

Getting Beyond Failure: Promising Approaches for Reducing DMC

Youth Violence and Juvenile Justice
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Abstract

States that wish to receive federal financial support through the Juvenile Justice and Delinquency Prevention Act for their juvenile justice systems are mandated to address disproportionate minority contact (DMC). A vast number of studies now exist that try to explain the presence, cause, and severity of DMC in states and local jurisdictions, but most work does not move past this point. A newer set of works explores reasons why DMC-reduction efforts fail. In recent years, generous investments from private foundations have led to a renewed sense of hope for success in the seemingly intractable problem of minority overrepresentation in the juvenile justice system. This article presents promising approaches that have resulted from these investments and suggests steps that should be taken from here.

Keywords

racial disparity, DMC, juvenile justice

Introduction

In 2007, official juvenile arrest statistics showed that while African Americans younger than 18 years old account for only 17% of the general population, they accounted for 51% of arrests for juvenile violent arrests and 32% of arrests for juvenile property arrests (Puzzanchera, 2009). It is observed in nearly all juvenile justice systems that youth of color enter and stay in system with much greater frequency than White youth. Explanations for this vary but fall into two broad categories of differential offending and differential selection.

For the past 20 years, the federal government has mandated that federally funded state juvenile justice systems abide by certain requirements under the Juvenile Justice Delinquency and Prevention Act (Pub. L. 93-415, 42 USC 5601 et seq.). Beginning in 1992, these requirements were expanded to address disproportionate minority confinement (DMC) in the juvenile justice system; in 2002, this requirement was refined to include racial and ethnic disparity at all points of contact; thus, “DMC”

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came to mean disproportionate minority contact with the juvenile justice system. Yet despite this federal mandate to address DMC, racial and ethnic disparities continue to permeate juvenile justice systems.

Many early DMC initiatives lacked guidance and oversight, were handicapped by political considerations and insufficient resources, and were poorly implemented. Not surprisingly, these early efforts, primarily focused on assessing the problem, produced unsatisfactory results (Hamparian & Leiber, 1997; Leiber, 2002; Pope & Leiber, 2005). Since this time, methods for detecting minority overrepresentation and diagnosing its sources have made great improvements, yet states and localities have again become stalled between the stages of identifying causes and moving toward remedying the problem. In this article, we seek to move past the analysis of why DMC strategies fail and focus instead on some popular strategies that, though early in their existence, have demonstrated notable success either in implementation, outcome, or both.

Explanations

Research has identified several possible contributors to DMC. The most commonly identified causes of DMC include selective enforcement (Feld, 1991; Huizinga et al., 2007), differential opportunities for treatment (U.S. Department of Health and Human Services, 2001), institutional racism (Bishop & Frazier, 1988), indirect effects of socioeconomic factors (Hawkins, Laub, Lauritsen, & Cothorn, 2000; Hsia, Bridges, & McHale, 2004; Pope & Snyder, 2003; Snyder & Sickmund, 2006), differential offending (Blumstein, 1995; Hawkins, Laub, Lauritsen, & Cothorn, 2000; Piquero & Brame, 2008; Pope & Snyder, 2003; Tracy, 2005), biased risk assessment instruments (Bridges & Steen, 1998; Chapman, Desai, Falzer, & Borum, 2006), differential administrative practices (Bridges & Steen, 1998), unequal access to effective legal counsel (Fagan, Forst, & Vivona, 1987), and legislative policies that disparately affect youth of color (Fabella, Slaphey, Richardson, Light, & Christie, 2007; Richardson, McCrory, Rembert, McCormick, & Graf, 2008). While any one of these contributors could lead to DMC on its own, it is more often the case that multiple contributors work simultaneously to increase representation of youth of color in the juvenile justice system.

The above-mentioned empirically derived causes for minority overrepresentation have been studied extensively. More recently, two additional issues have been identified as reasons for the overrepresentation of youth of color: the use of detention to provide social services that would otherwise not be available to some youth and policies that drive youth of color into the system because of their disproportionate impact on this population.

Some explanation for the persistence of DMC has recently been attributed to the well-intentioned misuse of the juvenile justice system to meet the needs of youth who would otherwise not receive services such as mental health treatment (Bell, Ridolfi, Lacey, & Finley, 2009; Cahn, 2006; Kempf-Leonard, 2007). To this point, Cahn notes, "It is not so much the criminality of the behavior that brings juveniles into the justice system, but the lack of viable alternatives and diversion programs for children with severe [problems] expelled from school, and children whose families cannot provide adequate care. Incarceration of youth becomes the default response to any deviant behavior with which the justice system and other youth serving systems are unable to cope" (Cahn, 2006).

Detention for the purpose of accessing services is not the intended purpose of the juvenile justice system and leads to many long-lasting collateral consequences for youth, including associations with high-risk individuals (Lowencamp & Latessa, 2004) and deviant labeling (Thio, 1972). Staff education, program resources in high-need areas, and alternatives to detention aim to alleviate this misuse of the juvenile justice system as a social service agency.

Legislative and administrative policies such as school-related "zero-tolerance" policies can create additional drivers for the racial and ethnic disparity in the juvenile justice system (Greene, Pranis, & Zeidenberg, 2006; Hirschfield, 2008; Nellis, 2005; Sannah & Jacobs, 2008; Verdugo, 2002).

These sorts of policies emerged in a handful of states in the late 1980s and gained federal endorsement in 1994, with President Clinton's signing of the Gun-Free Schools Act (20 U.S.C. Chap. 70, Sec. 8921), which mandated student expulsion for 1 year following referral to criminal or juvenile court for possession of a weapon. Following the passage of this Act, schools throughout the nation quickly developed varieties of zero-tolerance policies for presence of weapons, drugs, alcohol, tobacco, and/or violence on school campuses (Hirschfield, 2008). These policies are more likely to exist in urban low-income school districts that include large numbers of youth of color (Verdugo, 2002). This process of criminalizing school infractions through zero-tolerance policies has an especially negative impact on youth of color because of the predisposition that minority youth already have to suspensions and expulsions despite a lack of behavioral differences compared to White students (Skiba & Rausch, 2006).

Policies and practices that have a disparate impact on youth of color, even though they may be unintentional, have long-standing consequences at the individual and community level. Contact with the justice system reduces options for education, housing, and employment and also weakens the stability of communities of color and results in a deepening of the divide between Whites and non-Whites (Cahn, 2006; Clear, Rose, & Ryder, 2001).

Despite the volumes of discussion devoted to the accelerated involvement of youth of color in the juvenile justice system, most studies have been descriptive in nature. Some note that the causes of DMC have been examined exhaustively over the years but leave states with little instruction on how to remedy the problems they identify (Bell & Ridolfi, 2008; Piquero, 2008). That is, research has been inordinately focused on *whether* DMC exists and the scope of the problem, rather than *why* DMC exists, and, most important, what works to eliminate it (Bell & Ridolfi, 2008). As a result, documented successes have been few and far between.

In addition to the collection of studies examining where and why DMC is present, there is set of opinions that speculates as to why youth of color continue to be overrepresented in the juvenile justice system despite the federal mandate and the numerous empirically derived suggestions for reducing it. Some attribute this lack of progress to the fact that while state juvenile justice systems are federally mandated to study and address DMC, their ability to reduce it is impaired when the cause of DMC is determined to be outside the juvenile justice system (Piquero, 2008; Tracy, 2005).

Tracy (2005) suggests that progress on reducing DMC is greatly impeded by the politicized process inherent in the federal mandate. He further notes that the federal law and subsequent federal regulations assume that DMC is caused by system bias rather than differential offending patterns despite the lack of concrete evidence to demonstrate that this is the case (Tracy, 2005). He suggests that this assumption hampers the ability to reduce DMC. Others note that DMC could be the result of factors that originate from the system or the individual but that attempts to remedy are sure to fail until jurisdictions determine the cause of DMC before launching into a solution (Nellis, 2005).

Eliminating racial and ethnic disparities in the juvenile justice system is indeed a daunting task, but modest successes have been observed in reducing these unwarranted disparities for youth of color. The sharing of these successes is a critical component of DMC work, so that effective strategies can be replicated in similarly situated environments.

Promising strategies to reduce DMC share a number of traits. First, they have community support; they tend to originate from local community concerns and include stakeholders from the community who have been affected by minority overrepresentation (Bell et al., 2009; Soler & Garry, 2009).

Second, the strategies consistently rely on data from a variety of sources to identify where efforts should be undertaken and whether these need to be modified over time (Bell et al., 2009; Bell & Ridolfi, 2008). For example, if it is determined that referrals to the police from school-based incidents are racially disproportionate, this could mean that school-based law enforcement strategies are contributing to DMC. Third, effective strategies are transparent about their focus, their successes,

and their failures and acknowledge that important lessons can be learned from both. And finally, they are committed to a long-term investment in lowering DMC that relies on evidence-based practices and follow-through with sustainable initiatives. DMC must remain a priority for communities to observe sustained drops in overrepresentation (Soler & Garry, 2009).

Promising Initiatives to Reduce DMC

Over the years, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has been a leader in supporting DMC-reduction initiatives through the release of many publications, training offerings, annual meetings, and technical assistance to the states. Unfortunately, small and declining amounts of federal monies have been available for the states in the past several years, and this is often cited as a main impediment to DMC-reduction work. Recently, private organizations have stepped in to support the solid foundation that OJJDP originally established. Specifically, the W. Haywood Burns Institute (BI), the John D. and Catherine T. MacArthur Foundation's Models for Change Initiative, and the Annie E. Casey Juvenile Detention Alternatives Initiative (JDAI) have emerged as leaders in the work to reduce DMC in the juvenile justice system.

Models for Change

Beginning in 2004, the MacArthur Foundation undertook a multiyear, \$100 million investment in juvenile justice reforms nationwide, with a concentrated focus in four states (Illinois, Louisiana, Pennsylvania, and Washington). In 2007, the foundation undertook a long-term investment in 12 county-level Action Network sites that work specifically on DMC initiatives in the following eight states: Illinois, Kansas, Louisiana, Maryland, North Carolina, Pennsylvania, Washington, and Wisconsin. The Action Network states work as a peer network of collaborations involving multiple state and local juvenile justice allies that address specific reform issues, including DMC. Specifically, the DMC Action Network states focus on making improvements in tracking and reporting data, enhanced cultural competency, community investment, diversion, and expanded detention alternatives to detention that are culturally diverse (Models for Change, 2009).

As a result of these investments at the county level, jurisdictions have begun to report improvements in DMC. In Berks County, PA, the DMC action network site committed to several steps: enhancing Spanish-language capability and cultural competence; reducing minority detentions through improved assessment screening and diversion; recruiting nontraditional service providers; and developing workforce opportunities.

In Peoria, IL, another DMC Action Network site, analysis of arrest data revealed a disproportionately high number of arrests for aggravated battery. On closer inspection, it was found that many arrests resulted from fights at school. Once alternative conflict strategies were put into place, arrests for African American youth dropped 43% in 1 year (Griffin, 2008).

Juvenile Detention Alternatives Initiative

The JDAI, funded through the Annie E. Casey Foundation, was created to eliminate an overreliance on juvenile detention, minimize the number of youth who fail to appear in court, invest in community-based juvenile justice programming, and improve conditions of youth confinement. The initiative has been in operation since the 1990s and has grown from only 5 sites to 110 sites in 27 states over the past decade. It is considered by many to be the premier juvenile justice reform in the nation. It has been noted as the "... single greatest reform ever undertaken in juvenile justice programming" (Mendel, 2009, p. 5).

The JDAI strategy rests on the awareness that detention is an inherently negative experience and should be reserved for those youth who truly need to be detained because they present a threat to public safety. Unfortunately, it is used too frequently for other reasons and often in response to very minor offenses. To illustrate, 92,854 young people were held in public or private detention facilities on any given day in 2006. Moreover, most (65.9%) were detained for nonviolent offenses, and 5,000 of them (5.4%) were detained for behaviors that would not even be illegal if committed by an adult (i.e., status offenses; Sickmund, Sladky, & Kang, 2008). As a result of the JDAI efforts, detention units or entire facilities have been closed in 27 sites, and there are nearly 1,000 fewer detention beds overall.

Although not explicitly targeted at DMC reduction, juvenile justice populations in designated JDAI sites have experienced improvements in disproportionality as they focus their efforts on reducing the overall use of juvenile detention. While DMC successes have not been identified in every site, in some sites, they have been substantial. Historically, Latino youth in Santa Cruz were two thirds more likely to enter detention than White youth. In 2005, an evening reporting center was opened as part of JDAI, and by 2008, this disparity was reduced by half (Mendel, 2009). In 2005, The MacArthur Foundation began to formally incorporate DMC reduction as a part of its overall mission through the development of a *JDAI Core Strategies Matrix*, which jurisdictions use to investigate policies and practices in their JDAI site, which could be contributing to DMC (Soler & Garry, 2009).

The W. Haywood BI

Eleven of the above-mentioned JDAI sites are working with the W. Haywood BI to engage in more intensive DMC-reduction efforts. The BI has a mission to ensure equity and justice for all youth through providing technical assistance to certain eligible jurisdictions in facing and correcting their DMC problem. Some promising outcomes have been reported. For example, in Baltimore County, the BI worked with local community stakeholders to develop DMC reducing policies that resulted in a nearly 50% decline in the number of youth who were held in secure detention for failure to appear in court. In Peoria County, the BI created a restorative justice project to address “zero-tolerance” policies in schools that reduced African American youth admissions to detention for aggravated battery (i.e., school fights) by 43%. And in Pima County, AZ, the BI staff worked with officials from probation, the courts, and members of the community to develop and rely on alternatives to detention. As a result, the county experienced a 50% drop in detention use among Black youth over the past 5 years (Bell et al., 2009).

Iowa: A Case Study of State-Specific Success in Facing DMC

Over the past 8 years, the state of Iowa has demonstrated an unwavering dedication to diagnosing and reducing DMC, as evidenced by several noteworthy investments of time, expertise, and funds to the DMC effort. During this time, researchers, policy makers, professionals, and advocates have pursued several initiatives that demonstrate the state’s commitment to eliminating racial disparity in the juvenile justice system. Some of the important actions comprising the structure of DMC-reduction efforts in Iowa include (a) rigorous, empirical multivariate analyses of factors that precipitate youth involvement in the juvenile justice system; (b) the creation and maintenance of a statewide, multidisciplinary DMC Resource Center; and (c) buy-in from the state governor’s office. In addition, the launch of Iowa as a JDAI site in November 2008 will surely provide additional guidance and support to the ongoing work in this state.

A Decade of Rigorous Research

Over the past decade, Iowa researchers and specialists have assiduously tracked each juvenile justice decision point in several jurisdictions around the state in attempts to locate precisely where in the system DMC exists and what precipitates it. Because there are many juvenile justice systems within this state rather than a unified state system of juvenile justice, it is necessary to analyze data from individual jurisdictions. Researchers have analyzed local areas and produced numerous analyses on the causes and correlates of DMC in Iowa (Bishop, Leiber, & Johnson, IN PRESS; Leiber, 1994, 2003; Leiber & Fox, 2005; Leiber & Jamieson, 1995; Leiber & Johnson, 2008; Leiber & Mack, 2003; Leiber & Stairs, 1999). Across these studies, one consistently finds that legal factors do not alone account for racial disparity in Iowa's juvenile justice matters; race continues to be a factor that predicts involvement in the juvenile justice system net of other factors. Iowa is not unique in this finding; many other states have come to conclude that offending behavior does not sufficiently explain for the minority overrepresentation in juvenile justice systems (for a review, see Pope, Lovell, & Hsia, 2002).

Iowa's DMC Resource Center

Located at The University of Iowa School of Social Work's National Resource Center for Family Centered Practice, the DMC Resource Center was developed to provide intensive technical assistance to communities; build consensus on priorities and assist in the development of local DMC task forces; develop outcome measures and indicators of results; conduct training and education about DMC including holding an annual DMC conference; and maintain a Web site with relevant information for communities. The DMC Resource Center has emerged as a national model for cross-jurisdictional information sharing and has since been replicated in New Mexico and South Carolina.

Governor's Youth Race and Detention Task Force

In 2007, the Iowa's Governor Culver established a task force to address the overrepresentation of minorities at the point of detention in the state. Membership of the group included a broad representation from state government, law enforcement, prosecution, defense, human services, corrections, the American Civil Liberties Union of Iowa, education, and community members. The Task Force met eight times and received testimony from a wide variety of relevant parties. It produced a comprehensive report in 2009 that largely confirmed earlier findings that youth of color are treated more frequently and more harshly in the juvenile justice system than their White counterparts (Governor's Youth Race and Detention Task Force: Response to Executive Order 5, 2009).

What is notable about this work is that it elevated Iowa's commitment to DMC reduction at the state level and, thus, provides a template for other states to do the same. Iowa has recently decreased its overall juvenile detention population by 15% (Iowa Division of Criminal and Juvenile Justice Planning, 2009). In addition, the three counties where DMC initiatives are underway have observed significant reductions in the detention of youth of color: in Polk County, minority detention has declined by 23.2%; in Woodbury County, it has declined by 5.2%; and in Black Hawk County, it has declined by over 20% (Iowa Division of Criminal and Juvenile Justice Planning, 2009).

Although state-level buy-in is a major barrier that slows the DMC work in many states, Iowa is a fortunate exception. This state is fortunate to have an active and engaged state-level DMC committee as well as local DMC subcommittees, a statewide DMC Resource Center, production of several rigorous state- and locality-specific DMC analyses, and a highly regarded, annual statewide conference that draws nationwide experts. This dedication has undoubtedly formed the firm bedrock upon

which DMC-related staff, researchers, policy makers, and interested community members can continue to engage in comprehensive reform.

Iowa is also the first state in the nation to adopt state legislation, requiring an estimate of the disproportionate impact of future proposed crime laws on racial and ethnic minorities, similar to a fiscal impact statement (Mauer, 2008, 2009). Passed in 2008, the Minority Impact Law (HF 2393) requires assessments of “. . . any disproportionate or unique impact of proposed policies or programs on minority persons, . . . a rationale for the existence of programs or policies having an impact on minority persons in this state, and evidence of consultation of representatives of minority persons in cases where a policy or program has an identifiable impact on minority person” This legislation provides an added protection against unwarranted disparities in the justice system.

Suggestions for Moving the DMC-Reduction Movement Forward

Led by commitment by the federal government as well as national and state-based initiatives to ensure equitable treatment in the juvenile justice system, select states and localities are becoming leaders in the DMC reform movement. As such, a series of principles and guidelines have emerged that is based on knowledge of what works.

Strengthen Federal Requirements Around DMC

The JJDPAs have not been reauthorized since 2002, and substantive changes have not been made to the Act in over a decade. National, state, and local child advocates have been urging the U.S. Congress to reauthorize the JJDPAs since 2007 but have not succeeded as of this writing.

The JJDPAs need to be strengthened in their attention to the overrepresentation of youth of color. Based on recommendations submitted from DMC coordinators around the nation as well as seasoned DMC experts, the following recommendations are offered to improve the DMC focus within the JJDPAs:

1. Establish coordinating bodies (i.e., DMC subcommittees or task forces) to oversee efforts to reduce disparities;
2. identify key decision points in the system contributing to disparities;
3. create systems to collect local data at every point of contact youth may have with the juvenile justice system (by race, ethnicity, and offense) to identify where disparities exist and the causes of those disparities;
4. develop and implement plans to address disparities that include measurable objectives for policy or practice change that are based on data; and
5. publicly report findings and progress in efforts to reduce disparities on an annual basis.

Engage in Data-Driven Solutions

The routine and systematic collection of data is widely accepted as a key component for successful efforts to reduce DMC. The Office of Juvenile Justice and Delinquency Prevention emphasizes the importance of collecting and analyzing individual-level data from nine decision points in the juvenile justice system: arrest, referral to court, diversion, secure detention, petition (charges filed), delinquent findings, probation, confinement in secure correctional facilities, and transfer to adult court. Other data points may be instructive as well, such as police referral data from the schools.

States have come a long way in their ability to routinely collect data on race and ethnicity. When this area of study was first beginning, only a handful of states examined categories of race beyond “White” and “Other/non-White” (Leiber, 2002). Today, most states differentiate several racial

categories and a growing number of states distinguish race from ethnicity (i.e., Latino) as well. The distinction of ethnicity from race is critical to a complete understanding of which juveniles are in the system (Piquero, 2008).

States continue to be beset with problems associated with tracking youth through the system due to an inability of data systems to communicate with each other. In other words, police data are often disconnected from court data, which are also disconnected from sentencing and corrections data. This makes it difficult to follow individual youth through the system; instead, individual systems provide a snapshot of the youth in a particular domain. Ideally, one should be able to follow each youth through the system via data sets that are linked together (Nellis, 2005).

Community-level data collection is equally important to individual-level data for a complete understanding of DMC. As Kimberly Kempf-Leonard (2007) notes in her recent review of the past two decades of DMC research, jurisdictional differences in the treatment of youth, the availability of alternatives to detention, and “. . . the culture of the system” can serve to explain DMC (p. 81). The nuances of a particular area in terms of service availability, administrative or legal policies, and day-to-day practices could account for some minority overrepresentation but needs to be operationalized and measured to know whether this is the case. Finally, multilevel research that takes macrolevel factors (e.g., residential mobility, poverty, and unemployment) allows a fuller understanding of the contextual issues that accompany DMC in a particular jurisdiction.

Enact Racial Impact Statements

A 2008 study noted that Iowa topped the nation in racial disparity within its prison population, and the state moved quickly to address this dubious distinction by requiring policy makers to prepare racial impact statements for proposed legislation that affects sentencing (Mauer & King, 2007). In 2008, Iowa’s Governor Culver signed into law the Minority Impact Statement Bill (HF 2393), which requires legislators to have all pending legislation reviewed to anticipate any disparate impact on race or ethnicity that might occur as a result of the legislation. Similar to environmental impact statements that require the inclusion of a social impact assessment, enacting laws requiring racial impact statements for pending legislation, as Mauer (2008, 2009) suggests, is a legislative solution considered or adopted in a growing number of states. This approach shows promise; future iterations may wish to move the responsibility of impact statements out of the government and into the nongovernmental bodies so as to not compromise the integrity of the law.

Conclusion

As the DMC-reduction movement enters its second decade toward reform, many successes have been documented and many challenges remain. In the success side of the ledger, the establishment of professional statewide DMC coordinators, some of whom have been working within the movement for a decade or more, serves as a firm foundation upon which meaningful work can occur. In addition, whereas many states did not even have access to race and ethnicity data among their juvenile justice populations at multiple decision points, this is now standard in many places. In addition, whereas states historically operated in silos, unaware of the successes and challenges of their neighboring states, there is now a community of state coordinators, which has developed, in which ideas are shared. And finally, in the early days of the movement, states were easily frustrated by the lack of leadership and guidance offered to them as they were charged with this formidable task of reducing racial disparity in juvenile justice systems. National experts have fortunately emerged to guide and serve states and jurisdictions; areas with this guidance appear to be demonstrating the greatest improvements.

The relationship between race and justice has a long and toxic history. Although some modicum of success toward eliminating disparities has been observed, in many places, it still seems reluctant to even budge. Continued commitment to data-driven solutions, guidance from national experts, placement of the DMC issue as a local, state, and federal priority, and community investment have emerged as the keystones for success in removing unwarranted disparities from the juvenile justice system.

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Bios

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