



RESEARCH IN BRIEF TO TRANSFORM JUVENILE PROBATION

# Increase Successful Diversion for Youth of Color

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This brief presents powerful research showing that youth of color are substantially more likely than non-Hispanic white youth with similar case histories to be arrested and, following arrest, to face formal charges in juvenile court — despite similar delinquency rates. White youth are far more likely to be diverted and have their cases handled informally outside the court system. The brief also presents evidence that fewer opportunities for diversion for youth of color play a central role in perpetuating and exacerbating unequal outcomes in later stages of the justice process.

The brief builds on research that shows U.S. juvenile courts divert far too few youths from formal processing in juvenile court overall, despite evidence that informal processing improves public safety outcomes and bolsters long-term success in education and employment. (See [\*Expand the Use of Diversion From the Juvenile Justice System\*](#) to learn more.)

This research brief is part of the Annie E. Casey Foundation's work to [transform juvenile probation](#).<sup>1</sup>

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#### **AT DECISION POINTS FOR ARREST AND REFERRAL TO COURT**

**1** Black youth and other youth of color are arrested and referred to juvenile courts for delinquency at far higher rates than white youth despite similar rates of law-breaking behavior. There are vast disparities at the initial point of contact with the justice system.

#### **AFTER REFERRAL TO COURT**

**2** Black youth are far less likely to be offered diversion than white, non-Hispanic youth. Hispanic, Native American and Asian and Pacific Islander youth are also diverted from court at lower rates than white, non-Hispanic youth, though the gaps are not as large.

**3** Controlled research studies consistently find bias in diversion decisions, with Black youth and other youth of color significantly less likely to be offered diversion opportunities than white youth with similar case histories.

**4** Disparities in diversion also are driven by eligibility and participation requirements and other seemingly objective decision-making criteria that place youth of color at a distinct disadvantage.

**5** Many scholars have emphasized that the lack of diversion opportunities offered to youth of color play a central role in perpetuating and exacerbating unequal outcomes in later stages of the justice process.

**Black youth and other youth of color are arrested and referred to juvenile courts for delinquency at far higher rates than white youth despite similar rates of law-breaking behavior. There are vast disparities at the initial point of contact with the justice system.**

- For most types of delinquent conduct, there are only modest differences in offending rates by race or ethnicity, according to surveys in which participants report their behavior, known as self-report data. One widely cited review of racial and ethnic disparities in youth offending found that “self-report data confirm the generalization that there are few differences in property crime offending by juveniles of different racial or ethnic groups.” (Property crime is the illegal taking or damaging of property, including cash and personal belongings.) This study went on to conclude that “the most commonly occurring crimes exhibited few group differences.”<sup>2</sup>
- In a comprehensive review of research about racial disparities in youth justice, scholars Donna Bishop and Michael Lieber found that neighborhood characteristics influence how police officers exercise discretion “in ways that make youth of color more vulnerable to stops and arrests... . The research also suggests that police are more suspicious of persons in low [socioeconomic status] neighborhoods with high minority concentrations, which tend to be typified as 'bad' and 'dangerous' areas. These [assumptions], which rest on race and class stereotypes, condone and even encourage a more aggressive posture with respect to stops, arrests and use of coercive authority.”<sup>3</sup>
- Despite similar involvement in most types of delinquent conduct, youth of color are arrested at far higher rates than white youth, according to federal data and research studies. Black youth are arrested at 2.5 times the rate of white youth nationwide, with higher arrests rates in every offending category other than liquor-related offenses. Native American youth are also arrested at higher rates than white youth.<sup>4</sup>
- Contact with police causes significant negative consequences for young people of color, increasing the likelihood of subsequent arrests and more punitive treatment in the justice system. A longitudinal study of youth in Seattle found that Black teens were more than twice as likely to have a police contact as white teens and more than twice as likely to be arrested, and that youth who had a police contact by eighth grade were five times more likely to get arrested by tenth grade than youth with no police contact. As the study’s authors note, these dynamics provide support for a “narrative of injustice” where “early police contacts may have a detrimental effect on youth rather than a preventive impact.”<sup>5</sup>
- In a 2018 review of research on racial and ethnic disparities in youth justice, researchers identified statistically significant disparities disadvantaging youth of color in 82% of all analyses that compared arrest rates for white non-Hispanic youth with youth of another race or ethnicity.<sup>7</sup>

- National juvenile justice case processing data find that the likelihood of being referred to juvenile court following an arrest — rather than being issued a warning or released to their parents — is lower for white youth than for youth of other races.<sup>8</sup>
  - One study found that almost all Black youth who were arrested were referred to court (95%), compared to 85% of white youth arrested.<sup>9</sup>
  - Another study that examined youth arrests and referrals by race and ethnicity in 14 states, found that white non-Hispanic youth were significantly less likely than Hispanic youth to be referred to court following an arrest. The disparities were particularly large when arrests involved less serious offenses such as curfew violations, loitering, vagrancy and disorderly conduct.<sup>10</sup>
  - In 2016, the federal Office of Juvenile Justice and Delinquency Prevention estimated that “compared with white youth, Hispanic youth were 20% more likely to be referred to juvenile court.”<sup>11</sup>

**“It is fundamentally unjust to arrest youth who are less delinquent than others at a higher rate and move them through a system that in many locales focuses more on punishment than on rehabilitation. The injustice is intertwined with bias due to race and ethnicity when Black and Hispanic youth are most caught up in this trend.”<sup>6</sup>**

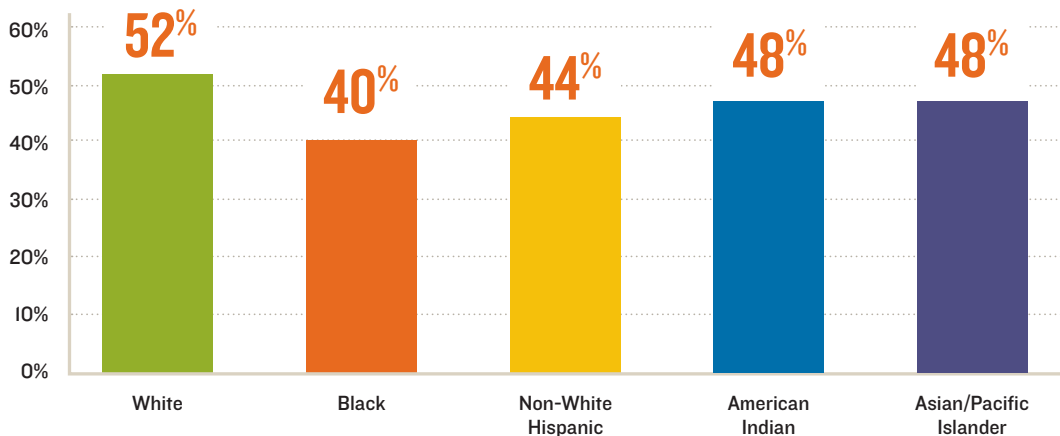
**— Criminologists Tia Stevens and Merry Morash**

# 2

Black youth, after referral to court for delinquency, are far less likely to be offered diversion than white non-Hispanic youth. Hispanic, Native American and Asian and Pacific Islander youth are also diverted from court at lower rates than white non-Hispanic youth, though the gaps are not as large.

- Overall, 52% of white non-Hispanic youth referred to delinquency courts in 2019 had their cases diverted, compared with 40% of Black youth. Diversion rates for Hispanic youth, Native American youth and Asian and Pacific Islander youth were all between 44% and 48%.<sup>12</sup>

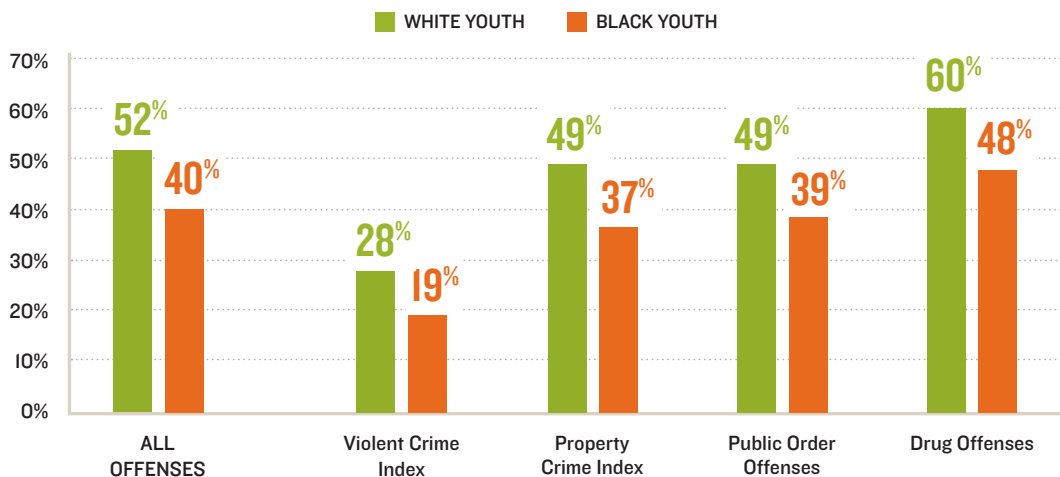
SHARE OF JUVENILE COURT REFERRALS DIVERTED FROM FORMAL PROCESSING IN COURT, BY RACE AND ETHNICITY, 2019



SOURCE: NATIONAL CENTER FOR JUVENILE JUSTICE<sup>13</sup>

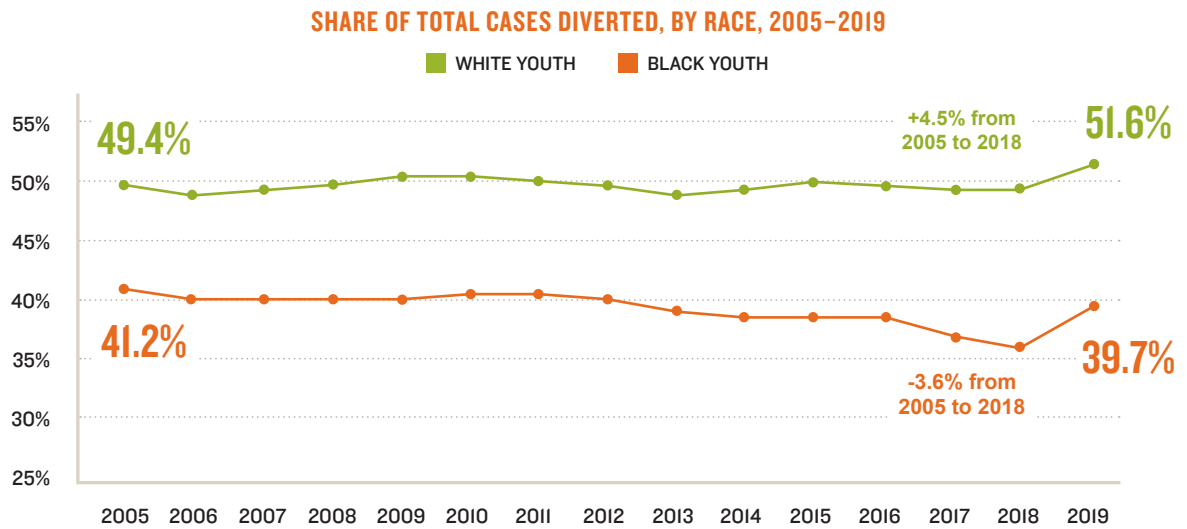
- Black youth are less likely than white youth to be diverted from court in every offense category, with the most glaring gaps for youth charged with serious violent offenses (19% vs. 28%) and serious property offenses (37% vs. 49%).<sup>14</sup> In fact, white youth are more likely to be diverted for property offenses (which typically involve a harmed party or property damage) than Black youth are for public order offenses, which usually do not involve a harmed party.

SHARE OF DELINQUENCY CASES DIVERTED FOR SELECTED OFFENSE CATEGORIES, BY RACE, 2019



SOURCE: NATIONAL CENTER FOR JUVENILE JUSTICE<sup>15</sup>

- Despite a federal mandate to address racial and ethnic disparities in juvenile justice and a stated commitment to do so in systems across the nation, the gap in the share of Black and white youth diverted from court has grown considerably in recent times — as shown in the charts below.<sup>16</sup>



SOURCE: EASY ACCESS TO JUVENILE COURT STATISTICS: 1985-2019<sup>17</sup>

# 3

## Controlled research studies consistently find racial bias in diversion decisions, with Black youth and other youth of color significantly less likely to be offered diversion opportunities than white youth with similar case histories.

- At least 20 academic studies in the past 25 years have documented the role that clear and statistically significant racial and/or ethnic bias plays in whether youth will be diverted from formal court processing following a referral to juvenile court.<sup>18</sup>
  - For example, a 2016 study examining the cases of more than 68,000 cases in one northeastern state confirmed prior research indicating that Black youth received different outcomes at intake compared with white youth. Specifically, the study found that Black youth were 54% more likely than comparable white youth to have their cases referred for formal processing in juvenile court.<sup>19</sup>
  - In the same year, a study in a large metropolitan county in the Midwest found that prosecutors charged, rather than diverted, youth of color significantly more frequently than white youth, particularly for theft cases.<sup>20</sup>
- Juvenile justice scholars report that disparate treatment of Black youth and other youth of color is most prevalent in the early stages of the justice process — and particularly at diversion.
  - Sociologist Traci Schlesinger wrote in 2018: “Research has consistently demonstrated that disproportionate minority contact 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.”<sup>21</sup>
  - In a comprehensive review of scholarly research on racial and ethnic disparities in juvenile justice, criminologists Donna Bishop and Michael Lieber found that youth of color are less likely than white youth to be diverted from the system. The review also notes that most studies examining the diversion stage of the process “reveal racial and ethnic disparities in outcome that cannot be explained solely by legal factors” like severity of offense or prior history of arrests and adjudications.<sup>22</sup>
- Research finds that disparities in diversion are often the result of implicit (or unconscious) biases of system decision makers.
  - In one study, police officers overestimated the ages of Black boys accused of felony crimes by nearly five years, while underestimating the ages of white boys accused of similar crimes. Consequently, police officers in this study judged Black youth as more culpable for their offenses, and officers were more likely to use force against Black youth.<sup>23</sup>
  - A 2021 study examining three Arizona counties documented how implicit bias influences diversion disparities.<sup>24</sup> The study reviewed the case files prepared by probation intake staff and found notes about youth of color were far more likely to include references to character weaknesses than notes about white youth. Indeed, the case files of Black, Hispanic and Native American youth had three to six times as many critical comments about the young people’s characters (such as “feels no remorse,” “does not take offense seriously” or “uncooperative with justice officials”) as those of white youth.<sup>25</sup> According to researchers, these internal attributions “had a significant negative effect on the likelihood of receiving diversion.”<sup>26</sup>

# 4

Disparities in diversion also are driven by eligibility and participation requirements and other seemingly objective decision-making criteria that place youths of color at a distinct disadvantage.

- Eligibility requirements consistently exclude youth of color from diversion at far higher rates than white youth.
  - *Offense history.* A survey of 36 diversion programs in 13 U.S. states found that the majority of programs served only youth referred to court for a first offense.<sup>27</sup> This survey also found that a majority of programs also served only youth accused of misdemeanors, not felonies, and many programs even excluded youth accused of some misdemeanors. Given the far higher arrest rates among youth of color,<sup>28</sup> these eligibility rules necessarily exclude youth of color at far higher rates than white youth. Rules excluding youth with more extensive offending histories and/or those assessed as higher risk for rearrest are not in line with the evidence, which says that diversion leads to better outcomes than formal court processing for youth assessed as high risk of rearrest. For instance, a 2013 meta-analysis reviewing the effectiveness of juvenile diversion found that diversion programs were just as effective for youth assessed as moderate or high risk of rearrest as for those assessed as low risk of rearrest.<sup>29</sup>
  - *Admission-of-guilt requirements.* In many jurisdictions, youth are required to admit guilt to qualify for diversion.<sup>30</sup> Such admissions tend to be perceived by officials as a sign that young people are receptive to treatment, but research finds that youth of color (especially Black youth) are less likely than white youth to be willing to admit guilt.<sup>31</sup> “Reluctance to admit guilt on the part of minority youths may say far more about their distrust of justice officials than about their amenability to treatment,” note juvenile justice scholars Donna Bishop and Michael Lieber. “Nevertheless, officials tend to draw the inference that those who do not admit guilt lack remorse.”<sup>32</sup>
- Assumptions based on situational factors such as family structure, economic class and offense history — factors unrelated to the specific offense — influence diversion decisions in ways that disproportionately disadvantage youth of color.
  - *Family structure.* Many studies have documented that youth from single-parent families are far less likely to have their cases diverted. In a 2018 study, scholars Tony Love and Edward Morris found that “African American youths are denied diversion opportunities largely because they disproportionately live in alternative family arrangements.” Love and Morris reported that “such assumptions about family are incorrect. Family structure in our data has no relationship to the successful completion of diversion.”<sup>33</sup>
  - *Parental income and education.* A 2017 study examining outcomes for youth referred to juvenile courts in Pennsylvania, Louisiana and California found that “parental education significantly predicted processing decisions, such that youth whose parents did not graduate from high school were more likely to be processed formally than to be diverted,” and that “youth from single-parent homes or from families receiving public assistance are also often processed more harshly.”<sup>34</sup> Nancy Rodriguez, a juvenile justice scholar and former director of the National Institute of Justice, has observed that “court officials [often] make individual assessments of youth that ... involve attributions that link minorities to ‘bad neighborhoods’ or ‘bad families,’ leading to more severe outcomes for racial minorities.”<sup>35</sup>



- *Parental incarceration.* In a study of several hundred youth referred to juvenile courts in Maricopa County, Arizona — where Phoenix is located — scholars found that, controlling for other relevant factors, youth whose fathers had been incarcerated were 2.6 times as likely to receive an out-of-home placement than comparable youth whose fathers had not been incarcerated.<sup>36</sup>
- *School progress of youth.* In a 2011 review of racial and ethnic disparities in juvenile justice, Bishop and Lieber concluded: “School problems (attendance and performance) have also been found to predict intake decisions to refer youths for formal processing, independent of controls for legal and other social factors. While difficulties in school are common among youths referred to intake, they are more common among African Americans, Native Americans and Hispanics.”<sup>37</sup>
- Because of enduring racial disparities in income, savings and access to transportation, youth and families of color often find it harder to meet diversion program requirements such as fines, fees and restitution costs; meeting attendance; and other program participation demands.
  - *Imposition of fines, fees and required restitution payments.* In 2016, the Juvenile Law Center reported that youth in 26 states are required to pay fees to participate in diversion, and that in many of these states, youth who are unable to pay can lose eligibility for diversion. Also, once enrolled in diversion, youth unable to pay fees and restitution costs are often required to attend additional court hearings or face other consequences.<sup>38</sup> These costs cause disproportionate harm to youth and families of color due to wide gaps nationwide in income by race and ethnicity and even wider gaps in savings and assets.<sup>39,40</sup> Another 2016 study concluded that fines and fees increased the likelihood of recidivism, and that the negative effects of fines and fees were especially severe for youth of color.<sup>41</sup>
  - *Parents’ availability to participate in diversion activities.* Bishop and Lieber reported that one reason for low rates of diversion for youth of color is that “as a matter of policy in many jurisdictions, juveniles are ineligible for diversion and must be automatically detained if their parents cannot be contacted and do not appear for a face-to-face interview.”<sup>42</sup> Parents of youth of color are less likely than those of white youth to have phones, access to transportation and child care and freedom to take leave time from work without loss of pay, making it more difficult to participate in diversion activities.<sup>43</sup> “Providers introduce barriers to enrollment when they require youth and their caretakers to come to their site during limited, inflexible hours,” notes a 2019 report about racial equity in diversion. “Providers should reduce burdens on caretakers related to transportation and limited time by meeting where the caretaker and youth are most comfortable, and scheduling the meeting around caretakers’ and youth’s availability.”<sup>44</sup>
  - *Participation requirements.* Multiple studies have found that youth of color have higher failure rates in diversion than white youth.<sup>45</sup> For instance, a study by Nina Chernoff and Bernadine Watson of Public/Private Ventures examined outcomes from Philadelphia’s Youth Aid Panel diversion program in 1994 and found that the failure-to-complete rates of Black youth (30%) and Hispanic youth (43%) were two times and three times, respectively, to the rate of white youth (15%).<sup>46</sup> However, when diversion programs are designed in culturally responsive ways, jurisdictions can close the disparities gap. For instance, after Philadelphia’s Youth Aid Panel addressed issues related to eligibility and program requirements, Black and Hispanic youth completed diversion programs at the same rate as white youth.<sup>47</sup>

# 5

Many scholars have emphasized that the lack of diversion opportunities offered to youth of color play a central role in perpetuating and exacerbating unequal outcomes in later stages of the justice process.

- In a 2020 paper, criminologists Margaret Goldman and Nancy Rodriguez concluded: “[M]any studies confirm that racial disparities are concentrated at the front end [of the juvenile justice system]. ... The consequences of this are substantial, as front-end processing decisions heavily impact youths’ trajectories toward or away from entrenchment into the justice system. ... Additionally, because prior records influence subsequent court outcomes, racial inequalities accumulate as youth move through the system.”<sup>48</sup>
- “[M]inority youth are more vulnerable to arrest and formal processing than otherwise similarly situated white youth,” explain Bishop and Lieber. “Compared to white youth engaged in the same behaviors, [minority youth] more readily accumulate offense histories and dispositions from which inferences are drawn about their character and capacity for reform.”<sup>49</sup>

## Endnotes

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