

# **¿DÓNDE ESTÁ LA JUSTICIA?**

**A CALL TO ACTION ON BEHALF OF LATINO AND LATINA  
YOUTH IN THE U.S. JUSTICE SYSTEM**

## **EXECUTIVE SUMMARY**

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This study is the seventh report published by Building Blocks for Youth, a multi-year initiative to reduce over-representation and disparate treatment that affect youth of color in the justice system and to promote rational and effective juvenile justice policies. The initiative has five major components:

1. Research on the disparate impact of the justice system on youth of color and related topics such as the effects of adult court transfer legislation in the states, the privatization of juvenile justice facilities by for-profit corporations, and the media's portrayal of crime, youth and race.
2. Site-based work to achieve measurable reductions in over-representation and disparate treatment of youth of color, focusing on (a) decision-making at critical points in the justice system, including arrest, detention, adjudication, and disposition; (b) over-incarceration; (c) prosecution of youth in adult criminal court; (d) zero tolerance policies, (e) Native American youth, and (f) police accountability.
3. Direct advocacy on behalf of youth of color in the justice system, particularly on issues that disproportionately affect youth of color, such as conditions of confinement in jails, prisons, juvenile facilities, and access to counsel and adequacy of representation in juvenile court.
4. Constituency-building among African-American, Latino, Native American, Asian and other minority organizations, youth organizations, state-based advocacy groups, and organizations in the civil rights, medical, mental health, legal, law enforcement, child welfare, human rights, religious, victim's rights, and domestic violence areas, at the national, state, and local levels.
5. Development of communications strategies to provide timely, accurate, and relevant information to these constituencies, public officials, policymakers, the media, and the public.

The partners in the initiative are the Youth Law Center, American Bar Association Juvenile Justice Center/National Juvenile Defender Center, Juvenile Law Center, Justice Policy Institute, Minorities in Law Enforcement, and Pretrial Services Resource Center.

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# 1. Introduction

*Pablo, a 16-year-old undocumented immigrant from Mexico, was asleep in his bed at 2:30 in the morning, when the police banged on the door of the apartment Pablo shared with his cousins. With guns drawn, the police handcuffed Pablo. They did not allow him to show identification or to put on a coat to protect himself from the January weather. Badly frightened, Pablo cried as he was taken away. During the course of the night and the next day, Pablo was taken to two different jails.*

*Pablo does not speak any English. He was asked, in Spanish, if he was the suspect the police sought; he replied that he was not. The police were looking for a much older person, who in fact was Pablo's brother. Although one of the arresting officers spoke Spanish, she did not explain the situation to Pablo. The police did not provide an interpreter at any time during Pablo's detention. He repeatedly asked to make a phone call, even using body language to convey his meaning, but the police refused. Although several officers at the second jail spoke Spanish, Pablo was not permitted to speak with them.*

*The police realized early in the day that Pablo's fingerprints did not match those of the person they were seeking; nevertheless, they did not release him until 6:30 p.m.*

Source: Confidential.<sup>1</sup>

Latino communities, and their youth in particular, are increasingly singled out by the criminal justice system. Harsh and disparate treatment at all stages of the justice system (including police stop, arrest, detention, waiver to adult criminal court, and sentencing) is a grim reality for many Latinos. Racial and ethnic disparities in the system are compounded by an unprecedented rate of construction of new juvenile facilities, jails and prisons across the country. These facts spell trouble for Latino and Latina<sup>2</sup> youth, who are part of the largest and fastest-growing racial/ethnic group in the United States.

<sup>1</sup> The names in this and other vignettes in this report have been changed to protect privacy and preserve confidentiality.

<sup>2</sup> The United States government uses the term *Hispanic* to recognize individuals' common Spanish descent. The term refers, in part, to people with ties to nations where Spanish is the official language, and is used by the U.S. government and legal system. The term *Latino*, on the other hand, generally refers to people with ties to the nations of Latin America and the Caribbean, including some nations where Spanish is not spoken (e.g., Brazil). It also encompasses persons born in the United States whose families immigrated to this country from Latin America in the recent past, as well as those whose ancestors immigrated generations ago. Throughout this report we use the term *Latino/a* to refer to Latino and Latina individuals in this country who identify their racial/ethnic backgrounds in reference to Mexico, Central and South America, and the Caribbean, including people born or living in the United States.

Available research data indicate that Latino/a youth, like other youth of color, receive harsher treatment than White youth charged with the same offenses. Unfortunately, the data available are limited because states do not routinely and systematically collect data that separate Latino/a youth from White youth, or distinguish among Latino/a youth of Mexican, Caribbean, Central American, or South American ancestry.

The absence of comprehensive data makes it impossible to determine the full extent of disparate and punitive treatment of Latino/a youth at key decision points in the justice system, or to fully develop more comprehensive and effective policies to remedy the disparities. The failure to collect separate data on Latino/a youth also inflates the incarceration rate of non-Hispanic White youth, further masking disparities in confinement of all youth of color.

The lack of bilingual staff and services in many agencies and institutions can make the juvenile justice experience incomprehensible—and nightmarish—for youth and their families with limited English proficiency.

Further, lack of cultural competency among justice system personnel can lead to misunderstandings. For example, while avoiding direct eye contact is considered respectful in many Latin nations, it can be and is viewed as a sign of disrespect or deceptiveness by White authority figures such as judges, district attorneys, or probation officers.

Immigrant youth, the majority of whom are Latino/a, face severe hardships if they come to the attention of the Immigration and Naturalization Service (INS). Oftentimes they experience psychological trauma and long periods of detention in jails and other facilities, as well as deportation and permanent separation from their families. Further, once Latino/a youth are taken into custody, their parents are afraid to have contact with authorities if the parents are not U.S. citizens and are subject to deportation. Even those Latino/a parents who are U.S. citizens resist invasions of their privacy and having to prove their citizenship. In addition, it is difficult or, in some cases, impossible for youth in migrant families, such as farmworker families, to comply with probation requirements, turning minor misbehaviors into serious violations.

Finally, reliance on ethnic stereotypes and bias in the justice system—particularly about which youth are involved in gangs—result in harsh consequences for Latino/a youth. Latino/a youth are held in secure detention based on assumptions of gang membership. Anti-gang statutes in many states impose dramatically higher penalties on youth who courts presume to be gang members. As a result, Latino/a youth who have no involvement whatsoever with gangs face prosecution and long mandatory minimum sentences if convicted.

This is an executive summary. The complete report, in Spanish and English, is available at the Building Blocks for Youth website: <http://www.buildingblocksforyouth.org/>.

## 2. Purpose of report and methodology

### *The purposes of this report are:*

1. To provide a picture of Latino/a youth in the U.S. justice system today, with a particular focus on racial and ethnic disparities,
2. To describe barriers to collection of comprehensive data regarding Latino/a youth in the system, and
3. To initiate a “call to action” for Latino communities, policy makers, service providers, advocates, researchers, parents, and youth to address the problems outlined in this report.

### *This report is based on a variety of sources:*

1. A review of the research literature and available data on Latino/a and other youth of color in the justice system.
2. A survey of selected states with significant Latino/a populations (at least 12% of total population) and states with growing Latino/a populations (at least 1-8% growth since 1990).
3. Vignettes from organizations serving Latino/a youth, the University of Michigan’s Institute for Social Research, police departments in cities across the United States, and news sources including the *Los Angeles Times*, *Reuters News Service*, and the *Oakland Tribune*.
4. Two meetings in Washington, DC, and discussions with representatives of a variety of Latino/a and youth-serving organizations, including such national and local community organizations as ASPIRA Association, Calvary Bilingual Multicultural Learning Center, Catholic Archdiocese Juvenile Detention Ministry, Center for Young Women’s Development, Child Welfare League of America, Latin American Youth Center, Latino Community Development Agency, Make the Road by Walking/Youth Power Project, Mexican American Legal Defense and Education Fund, National Council of La Raza, National Latino Children’s Institute, Puerto Rican Legal Defense and Education Fund, Prison Moratorium Project, Sermetro/Youth Opportunity Movement, St. Christopher’s, Inc., and Youth Force Coalition.

## 3. Summary of Key Findings

### FINDING 1:

**Latino/a youth are significantly over-represented in the U.S. justice system and receive harsher treatment than White youth, even when charged with the same types of offenses.**

#### **A. Over-Representation: More Latino/a Youth at Each Stage of the System**

While there are serious inadequacies in the availability of data, research that has been conducted demonstrates that Latino youth are over-represented in the justice system.<sup>3</sup> An “index of over-representation” is calculated by dividing the Latino/a proportion of youth at a particular stage of the justice system (e.g., arrest or detention) by the proportion of Latinos/as in the general juvenile population. An index of 1.0 means that the Latino/a proportion of youth at that stage of the system is the same as the proportion of Latinos/as in the general juvenile population. An index greater than 1.0 means that Latino/a youth are over-represented at that stage of the system.

#### **Arrests of Latino/a youth**

Latino/a youth, as well as African-American youth, are arrested at much higher rates than White youth (see Table 1).<sup>4</sup>

	Latino	White	Black
Felony arrests	1,989	1,126	5,049
Violent offenses	556	287	1,911
Property offenses	917	568	2,282
Drug offenses	266	135	427
Sex offenses	33	15	98
Other offenses	218	122	331

Source: Hayes-Bautista, D. E. & Nichols, M. (2000). *American dream makers: Latino profiles study report*. Los Angeles, CA: Latino Profiles Committee. Table 2.19.

In other words, in Los Angeles County in 1998, Latino/a youth were:

- 1.9 times as likely as White youth to be arrested for violent offenses.

<sup>3</sup> Section 5633(a)23 of the Juvenile Justice and Delinquency Prevention Act of 1974, Title 42 of the United States Code, requires states to (1) investigate the problem of disproportionate minority confinement (DMC) in secure facilities, (2) determine the extent to which DMC exists, (3) assess the reasons for its existence, and (4) develop action plans to address the causes of disproportionate confinement of minorities. States failing to address the overrepresentation of youth of color in confinement are ineligible to receive certain federal funds.

<sup>4</sup> This table appears as Table 3 in the full report: Villarruel, F. A., & Walker N. E. (2002). *¿Dónde está la justicia?: A call to action on behalf of Latino and Latina youth in the U.S. justice system*. Washington, DC: Building Blocks for Youth [hereafter, “the full report”].

- 1.6 times as likely as White youth to be arrested for property offenses.
- 2.0 times as likely as White youth to be arrested for drug offenses.
- 2.2 times as likely as White youth to be arrested for sex offenses.
- 1.8 times as likely as White youth to be arrested for other offenses.
- 1.8 times as likely as White youth to be arrested for felony offenses in general.

#### Latino/a youth in pretrial detention

The index of over-representation for Latino/a youth in detention was significant in many states in 1996:

State	Index of over-representation (detention)
Colorado	1.9
Connecticut	4.8
Massachusetts	2.1
Nevada	1.4
New Jersey	1.5
New York	1.6

Source: Hamparian, D., & Leiber, M. (1997). *Disproportionate Confinement of Minority Juveniles in Secure Facilities: 1996 National Report*. Champaign, IL: Community Research Associates.

Human Rights Watch reported that Latino/a youth were over-represented in 39 states in 2002; the index of over-representation was 2.0 or greater in 22 states, and greater than 3.0 in 8 states:

State	Index of over-representation
Connecticut	3.8
Michigan	7.2
North Dakota	6.7
Pennsylvania	4.5
South Dakota	7.1
Vermont	5.9
West Virginia	3.4
Wisconsin	3.1

Source: Human Rights Watch (2002), Table 6. Available at <http://hrw.org/backgroundunder/usa/race>. Note: "Juvenile detention centers" includes homes for neglected children, residential treatment centers, and detention centers, among others listed by the U.S. Census Bureau.

Further, between 1983 and 1991, the percentage of Latino/a youth in public detention centers increased by 84%, compared to an 8% increase for White youth and 46% increase for youth overall.

#### Latino/a youth in adult jails and prisons

Data compiled by Human Rights Watch (see Table 2)<sup>5</sup> indicate that Latino youth are incarcerated in jails and prisons at rates 2 to 3 times the rates of White youth in nine states, 3 to 6 times the rates of White youth in eight states, and 7 to 17 times the rates of White youth in four states.

<sup>5</sup> This table is excerpted from Table 8 of the full report.

#### Consequences of prosecution as an adult and confinement in adult prison

Youth prosecuted as adults and confined in adult jails or prisons face particular dangers. Compared to youth in juvenile facilities, youth in adult facilities are:

- 8 times as likely to commit suicide.<sup>6</sup>
- 5 times as likely to be sexually assaulted.
- 2 times as likely to be assaulted by staff.
- 50% more likely to be attacked with a weapon.<sup>7</sup>

Moreover, it is important to note that recidivism is *higher* for youth who have been transferred to adult criminal court compared to youth with similar characteristics and offense records who stay in the juvenile court.<sup>8</sup>

State	Index of over-representation (jail/prison)
Alabama	2.9
Colorado	2.1
Connecticut	10.9
Delaware	4.6
Hawaii	7.6
Iowa	5.4
Kansas	2.0
Kentucky	2.1
Massachusetts	8.8
Mississippi	3.8
Montana	4.3
Nevada	2.8
New Hampshire	17.5
New Jersey	5.7
New York	2.4
Ohio	2.0
Pennsylvania	5.9
South Dakota	3.7
Tennessee	2.7
Vermont	4.5
Washington	2.0
<b>National</b>	<b>2.0</b>

Source: Human Rights Watch (2002), Table 7. Available at <http://hrw.org/backgroundunder/usa/race>.

Note: Figures calculated on basis of U.S. Census Bureau data from Census 2000 on state residents and incarcerated population. Confinement facilities include prisons, federal detention centers, military disciplinary barracks and jails, police lockups, half-way houses used for correctional purposes, local jails, work farms and others.

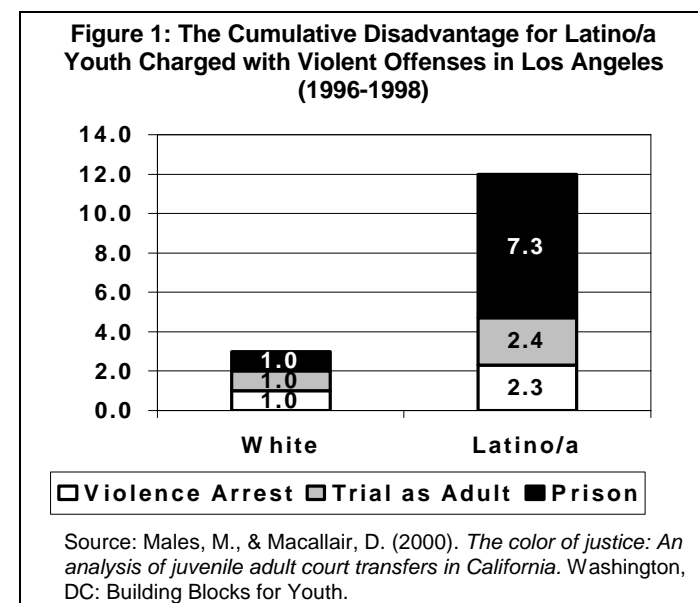
<sup>6</sup> Flaherty, M. G. (1980). *An assessment of the national incidence of juvenile suicide in adult jails, lockups, and juvenile detention centers*. Urbana-Champaign: University of Illinois.

<sup>7</sup> Forst, M., Fagan, J., & Vivona, T. S. (1989). Youth in prison and training schools: Perceptions and consequences of the treatment-custody dichotomy. *Juvenile & Family Court Journal*, 40, 1-14.

<sup>8</sup> Bishop, D. M., Frazier, C. E., Lanza-Kaduce, L., & Winner, L. (1996). The transfer of juveniles to criminal court: Does it make a difference? *Crime and Delinquency*, 42, 171-192.

**The “cumulative disadvantage”: Latino youth prosecuted as adults and sentenced to prison**

Racial and ethnic disparities for youth occur at several points in the justice system; more importantly, they accumulate over time. Initial disparities at arrest are compounded by disparities that occur later in the process. When added together, these disparities, even if they are relatively small at each stage, can produce large negative effects. Thus, as Figure 1 shows,<sup>9</sup> youth of color have a “cumulative disadvantage” in the justice system compared to White youth.



For example, in Los Angeles in 1996-98, Latino/a youth were:

- Arrested 2.3 times as often as White youth.
- Prosecuted as adults 2.4 times as often as White youth.
- Imprisoned 7.3 times as often as White youth.

Thus, a Latino/a youth who committed a violent offense in Los Angeles during the period 1996-1998 was, in total, 12 times as likely as a White youth to be confined in the California Youth Authority (CYA).

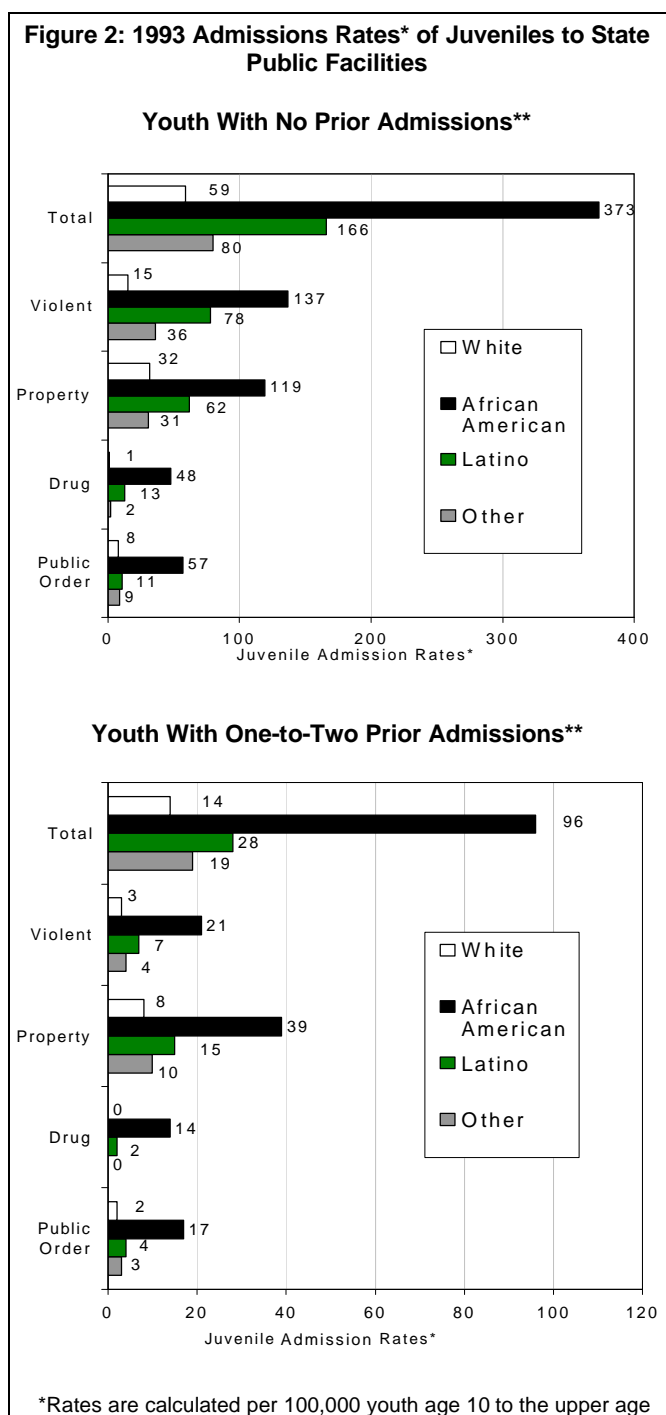
**B. Racial/Ethnic Disparities: More Time for the Same Crime**

Research also demonstrates that Latino/a youth are treated more harshly than White youth, even when they are charged with the same offenses.

**Admission rates to state public facilities**

As Figure 2 shows,<sup>10</sup> Latino/a youth are admitted to public facilities at much higher rates than White youth, even when charged with the same offenses. Among youth with *no prior admissions* to state facilities:

- For youth charged with drug offenses, the admission rate for Latino/a youth was 13 times the rate for White youth.
- For youth charged with violent offenses, the admission rate for Latino/a youth was more than 5 times the rate for White youth.
- For youth charged with property offenses, the admission rate for Latino/a youth was almost 2 times the rate for White youth.
- For youth charged with public order offenses, the admission rate for Latino/a youth was 1.3 times the rate for White youth.



<sup>9</sup> This figure appears as Figure 3 in the full report.

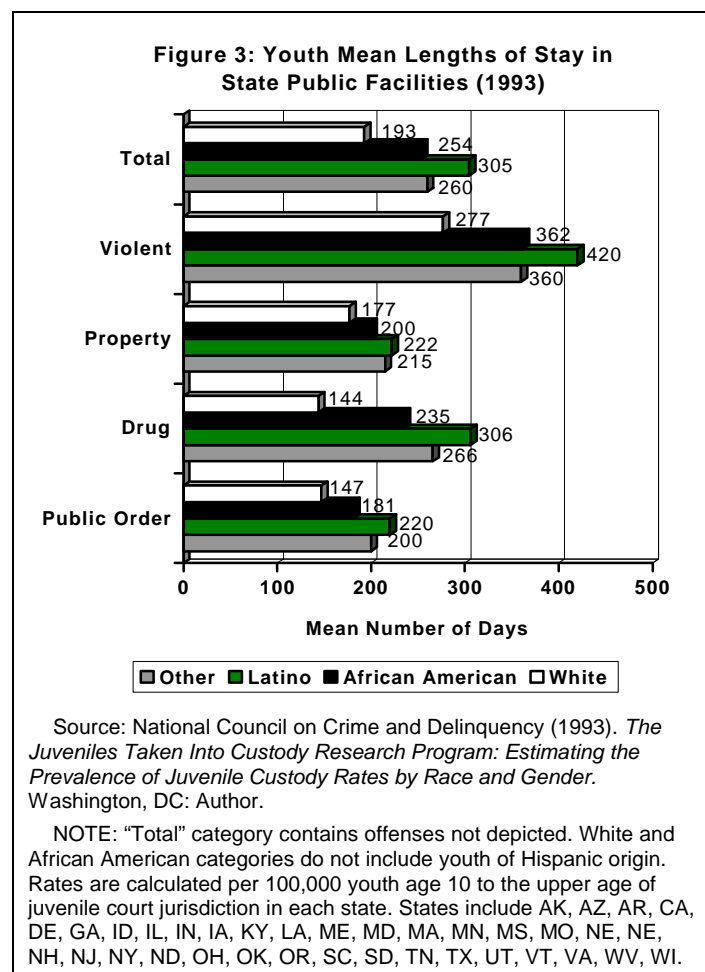
<sup>10</sup> This figure appears as Figure 5 in the full report.

of juvenile court jurisdiction in each state.

\*\*States include AK, AZ, AR, CA, DE, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MN, MS, MO, NE, NH, NJ, NY, ND, OH, OK, OR, SC, SD, TN, TX, UT, VT, VA, WV, WI.

Note: Persons of Hispanic origin may be of any race. White and African American categories do not include youth of Hispanic origin. Totals contain offenses not shown.

Source: National Council on Crime and Delinquency (1993). *The Juveniles Taken Into Custody Research Program: Estimating the Prevalence of Juvenile Custody Rates by Race and Gender*. Washington, DC: Author. Reprinted in Poe-Yamagata, E., & Jones, M. (2000). *And Justice for Some*. Washington, DC: Building Blocks for Youth.



Among youth with *one or two prior admissions* to state facilities:

- The admission rate for Latino/a youth was 2 times the rate for White youth, for all categories of offenses (violent, property, drug, public order).

**Average length of incarceration in state public facilities**

Data from 1993 (Figure 3)<sup>11</sup> show that, in every offense category, the average length of incarceration was longer for Latino/a youth than for any other racial/ethnic group:

<sup>11</sup> This figure appears as Figure 6 in the full report.

- Latino/a youth charged with violent crimes spent an average of 143 days longer incarcerated than White youth charged with the same offenses—almost 5 months longer.
- Latino/a youth charged with property offenses were incarcerated an average of 45 days longer than White youth similarly charged.
- For drug offenses, Latino/a youth were incarcerated for more than twice the amount of time (306 days) as White youth (144 days)—more than 5 months longer.
- For public order offenses such as gambling and prostitution, which are the least serious, Latino/a youth spent more than 50% longer incarcerated than White youth (220 days vs. 147 days).

It is particularly important to document disparate treatment of Latino/a youth because the proportion of Latino/a youth confined in California Youth Authority facilities has grown steadily over the past 20 years; in contrast, the percentage of White and Black youth confined has declined.

**FINDING 2: Current means for collecting and accessing data are inadequate, resulting in under-counting and inaccuracies in reporting disproportionate representation and disparate treatment of Latino/a youth in the U.S. justice system.**

Current methods for recording and gathering data obstruct attempts to understand the magnitude of the problem of over-representation and disparate treatment of Latino/a youth in the justice system. Critical pieces of information often are missing, variables are not specified in detail, terminology is inconsistently used, and information is not consistently reported across jurisdictions. There is little incentive—and scant resources—for states to provide data to researchers. Yet without research it is not possible to understand the nature or extent of the problem, or to fully develop effective solutions.

**Several barriers to accurate data collection regarding Latino/a youth currently plague the justice system:**

- Systems for gathering data in many states and the federal government do not have a “Latino” or “Hispanic” ethnic category. They also fail to separate ethnicity from race, so that Latino/a youth often are counted as White (and sometimes as Black). As a result, data on the Latino/a youth population often are inaccurate, erroneously under-counting the degree of Latino/a over-representation and mistakenly over-counting incarceration rates of White youth.
- State personnel have insufficient resources and/or time to collect data. During difficult economic times, especially when state budgets are being slashed, this barrier is likely to become even more daunting.
- Departmental procedures for collecting information across jurisdictions and agencies are inconsistent.

- States use different methods for collecting and presenting information on Latino/a populations in the justice system, including varying definitions of the terms *Latino* and *Hispanic*.
- Some states compile data at the county level; however, there are differences of interpretation of data among counties.
- Other states collect data only at the state level, but use of different methodologies in different states makes it difficult to compare state-level data.
- States employ too few employees who are bilingual and knowledgeable about various Latino/a cultures. As a result, data often are inaccurate or incomplete.
- Failure to collect data that reflect changing demographics results in inaccurate and/or incomplete information on youth and their families, both within and across states.
- Very few agencies or organizations have electronically coded their statewide data.
- Coding information has been inconsistent and time gaps have occurred when data were/were not being collected. For example, some computerized information, such as the race of offenders, is missing because the focus of data collection was case management rather than aggregate analysis.
- Critical data elements such as race/ethnicity, gender, age, and offense type are not uniformly collected throughout the juvenile justice system.
- Race/ethnicity often is coded differently from agency to agency.

In addition, the lack of accurate, consistent Latino/a data inhibits researchers' ability to separate Latino/a data from the data of other racial/ethnic groups in reports that may critically impact changes in policy and access to funds for services. To the extent a jurisdiction is trying to make an accurate analysis of disproportionate confinement of youth of color, as is required by federal law, counting large numbers of Latino/a youth in the "White" category clearly inflates the White incarceration rate and masks the already substantial rates of disproportionality between White youth and youth of color.

**FINDING 3:  
The system does not provide uniform definitions for the terms *Latino* and *Hispanic*.**

*Juanita is a biracial child who has just been arrested and detained for questioning. Her father is Puerto Rican, and her mother is African American. How should the justice system categorize Juanita's race/ethnicity? The answer to that question depends upon Juanita's state of residence. For example,*

- *In Arizona, Juanita would define her own race/ethnicity;*
- *In California, she would be assigned to the category of "African American;"*

- *In Michigan, she would be classified as "Hispanic" as well as being assigned to a specific racial group; and*
- *In Ohio, she would be listed as "biracial."<sup>12</sup>*

States define Latino/a ethnicity and race in a variety of ways. Because no uniform system exists for defining Latino/a ethnicity, cross-state comparisons of data about Latino/a youth are inaccurate. Until a uniform definition and reporting system exists, it is not possible to determine the true extent of disproportionate representation and disparate treatment of Latinos/as in the justice system.

**FINDING 4:  
The system fails to separate ethnicity from race.**

*Rosa, José, and María all were born in the Dominican Republic and immigrated to the United States; all three, therefore, are Latino/a. However:*

- *Rosa's ancestors were slaves brought from Africa. The Dominican Republic considers her to be "Black."*
- *José's ancestry is a mix of Spanish colonists and the native Taino people. He is classified as "White" by the Dominican Republic.*
- *María's mother is Black and her father is White. The Dominican Republic classifies Maria as "Mulatta."*

*How should Rosa, José, and María define their race? Who should indicate "Latino"? "Hispanic"? "White"? "Black"? "Biracial"? "Mulatto"? If Rosa is classified as "Black" and José as "White," do these government designations exclude them from being considered "Latino/a?"<sup>13</sup>*

Persons of Hispanic and Latino heritage can be of any race; they also can choose to identify their race as Hispanic or Latino/a. However, current data gathering systems generally fail to account for these facts.

Many data systems only collect information on race and only offer choices—such as "White," "African American" and "Other"—that do not consider ethnicity. With only these choices, more than 95% of Latinos/as report their race as White.

Research on prisons demonstrates that failure to include a Latino/a racial category or to separate ethnicity from race often results in a dramatic over-reporting of the percentage of "Whites" incarcerated, and therefore a significant under-reporting of the percentage of Latinos/as incarcerated (or no

<sup>12</sup> This is a hypothetical example. The definitions of race/ethnicity are based on state responses to our survey.

<sup>13</sup> This is a hypothetical example.

reporting at all). Table 3<sup>14</sup> lists the substantial over-reporting of White inmates because Latinos/as were counted as White.

**FINDING 5:  
The system fails to provide adequate bilingual services to Latino/a youth.**

There are limited data available on the number of youth in the justice system who are predominantly Spanish-speaking or have limited English proficiency (LEP). However, data on the public

	Percentage White prisoners reported	Actual percentage White prisoners	Percentage White over- count
Federal	58.0	31.3	26.7
Arizona	79.6	48.8	30.8
California	30.1	30.1	0.0
Colorado	71.0	45.0	26.0
Florida	42.5	36.0	6.5
Idaho	80.9	68.8	12.1
New Jersey	25.8	17.7	8.1
New Mexico	83.0	28.9	54.1
New York	42.9	18.3	24.6
Texas	27.6	27.6	0.0
Utah	86.2	68.2	18.0

Source: Holman, B. (2001). *Masking the divide: How officially reported prison statistics distort the racial and ethnic realities of prison growth*. Alexandria, VA: National Center on Institutions and Alternatives. Figure 4: Percent of prison population that is White, 1985 & 1997.

school system in Los Angeles County, which has the largest Latino/a population in the nation, provide some indicators.

During the past 15 years, the percentage of all public school students in that county who have limited English proficiency has risen from 18% to more than 35%, with more than half of the Latino/a students not being fluent in English. At the same time, only 1 Latino/a teacher is available for every 147 Latino/a students in the county.

As the Spanish-speaking population of the United States increases, the need for bilingual services for youth in the justice system also increases. For individuals who speak little or no English, legal procedures must be explained in Spanish and documents must be translated. Spanish-speaking parents are cut off from communicating with their children and with decision makers in the system if bilingual staff and services are not available.

Moreover, cases that involve medical or mental health emergencies require immediate communication with both youth and parents about what is happening. It is particularly important to communicate with individuals in the language that has the least likelihood of misunderstanding during such emergencies.

Also, interpretation of the results of various types of assessments (e.g., risk, psychological, and educational) may be mistaken

<sup>14</sup> This table appears as Table 12 in the full report.

because those working in the system do not have the necessary language and/or cultural competency skills.

Finally, without bilingual services, it is difficult, if not impossible, to communicate with youth, their parents or guardians, and their families about treatment, counseling services, and after-care plans.

**FINDING 6:  
The system fails to ensure cultural competency of staff working with Latino/a youth in the system.**

*WHAT SIGNIFIES RESPECT?*

*Luis, a 15-year-old Latino with no previous record, was arrested for possessing less than ½ ounce of marijuana.*

*During Luis' disposition hearing, the judge ordered him and his caseworker into chambers. As the judge talked to Luis, he noticed that the youth was not looking directly at him. The judge ordered the youth to look at him, which Luis did. But, as time progressed, Luis looked down again. The loss of eye contact infuriated the judge, whose words and tone of voice became harsher. The caseworker attempted to explain that Luis' downcast eyes were a sign of respect in his culture—youth who are being reprimanded in Luis' culture bow their heads to show their embarrassment at their actions. He explained that "staring down" authority figures is considered to be highly disrespectful. The judge, however, took Luis' downcast eyes as an admission of guilt, and sentenced him to two years in a juvenile facility.*

Source: Confidential.

Good communication and cultural understanding are prerequisites to a fair, efficient, and effective justice system. Cultural differences between Latino/a youth and justice system personnel may foster misunderstandings that lead to inappropriate and harsher treatment.

Predominantly Spanish-speaking individuals, particularly those who emigrated recently to the United States from countries with autocratic or corrupt legal and law enforcement systems, often struggle to communicate with justice system personnel and to understand or trust justice system procedures in this country. Lack of training or experience by those within the system can exacerbate miscommunications and misunderstandings.

In addition, assessment tools (e.g., risk, psychological, and educational) may not be culture-neutral and appropriate to the individuals being assessed, and professionals who administer and interpret the results may not be trained in cultural differences.

Moreover, the Latino/a population of the United States is increasingly diverse. In 1970, Latinos/as in this country were primarily second- and third- generation U.S.-born, English-speaking individuals of Mexican ancestry. The Latino/a

population now is comprised of many diverse groups, including Mexican, Guatemalan, Salvadoran, Cuban, Nicaraguan, Peruvian, Puerto Rican, Honduran, and Colombian, each with its own ethnic identity and cultural traditions. While Latinos/as may share common language and cultural values—such as the importance of close family and extended family relationships—their histories and experiences in the U.S. are not identical. Differences among Latino/a subgroups cover a wide range of variables, including—but not limited to—immigration status, fertility rates, family structure, socioeconomic status, and education. These factors may significantly impact Latinos/as’ interactions with the justice system.

The juvenile and criminal justice systems have a variety of problems providing culturally competent personnel and services, including:

- Recruiting staff and service providers who are bilingual and culturally competent.
- Conducting in-service training of staff in cultural competency.
- Translating documents and forms into Spanish.
- Providing services to families that are culturally appropriate.

**FINDING 7:  
Consideration of the immigration status of Latino/a youth results in incarceration, deportation, and permanent separation from families.**

*LIFE IN INS DETENTION*

*The U.S. government locked 16-year-old Alfredo Lopez Sanchez, a Mayan boy from Guatemala, alone in a hotel room for five weeks with nothing to read, no one to talk to, and no change of clothes while the INS worked to deport him. He washed his underwear in the sink with hand soap each night. “Each day the maid comes in and changes the sheets. The bed gets clean clothes, but I don’t,” Alfredo told his lawyer.*

*Alfredo has been held by the INS in at least four locations, including a Florida county jail, a juvenile detention center in Pennsylvania, and the hotel room. Alfredo never has been charged with any crime, but he has been held in jails and shackled and handcuffed to chains around his waist, because he has been labeled a “threat risk.” Although he suffers from post-traumatic stress disorder, he has been moved eight times without prior notification of his lawyer (including being flown between Miami and Pennsylvania five times). Alfredo said that he ran away from home after seeing his alcoholic father beat his mother so badly that she fell on top of her youngest baby, who died. Alfredo then left home and hitchhiked and walked to the U.S.*

*Alfredo speaks a rare dialect called Southern Low Mam; he understands little Spanish and almost no English. A woman who speaks his language is ready to*

*offer him a home in Miami, as are two other families, but the INS refuses to release him, saying he is a flight risk. A U.S. District Court Judge in Miami disagreed with the INS determination, but noted that the court cannot “dictate to the INS where to place a juvenile alien.” Alfredo was dragged out of court in shackles, weeping. He was transferred to Berks County Youth Center in Leesport, Pennsylvania—1,200 miles from his lawyer (who was informed after the fact) and from the only interpreter currently available for his language in the U.S.*

Source: Elsner, A. (2002, March 12). *U.S. immigration agency a harsh jailer of children*. London: Reuters News Service.

The detention and incarceration of Latino/a youth are not limited to the juvenile justice and adult criminal justice systems. The Immigration and Naturalization Service (INS) detains nearly 5,000 immigrant youth at more than 90 facilities across the country. The vast majority of the children detained are Latino/a. In most instances, they have not been charged with any crime, so their only violation of the law is being present in the United States without legal documentation. Nevertheless, many of these youth are detained for months, and sometimes years, in secure juvenile detention centers and, in some cases, in adult jails and prisons contracted by the INS, after which they may be deported.

Another approximately 9,000 immigrant youth, a majority of whom are Mexican, are detained at the U.S.-Mexico border annually; most of them are deported within 72 hours.

Latino/a youth taken into the custody of the INS often are denied a hearing, access to legal representation, and contact with relatives. They are provided with little information about their legal rights and about whether, or when, they will be deported. The detention facilities often feature few (if any) bilingual staff, no cultural competency plan and substandard education services. Immigrant youth may be commingled with delinquent youth, even if they have not been charged with a crime themselves.

Some immigrant youth become separated from their parents and families during their journey to the United States and arrive in this country completely unaccompanied. Others are apprehended with their families, but are purposefully transferred by the INS to detention facilities located in different states than those where their parents are detained. Many youth are held in detention even when adult family members are available to take custody of them while their immigration case is pending. In some cases, parents of immigrant children apprehended by the INS are afraid to come forward to take custody for fear that they themselves will be deported—a fear that has been borne out in some instances.

The majority of immigrant youth who are detained never obtain access to a lawyer. Immigrant youth have no right to government-appointed counsel or guardians ad litem. They are nonetheless held to the same standard of proof as adults in their immigration “removal” (deportation) proceedings. Children as young as 6 years old have had no representation in immigration court. Further, the U.S. government makes little or no effort to reunite children with family members when they are deported. In

fact, some children from Central and South American countries simply have been dropped off at the U.S.-Mexico border.

Many immigrant youth have lived in the United States virtually their entire lives and no longer have ties to their country of birth. Some are detained many years after having entered the U.S. and no longer speak Spanish. Some youth are the young parents of children born as U.S. citizens. Nevertheless, Latino/a youth who are not citizens of this country may suffer not only prolonged periods of secure detention and discrimination but also permanent separation from their families. If they are deported to their country of birth, many also face poverty, homelessness, further psychological trauma, political persecution and other significant hardships.

**FINDING 8:  
Anti-gang laws result in harsh and unfair  
consequences for Latino/a youth.**

Anti-gang laws, such as California's recent ballot initiative, Proposition 21, have converted a broad range of youth offenses, including misdemeanors, into adult felonies. These highly punitive laws have had a disproportionate impact on youth of color who are most often identified as "gang-affiliated" by law enforcement and other justice system personnel. In practice, anti-gang laws have caused significant numbers of Latino/a youth across the country—many of whom are not actually members of gangs—to receive harsh treatment by police, detention facilities staff, prosecutors and the courts.

*THE CONSEQUENCES OF PRESUMED GANG  
AFFILIATION*

**Alicia**

*Alicia, a 17-year-old Latina, had just graduated from high school and was working two jobs in preparation for her first year of college. She had been a model high school student, never in trouble with the police, and not a gang member.*

*One evening, three neighborhood friends asked Alicia to give them a ride. Unbeknownst to her, they were planning to rob some marijuana buyers. After Alicia dropped them off, she heard gunshots. When they returned to the car, they forced Alicia to drive off.*

*Alicia's friends were members of a gang. They had shot and killed the drug buyers. During the police investigation, one of the perpetrators cut a deal with the prosecutor, "giving up" Alicia. Considering Alicia to be affiliated with the gang, the prosecutor charged her in adult court with aiding and abetting the killing. The jury convicted her of second degree murder and she was sentenced to 25-50 years in prison. The "friend" who gave her up received a lesser sentence. Later, he recanted his testimony about Alicia's prior knowledge of the robbery.*

*Since her sentence in 1991, Alicia has been a model prisoner, completing several training courses and receiving recognition for outstanding prisoner program and work assignment efforts. She has obtained*

*an associate's degree and a bachelor's degree in business. Currently she is working on a master's degree in marketing.*

*Alicia's case is one of a handful that the U.S. Department of Justice is investigating in one metropolitan police department—cases of arrest and prosecution under circumstances indicating that racial or ethnic stereotypes were prominent factors.*

**Antonio**

*Antonio, now age 28, was imprisoned at age 17 for participating in a barroom brawl that involved weapons. In prison, staff labeled Antonio a "gang member" based on his Latino ethnicity and his multiple tattoos. Although Antonio had associated with gang members, he never had been a gang member himself. For Antonio to be eligible for parole, prison officials required that he have no contact with gang members. Ironically, prison officials themselves continually placed Antonio with gang members who repeatedly threatened him, including one who stabbed him.*

*Shortly before coming up for parole, Antonio received a letter from a cousin lamenting the fact that the cousin had not followed Antonio's advice to stay away from gang members. Because of this letter, prison officials labeled Antonio with "Security Threat Group" (STG) status and denied him parole—despite the fact that his cousin later was exonerated of the gang charges. After he was denied parole a second time, out of anger and frustration Antonio threw a chair. He was charged with assault and battery and intent to riot, and is facing 5 to 10 years for the new charges.*

Sources: Confidential.

Being labeled a "gang member" can have adverse consequences for youth at all the key decision-making points in the justice system. First, stereotypes about which youth are associated with gangs can impact police decisions about who to stop and who to arrest. Alleged gang affiliation can also be the determining factor in whether a youth is held in secure detention after arrest. Police and probation departments in some jurisdictions assign a significant number of "negative points" for alleged gang involvement during the "risk assessment" component of detention decisions. For many Latino/a youth, this practice incorrectly presumes the youth are dangerous and guilty before they are adjudicated.

Gang affiliation is also a basis for transferring a youth to an adult court in some jurisdictions. Under California's Proposition 21, by merely alleging that an offense is "gang-related," prosecutors may have the power to file charges directly in adult court against a youth as young as 14 years old, without a hearing before a judge. Under the California Penal Code, "gang-related" offenses are defined as those "committed for the benefit of, at the direction of, or in association with any criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang members." Allegations of gang involvement can also be extremely prejudicial to the outcome of

the youth's case, sometimes serving to validate judges' decisions to deny bond, to discount the youth's testimony, or to impose harsh sentencing. Moreover, even allegations that a youth is a "gang member"—which may ultimately be unsubstantiated—may nevertheless instill fear in some jurors and thereby impact the verdict.

The terms *gang* and *gang affiliation* are defined differently and quite broadly in many jurisdictions. In some states, the sole testimony of a police officer categorized as a "gang expert" by the police department is enough to establish a youth's "gang association" at trial. Anti-gang laws have legalized the practice of "gang profiling," which allows police to stop, question and in some jurisdictions use extremely aggressive tactics, such as involving SWAT teams, against any youth who fits a description of a "gang member." Latino/a and other youth of color who merely have a tattoo, wear hip-hop clothing or live in low-income, high crime neighborhoods are sometimes presumed to be "gang affiliated" by police and therefore are stopped, questioned and physically threatened or assaulted. These policies are often justified under the auspices of the "war on drugs," of which the "war on gangs" is a part.

The use of "gang databases" has become more widespread over the last decade. They are currently used in Michigan, Ohio, Minnesota, Texas and California, among other states. Such databases contain names of "suspected gang members," "gang associates," and individuals convicted of "gang-related" crimes and also include personal information and photographs entered by police. The criteria for being placed on these lists are often vague, including such things as "hangs around with gang members" and "is called a gang member by an untested informant with corroboration." These lists are off limits to the public in many jurisdictions and there is no judicial review of the decision to place a youth in the database; thus, gang databases often include many youth who have left gangs or who were never actually gang members. In addition, in some jurisdictions there are no means available for youth to have themselves removed from the gang database.

Anti-gang laws also come in the form of "gang enhancements," which significantly increase the penalties imposed for an offense. Although many gang-related offenses are serious crimes, gang enhancement laws sometimes impose sentences which far exceed what the criminal law would have imposed for the same offense had it not been gang-related. For example, in California, youth can face a life sentence in adult prison for a residential robbery if it is deemed to have been "gang-related." Presumptions about gang affiliation also have severe consequences under the state's "three-strikes" law intended for adults. Proposition 21 made any felony committed "on behalf of a gang" a strike. It also created new "juvenile strikes," or juvenile offenses which count as adult strikes, which can lead to 25-year-to-life sentences for some youth. These new "juvenile strikes" include offenses such as unarmed robbery.

Police work targeting predominantly Latinos/as and Latino/a "suspected gang members" in Los Angeles was the focus of the city's largest police scandal in history. The Rampart CRASH ("Community Response to Street Hoodlums") police unit planted evidence on thousands of innocent people, committed perjury in court to gain convictions and physically brutalized

innocent youth and adults. The officers also illegally colluded with the INS to deport young Latinos/as. The Los Angeles Public Defender continues to review over 30,000 convictions to identify other young people Rampart police may have framed.

## 4. Promising Approaches

The Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) recommends 10 strategies to counteract the specific problem of disproportionate minority confinement (DMC), including confinement of Latinos/as:

1. Formulate a vision and related policy goals for reducing DMC.
2. Create structures (e.g. task forces) charged with sustaining a focus on DMC.
3. Collect data and conduct research to document where disparities occur.
4. Build coalitions and alliances with communities and people of color.
5. Diversify the composition of the system's work force.
6. Diversify the service delivery system by contracting with organizations located in communities of color and managed by people of color.
7. Provide cultural and racial sensitivity training for staff at all levels of every agency of the system.
8. Minimize opportunities for discriminatory decisions by creating objective instruments and guidelines free of racial bias.
9. Improve defense representation to increase advocacy for youth of color.
10. Change the policies and practices of other systems (e.g. mental health, child welfare) to prevent "dumping" into secure detention youth who would be better served by those systems.

Counties that have adopted these types of strategies have made progress toward the goal of eliminating disproportionate representation and disparate treatment of youth of color.

### Santa Cruz County, California

*Santa Cruz County is a mid-sized county in California with Latinos/as comprising 35.2% of youth ages 10-17. In 1998, prior to the county's aggressive plan to combat disproportionate minority confinement, Latino/a youth represented nearly 64% of the youth detained in the county's secure juvenile detention facility. In 1999 that percentage dropped to 53%, to 50% in 2000, and to 49.7% in 2001.*

Source: Cox, J. A. (2000, September). *Addressing disproportionate minority representation within the*

### **Lessons from Santa Cruz County**

Santa Cruz County's success resulted from implementation of a comprehensive set of strategies:

**1. Embrace the reduction of DMC as a key organizational objective.**

The agency administrator must play a significant leadership role in the development and direction of this effort. The administrator must ensure that departmental resources, personnel practices (recruitment, hiring and training), outcome indicators, and service and program strategies all support this effort. The administrator also must develop a cultural competency plan and appoint a cultural competency coordinator.

**2. Create a map of key decision points affecting decisions to arrest, book, detain, release and place juveniles.**

Determine whether data are available, by ethnicity, for each decision point. If data by ethnicity are not available, create a data development agenda. Keep a trend line for each decision point. Review the trend line regularly to mark progress and to identify problem areas.

**3. Develop and monitor objective criteria for the decisions made at each point.**

Develop a quantifiable set of risk factors free of criteria that may create racial bias. Include all stakeholders in the development of the objective criteria. Base the assignment to intensive supervision caseloads and removal from these caseloads on clearly stated risk-based criteria.

**4. Ensure that staff persons in key positions are culturally competent and bilingual.**

Establish guidelines that ensure that staff persons have the skills and abilities to provide services to a diverse client population. Provide ongoing training in cultural sensitivity, cultural competence, the dynamics of disproportionate representation of Latino/a youth, and the disparate treatment of Latino/a youth in the system.

**5. Eliminate barriers to family involvement.**

Conduct surveys of youth involved in the system and their families to determine what barriers to service and family involvement exist. Encourage family conferencing and parental involvement at all levels.

**6. Create two or three tiers of community-based alternatives to detention that involve community-based organizations and parents.**

Agree on a continuum of court-approved administrative sanctions that could be imposed prior to arrest for probation violations to prevent unnecessary detention. Establish desired outcomes for these alternatives. Include crisis response plans, strength-based work, and wrap around services. Provide more than one level of supervision for youth. Track outcomes by ethnicity.

**7. Develop a full continuum of treatment, supervision and placement options.**

Carefully define and develop a local continuum of culturally sensitive services. Ensure that youth of color have equal access to these services at each level. Calculate data on length of stay by ethnicity and adjust programs to reduce disparities.

Santa Cruz County's success also is attributable to the fact that local Latino community members were actively involved in holding the county accountable for making policy changes to decrease Latino/a youth confinement. Community representatives sat on advisory panels and held town hall meetings to discuss issues.

### **Multnomah County, Oregon**

*In 1994, Latinos/as comprised 6% of the youth population and African-Americans represented 10% of the youth population in Multnomah County. However, both groups were twice as likely as White youth to be detained by the Department of Community Justice; overall, youth of color were 31% more likely to be detained than Whites. By 2000, after Multnomah County worked with the Casey Foundation's Juvenile Detention Alternatives Initiative to create a more effective juvenile detention system and reduce disproportionate minority confinement, both youth of color and White youth were detained at identical rates (22%).*

Source: Schiraldi, V., & Ziedenberg, J. (2002). *Reducing disproportionate minority confinement: The Multnomah County, Oregon, success story and its implications.* Washington, DC: Justice Policy Institute.

### **Lessons from Multnomah County**

As part of JDAI, Multnomah County set up a Disproportionate Minority Confinement Committee, whose objectives were to make fair and equitable decisions about detention and to ensure that system resources were culturally relevant, accessible, and appropriately used for all racial and ethnic communities. Multnomah JDAI then established a series of detention alternatives, including:

- Shelter care
- Foster homes
- Home detention
- A day reporting center

Multnomah County also developed a risk assessment instrument, which it used to guide its admissions decisions. The county stopped relying on criteria such as "good family structure" and "gang affiliation," which may be biased against youth of color, and expanded the "school attendance" factor to include "productive activity."

In addition to these actions, Multnomah County worked with its staff to ensure more equitable processing of youth of color. The

probation department diversified its staff so that the staff reflected the demographic diversity of the county. The department also hired 4 half-time trial assistants to help attorneys improve pretrial placement planning for youth. The county then trained community police officers in the goals of JDAI, which resulted in diverting many youth from referral to the juvenile justice system.

Finally, the Department of Community Justice declined to renew its contract with INS in 2001, which resulted in a 31% decline in the proportion of Latino/a youth in pretrial detention.

In summary, the county's successful strategic plan included the following components:

- Provide racial and cultural sensitivity training for staff, and collect and maintain data on the detention system, over-representation, and disparate treatment.
- Reduce the time youth have to wait to have their cases processed.
- Develop and use more accurate and objective risk assessment instruments.
- Hire a more diverse workforce.
- Develop alternatives to detention programs in communities of color.

## 5. Recommendations for Action

We recommend that all groups address the issue of racism in the justice system. Specifically, we recommend that groups (1) determine the magnitude of the problem of over-representation and racial/ethnic disparities in the justice system, (2) embrace the reduction of disproportionate representation of Latino/a youth in the system as a key community objective, and (3) implement strategies and accountability systems that eliminate disparate treatment of Latino/a youth in the justice system.

### What can Latino communities do?

- Get organized at the local level. Youth, parents, and other concerned community members who come together to educate and organize themselves can more effectively pressure the justice system to be accountable to Latino communities for the way the system treats its youth. Include representatives of various community groups, including faith-based organizations and youth who have experience with the justice system. Involve the growing, youth-led grassroots movement to stop the incarceration of youth of color across the country.
- Call for a real voice for youth in the area of policy development and implementation. Use the United Nations Convention of the Rights of the Child as a basis for including youth as active participants in the systems and decision processes that affect them.
- Host community meetings that present facts regarding the problem of disproportionate representation of Latino/a youth in the vicinity and accounts of the experiences of

Latino/a youth in the system. Help those who attend the meetings to develop action plans to address the problem and then to implement those plans.

- Pursue collective understanding of the terms *Latino* and *Hispanic*. Suggest how definitions should be applied when data are collected.
- Call for local and state government representatives to develop and use databases that include information on both race and ethnicity. Encourage community members to participate in research, increasing the likelihood that the data collected will be representative.
- Call for the expansion and increased funding of community programs that provide alternatives to detention, alternatives that provide sufficient, high quality, culturally competent in-home and community-based services for at-risk youth and for youth offenders, both pre- and post-disposition. Require that service delivery systems are held accountable for results through the use of performance-based outcomes.
- Encourage community members to become educated on how the criminal and juvenile justice systems work and on techniques that serve to reduce youth crime. Such methods could include advocating for reductions in the number of school expulsions and suspensions and calling for creation and funding of more high quality after-school programs in the community.
- Work closely with schools to implement prevention programs, including structured out-of-school activities for youth both after school hours and during the summer.
- Encourage community members to serve as cultural competence trainers, interpreters, and bilingual staff members in juvenile justice and law enforcement. Require that juvenile justice and law enforcement systems be held accountable for providing appropriate training and bilingual interpretation services.
- Encourage culturally competent, bilingual attorneys to provide pro bono counsel to Latino/a youth and their families.
- Create a hotline for Latino/a youth and their families that provides information and referral services on juvenile justice issues in both Spanish and English.
- Form Latino advisory groups to guide policy making and implementation in the law enforcement and justice systems. Call for Latinos/as to be appointed to state advisory groups on juvenile justice in numbers reflective of the proportion of Latinos/as in the state. Ensure that Latino/a youth who have experience in the justice system are included in these advisory groups.
- Call for the implementation of non-cooperation agreements between the justice system and the Immigration and Naturalization Service (INS) to protect immigrant youth from being held in INS detention facilities, and from being deported and/or permanently separated from their families.

- Call for an end to the widespread secure detention of immigrant youth in INS facilities.
- Call on state policymakers to conduct oversight hearings on how the state collects data on Latino/a youth in the justice system.
- Advocate for state laws that mandate use of certified interpreters/translators at all proceedings.
- Call for seamless delivery of services to youth who are at risk for involvement with the justice system.

#### **What can Latino/a youth do?**

- Attend training in youth organizing and activism; recruit other youth to do the same.
- Contact other youth-led campaigns (e.g., in the San Francisco Bay area, New York, and other cities) currently working to stop the construction of more large, warehouse-like, locked facilities for juveniles. Speak out about the over-incarceration of youth of color.
- Start a “speakers bureau” of Latino/a youth who can present factual information and personal stories of experiences with the justice system.
- Testify before legislative committees charged with developing juvenile justice laws and call for significant reform of the juvenile justice system to eliminate racial bias and discrimination.
- Meet with local and state government representatives who are responsible for developing and implementing juvenile justice policies to call for serious reform of the juvenile justice system to eliminate racial and ethnic bias and discrimination.
- Call for clear, complete and consistent information on referral, program and placement alternatives, legal proceedings, and agency procedures. Request that these materials be provided in Spanish or that a translator be made available whenever one is needed, particularly at each court appearance.
- Get involved with local “watch dog” groups advocating for accountability in the elimination of racial and ethnic disparities in the system.

#### **What can Latino/a parents do?**

- Become knowledgeable about the problems of disproportionate representation and disparate treatment of Latino/a youth in the justice system and the rights of parents; share factual information with other parents. Hold neighborhood gatherings that discuss action plans for addressing the problem; document progress as action plans are implemented.
- Become vocal advocates for Latino/a youth in the system instead of accepting the system’s procedures and practices that perpetuate disproportionality.

- Call for clear, complete and consistent information on referral, program and placement alternatives, legal proceedings, and agency procedures. Request that these materials be provided in Spanish, if that would be helpful, or that a translator be made available, particularly at each court appearance.
- Advocate for clear information—fact sheets, handbooks, brochures, and other materials—provided in the family’s preferred language.
- Organize collectively, including through schools and faith-based organizations.
- Join local, regional, and national Latino-serving organizations that deal with juvenile justice issues.
- Develop support groups for parents and families impacted by the juvenile justice system. Include workshops (on such topics as how the system works, legal rights of youth and parents, use of interpreters, etc.). Include parents and youth who have been impacted by the system.
- Develop public service announcements (PSAs) for Latino/a parents and air them on radio and television programs.

#### **What can law enforcement do?**

- Eliminate racial profiling from all law enforcement practices.
- Document all law enforcement contacts with youth by race and ethnicity, including contacts not resulting in arrest, in order to monitor when law enforcement practices and procedures result in racial and ethnic disparities.
- Develop policies encouraging release of youth to parents, guardians or other responsible parties.
- Encourage the use of community policing procedures by officers who are knowledgeable about available children’s services and cultural norms and practices in the community.
- Work with community leaders, the National Association of Hispanic Educators (NAHE), and the National Community for Latino Leadership, Inc. (NCLL) to develop and implement a training program in cultural competence aimed at increasing participants’ understanding of the unique issues and challenges confronting Latino/a youth and families within their respective jurisdictions.
- Train law enforcement personnel in cultural sensitivity related to specific Latino/a ethnic subgroups.
- Ensure that law enforcement professionals throughout the country develop outreach programs to improve trust levels among Latino/a communities.
- Educate Latino/a immigrants regarding the proper role of law enforcement in the United States, as well as where and how to report abuses of that role.

### What can the justice system do?

- Collect data in a way that permits analysis of the extent—and ultimately the causes—of over-representation and disparate treatment of Latino/a youth. Different approaches could achieve this goal:
  - Use a single “race/ethnicity” category, such as the category that appears on many government documents (e.g., federal loan applications). This category would include White, Black, Asian American, Native American, and Latino/Hispanic.
  - Alternatively, use the U.S. Bureau of the Census system of classifying persons by both race and ethnic origin.
  - Adopt the approach used by Latin American nations in which race is considered a secondary characteristic. Identify ethnicity prior to racial categorization.
- The Census Bureau and the Justice Department should conduct an independent review of all states that documents the methods for addressing issues of Latino/a disproportionality. Most notably, states should share their strategies for documenting Latino/a youth in the justice system. Based on this review, a common strategy can be developed for all states that would facilitate an accurate and consistent methodology to monitor and implement documentation of Latinos/as who come into contact with the justice system.
- Revamp risk assessment procedures, as successfully done in Santa Cruz County, California and Multnomah County (Portland), Oregon and discussed in Section 6 of the full report.
- Require states to collect data and establish databases at the county level to ensure accurate information regarding Latino/a youth interactions with the justice system.
- The Office of Juvenile Justice and Delinquency Prevention, in collaboration with state and local agencies, should develop a common reporting mechanism for documentation of Latino/a race and ethnicity. This strategy should be employed at all levels of the juvenile justice system—including police, detention, court proceedings, probation, state commitment agencies, etc.—to ensure accurate and consistent data at all levels.
- States should adopt an approach of permitting youth to identify their own race and/or ethnicity. In addition, given the growing rate of multiracial and inter-ethnic marriages and families in the U.S. and internationally, multiracial and multi-ethnic youth should be able to identify and report their diverse heritage, and should not be required to select a single racial or ethnic category. Consideration should be given to methods for avoiding duplicate reporting, over-statement, under-counting, or other inaccuracies in reporting numbers of youth in the system.
- Establish a program with Hispanic serving institutions (HSIs)<sup>15</sup> to increase the number of bilingual professionals in the juvenile justice system. Undertake similar efforts with non-HSIs.
- Employ bilingual staff in equal proportion to the percentage of youth in the system who are predominantly Spanish-speaking and whose parents are monolingual Spanish speakers.
- Permit youth freedom to communicate in the language of their choice.
- Provide written materials and verbal information in both English and Spanish. The written materials should be at the level of reading proficiency of the local Latino/a population. In addition, translation should not be literal, but rather culturally and linguistically appropriate. In order to achieve these ends, a professional translator/interpreter should be hired rather than using institutional staff who speak Spanish.
- Develop guidelines that prohibit probation departments, prosecutors and juvenile court judges from inappropriately taking immigration status into account in decisions about detention, transfer to adult court, and disposition. Decisions regarding immigrant youth should be based on the same criteria as decisions regarding other youth in the system.
- Develop guidelines that prohibit probation departments and juvenile detention centers from placing “informal holds” on youth and detaining youth for the purpose of notifying the INS.
- Work with juvenile justice system personnel to ensure that young Latino/a immigrants in the custody of the INS are not needlessly locked away in juvenile detention facilities. When temporary confinement is necessary, ensure that these youth are processed and released to their families or to community programs as quickly as possible.
- Develop guidelines that prohibit probation departments, prosecutors and juvenile court judges from recommending deportation of youth.
- Encourage the development and implementation of uniform “non-cooperation agreements” between the INS and juvenile/adult justice agencies.
- Require INS to separate youth from adult inmates in all facilities, as is required in the juvenile justice system under the federal Juvenile Justice and Delinquency Prevention Act.

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<sup>15</sup> HSIs are non-profit, accredited colleges, universities or systems in which total Hispanic student enrollment constitutes a minimum of 25% of the total enrollment, including full-time and part-time students, whether at the undergraduate or graduate level or both. HSI Associates are non-profit, accredited colleges, universities or systems in which at least 1,000 Hispanic students are enrolled, or a minimum of 10% of the total enrollment is Hispanic, including full-time and part-time students, whether at the undergraduate or graduate level or both (see <http://www.hacu.com/members/list/HIS.htm>).

- Recruit, hire, and train more U.S. attorneys, public defenders, and advocates who are Latino/a, or who speak Spanish and are culturally competent, to direct and conduct services and initiatives targeted at strengthening Latino/a youth and families.
- Convene a meeting of key players in the juvenile justice system to educate them about the reform efforts of other jurisdictions that are making efforts to address the disproportionate representation and disparate treatment of youth of color, such as Santa Cruz (CA), Portland (OR), and Phoenix (AZ).
- Create more community-based alternatives to detention programs. (See, e.g., Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative, <http://www.aecf.org/initiatives/jdai/>.)
- Ensure that numbers of Latino/a employees at all levels closely reflect the numbers of Latino/a youth served by juvenile justice agencies, both public and private.
- Ensure that hiring practices, job performance reviews, and promotion policies include consideration of a candidate’s ability and experience in working well with persons of differing races, cultures and languages, particularly with Latino/a youth.
- Regulate or amend provisions giving prosecutors “direct file” authority to prosecute youth in adult criminal court and require that waiver decisions be individualized and made by judges.
- Actively enlist the support of juvenile court judges, who have been major influences in shaping and reshaping juvenile courts:
- Train detention staff to administer a valid, racially and ethnically unbiased risk and needs assessments designed to determine whether each youth should be released. Present the results of this assessment to the court at the initial detention hearing.
- Ensure that public and private residential programs serving youth offenders clarify their incident reporting processes to ensure consistent application of rewards and sanctions for all youth.
- Adopt an approach that allows state and county juvenile justice directors to accurately assess and monitor disproportionate representation of Latinos/as across all levels of the juvenile justice system (e.g., arrest, detention, petition, waivers, adjudication), as well as to conduct the trend analyses necessary to document changes over time in disproportionate Latino/a representation.
- Advocate for a requirement that state justice system agencies, the Federal Bureau of Investigation and other agencies within the U.S. Department of Justice keep accurate crime and court-related statistics regarding Latinos/as, fully accounting for ethnic and racial distinctions in all information released by the agencies. Hold these agencies accountable for accurate data collection.
- Advocate for additional funding to ensure that law enforcement, justice system, education, and mental health professionals are adequately trained in the Spanish language and in cultural competence regarding specific Latino/a ethnic groups.
- Ensure that those impacted by the system (e.g., youth who have been in the system and their families) are included as integral parts of training programs for system personnel.
- Establish a national advisory council for youth in the juvenile justice system.
- Create users’ guides and directories for individuals and groups working on issues of disproportionate representation and disparate treatment of Latino/a youth in the justice system.
- Implement public education and media strategies to raise awareness of the issues discussed in this report. Include public service announcements (PSAs), web sites, and fact sheets. Speak out on radio and television programs.
- Advocate to have certified interpreters available in all judicial proceedings involving Spanish-speaking or limited English proficiency (LEP) youth.
- Hold town hall meetings for legislators and other interested citizens that provide information on the problems associated with Latino/a youth in the justice system.
- Encourage more monitoring and oversight of INS practices by human rights organizations and governmental agencies.
- Learn about gang databases, gang enhancement statutes, and other policies concerning gangs in your community.
- Demand that constitutional due process apply to all youth, regardless of gang affiliation.
- Advocate for the elimination of gang databases.
- Advocate for the elimination of “gang-injunction zones,” which make certain areas off limits to youth who police believe are gang members.
- Advocate for the allocation of significantly increased funding for decaying schools in inner cities, after-school youth programs and jobs to create more options for youth in their communities.

#### **What can advocates and grassroots organizers do?**

- Organize coalitions of advocacy groups nationally for the purpose of educating one another, sharing successful strategies, and collaborating on national campaigns.

#### **What can public officials and policy makers do?**

- Enact legislation that advances the strategies outlined in this report, specifically those most likely to reduce the

disproportionate representation and disparate treatment of Latino/a youth in the justice system.

- Conduct hearings on how the state collects data on Latino/a youth in the justice system, as well as on INS procedures and treatment of Latino/a youth.
- Enact legislation to reduce over-reliance on incarceration.
- Amend or repeal laws that may disproportionately impact Latino/a youth—such as laws providing long mandatory sentences for alleged gang involvement, drug laws with mandatory minimum sentences, “three-strikes” laws, and RICO statutes.
- Ensure that state law mandates written findings by the judge at detention hearings. The written findings should include reasons why youth cannot be placed at home or in less restrictive environments.
- Enact legislation and provide funding to establish a longitudinal national database with county-level data on Latino/a youth in the U.S. justice system.
- Support legislation to ensure that young Latino/a immigrants in the custody of the Immigration and Naturalization Service are not locked away in juvenile detention facilities. When temporary confinement is necessary, ensure that youth are processed and transferred out of these facilities in less than one week.
- Hold town hall meetings. Invite families, parents of incarcerated youth, and Latino/a community youth and organizations in your district to participate in discussions about juvenile justice reform efforts.
- Develop a systematic, uniform monitoring procedure to determine the percentage of Latino/a youth being processed at each stage of interaction with the justice system in each county across the United States.
- Provide training to personnel in each of the 50 states and the District of Columbia regarding how to collect data.
- Designate a national Latino/a organization (e.g., Mexican American Legal Defense and Education Fund, National Council of La Raza) to become a national repository for data pertaining to Latino/a youth in the justice system and to release periodic reports that document progress on issues pertaining to Latino/a youth involvement in the justice system. Require states to provide data annually.
- Fund a national organization, in collaboration with officials from the justice system, to conduct a census of youth institutions (public and private) to determine current incarceration of Latino/a youth.
- Fund a national organization, in collaboration with officials from the justice system, to conduct a census of juvenile court records in multiple states, as well as counties within states (high, medium, and low Latino/a population density) to analyze court processing and adjudication of Latino/a youth.
- Require all states to gather data in a manner that includes a “Latino” or a “Hispanic” category. Conduct an audit of states to ensure that adequate procedures are used to distinguish between ethnicity and race.
- Develop a national protocol for documenting the categorization of individuals of Latino/a ethnicity who also have African or Native/Indigenous ancestry.
- Ensure availability of bilingual services, including both interpretation and translation of materials – 24 hours per day, 7 days per week – to ensure that Latino/a youth are afforded due process under the law, to optimize the probability of helping Spanish-speaking youth and their families, and to facilitate the youths’ rehabilitation.
- For states that have a commission for Spanish-speaking affairs, engage the commission to protect the rights of youth who are brought before the justice system by providing translation/interpretation assistance when needed. Also ensure that the commission works with the Department of Justice to translate all documents and to facilitate cultural-sensitivity programming for Latino/a populations in the state.
- Expand ethnic categories to include all Latin American nations.
- Develop a method for documenting the multi-ethnicities of Latino/a youth.
- Permit youth to self-identify the ethnic group with which they identify.
- Encourage counties with Latino/a populations to replicate procedures used in Santa Cruz County (CA) and Multnomah County (OR) to reduce overrepresentation of youth of color in the justice system.
- Employ more bilingual professionals who have demonstrated competencies across Latino/a communities to work with state agencies to ensure the accuracy of information from families and youth who are predominantly Spanish-speaking.
- Apply sanctions to states that fail to collect data on Latino/a youth as required by the Juvenile Justice and Delinquency Prevention Act.
- Ensure that states have all documents available in Spanish in order to minimize interpretive errors.

#### **What can researchers do?**

- Seek funding for and conduct longitudinal studies of Latino/a youth in the U.S. justice system, tracking trends using both quantitative and qualitative methods (such as focus groups of individuals who have experience with the system).
- Focus on research providing evidence of disparity of treatment as opposed to over-representation of youth of color in the system. As a report by The National Research Council (2001) concluded, “Given the importance of the

problem of race, crime, and juvenile justice in the United States, the scant research attention that has been paid to understanding the factors contributing to racial disparities in the juvenile justice system is shocking” (p. 258).

- Link with professional organizations that can disseminate relevant research findings through their policy divisions.

## The Authors

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Dr. Villarruel's research focus is generalized into the three areas: developmental contextualism, Latino youth and families, and positive youth development. He is the co-editor two books: *Making Invisible Latino Youth Visible: A Critical Approach to Latino Diversity and Community Youth Development*, *Beacons and Promises*, and is working on an edited volume tentatively entitled *Community Youth Development: Challenges, Beacons, and Opportunities for Healthier Futures*.

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### Institute for Children, Youth, and Families Michigan State University

ICYF at Michigan State University is a multidisciplinary institute supporting university-community collaborations in research, policy engagement, and outreach regarding children, youth, and families from diverse communities. ICYF maintains a portfolio of current and emergent projects of state, national and international scope that focus on four core areas:

- The Youngest
- Child and Youth Policy
- Family Diversity
- Violence Prevention