Justice System* (NCIA, Washington, DC, June 1992).

²⁰Marc Mauer (January 1997) Intended and Unintended Consequences: State Racial Disparities in Imprisonment. The Sentencing Project.

²¹*Id.*

²²Amnesty International Report: United States of America: Betraying the Young, November 1998, p. 39.

²³Donna Bishop and Charles E. Frazier, Office of Juvenile Justice and Delinquency Prevention, 1998, and keynote address, National Association of Sentencing Advocates Conference, Miami, Florida, April 15, 1999

²⁴Lessons Learned article