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Task Force 2.0

Report and Recommendations to Address Race in Washington's Juvenile Legal System

2021 Report to the Washington Supreme Court

Submitted by the Juvenile Justice Subcommittee

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Message from the Juvenile Justice Subcommittee

Chief Justice González and Justices of the Washington Supreme Court:

We are pleased to present the *2021 Report and Recommendations to Address Race in Washington's Juvenile Legal System*, authored by the Juvenile Justice Subcommittee of the Research Working Group of Task Force 2.0. Like the Research Working Group that authored the *2021 Report on Race and Washington's Criminal Justice System*, our subcommittee's mandate was to investigate race disproportionalities in the juvenile legal system, and to determine whether any of the race disproportionality observed and reported on by the same subcommittee in 2012 had improved.

The subcommittee found that race disproportionality had not improved but instead had worsened. In addition to trying to understand why this was the case, the subcommittee shifted to a more fundamental question. Even if the persistent race disproportionality in the juvenile legal system disappeared overnight, is the juvenile legal system's punitive response to a young person causing harm one we should continue to collectively endorse? To engage stakeholders in answering this question, the report addresses the empirically observable harms that flow from incarcerating young people, as well as the collateral consequences of court involvement.

The subcommittee also broadened the scope of the report to include a more thorough assessment of the root causes of the observed disproportionalities in the juvenile legal system. While the subcommittee's 2012 report referenced "socio-economic factors such as family structure, poverty, employment opportunities, affordable housing, and the academic and opportunity gaps in education," this report attempts to describe in more detail the ecosystem of state institutions that funnels young people—disproportionately youth of color—into juvenile court.

We are grateful to have the formal participation of a range of organizations and institutions, as well as people contributing in their individual capacities. We are particularly grateful to the young people on the subcommittee, as well as the representatives from the community-led organizations, whose expertise and policy platforms pushed the subcommittee's work to a new plane. In crafting recommendations regarding the juvenile legal system, the education system, the family regulation system, and youth homelessness, the subcommittee sought to center the experience of impacted youth and align with their visions for change. As we consistently heard at the September 29, 2021, presentation to the Court, those who are closest to the problems are closest to the solutions. Accessing and implementing those solutions requires changing our institutional process and priorities to ensure that impacted people are authentically centered in this work.

Sincerely,

Jessica Levin, Assistant Director, Fred T. Korematsu Center for Law and Equality
Chair, Juvenile Justice Subcommittee

Juvenile Justice Subcommittee Participating Organizations and Institutions

[American Civil Liberties Union of Washington](#)

[El Centro de la Raza](#)

[CHOOSE180](#)

[Community Passageways](#)

[Gonzaga University School of Law](#)

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[King County Department of Public Defense](#)

[King County Prosecuting Attorney's Office](#)

[Legal Counsel for Youth and Children](#)

[The Mockingbird Society](#)

[Office of Juvenile Justice, Washington State Department of Children, Youth & Families](#)

[Pacific Islander Community Association of Washington](#)

[Seattle University School of Law](#)

[TeamChild](#)

Acknowledgments and Note on Process

This report, submitted by the Juvenile Justice Subcommittee, is the product of a process initiated and conducted by an ad hoc Task Force on Race and Washington’s Criminal Justice System. Called Task Force 2.0, it includes many organizations and individuals who came together to document existing race disproportionalities in the criminal justice system, to identify its causes, and to propose recommendations to reduce and, where possible, eliminate disparities.

Co-chaired by the deans of Washington’s three law schools, Task Force 2.0 builds on the work of the 2010-12 Task Force on Race and the Criminal Justice System (Task Force 1.0). The work of Task Force 1.0 and 2.0 builds on decades of work of the Minority and Justice Commission, which carries forward the work of the legislatively-created Minority and Justice Task Force that issued its pathbreaking 1990 Final Report.

In addition to the working groups within Task Force 2.0, a subcommittee came together to examine the separate issue of the Juvenile Legal System. As in the *Report on Race and Washington’s Criminal Justice System*, at the outset, it is important to make clear what this report is and what it is not. The Juvenile Justice Subcommittee of the Research Working Group of Task Force 2.0 includes many organizations and individuals. Volunteers from the subcommittee, comprised of law students and advocates alike, were tasked with drafting research memoranda to update the work of the previous task force to provide an updated picture of race disproportionality in Washington’s juvenile legal system. The research process allowed for input and involvement by all subcommittee members. This report is the product of that process. But at the end of the day, it is the work of the individuals who researched and drafted the report. Thus, the listing of organizations and individuals in either this report or in the recently issued *Report on Race and Washington’s Criminal Justice System*, does not indicate endorsement of each statement or report finding.

This report focuses on race and not on the intersection of race and gender. There are important limitations to the chosen focus, including that the experiences of girls of color and trans youth of color in the juvenile legal system are not specifically accounted for, and may very well be materially different. This report is offered as a complement to the just-released *2021: How Gender and Race Affect Justice Now: Final Report*¹ issued by the Washington Gender and Justice Commission.

1. Wash. Gender & Justice Comm’n, *2021: How Gender and Race Affect Justice Now: Final Report* (Sept. 16, 2021), https://www.courts.wa.gov/subsite/gjc/documents/2021_Gender_Justice_Study_Report.pdf [hereinafter *2021 Gender & Justice Study*]. The breadth and depth of this report is remarkable. Though the Research Working Group has not had a chance to review this new report closely, it is amply evident that the Commission’s report provides a comprehensive examination of the intersection of gender and race in many areas in our legal system, including in the criminal justice system.

Given the nature of an ad hoc task force whose work extended over a 17-month period, people's active participation at times varied. We include everyone who participated in some fashion, without making distinctions based on level of contribution. In addition, with such a large group of individuals, we admittedly did not always successfully involve everyone in the work.

Juvenile Justice Subcommittee: Zubin Abraham-Ahmed, Jo Bechtold, Rosemarie Clemente, Alice Coil, Julian Cooper, Kaku Cosmos, Mariam Cosmos, Dominique Davis, Koa Derouin, Staci Dockins, Judge Theresa Doyle (ret.), Krista Elliott, Brianna Fenske, Louisa Florio, Hickory Gateless, Destinee Harris, Jaime Hawk, Vanessa Hernandez, Jimmy Hung, Katherine Hurley, Stephany Inocente, Hazel Kerkemor Johnson, Judge David Keenan, Jr Kiona, Ru'ya Lamont, Tori Sullivan Lavoie, Anne Lee, Jessica Levin, Mynor Lopez, Atelete Makasini, Desmond Maiava, Jacqui Merrill Martin, Julia Mizutani, Karisa Morikawa, Alex Narvaez, Gloria Ochoa-Bruck, Faye Oiph, Bailey Michaela Warrior Pahang, Crystal Pardue, Dontay Proctor-Mills, Karen Pillar, Jessica Rock, Nathan Rouse, Judge Averil Rothrock, Matthew Sanders, Joseph Seia, Cameron Sheldon, Patreece Spence, Calson Tiweyang, Bry'Onta Thomas, Claire Thornton, Liz Trautman, Dalia Pedro Trujillo, Tara Urs, Kendrick Washington, and Sara Zier.

In addition, we acknowledge subcommittee members listed below who volunteered for the Juvenile Justice Subcommittee and drafted the Appendices and other parts of the report were drawn. The subcommittee also recognizes the extraordinary efforts of Vanessa Hernandez in researching and drafting the policy recommendations.

Part I. Zubin Abraham-Ahmed, Kaku Cosmos, Mariam Cosmos, Staci Dockins, Vanessa Hernandez, Stephany Inocente, Ru'ya Lamont, Faye Oiph, Bry'Onta Thomas.

Part II. Bob Chang, Louisa Florio, Tori Sullivan Lavoie

Part III. Melissa Lee

Part IV. Katherine Hurley, Karen Pillar

Part V. Katherine Hurley, Julia Mizutani, Tara Urs, Sara Zier

Part VI. Zubin Abraham-Ahmed, Kaku Cosmos, Mariam Cosmos, Staci Dockins, Vanessa Hernandez, Jimmy Hung, Katherine Hurley, Stephany Inocente, Ru'ya Lamont, Jacqui Merrill Martin, Karisa Morikawa, Faye Oiph, Bry'Onta Thomas, Liz Trautman, Kendrick Washington, Sara Zier.

Appendix A. *Statistical Evidence of Disproportionate Minority Contact in Washington's Juvenile Legal System*: Bob Chang, Louisa Florio, Tori Sullivan Lavoie

Appendix B. *An Empirical Look at How Public Education in Washington Is Failing Children and Youth of Color*: Dontay Proctor-Mills, Sara Zier

Appendix C. *Race and the Family Regulation System*: Alex Narvaez, Cameron Sheldon, Tara Urs

Appendix D. *Race and Youth Homelessness*: Julia Mizutani

Appendix E. *Race and Mental Health*: Nic Doherty, Melissa Lee, Patreece Spence, Sara Zier

Appendix F. *Juvenile Justice Subcommittee's Recommendations Process*: Jessica Levin, Jacqui Merrill Martin, Karisa Morikawa, Jessica Rock

We also thank the following organizations for their direct financial support that has facilitated the participation of community-based organizations: American Civil Liberties Union of Washington, Asian Bar Association of Washington, Center for Children & Youth Justice, Latina/o Bar Association of Washington, Loren Miller Bar Association, Korean American Bar Association of Washington, Pierce County Minority Bar Association, QLaw Association of Washington, Seattle University School of Law, University of Washington School of Law, and the Vietnamese American Bar Association of Washington.

We are grateful to the Gonzaga Law Review and the Seattle University Law Review for agreeing to publish this report as a joint project in their respective journals.

We apologize for any omissions or errors in acknowledging any individual or organization.

Definitions

The subcommittee largely adopts the definitions of Task Force 2.0's recent report on Race and Washington's Criminal Justice System² and reproduces them below, with a few slight modifications and additions to adapt to the subject matter of this report.

What We Mean by “Disproportionality” and “Disparity”

Although the terms disproportionality and disparity often are used interchangeably, there is an important distinction between these two concepts. Researchers have found it useful to distinguish between racial inequities that result from differential crime commission rates and racial inequities that result from practices or policies. In this report, we use disproportionality to refer to a discrepancy between reference groups' representation in the general population and in criminal justice institutions. Disproportionality can be measured relatively or comparatively.

Relative disproportionality. Using adult incarceration data from Washington state in 1980 to illustrate, the Black share of Washington's incarcerated population was 28%. The Black share of Washington's overall population was 3%. Relative to their share of the population, Black people are overrepresented in incarceration ($28 \div 3$) by a factor of 9.33x relative to their share of the Black population in Washington.

Comparative disproportionality. If you take the 1980 figures and calculate the incarceration rate for each group,³ you can calculate comparative disproportionality between groups. White people were incarcerated at a rate of 95 per 100,000 white people in Washington's general population. Black people were incarcerated at a rate of 1,342 per 100,000 Black people in Washington's general population. A comparison of Black to white incarceration rates ($1,342 \div 95$) produces a comparative disproportionality ratio of 14.1. Comparative disproportionality corresponds to Relative Rate Index (RRI), the term used by the Department of Justice's Office of Juvenile Justice and Delinquency Prevention to measure disproportionate minority contact (DMC).

2. Task Force 2.0 Research Working Group, *Race and Washington's Criminal Justice System: 2021 Report to the Washington Supreme Court* (2021), 57 GONZ. L. REV. (forthcoming 2021), 45 SEATTLE U. L. REV. (forthcoming 2022); 97 WASH. L. REV. (forthcoming 2022). In advance of formal publication, the report as presented to the Court can be found here: https://digitalcommons.law.seattleu.edu/korematsu_center/116 [hereinafter *Report on Race and Washington's Criminal Justice System*].

3. For example, to calculate the white incarceration rate, take the number of white persons incarcerated, divide it by the number of white persons in the relevant general population, and then multiply by 100,000 to determine the number of white persons incarcerated per 100,000 white persons in the relevant general population. Though some organizations make the methodological choice to compute rates using different population groups, such as the number of white persons 18 and older or the number of white persons between 18 and 64 years of age, the Research Working Group has chosen to use total population figures.

In contrast, we use disparity when there is sufficient evidence to indicate that race accounts at least in part to unequal outcomes for one group when compared with outcomes for another group. For example, disparity exists when a Black capital defendant in Washington is 4.5 times more likely to receive the death penalty than a similarly situated White capital defendant. This difference in outcomes is considered *unequal* because race, and not other differences in case characteristics, accounts significantly to this difference in outcomes.

What We Mean by “Detention” and “Incarceration”

Incarceration refers to being held in state adult prisons or in state facilities run by the Department of Children, Youth & Family’s Juvenile Rehabilitation. Incarceration may also refer to when young person is adjudicated in juvenile court and then incarcerated in a county-level facility as part of that young person’s sentence. “Detention” refers to when a youth may be detained following an arrest for allegedly committing an offense or on a warrant, pending trial, or as part of an order sanctioning the youth for violating the terms of probation. Until recently, “detention” was also permitted for young people who were faced with status offenses (truancy, at-risk youth, children in need of services, or dependents) and then detained for violation of a court order or arrested on a warrant; in 2019, our legislature eliminated the use of detention for status offenses.⁴ The subcommittee underscores that both incarceration and detention are inherently harmful to young people.

What We Mean by “Race” and “Ethnicity”

One of the most perplexing problems with race is that few people seem to know what “race” means. Widely accepted understandings of race focus on biology, invariably pointing to physical differences amongst humans that are used to define, in genetic terms, different racial groups.⁵ The distinctions that we employ today to categorize humans, such as Black, white, and Latina/o, date back only a few centuries or less.⁶ These labels do not signal genetically separate branches of humankind. Racial distinctions are largely social constructs based upon perception and history.

Not only are these distinctions socially constructed, they are also in constant flux, and under perpetual siege by those who dispute the arbitrary lines that they draw. The problem is compounded by the fact that different institutions use the terms differently. This lack of common nomenclature makes some comparisons difficult. When a term like “Asian” may encompass over two billion individuals, its ability to precisely and accurately describe an individual, much less a

4. Laws of 2019, ch. 312, §§ 1-2, <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5290-S2.SL.pdf#page=1>.

5. Ian Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 6 (1994).

6. *Id.* at 7-8.

group of individuals, becomes challenging. Similar difficulties imperil the classifications of “Hispanic” and “Latino,” which are used to describe not only Dominicans whose descendants may be from Africa, but also Argentines whose ancestry may be traced to Italy, and Peruvians whose forefathers may have emigrated from Japan. Additionally, these traditional categories have come under increasing strain because one in seven marriages within the United States is now “interracial” or “interethnic,” rendering single labels less accurate.⁷

In this report, we use “race” to refer to groups of people loosely bound together by history, ancestry, and socially significant elements of their physical appearance.

Racial Group Designations

Though people have different views on preferred group designations, for the sake of consistency, the following are the racial group designations used in the report. Where the report is discussing specific data that uses different designations than what is included below, the terms used in the underlying data set are maintained. This report uses BIPOC (Black, Indigenous, and People of Color) when generally describing the harms experienced by youth of color.

Asian and Native Hawaiian or Other Pacific Islander (Asian and NH/PI). At times, “Asian” is used by reporting agencies or groups as an umbrella designation that includes Native Hawaiians and other Pacific Islanders. Where possible, the report disaggregates Native Hawaiians and other Pacific Islanders from the broader “Asian” racial category. Listening sessions held in Washington revealed a preference that “NH/PI” be used instead of “NHOPI” which appears in the literature. Detail on the importance of disaggregating these groups can be found in Appendix J of the *Report on Race and Washington's Criminal Justice System*.

Black. We capitalize “Black” unless it appears otherwise in quoted material. Though there are differences between Black persons whose ancestry traces to U.S. slavery and more recent immigrants from Africa and the Caribbean, data collection in the criminal legal system typically does not disaggregate these groups.

Indigenous. Though there are important differences in the histories of groups indigenous to the lower 48 in comparison to those indigenous to Alaska, because many reporting agencies combine “Native American” (or “American Indian”) with “Alaska Native,” we use the umbrella term “Indigenous” to describe people who

7. Susan Saulny, *Counting by Race Can Throw Off Some Numbers*, N.Y. TIMES, Feb. 10, 2011, at A1, <http://www.nytimes.com/2011/02/10/us/10count.html?scp=1&sq=race%20counting&st=cse>.

are indigenous to the lands comprising the forty-eight contiguous states as well as Alaska.⁸

Latinx. As with other racial and ethnic categories, the choice of naming groups is a complicated one, and in the case of Latina/o populations, one that is in flux. The *Report on Race and Washington's Criminal Justice System* uses “Latina/o.” To acknowledge the diversity of opinions on this naming choice, the subcommittee uses “Latinx”—which we will use where possible rather than “Hispanic”—to describe those individuals whose ancestry is traced back to Latin America, Spain, and Portugal. Though “Hispanic” remained an ethnic designation on the 2020 U.S. Census, the Census Bureau in 2017 had recommended that OMB reassign “Hispanic, Latino, or Spanish origin” to a racial category.⁹

White. The juvenile justice subcommittee has chosen to use “white” instead of “White,” unless it appears otherwise in quoted material. The subcommittee recognizes the complexity of the debate around this choice, a debate that should remain rooted in fact that both Black and white are historically created racial identities. Because there does not yet appear to be consensus regarding capitalization of white, the subcommittee uses “white” to distance the word from the white supremacist connotations that can be evoked by capitalizing the word.¹⁰

These definitions contemplate race and ethnicity as social phenomena, such that race and ethnicity are not objective observations rooted in biology, but rather self-reinforcing processes rooted in the daily decisions we make as individuals and as institutions. Although socially constructed and enacted, race and ethnicity have important consequences for people’s lived experiences.

What We Mean by “Structural Racism”

A structurally racist system can be understood best as a system in which a society and its institutions are embedded, and from which racial disparity results. Within such systems, notions and stereotypes about race and ethnicity shape actors’ identities, beliefs, attitudes, and value

8. “Indigenous” in this report does not include Native Hawaiians or Other Pacific Islanders, who tend to be lumped together under the “Asian” category described above when not appearing as a separate category.

9. See Census 20/20, *Race/Ethnicity and the 2020 Census* (Mar. 23, 2019), <https://www.census2020now.org/faces-blog/same-sex-households-2020-census-r3976> (discussing proposed change and noting that the Office of Budget and Management did not respond to this recommendation). The Census Bureau in 2017 had also suggested new race category for individuals identifying as being of Middle Eastern or North African descent (MENA). *Id.*

10. See, e.g., Mike Laws, *Why We Capitalize ‘Black’ (and not ‘white’)*, COLUM. JOURNALISM REV. (June 16, 2020), <https://www.cjr.org/analysis/capital-b-black-styleguide.php#:~:text=At%20the%20Columbia%20Journalism%20Review%2C%20we%20capitalize%20Black%2C.context%20risks%20following%20the%20lead%20of%20white%20supremacists>.

orientations. In turn, individuals interact and behave in ways that reinforce these stereotypes. Thus, even with facially race-neutral policies, processing decisions are informed by actors' understandings (or lack thereof) about race and ethnicity, often leading to disparities in treatment of people of color. As a consequence, structural racism produces cumulative and persistent racial and ethnic inequalities.

Racism should not be viewed as an ideology or an orientation towards a certain group, but instead as a system: "[A]fter a society becomes racialized, racialization develops a life of its own...[and] [a]lthough it interacts with class and gender...[race] becomes an organizing principle of social relations itself."¹¹ The persistent inequality experienced by Black persons and other people of color in America is produced by this racial structure. The contemporary racial structure is distinct from the past in that it is covert, is embedded within the regular practices of institutions, does not rely on a racial vocabulary, and is invisible to most white people.¹² That structural racism exists does not negate the effects of explicit racism, which continues to exist and which must also be addressed where evident.

11. Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 AM. SOC. REV. 465, 475 (1997).

12. *Id.* at 467.

Executive Summary

When the Juvenile Justice Subcommittee released its 2012 *Juvenile Justice and Racial Disproportionality: A Presentation to the Washington State Supreme Court* (“2012 Report”), it noted that despite an untold number of federal, state, and private dollars spent on addressing the issue, the overrepresentation of youth of color “at every stage of the juvenile justice process persists with very little change.”¹³ In the 10 years since this subcommittee first examined and reported on the overrepresentation of youth¹⁴ of color at every stage of the juvenile legal system in Washington,¹⁵ the conclusion remains the same: little has changed.

Updated race disproportionality data shows that, unsurprisingly, the overrepresentation of youth of color in the juvenile legal system has persisted. Recent and hard-won reforms,¹⁶ including many

13. Research Working Grp., Juvenile Justice Subcommittee, *Juvenile Justice and Racial Disproportionality: A Presentation to the Washington State Supreme Court* (2012), https://digitalcommons.law.seattleu.edu/korematsu_center/117/ [hereinafter *2012 Report*].

14. The subcommittee uses “youth” or “young person” instead of juvenile, except where juvenile is used as a specific legal term of art, to emphasize the whole person. The word “juvenile” can also carry with it bias, disapproval, and negative judgment that can impact youth’s perception of themselves, as well as the speaker’s thinking and decision making. National Juvenile Defender Center, *Seeing What’s Underneath: A Resource for Understanding Behavior & Using Language in Juvenile Court*, <https://njdc.info/wp-content/uploads/A-Resource-for-Understanding-Behavior-Using-Language-in-Juvenile-Court.pdf>.

15. For an overview of Washington’s juvenile legal system, along with a summary of federal, state, and private efforts to address disproportionality in Washington’s juvenile legal system, as well as a glossary of terms, see Parts II and III, and Appendices II and III, of the 2012 Report.

16. These reforms include but are not limited to:

- The codification of our Supreme Court’s decision in *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017), requiring consideration of the mitigating qualities of youth and affording sentencing courts broad discretion to disregard mandatory sentencing schemes, Laws of 2020, ch. 141, § 1, <https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5488-S2.SL.pdf?q=20201125180512>;
- The elimination of detention for status offenses, Laws of 2019, ch. 312, §§ 1-2, <https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5290-S2.SL.pdf#page=1>;
- Extending Juvenile Rehabilitation to 25, Laws of 2019, ch. 322, §§ 1-3; <https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/House/1646-S2.sl.pdf>.
- The expansion of juvenile offenses eligible for diversion, along with the mandatory destruction of the records upon successful completion of diversion agreement, Laws of 2018, ch. 82, §§ 1, 4, 5, <https://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6550-S.SL.pdf#page=1>.
- The narrowing of the crimes subject to auto decline, Laws of 2018, ch. 162, § 1, <https://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6160-S2.SL.pdf#page=1>; and
- The Youth Equality and Reintegration Act (YEAR Act), which eliminated most nonrestitution legal financial obligations for young people convicted of less serious crimes, as well as instituted automatic

that were recommendations in the 2012 Report that preceded this report, have made incremental change but have largely left intact the juvenile legal system as it was described nearly 10 years ago. Although overall arrest and detention rates have improved (rates have decreased), race disproportionality has in many instances worsened. Youth of color continue to be disproportionately arrested, referred to juvenile court, transferred to adult court, prosecuted, detained, and incarcerated compared to their white peers.

Certainly, the role of race was the subcommittee's entry point into examining the juvenile legal system, and those disproportionalities remain stark. Yet in wrestling with how to undo those disproportionalities, the subcommittee ultimately concluded that simply focusing on disproportionality while leaving the system intact was too narrow an approach. Even if the race disparities that plague the juvenile legal system were to vanish overnight, the system itself is still inherently harmful to young people. Both the data presented in this report and the experience of young people impacted by the juvenile legal system make evident that it does not work to achieve its stated purpose of rehabilitation, and instead ultimately leads many young people into the adult criminal legal system.

The juvenile legal system makes it harder for young people to achieve their full potential; it perpetuates and exacerbates disparities and inequities in the treatment of and opportunities afforded to young people, and, in so doing, ultimately fails to address the needs of the communities the system claims to serve. Young people who enter the juvenile legal system experience worse outcomes in their health, education, housing, employment, future involvement in the criminal legal system, and other measures of wellness. And because those entering the juvenile legal system are disproportionately youth of color, the harms experienced fall unequally on the shoulders of young people of color, their families, and their communities.

Despite the notable and numerous harmful effects of the juvenile legal system that fall disparately on young people of color, the current legal framework all but ignores the material and behavioral needs of these young people. Instead, the system relies principally on criminalization and punishment of those youthful behaviors. The system and underlying laws are structured so that the default response is prosecution in juvenile court; other responses, such as community-based responses, are structured as alternatives, are often discretionary, are applied unevenly, and are not widely available.

sealing during administrative hearings, Laws of 2015, ch. 265, §§ 1, 3, 6, 7, <https://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/Senate/5564-S2.SL.pdf#page=1>; see also <https://columbialegal.org/wp-content/uploads/2019/04/YEAR-ActFAQ.pdf>. Effective February 1, 2021, JuCR 7.16 quashed outstanding warrants due to violation of court orders or failure to appear, as well as limiting the issuance of new warrants to instances where the violation of a court order or failure to appear poses a serious threat to public safety. JuCR 7.16.

Further, the current legal framework does not account for the system failures that so often are responsible for feeding young people of color into the juvenile legal system. As children grow up, they are impacted by multiple systems making up our society. Not unlike the juvenile legal system, this complex ecosystem is underpinned by histories of racism that remain institutionalized and create disparate outcomes for youth of color. This report attempts to describe significant parts of the ecosystem that young people must navigate throughout their lives, including the public school and family regulation systems,¹⁷ and suggests that the race disparities in those systems feed into the race disparities observed in the juvenile legal system. Further, youth who struggle with mental health—including the adverse psychological and health effects of experiencing race discrimination—and youth who face homelessness are frequently criminalized rather than provided the material and psychological supports needed to thrive, reflecting other systematic failures that disparately impact youth of color.

As disparities have persisted and data and experience have revealed the continued harms caused and exacerbated by the current juvenile legal system, it becomes increasingly evident that bold action is needed for us to turn away from our historic approaches to juvenile justice and toward a new, innovative model. To that end, the subcommittee developed recommendations addressing the need to fundamentally change how systems respond to the needs of young people.

The recommendations reflect a significant shift in how our society thinks about accountability and culpability. In most instances, a young person who causes harm should not be the sole focus of our efforts to demand accountability; rather, it is the collective failure of our public systems to lift up and provide for young people of color that must shoulder the blame. It is our collective responsibility to contextualize personal culpability within systems that are plagued by structural racism, particularly when those systems profess to help youth of color but continued to disparately harm and/or underserve them. The recommendations therefore drive toward dismantling the juvenile legal system; in its place, the recommendations articulate an alternative approach that embraces restorative justice, and more fundamentally, focuses on providing young people the material conditions needed to thrive. The recommendations also drive toward reforming and improving other institutions that have a public duty to serve families and children in their communities.

Part I of the report provides the core work of the subcommittee and is intended to function as a stand-alone document, expressed in youth-friendly language, that sets forth: (1) the youth-articulated goals for systemic change to the juvenile legal system; (2) a narrative of how the system

17. The subcommittee uses the term “family regulation system” instead of “child welfare system” to call attention to the harm inflicted upon both the young person and the family. The subcommittee also recognizes the efforts of those in DCYF who are committed to acknowledging the racist underpinnings and ideologies of the family regulation system, and those who are attempting to radically reimagine how the agency can refocus its efforts to meet the material needs of families and support them in staying together rather than tearing them apart.

currently works and the harms caused; and (3) the change needed to bring about the youth-articulated goals for systemic change. This document is intended to be a youth-centered blueprint for change—a tool for community advocates, a framework for policy makers, and a call-in to the many institutional actors to center the leadership of youth and community and collaborate on implementing these recommendations.

Part II, supported by Appendix A, provides a summary of the persistent overrepresentation of youth of color in the juvenile legal system. Part III provides the necessary historical lens on the juvenile legal system, exposing the racist roots of the system and detailing the ways in which the system was intentionally designed to benefit white children and punish Black and brown children. The historical context provides the necessary lens for Part IV, which discusses the harms caused by the juvenile legal system, including accumulated disadvantage and disparity, harms caused by law enforcement and criminal courts, and the enduring collateral consequences of prosecuting youth. Part V, supported by Appendices B – E, picks up where the 2012 Report left off, when it noted without further examination that other system failures feed into the observed race disproportionalities in the juvenile legal system. This part attempts to provide a sketch of the ecosystem that youth navigate as they grow up, systems that, in theory, are ultimately to help children but continue to fail children of color in significant ways. The Appendices to Parts II and V set forth the empirical basis for the broader discussion in the report itself.

Finally, Part VI sets forth the subcommittee’s policy recommendations regarding the juvenile legal system and education system. These recommendations are designed to (1) ameliorate the harms that institutions inflict on youth of color; (2) divest from systems of oppression; and (3) place our state on a trajectory to meet the stated goals of impacted young people.

Three sets of recommendations were developed: juvenile legal system recommendations, education recommendations, and family regulation and homelessness recommendations.¹⁸ Significantly, while these recommendations contain specific policy proposals created by advocates and system stakeholders, they are designed to further the youth-articulated goals that set the trajectory for the subcommittee’s recommendations work. They are an explicit attempt to center the experience and knowledge of impacted youth in determining the best way forward.

Appendix F sets forth the recommendations process the Juvenile Justice Subcommittee agreed upon at the outset of the recommendations work. While the subcommittee acknowledges that the process was imperfectly executed, it nevertheless reflects the subcommittee’s intent to place impacted young people at the center of the recommendations process.

18. Recommendations regarding the family regulation system and homelessness are in progress. Because the recommendations work in all areas will continue beyond the publication of this report, readers are referred to the [Task Force 2.0 homepage](#) for updated recommendations and for more information about implementation efforts. Recommendations regarding mental health supports are beyond the scope of the expertise represented on the subcommittee.

I

YOUTH-CENTERED BLUEPRINT FOR CHANGE

At the outset of the subcommittee's work to address race disproportionality in the juvenile legal system, the subcommittee agreed that the impacted youth on the subcommittee were those with the experience and the expertise to articulate the overarching goals and set the trajectory for the subcommittee's recommendations work. The young people articulated three bedrock principles that grounded the subcommittee's recommendations work and provided eight broad policy goals to further direct the subcommittee. Their vision is presented below, along with the specific policy proposals generated by the entire subcommittee that have been translated into straightforward language that is intended to be youth-oriented. The same policy proposals are presented in more formal policy language in the recommendations section, Part VI, which also includes the minority reports on a handful of specific policy proposals.

This youth-articulated vision for change charts a course for how we could respond when a young person causes harm, and, more fundamentally, how to lift up young people so harm does not occur in the first place.

Youth Articulated Bedrock Principles

These are the youth-generated bedrock goals for systems change, from which more specific policy work was inspired:

- **Ensure that everyone has the material conditions to thrive.**
- **Shift power from the criminal legal system to the community to respond after a young person has caused harm.**
- **Promote self-awareness and positive self-expression.**

Youth Articulated Broad Policy Goals

These are the broad policy proposals articulated by the young people on the subcommittee that are necessary to realize the bedrock goals:

- **Prevent youth involvement in the juvenile legal system** by meeting their material needs through robust mutual aid infrastructure led by community-based organizations.

- **Invest in a community-led response to an unfolding crisis**, including alternatives to 911 and police.
- **Eliminate youth interaction with law enforcement in schools, family regulation, and health care settings**, with the ultimate goal of abolishing police interactions with young people.
- **Invest in community responses to harm that promote healing and restoration for all parties** as the primary response rather than the legal system.
- Work to **eliminate youth prosecution** by increasing opportunities for community-based diversion and adjusting the jurisdiction of juvenile courts.
- Take measurable concrete steps to move towards **zero youth detention/incarceration**, including limited detention admission and developing alternatives for all youth.
- **Limit the impact of criminal history from juvenile court**; ensure that juvenile court records do not limit opportunity or increase incarceration.
- **Provide community healing** for people who have been incarcerated.

Specific Policy Proposals

To center the experience of young people and galvanize policy makers, youth advocates, and systems players alike to aspire toward the youth-articulated goals and broad policy proposals, this part of the report describes, using a timeline concept, the basic problems associated with each phase of involvement in the juvenile legal system. Each description of harms and challenges associated with each phase is accompanied by a list of what the subcommittee believes should change. The harms described in each phase of system involvement are empirically supported by Parts II-V of the report. The list of desired changes to each phase of the system is spelled out in formal policy language in Part VI, Recommendations.

1. Before Crimes Are Committed or Harm Occurs

What happens under the current system? Young people and their families have a hard time getting access to basic services and supports. The state does not adequately invest in the needs of communities of color and does not involve BIPOC people in deciding how to spend resources that could help their communities.

What needs to change?

- Ensure that young people get housing, food, health care, education, addiction and mental health resources, and other supports (including recreational resources and transportation), before they end up in juvenile court.
- Make sure that all government agencies providing youth services work together to give youth what they need, and make sure people don't have to apply multiple times or meet different standards to get help.
- The state should budget for reparations to communities of color. The state should also budget for everyone to have a basic right to housing, health care, and wifi/broadband. That money should be provided to local community led organizations, and BIPOC people should decide how to spend the funds.
- The state should spend more money on mental health care providers and make sure that BIPOC youth have access to care.
- BIPOC people should be centered in how governments spend their money. The state should provide resources to teach governments how to involve communities in budgets.

2. When a Young Person is in Crisis or Harm is Occurring

What happens under the current system? Police and 911 are the only government response available, and the government does not adequately support community alternatives. So, if there is harm, community members may feel they have no choice but to call police, even if they don't want to see the young person arrested or charged with a crime.

What needs to change?

- Empower/educate people to call 211 to channel people towards health and human services resources instead of police, and 311 to report non-emergency activity that doesn't require immediate assistance.
- Build up a more detailed process and training for how 911 dispatchers identify the kind of services needed by a call to avoid calling police when police are not needed.
- Have trusted community organizations build safety teams that can respond to different types of crises, including de-escalation teams, mental health crisis response, and trauma response teams.
- Create (or increase funding if already existing) community-led response and interventions for restorative justice interventions, including when there is family violence.
- Fund youth mentors to interrupt violence and educate young people about nonviolent conflict resolution.

3. When Police Are Called

What happens under the current system? Police often escalate situations, and move issues like school conflicts, skipping school, and running away from home into the criminal system. Government systems like schools, health care settings, and youth shelters rely on police rather than supporting youth.

What needs to change?

- All state agencies and state funded groups that provide services to young people need to make sure to have policies to limit—and hopefully eliminate—when they call police on young people receiving services.
- Pass laws that entirely prevent police from being present in schools
- Eliminate laws that allow young people to be charged with crimes for disturbing school or insulting teachers.
- Require schools to use restorative justice when there is conflict at school, and limit schools from calling police unless there is a current risk of serious physical injury.
- Enforce laws that require schools to track how often they call police.
- Change laws that allow schools to bring young people to court for missing school. Develop community supports to help students who miss school.
- Increase funding for those working within the school to get resources and support to students (and families) who are at risk of dropping out of school
- Put together a BIPOC led working group to come up with best practices for community-based truancy boards and to hold schools accountable for increasing student attendance
- Change the law so that police and detention are not the primary response when situations involving youth in foster care or dependency proceedings require additional safety supports.

4. After Harm Has Occurred But Before Youth Are Prosecuted For a Crime

What happens under the current system? Some youth cases are diverted (or sent to services rather than having charges filed), but diversion is not as common as it should be, and lots of diversion programs are run by law enforcement or the courts instead of the community. Diversion programs don't focus enough on the needs of the young person who has committed the crime or the victim of the crime (restorative justice). The state invests a lot of money in courts and cops, but not enough in community programs to help youth.

What needs to change?

- Increase state funding to community design to a primary response to youth offenses (similar to restorative community pathways in King County) with prosecution the rare alternative; make community-based diversion the norm or preferred resource.
- Transfer money that is currently being spent on prosecuting youth to community-based programs that can provide alternatives to prosecution.
- Make state funds that are currently used for youth incarceration open to being spent on alternatives to prosecution.
- Create funds designed to compensate victims of crime who are engaged in restorative justice.
- Change the law to allow for law enforcement and prosecutors to increase diversion, and develop responses that address the needs of young people who are in mental health crisis or in the family regulation system.
- Make diversion mandatory, unless a judge decides it is absolutely necessary to file charges to prevent serious harm to public safety
- Change the laws so that cases can be diverted or removed from the criminal legal system for young people up to age 25.

5. If Youth Are Prosecuted/Charged With a Crime

What happens under the current system? Very young people can be prosecuted for crimes (as young as 9 in some cases) and some young people are prosecuted as adults (which exposes them to longer sentences, adult prison, and a life-long criminal record). The courts don't focus on the needs of young people who are charged with crimes and don't involve the community in supporting young people.

What needs to change?

- When youth are prosecuted, make sure that the system provides the resources to address their non-legal needs (like housing, employment, health care, family support).
- When youth are prosecuted, make sure they have a community ambassador who is part of their defense team, to help young people engage with community resources.
- No youth under the age of 14 can be charged with a crime and brought into the legal system.
- Instead of moving young people to adult court when they turn 18, raise the age of juvenile court up to 21 years old.

- Explore options for different ways to treat young adults (21-25) who are charged with crimes and account for ways that these young people are still developing and maturing.
- Change the law so that no young person charged with an offense committed before their 18th birthday can be prosecuted in adult court, which usually means they will face a much longer sentence in adult prison.
- Until that change in law comes about, youth who end up being prosecuted in adult court should be assigned to judges and prosecutors who are assigned to juvenile cases. Make sure that young people aren't jailed with adults if the alleged offense occurred while they were under age 18.

6. If Youth Are Facing Incarceration

What happens under the current system? For certain crimes, or for some youth who have previous convictions, the “standard” sentence is to juvenile prison. Juvenile prisons are located far away from youth’s communities, they are expensive, and long sentences in juvenile prison don’t help youth.

What needs to change?

- Adopt policies to limit juvenile detention to serious violent offenses; require counties to release all other youth. Develop alternatives to detention for youth convicted of serious violent offenses as we work towards zero youth detention.
- Make sure that all services provided to youth in jail (such as drug and mental health treatment) are available in the community.
- Review the sentencing “grid” that determines when a young person is jailed and for how long, to identify racial inequities and unequal outcomes by race.
- Change the juvenile sentencing grid to prevent juvenile prison from being a “standard” sentence for any juvenile. Instead, limit juvenile prison to cases where the judge makes a specific finding that prison is necessary to prevent a significant risk to public safety.
- Expand the use of community alternatives to juvenile prison so that young people can stay in their communities and receive services; set specific goals for reducing juvenile prison admissions through community-based responses.
- Abolish the use of house arrest (electronic home monitoring) for youth. Until that is done, provide judges with specific guidance to prevent the over-use of house arrest and limit its harm to youth, their families, and our community

7. After Youth Are Released from Jail or Serve Their Sentence

What happens under the current system? Youth are released without enough supports to make sure they are successful back in the community. Youth records are public, meaning that juvenile

history can continue to hurt youth long after they are released. Some youth can try to seal their records after the fact, but the process is difficult for many youth. Juvenile court convictions also can automatically increase adult sentences, resulting in longer periods in prison as an adult.

What needs to change?

- Change the law so that crimes committed as a youth do not count as criminal history that automatically increases a person's sentence if they commit crimes as an adult. Make sure this change applies going forward and applies to people already sentenced (so they can be released from prison if criminal history from juvenile court resulted in them serving more time).
- Make juvenile court and law enforcement records confidential, so that members of the general public, employers, landlords, and schools cannot see juvenile criminal history.
- Prevent the courts from selling juvenile court records to private parties.
- Until juvenile records are made fully confidential, change the law to require courts to seal (remove from public view) juvenile records when a juvenile is no longer in jail or on probation. Apply this change to records going forward and to older records.
- Change the law to expunge (destroy) juvenile records when a juvenile has turned 18 and is no longer in jail or on probation. Apply this change going forward and to older records.
- Make sure that folks who are finished serving their prison or sentences can reenter the community and have their basic needs met, including food, shelter, income/job pathways, education, and healthcare/mental health.

8. System Accountability

What is needed to make sure we continue to track and understand the harms of the juvenile legal system, especially on young people of color?

- Improve data collection standards for tracking school calls to police, especially to make sure that NHPI students are not put under the broader umbrella of API.
- Make sure data collected by county prosecutors and state courts about youth prosecuted in adult court also includes a category for NHPI separate from API.
- County prosecutors and courts should track and publish data 4 times a year that shows arrests, diversions (and whether diversion was completed), charges, and how juvenile cases are resolved. That data should be broken down by county, age, race, gender, and other demographics (see Zero Youth Detention Data Dashboard).

- Develop data tracking policies to ensure effective tracking of the impact of the criminal legal system on NHPI, Latinx, and multiracial youth. Work with community leaders to develop the policies.

These proposals are set forth in formal policy language in Part VI.

II

THE OVERREPRESENTATION OF YOUTH OF COLOR IN THE JUVENILE LEGAL SYSTEM PERSISTS

This section provides a snapshot of the race disproportionality that plagues Washington’s juvenile legal system. Appendix A provides a more thorough discussion that compares the data presented in this section to what was included in the 2012 Report. Just as in 2012, there is clear evidence of persistent overrepresentation of youth of color at each stage of the juvenile legal system.¹⁹ More concerning is that comparative disproportionality, which compares the treatment of youth of color to white youth, has worsened.

While overall arrest²⁰ and detention²¹ rates have dropped steadily since 2012, this change has benefited white youth more than it has youth of color. The 2012 Report, using data from 2009, found that Black youth were nearly twice as likely as white youth to be arrested, and more than twice as likely to be referred to court. Recent statewide data shows that Black youth are nearly three times as likely as white youth to be arrested; in King County, Black youth are nearly 7 times as likely as white youth to be arrested²² and Black youth are nearly 4 times as likely to be referred to the juvenile court than white youth. It is evident that race disproportionality for Black youth has worsened.

Though earlier data does not permit comparative disproportionality trends to be made for Latinx and Indigenous youth, the evidence is clear that disproportionalities exist. Recent statewide data shows that Latinx youth are 1.12 times more likely to be arrested and nearly 1.5 times as likely to be referred. Indigenous youth are 1.74 times more likely to be arrested and 2.5 times as likely to

19. Wash. State Dep’t of Children, Youth & Families, *Washington State Juvenile Justice Report to the Governor & State Legislature* (August 2020), at 52-53, <https://www.dcyf.wa.gov/sites/default/files/pdf/2020WA-PCJJgov.pdf> [hereinafter *2020 DCYF Report to Legislature*].

20. *Id.* at 10, Exhibit 9.

21. Amanda Gilman & Rachael Sanford, Wash. State Ctr. for Court Research, *Washington State 2019 Juvenile Detention Annual Report* 7 (2021), <http://www.courts.wa.gov/subsite/wscrr/docs/Detention%20Report%202019.pdf>.

22. William Feyerherm, FFY 2018 Office of Juvenile Justice and Delinquency Prevention Title II Formula Grant Application, 2018-50017-WA-JF, *Compliance with the Disproportionate Minority Contact (DMC) Core Requirement* 5, 8 (2018), <https://dcyf.wa.gov/sites/default/files/pdf/2018DMCPlan.pdf>.

be referred.²³ Further, youth of color are less likely to receive a diversion relative to white youth.²⁴ In convictions as well there remains significant disproportionality, with Black youth being convicted at a rate 4.8 that of the rate involving white children, Latinx youth at a rate 1.8 times that of white youth, and Indigenous children at a rate 2.6 times that of white children.²⁵

Youth of color are also overrepresented in transfer to the adult criminal system. Among youth of color sentenced in the adult system through the discretionary decline process, Latinx youth are declined at rate 4.5 times the rate as white youth, Black youth at 11.4 times the rate of white youth, and Asian youth at a rate 1.2 times that of white youth.²⁶ These racial disparities grow more severe among youth prosecuted as adults through the “auto-decline” process. Among youth of color sentenced as adults through the auto-decline process, Latinx youth are auto-declined at a rate 4.9 times the rate of white youth, Black youth are auto-declined at a rate that is 25.8 times the rate of white youth, Asian youth at a rate 1.4 times that of white youth, and Indigenous youth at a rate 5.2 times the rate of white youth.²⁷

Importantly, a recent study that examined the treatment of juveniles sentenced as adults in Washington over a ten-year period, from 2009-2019, revealed not just that Black and Latinx children are disproportionately overrepresented among youth convictions, discretionary decline, and auto-decline cases, but that “[d]ifferences neither in criminal histories nor types of offense explain this disproportional over-representation.”²⁸ The importance of this finding cannot be overstated. The pattern of race disproportionality in the juvenile legal system is “a persistent one across time.”²⁹

Factors that contribute to these disparities are well known. Implicit biases influence decisionmakers’ perceptions of youth of color, “which includes expectations for their future behavior.”³⁰ These implicit racial biases also include adultification of youth of color,³¹ which can

23. 2020 DCYF Report to Legislature, *supra* note 19, at 11 Exhibit 10 (August 2020).

24. *Id.*

25. Heather Evans & Steven Herbert, *Juveniles Sentenced as Adults in Washington State, 2009-2019*, at 20 (2021), https://www.opd.wa.gov/documents/00866-2021_AOCreport.pdf.

26. *Id.*

27. *Id.*

28. *Id.* at 4.

29. *Id.* at 3.

30. *Id.*

31. Empirical literature demonstrates that Black children tend to be regarded and treated as older than they actually are, a process called “adultification.” Deprived of the benefit of being treated as children leaves a vacuum within which race can operate as an aggravator, leading to harsher treatment than their white counterparts. In a seminal study on adultification of Black youth, researchers demonstrated that Black children do not receive the same

mean justice officials perceive youth of color as “more culpable for the crime, less amenable to rehabilitation, and more threatening.”³² And the flip side of this is justice officials’ tendency to see white youth “as less threatening and more susceptible to treatment.”³³ Stated differently, youth of color are placed disproportionately on the paths that lead to incarceration; white youth are placed disproportionately on the paths that lead to alternatives to incarceration.

III

HOW DID WE GET HERE? HISTORY EXPOSES THE RACIST ROOTS OF THE JUVENILE LEGAL SYSTEM

The persistence of the race disproportionality that plagues the juvenile system must be understood not only as a contemporary problem, but as one rooted in the racist history of juvenile legal institutions themselves. From the time the Houses of Refuge and subsequent juvenile courts were established in the mid-1800s to early-1900s, the juvenile legal system, at best, subjected children of color to a separate but unequal counterpart in which they did not receive the rehabilitative benefits for which the system was created. At worst, it excluded children of color entirely and subjected them to incarceration in adult prisons for delinquency and other minor offenses. Even after the Warren Court began to establish procedural protections for juveniles against the backdrop of the Civil Rights Movement, the system’s disparate treatment of children of color persists.

A. The Juvenile Rehabilitation System Was Never Intended to Benefit Children of Color.

Present-day juvenile courts have their beginnings in reform movements of the early 1800s.³⁴ In 1824, the Society for the Prevention of Pauperism, a Quaker group dedicated to addressing the suffering of the poor, gained authority to build the New York House of Refuge, the nation’s first

presumption of childhood innocence as their white peers. Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526, 539-540 (2014), <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>. For Black girls, gender stereotypes compound the harmful effects of adultification bias. Rebecca Epstein, Jamila J. Blake & Thalia González, Ctr. on Poverty & Inequality, Geo. Law, *Girlhood Interrupted: The Erasure of Black Girls’ Childhood*, 2, 4, 8 (2017), <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf>.

32. Evans & Herbert, *supra* note 25, at 3 (internal citations omitted); *see also* Aneeta Rattan et al., *Race and the Fragility of the Legal Distinction Between Juveniles and Adults*, 7 PLOS ONE at 2 (2012), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0036668> (survey of 735 white Americans demonstrated significantly more support for imposition of LWOP on a hypothetical 14 year old Black defendant than in the identical hypothetical where defendant was white).

33. Evans & Herbert, *supra* note 25, at 3 (internal citations omitted).

34. Robin Walker Sterling, *Fundamental Unfairness: In Re Gault and the Road not Taken*, 72 MD. L. REV. 607, 616 (2013).

juvenile treatment facility, whose goals included diagnosing and curing the causes of juvenile delinquency.³⁵

In 1899, a group of Progressive reformers, The Child Savers, established the nation's first juvenile court in Chicago,³⁶ which was envisioned to be more of a social welfare agency than a court. The judge was concerned, not with the child's guilt or innocence, but instead with "[w]hat is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career."³⁷

The child—essentially good, as they saw it—was to be made “to feel that he is the object of (the state's) care and solicitude,” not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. . . . The idea of crime and punishment was to be abandoned. The child was to be “treated” and “rehabilitated” and the procedures, from apprehension through institutionalization, were to be “clinical” rather than punitive.

These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the state was proceeding as *parens patriae*.³⁸

Washington established its juvenile courts in 1905 in response to this movement, focusing “on treating and rehabilitating juveniles instead of subjecting them to the harsh procedures, penalties, and jail conditions of adult courts.”³⁹ The Washington State Reformatory, which was the first juvenile reformatory in the State, was in fact partially constructed by the young offenders incarcerated there.⁴⁰ By 1908, 43 inmates had cleared the building suite and a road, and erected a brickmaking plant that produced 850,000 bricks, and excavated two building site.⁴¹

35. *Id.* (citing Sanford Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1187-91 (1970)).

36. *Id.* at 617.

37. *Id.* at 619 (quoting Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119-20 (1909)).

38. *In re Gault*, 387 U.S. 1, 15-16, 87 S. Ct. 1428, 18 L. Ed. 2d 40 (1967) (quoting Mack, *supra* note 37, at 120).

39. *State v. Saenz*, 175 Wn.2d 167, 172-73, 283 P.3d 1094 (2012) (citing *State v. Rice*, 98 Wn.2d 384, 389, 655 P.2d 1145 (1982)).

40. Jack M. Holl & Roger A. Pederson, *The Washington State Reformatory at Monroe: A Progressive Ornament*, 67 PAC. NW. Q. 21, 25 (1976), <https://www.jstor.org/stable/40489741>.

41. *Id.* at 26.

When the Houses of Refuge were established, the target beneficiaries were poor white children, including European immigrants.⁴² Black children were not among those meant to be helped by such programs because they were not considered to be amenable to rehabilitation,⁴³ and because of the concern that “[i]t would be degrading to the white children to associate them with beings given up to public scorn.”⁴⁴ In some places, special sections for Black children were created, but fewer resources were allocated to these children and fewer rehabilitative and educational services were offered.⁴⁵ Instead of receiving an academic education, Black children were taught skills needed to perform manual and domestic labor.⁴⁶ In northern communities that did not establish separate facilities, Black children were often placed in adult prisons rather than with white children in existing juvenile facilities.⁴⁷

In the South at this time, slavery was still in practice, so Black children accused of committing crimes were not thought of as needing special care; they were dealt with within the institution of slavery, often by the violent means of “plantation discipline.”⁴⁸ Even after the end of slavery, juvenile rehabilitation institutions were often not available to Black children in the South, who instead were subjected to the same system of convict leasing, whipping, and lynching experienced by Black adults in the post-Civil War period.⁴⁹ “By 1890, according to a census analysis by W.E.B. Du Bois, more than 18% of all [B]lack prisoners were juveniles.”⁵⁰ Children as young as eight, six, and four-years old were sent to adult prison for minor crimes.⁵¹ In the few southern communities where juvenile reform schools for Black children were established, they were only allowed schooling after spending long days working in the fields.⁵² “[O]ne of the main reasons for opening the Baltimore House of Reformation for Colored Children was ‘the need for agricultural labor through the state, as well as the great want of competent house servants.’”⁵³

42. Walker Sterling, *supra* note 34, at 616-18.

43. *Id.* at 623.

44. *Id.* at 624 (quoting ROBERT M. MENNEL, THORNS & THISTLES: JUVENILE DELINQUENTS IN THE UNITED STATES, 1825-1940, at 17 (1973)).

45. Walker Sterling, *supra* note 34, at 623-24; see Barry C. Feld & Perry L. Moriearty, *Race, Rights, and the Representation of Children*, 69 AM. U. L. REV. 743, 764 (2020).

46. Walker Sterling, *supra* note 34, at 624; Feld & Moriearty, *supra* note 45, at 764.

47. Walker Sterling, *supra* note 34, at 624.

48. *Id.* at 623-24 (quoting Mennell, *supra* note 44, at 75).

49. *Id.* at 625.

50. *Id.* at 626-27.

51. *Id.* at 627.

52. *Id.* at 625.

53. *Id.* (quoting Geoff K. Ward, *The Black Child-Savers: Racial Democracy and Juvenile Justice* 74 (2012)).

After the first juvenile courts were established in the early part of the twentieth century, children of color continued to be excluded from the benefits and services offered there, even while they were overrepresented in court proceedings.⁵⁴ The courts were founded on the premise that youth were well-situated for rehabilitation, provided the appropriate access to treatment and services.⁵⁵ But Black youth were not considered as redeemable as white youth.⁵⁶ Across the country, segregated juvenile justice systems continued, prioritizing the needs of white youth.⁵⁷ The effect in the North ““manifested as institutionalized neglect or subtle exploitation,””⁵⁸ while in the South “the oppression of the [B]lack youth population was overt and socially endorsed.”⁵⁹

In the Jim Crow South, even in states that established juvenile court systems, things were much worse. Black children in most southern states were tried in the adult criminal courts and sent to adult prisons where they were subjected to chain gangs and convict leasing.⁶⁰ “In 1910, over 80% of Black youths charged with offenses in the South were committed to adult correctional facilities.”⁶¹ While in the North services and institutions for Black children were difficult to come by, in the South they were either unavailable or had conditions that bordered on inhumane.⁶² In a 1914 letter to W.E.B. Du Bois, Florence Kelly, the director of the Chicago NAACP, described a juvenile rehabilitation institution in Memphis in which white children were provided comfortable living arrangements, schooling, and vocational training, while Black children were crowded in a small cottage, with backyard sewage and no teacher.⁶³ Black children in the South also experienced violence, including corporal punishment as an official part of the system and lynching as an extrajudicial source of control.⁶⁴

54. *Id.* at 627.

55. *See id.* at 618; Feld & Moriearty, *supra* note 45, at 762-63.

56. *See* Walker Sterling, *supra* note 34, at 627.

57. *Id.* at 627-28.

58. *Id.* at 628 (quoting Ward, *The Black Child-Savers*, *supra*, at 105).

59. *Id.*

60. Feld & Moriearty, *Race, Rights, and Representation*, *supra* note 45, at 764.

61. *Id.* at 764.

62. Walker Sterling, *supra* note 34, at 628.

63. *Id.*

64. *Id.* at 629 (describing lynchings of teenagers in the South in the early 1900s). The 1955 murder of 14-year-old Emmett Till, which served as one of the catalysts for the Civil Rights Movement, is the most well-known example of a child facing extrajudicial killing after being accused of a minor offense, one which arguably was not even criminal. *See generally* Clenora Hudson-Weems, *Resurrecting Emmett Till: The Catalyst of the Modern Civil Rights Movement*, 29 J. BLACK STUD. 179 (1998). During this time, Black civic leaders organized to fight against “Jim Crow juvenile justice.” Walker Sterling, *supra* note 34, at 630. Many prominent Black-led institutions took up the cause of obtaining justice for Black children involved in the system, including the National Council of Colored Women’s Clubs, the United Negro Improvement Association, and the NAACP, seeing it as important issue for social change. *Id.*

Indigenous youth were subject to a different, but similarly egregious and lasting, form of institutional trauma. Assumed to be uncivilized, they were systematically removed from their families and tribes and into boarding schools,⁶⁵ and they continue to be removed from their families and tribes and placed into foster care at alarming rates.⁶⁶ A full discussion of this history is beyond the scope of this report, but awareness of this history and its effects aid in understanding the harms suffered when children are separated from their families, discussed below.

B. Disproportionalities Resulting from the Structural Inequalities Created by the Juvenile Legal System Have Been Documented Since Its Inception.

Statistical evidence of institutional racism in the juvenile legal system has existed from its very beginnings and has changed little since. The development of the first juvenile courts in the first half of the twentieth century coincided with the beginning of the Great Migration, in which large numbers of Black families moved from the rural South to urban centers in the North and the West.⁶⁷ Many Black families were seeking new opportunities in the North but continued to encounter exclusion because of their race.⁶⁸

Studies going back to the early 1900s document striking disproportionalities for Black children at all stages of the court process. Though offense patterns for Black and white children were similar, Black children were disproportionately represented in juvenile court systems in many industrialized northern cities.⁶⁹ In 1913, a study conducted over the course of one year by the Juvenile Protective Association of Chicago documented that approximately 12.5 percent of boys and young men and 33.3 percent of girls and young women held in the county jail were Black, while only 2.5 percent of the population of Chicago was Black.⁷⁰ In 1920, Black teens were represented in prison in Pennsylvania at nearly ten times their proportion of the general population.⁷¹ Similar patterns were found in other cities whose demography changed as a result of

65. Colin Tiernan, “All these children matter”: Discovery of Indian boarding school graves shines spotlight on cultural genocide, with ripple effects felt in Spokane, SPOKESMAN REV., Aug. 1, 2021, <https://www.spokesman.com/stories/2021/jul/08/all-these-children-matter-discovery-of-indian-boar/>; Katie Johnston-Goodstar & Ross VeLure Roholt, “Our Kids Aren’t Dropping Out; They’re Being Pushed Out”: Native American Students and Racial Microaggressions in Schools, 26 J. ETHNIC & CULTURAL DIVERSITY SOC. WORK 30 (2017), <https://www.tandfonline.com/doi/full/10.1080/15313204.2016.1263818>.

66. Nick Estes & Allen Brown, *Where are the Indigenous children who never came home?*, HIGH COUNTRY NEWS, Sept. 25, 2018, <https://www.hcn.org/articles/tribal-affairs-where-are-the-indigenous-children-that-never-came-home-carlisle-indian-school-nations-want-answers>; *Matter of Dependency of Z.J.G.*, 196 Wn.2d 152, 164-66, 471 P.3d 853 (2020).

67. Walker Sterling, *supra* note 34, at 631.

68. *Id.*

69. *Id.* at 631-32.

70. *Id.* at 625.

71. *Id.* at 631-32.

the Great Migration.⁷² Largely white police forces in these cities had wide discretion in referring youth to juvenile court, resulting in complaints against Black children being filed more than twice as often as against white children.⁷³

Disproportionality in the juvenile justice system was first documented on a national level in the 1940s. A study of 53 courts across the United States found that Black children were grossly overrepresented in delinquency cases and had juvenile court contact at an earlier age than their white counterparts; that cases against white boys were more likely to be dismissed than those against Black boys; and that Black children were more likely to be sent to an institution.⁷⁴ Two decades later, little had changed. In the 1960s, the President's Commission on Law Enforcement and the Administration of Justice conducted a survey contemporaneously with *Gault*,⁷⁵ finding that "in the vast majority of juvenile courts in the country, non-white juveniles comprised 40% of the youth who came before them."⁷⁶ Other studies "found that Black youth brought before the juvenile court were younger, had fewer prior appearances, committed fewer and less serious crimes, but received probation less often than their white counterparts."⁷⁷ In the decades since these studies, and as set forth in Part II, youth of color have continued to experience significant disparities at all points in the juvenile court process, from arrest to transfer to adult court.⁷⁸

IV

THE HARMS CAUSED BY THE JUVENILE LEGAL SYSTEM

The persistent overrepresentation of youth of color in the juvenile legal system, both historically (Part III) and in present day (Part II), is evidence of systemic racism—as our Supreme Court has recognized as a “painful fact that...the injustices faced by [B]lack Americans are not relics of the past. We continue to see racialized policing and the overrepresentation of [Black] Americans in every stage of our criminal and juvenile justice systems.”⁷⁹ As set forth in the introduction, though,

72. *Id.* at 632.

73. *Id.*

74. *Id.* at 632-33.

75. 387 U.S. 1 (1967) (holding that children adjudicated in juvenile court have many of the same due process rights as adults in criminal court, including adequate notice, the right to counsel, the privilege against self-incrimination, and the right to a full hearing on the merits that includes the rights of confrontation and cross-examination).

76. Feld & Moriearty, *supra* note 45, at 765.

77. *Id.*

78. *See id.* at 786-91 (discussing the extreme disproportionalities experienced by youth of color at various points in the system from the 1980s to present); Walker Sterling, *supra* note 34, at 660-61 (discussing current overrepresentation and disparate treatment of youth of color in juvenile justice system).

79. The Supreme Court of the State of Washington, Letter to the Judiciary and the Legal Community (June 4, 2020), <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf>.

even if the race disproportionality were to disappear overnight, we would still be left to reckon with a system that is inherently harmful to young people. And because of the persistent and well documented racial disproportionality in the system, those harms fall unequally on youth of color. This section sets forth how being system-involved harms young people by driving them deeper into the system and by negatively impacting other aspects of their lives, both in the short and long term.

A. Accumulated Disadvantage and Disparity

Being “justice system-involved” can establish, reinforce, and exacerbate disparity patterns—the deeper into the system, the greater the cumulative racial/ethnic disparity. This “accumulated disadvantage” impacts youth of color as they are processed through the system.⁸⁰ “Studies have indicated that decisions made at earlier stages, such as detention, affect outcomes at later stages and, in particular, judicial disposition. That is, detention strongly predicts more severe treatment at judicial disposition. Because youth of color are more likely to be detained, they receive more severe dispositions than do their white counterparts. Consequently, race or ethnicity may not directly influence judicial disposition, but its effects may be masked, operating through a racially linked criterion of pre-adjudicatory detention.”⁸¹

Further, the mass incarceration of BIPOC adults can contribute to harsh outcomes for BIPOC youth, as the system use “lack of access to parents” as a basis for harsher consequences. This disregards the over-policing of BIPOC adults, documented in the *Report on Race and Washington’s Criminal Justice System*.⁸²

Finally, youth who have been incarcerated have a high likelihood of become system-involved in the future. In a recent analysis using two different cohorts, researchers determined that youth who had received a court disposition in 2014 had an overall recidivism rate of 30.3%, and that youth who had been released from Juvenile Rehabilitation in 2015 had an overall recidivism rate of 49.6%.⁸³ The severity of the punishment corresponds to a higher overall recidivism rate. Those in the Juvenile Rehabilitation release cohort had the highest rate, at 49.6%; within the court cohort, those with adjudicated court cases had an overall recidivism rate of 44%, and those with diversions had a much lower rate of 21.7%.⁸⁴

80. Off. of Juv. J. & Delinq. Prevention, *Disproportionate Minority Contact Technical Assistance Manual* 2-10 (4th ed. 2009), https://www.ncjrs.gov/html/ojjdp/dmc_ta_manual.

81. *Id.*

82. See generally *Report on Race and Washington’s Criminal Justice System*, *supra* note 1, at 9-26.

83. Wash. State Ctr. for Court Research, *Juvenile Recidivism in Washington State: A 2014 Court Cohort and 2015 Juvenile Rehabilitation Release Cohort* 1 (2018).

84. *Id.* at 1. The efficacy of diversion in reducing recidivism is striking. Both the recent legislation expanding the availability of diversion for almost all juvenile offenses, *supra* note 15, coupled with the recommendations to

B. Harms Caused By Contact with Law Enforcement and Criminal Courts

Young people who come into contact with law enforcement and the juvenile legal system are harmed by those interactions. As the American Bar Association has recognized, the consequences of justice system involvement are dire and far-reaching:

Consequences from formal juvenile justice involvement include the traumatic effects on child development for children who are detained. Trauma informed care once a child is detained is not enough; avoiding unnecessary detention is more appropriate. Detention of any duration adversely affects a child or youth. About 93% of youth in detention currently have been exposed to adverse child experiences previously, 75% have experienced traumatic victimization, and 6% have witnessed traumatic events. Collateral consequences of juvenile court involvement include negative impacts on a student's financial aid eligibility, familial debts from court costs, and interruptions in educational continuity. The juvenile justice system disproportionately impacts impoverished children, children of color, and children who have experienced trauma.⁸⁵

Even if a young person is never detained, contact with law enforcement has negative consequences for future system involvement. For youth of color, even a single encounter with police matters. According to a study published in December 2020, Black respondents who had police encounters by eighth grade were 11 times more likely to be arrested as young adults compared to their white counterparts when controlling for engagement in illegal activity.⁸⁶ The researchers included both arrests and police stops not resulting in arrest in the analysis indicating that it is the encounter with police and not just involvement in the criminal legal system that appears to affect later arrests.⁸⁷

If a young person is incarcerated, the harms are severe. Incarceration removes young people from their families, their schools, and their communities. Depriving young people of these support systems puts them at high risk of developing mental health conditions, and they lose their connection to school and the other supports the school may provide beyond education.

emphasize community-based diversion as our primary response to criminal law violations, chart a clear path forward in how we can effectively and equitably respond when young people cause harm.

85. A.B.A. Resolution, (August 2021), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2021/505-annual-2021.pdf> (internal citations omitted) (regarding raising the minimum age for prosecution of children to 14).

86. Anne McGlynn-Wright et al., *The Usual, Racialized, Suspects: The Consequence of Police Contacts with Black and White Youth on Adult Arrest*, SOC. PROBLEMS 1 (Oct. 31, 2020), <https://doi.org/10.1093/socpro/spaa042> (advance access version; paginated version forthcoming).

87. *Id.*

Incarceration itself negatively impacts young people's mental and physical well-being and their education.⁸⁸

One psychologist found that for one-third of incarcerated youth diagnosed with depression, the onset of the depression occurred after they began their incarceration, and another suggests that poor mental health, and the conditions of confinement together conspire to make it more likely that incarcerated teens will engage in suicide and self-harm. Economists have shown that the process of incarcerating youth will reduce their future earnings and their ability to remain in the workforce, and could change formerly detained youth into less stable employees.

Educational researchers have found that upwards of 40 percent of incarcerated youth have a learning disability, and they will face significant challenges returning to school after they leave detention. Research suggests that the experience of detention may make more likely that youth will continue to engage in delinquent behavior, and that the detention experience may increase the odds that youth will recidivate, further compromising public safety.⁸⁹

System involvement is also linked to poor academic performance. Educational opportunities are lost or limited by the transitions in and out of detention and Juvenile Rehabilitation facilities, which have inadequate educational programming. Youth are unable to easily move from one school to another and stay on track. Youth encounter barriers in the form of school discipline laws and policies, are pushed out to alternative schools, receive minimal academic and transition support, and encounter attitudes that discourage high school completion and post-secondary goals.⁹⁰ Forty to fifty percent of youth with juvenile court involvement dropped out or disappeared from school.⁹¹

88. Barry Holman & Jason Ziedenberg, Justice Policy Inst., *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* 2 (2006), https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/dangers_of_detention.pdf.

89. *Id.*

90. See generally Improving Institutional Education Programs and Outcomes Task Force, *Report to the Governor and the Legislature* 1-11 (December 2020), https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=IIEPO%20Final%20Report_4ab7b9ab-e7b2-4262-9f21-97953cdb4be8.pdf. During the 2020 session, the legislature established this task force in recognition that the delivery of educational services in institutional facilities requires immediate attention to ensure better outcomes for students who are system-involved. Laws of 2020, ch. 226, § 1, <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/House/2116-S.SL.pdf#page=1>.

91. Carl McCurley et al., Ctr. for Court Research, *Students Before and After Juvenile Court Dispositions: Student Characteristics, Education Progress, Juvenile Court Dispositions, and Education Outcomes in Washington State* 13, Fig. 10 (2017), https://www.courts.wa.gov/subsite/wscrr/docs/Education%20and%20Juv%20Ct%20Dispositions_finalrev.pdf.

Youth who have been incarcerated are even more likely to disengage from school. A recent cohort study by Washington State Center for Court Research of 3,396 students from academic year 2009-2010 with juvenile legal system involvement found that just 23% of the cohort had graduated at the end of at least 5 years of follow up, whereas Washington State's class of 2015 four-year graduation rate was 78.1%.⁹² Results were worse for youth with more serious sanctions—13% of youth on probation and 16% of youth committed to Juvenile Rehabilitation had graduated according to the Washington State Center for Court Research.⁹³ Additional information from this important analysis is set forth in Appendix B.

C. Enduring Negative Impacts of Prosecuting Youth

Juvenile court involvement can have a lasting negative impact on a youth's prospects for housing and employment, especially for youth of color who are overrepresented at all stages of the proceedings. These negative impacts have a cumulative and enduring effect and can increase the risk factors that contribute to their continued involvement in the juvenile and adult criminal legal systems.

Because of the public availability⁹⁴ of Washington State's juvenile records, youth often do not have a meaningful opportunity to put delinquency behind them.⁹⁵ The record sealing process is difficult to navigate.⁹⁶ In some but not all instances, sealing is accomplished administratively, and does not occur until after a young person reaches 18.⁹⁷ A youth may not know whether their record

92. *Id.* at 1-2.

93. *Id.*

94. RCW 13.50.050(2) ("The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to RCW 13.50.260.").

95. Washington's juvenile legal system is much more open than the vast majority of U.S. state systems. Not only are proceedings public, but Washington is with a handful of states that allows for the release of juvenile records without restriction. Linda Szymanski, Nat'l Ctr. for Juv. Just., *Public Juvenile Court Records*, 5 NCJJ SNAPSHOT 10, (2000), http://www.ncjj.org/PDF/Snapshots/2000/vol5_no10_publicrecords.pdf.

96. Between 1997 and 2010, the juvenile code mirrored the adult provisions for sealing of records: Class A felonies could never be sealed, Class B felonies required ten years with no new convictions, Class C felonies required five years, and misdemeanors required two or three years (depending on the crime) with no new convictions. In 2010, the legislature amended RCW 13.40.050(12) to expand the sealing provisions to include Class A felonies. In 2011 the legislature amended the section to allow all sex offenses (except Rape 1, Rape 2 and indecent liberties with actual forcible compulsion) to also be sealed after being relieved of sex offender registration. Laws of 2011, ch. 388, § 4, <https://lawfilesexternal.wa.gov/biennium/2011-12/Pdf/Bills/Session%20Laws/Senate/5204-S.SL.pdf#page=1>. In 2014 the Youth Opportunities Act was enacted, which provides for the administrative sealing of many juvenile records after July 2014, except most serious offenses, sex offenses, and drug offenses, as well as in cases where juveniles do not otherwise meet the requirements for administrative sealing. Laws of 2014, ch. 175, § 1, 3, 4, 5, <https://lawfilesexternal.wa.gov/biennium/2013-14/Pdf/Bills/Session%20Laws/House/1651-S2.SL.pdf#page=1>. This 2014 Act also shifted the framework for sealing in that it requires that courts *shall* seal records where requirements are met, *id.*; RCW 13.50.260(4), and may in other cases, RCW 13.50.260(3).

97. RCW 13.50.260(1).

was administratively sealed. Due to the YEAR Act,⁹⁸ more youth became eligible to seal their records, as the act eliminated most non-restitution legal financial obligations from the statute and allowed for administrative sealing to occur even if fines remained, including restitution owed to insurance companies. However, if youth are unable to pay restitution to an individual or any other entity besides an insurance company, the record cannot be administratively sealed. If records are not administratively sealed, a youth must file a motion, provide notice to law enforcement, and, in some cases, attend a hearing. Further, the recent establishment of the administrative sealing process in 2014 means that some youth records were sealed, while others were not. Finally, jurisdictional differences exist in counties' process for record sealing, including whether help is available, and whether youth have to notify law enforcement of sealing.

Even though juvenile records can be sealed⁹⁹ and electronic records can sometimes be amended, electronic records that are released prior to the sealing date may continue to exist after sealing, including potentially on the Internet and at credit reporting agencies. Youth have little or no control¹⁰⁰ over previously public data that is released over and over by private companies for profit.¹⁰¹

Additionally, the legislature currently requires access to unsealed juvenile offender records and has not acted to restrict access even via the Internet. This has resulted in a lack of uniformity regarding access throughout the State. In October 2021, King County Superior Court and the Superior Court Clerk's Office, also known as the King County Department of Judicial Administration, agreed to work to alter electronic access to juvenile offender records through its relatively new portal (KC-SCRIPT). Unlike the previous portal (ECR), KC-SCRIPT was permitting online access by the general public to case summary information and indexes of juvenile offender records. In agreeing to work on its portal system to restrict this online access to only victims and their families and members of the media, the King County Superior Court acknowledged the harm that online access causes to youth, stating:

[O]ur current practices create known harms and unknown harms against juveniles that we are, in part, obligated by law to seek to rehabilitate. Further, the known

98. The legislature amended the record sealing laws in 2015, passing the Youth Equality and Reintegration Act (YEAR Act), Laws of 2015, ch. 265, §§ 1, 3, 6, 7, <https://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/Senate/5564-S2.SL.pdf#page=1>.

99. *State v. Ogle*, No. 50492-8-II, 2018 WL 1729778 (Div. II, Apr. 10, 2018) (a superior court is required to grant a motion to seal a juvenile offender's court records when the statutory conditions are met but that the statute does not prohibit the court from discretionarily granting a motion to seal juvenile court records under GR 15(c)).

100. See, e.g., *John Doe A v. Wash. State Patrol*, 185 Wn.2d 363, 374 P.3d 63, 66 (2016) (upholding the blanket release of Level I sex offender registry information, even as to juveniles.)

101. See generally Riya Shah & Jean Strout, Juv. L. Ctr., *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* 15-16 (2015), <https://juvenilerecords.jlc.org/jjuvenilerecords/documents/publications/future-interrupted.pdf>.

harms are not always remediable: once data has been swept up and mined, it may live in databases for significant periods of time. Similarly, it is well known that reputational harm is difficult to rehabilitate.¹⁰²

This harm also has been acknowledged by the legislature in enacting sealing laws and by the Washington Supreme Court when it affirmed the validity of those sealing laws, noting that

[a] publicly available juvenile court record has very real and objectively observable negative consequences, including denial of housing, employment, and education opportunities.

In public housing, a single juvenile offense might result in the entire family's eviction. In the employment context, an open juvenile court record forecloses many possibilities, particularly where the employer subscribes to the view that individuals who have previously violated the criminal laws, as a class, adopt an opportunistic attitude, choosing to act upon their criminal predisposition when the opportunity arises. Finally, an open juvenile record makes it more difficult to obtain even a high school diploma, much less postsecondary education. Juvenile courts are intended to prevent adult recidivism, but lack of housing, employment, and education all increase the likelihood of recidivism.

The stigma of an open juvenile record and the negative consequences that follow are particularly unjustifiable in light of the fact that the mind of a juvenile or adolescent is measurably and materially different from the mind of an adult, and juvenile offenders are usually capable of rehabilitation if given the opportunity.¹⁰³

For job candidates with juvenile justice history, employment opportunities in an increasingly competitive job market are limited by assumptions made by employers about the aptitude of job candidates and outright discrimination. There is significant research showing that regardless of legal restrictions against employment discrimination, “the majority of employers indicate that they would ‘probably’ or ‘definitely’ not be willing to hire an applicant with a criminal record.”¹⁰⁴ In addition, a New York Times article states that

102. King County Superior Court Letter re KCScript Juvenile Records, October 14, 2021.

103. *State v. S.J.C.*, 183 Wn.2d 408, 433, 352 P.3d 749 (2015) (internal quotations and citations omitted).

104. Amy L. Solomon, *In Search of a Job: Criminal Records as Barriers to Employment*, 270 NAT'L INST. JUST. J. 42, 46 (June 2012), <http://www.nij.gov/journals/270/pages/criminal-records.aspx> (citing Harry Holzer et al., *Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers*, 49 J. L. & ECON. 451, 453–454 (2006), <https://www.journals.uchicago.edu/doi/pdf/10.1086/501089>); see also Harry J. Holzer et al., *How Willing Are Employers to Hire Ex-Offenders?*, 23 FOCUS 40, 41 (2002), <http://www.irp.wisc.edu/publications/focus/pdfs/foc232h.pdf> (noting 40% of employers surveyed reported that they

the easy availability of online databases lets employers investigate everyone — indeed, it makes hard to justify not looking. Surveys show roughly nine in 10 United States employers check databases of criminal records when hiring for at least some positions. Some focus solely on felony convictions; others also consider misdemeanors or arrests.¹⁰⁵

Moreover, studies have demonstrated that employers for low wage jobs have discriminatory practices. In a 2009 study of New York low-wage employment opportunity found the following:

Sending trained testers with equivalent résumés to apply for entry-level jobs reveals clear evidence of discrimination among low-wage employers in New York City. Blacks were only half as likely to receive a callback or job offer relative to equally qualified whites; moreover, [B]lack and Latino applicants with clean backgrounds fared no better than a white applicant just released from prison. The magnitude of these racial disparities provides vivid evidence of the continuing significance of race in contemporary low-wage labor markets. There is a racial hierarchy among young men favoring whites, then Latinos, and finally [B]lacks as the candidates of last resort.¹⁰⁶

Involvement in the juvenile legal system can prevent youth from accessing certain professional licenses¹⁰⁷ as well as driver licenses.¹⁰⁸ This can lead to denials of employment in certain fields, as well as transportation barriers that impact all areas of a youth’s life, particularly where public transportation is not robust or is unsafe for a youth.

Barriers to stable housing are similar—the near instant availability and low cost of juvenile history through credit reporting agencies and law enforcement background checks keep young people with

would “definitely” or “probably” not hire an applicant with a criminal record for a job not requiring a college degree); Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 937, 937-35 (2003), https://scholar.harvard.edu/files/pager/files/pager_ajs.pdf (conducting two studies in 2001 (in Milwaukee) and 2004 (in New York City) by sending pairs of men with similar resumes except that one member of each pair was told to report a felony conviction; in both cases the men who claimed to have had a felony conviction were about “50 percent less likely to receive a callback or a job offer”).

105. Binyamin Appelbaum, *Out of Trouble, But Criminal Records Keep Men Out of Work*, N.Y. TIMES (Feb. 28, 2015), <http://www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html>.

106. Devah Pager et al., *Discrimination in a Low-Wage Labor Market: A Field Experiment*, 74 AM. SOC. REV. 777, 792–93 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2915472/>; see also Shah & Strout, *supra* note 101, at 11-12 (noting discriminatory employment practices harm applicants of color more than white applicants).

107. See, e.g., RCW 9.96A.020.

108. See, e.g., RCW 13.40.265.

records from renting and the difficulty of finding employment make most housing options unaffordable.¹⁰⁹ Public housing options are also limited for youth with certain offenses and, as recognized above, a juvenile record can result in an entire family's eviction from public housing.¹¹⁰ For youth experiencing homelessness, some juvenile court records can prevent them from accessing youth shelter resources.¹¹¹

National efforts have focused attention on the negative collateral and direct consequences of juvenile court involvement. The American Bar Association passed a resolution in 2010 recognizing that extra effort must be made to reduce the stigma and discrimination faced by youth involved in the juvenile legal system. Then-chair of the ABA's Juvenile Justice Committee, Lawrence Wojcik, commented on the resolution stating,

Court-involved children face numerous obstacles imposed by law that adversely impact their attempts to successfully return to their communities. In adopting this policy, the ABA is urging the business, education and government sectors to refrain from placing additional barriers that are not mandated by law in the path of these children. The policy embraces the idea that the best way to help such children is to encourage their return to the community by offering them every opportunity to succeed.¹¹²

The Juvenile Justice Subcommittee agrees that the best way to help children involved with the juvenile legal system is to encourage their return to the community and providing resources to enable their success. The next part explores the broader ecosystem youth face in order to understand better the challenges so that solutions can be developed.

109. See, e.g., Andrea Coleman, Office of Juvenile Justice & Delinquency Prevention, *Expunging Juvenile Records: Misconceptions, Collateral Consequences, and Emerging Practices* 8-9, <https://ojjdp.ojp.gov/publications/expunging-juvenile-records.pdf>; D. Tate Vermeire & N. Merluzzi, ACLU of N. Cal. & W. Haywood Burns Inst., *Balancing the Scales of Justice: An Exploration into How Lack of Education, Employment, and Housing Opportunities Contribute to Disparities in the Criminal Justice System* v, 3 (undated, analyzing 2001-2007 employment data), https://www.aclunc.org/sites/default/files/balancing_the_scales_of_justice.pdf.

110. See, e.g., 24 CFR § 982.553; Shah & Strout, *supra* note 101, at 9 (discussing public housing authorities' ability to evict residents based on relatives' juvenile offenses).

111. See Dep't of Commerce, *Office of Homeless Youth Prevention & Protection Programs, 2016 Report 23* (2016) (recommending low-barrier shelter practices that make services more accessible to the hardest to reach youth, including those with criminal backgrounds).

112. ABA *Adopts Policy to Limit Collateral Consequences for Juvenile Offenders*, A.B.A., http://apps.americanbar.org/abanet/media/release/news_release.cfm?releaseid=909; see generally Shah & Strout, *supra* note 101; Coleman, *supra* note 109.

V

**THE ECOSYSTEM YOUTH NAVIGATE AND THE
UBIQUITY OF DISPARITIES FOR YOUTH OF COLOR**

There are several theories seeking to explain the overrepresentation of youth of color in the juvenile legal system.¹¹³ These theories consider a variety of factors, including differential involvement in offending behavior, social and economic disparities, differential selection and processing by the court system, differential opportunities for prevention and treatment, and the accumulation of disparity and enduring negative impacts once involved in the juvenile legal system. As the multiple theories suggest, and as this subcommittee noted in the 2012 Report, the sources and perpetuation of disparity are complex and intertwined.

While in theory our public institutions that serve youth and children promise to address many underlying social inequities, many of them, such as the education system and family regulation system, feed youth of color into the juvenile legal system. The discussion that follows highlights the many systems and social issues that contribute to the observed racial and ethnic disproportionalities in the juvenile legal system. In addition to discussions of the education and family regulation system, this section of the report also addresses the issues of homelessness and mental health struggles, which disparately impact youth of color.

The subcommittee also notes that much of the focus of these systems is on disrupting the school to prison pipeline, as well as the foster care to prison pipeline. While disrupting these pipelines is a necessary task, a more fundamental level of scrutiny is required. This portion of the report, along with the subcommittee's recommendations, are an attempt to engage with the following questions:

- How is our education system failing young people of color to begin with, even before contact with the juvenile legal system? And what do we do so that our education system specifically serves those who have been historically and currently fed into the juvenile legal system?
- How does the family regulation system harm children of color? How can we shift our focus and our resources to providing for the material and health needs of children and families of color, to keep them out of the family regulation system altogether?

113. See, e.g., Alex R. Piquero, *Disproportionate Minority Contact*, 18 FUTURE OF CHILDREN 59 (2008); see also *Disproportionate Minority Contact Technical Assistance Manual*, *supra* note 80.

- How are the problems of homelessness and mental health struggles, which disparately impact youth of color, criminalized instead of resolved by providing for young people's basic material and psychological needs?

In answering these questions, we have the opportunity to build systems that lift up youth of color (and their families), rather than simply ceasing to channel them into the juvenile legal system.

A. Education

Schools are failing to provide adequate educational opportunities for students of color, beginning with early education and continuing through the K-12 system. Students of color are also disparately impacted by school discipline policies. When students are excluded from school, any educational challenges or setbacks are exacerbated and decrease the chances of high school completion. Students who are excluded from school are more susceptible to involvement with the juvenile legal system. And court involvement is one of the strongest indicators that a student will not complete high school. Instead of offering an educational environment that centers BIPOC students, their culture, their educational needs, and their success, school districts focus on a deficit model of intervention towards BIPOC students that increases their risk of contact with the juvenile legal system.

While a thorough exploration of early education is beyond the scope of this report, it is clear that children of color and their families are hardest hit by inadequate funding of a robust early education program. They are also hardest hit by suspension and expulsion from preschool.¹¹⁴ In addition to the problem of inadequate funding, their access to early learning programs are affected by multiple factors, including but not limited to access and affordability, system navigation, the need for comprehensive free or affordable health care, mental health services for both children and parents, and need for basic material support for housing, food, and transportation.¹¹⁵ For families of color, racial equity issues experienced at both the institutional level and program level pose significant additional barriers.¹¹⁶ Further complicating the racism families experience within the early education system are historical traumas, geographic¹¹⁷ isolation, mass incarceration within communities of color, and exclusion from economic systems.¹¹⁸ More fundamentally, as the 2020

114. Adrienne Garro et al., *A Consultation Approach to Target Exclusionary Discipline of Students of Color in Early Childhood Education*, 25 CONTEMP. SCH. PSYCHOL. 124 (2021) (using 2016 data, researchers demonstrated that while Black students comprised approximately 19% of the preschool population, yet they represented 47% of school suspensions).

115. Wash. State Dep't of Children, Youth & Families, *2020 - Washington's Statewide Early Learning Needs Assessment* 35, Appendix B, at 3-20 (2020) [hereinafter *Early Learning Needs Assessment*].

116. *Id.* at Appendix B, 3, 8-9.

117. *Id.* at 62.

118. *Id.* at Appendix B, 8-9.

DCYF Needs Assessment calls out, that data show “the persistence of disparities in achievement over time, demonstrate that the pipeline as a whole is not effective at ameliorating low achievement, but rather is passing along low achievement to each subsequent level.”¹¹⁹

Recent studies also suggest that the K-12 system is failing to support BIPOC students, and that poor academic performance is strongly linked with later court involvement.¹²⁰ And there is ripe data, presented in Appendix B, reaffirming what we have long known—that children and youth of color are disproportionately disciplined and pushed out of the very system where they deserve to experience empathy and success, and into the juvenile legal system. Once youth are system-involved, graduation rates plummet, and those rates continue to decrease as the severity of the sanctions increase.¹²¹ Finally, the presence of police at schools increases the likelihood of student’s involvement in the juvenile legal system, and data indicates that normal student behavior that could be dealt with in school is being criminalized. Data also suggests that police presence in schools is far more common in schools with greater enrollment of students of color.¹²²

Further, notwithstanding recent positive changes to truancy laws that prevent the juvenile court from detaining young people for failure to attend school and employ Community Engagement Boards to identify the root causes of school absence and provide supports,¹²³ the truancy rates themselves have persisted,¹²⁴ along with race disproportionality in which students are reported as

119. *Id.* at 62. Appendix B sets forth detail regarding DCYF’s laudable efforts to improve provision of early education around the principles of its draft Statewide Early Learning Coordination Plan, which is centered on eliminating long-standing inequities in early learning outcomes for Black, Brown, Indigenous, and other marginalized groups including their families. *See generally id.* at Appendix B; Wash. State Dep’t of Children, Youth & Families, *At-A-Glance: Draft Goals & Strategies for Washington’s Statewide Early Learning Coordination Plan* (2020), https://dcyf.wa.gov/sites/default/files/pdf/PDG_At_A%20Glance_Goals_Strategies_English.pdf.

120. McCurley et al., *supra* note 91, at 1-2.

121. *Id.* at 1-2.

122. *See generally* Vanessa Hernandez, American Civil Liberties Union-Wash., *Students Not Suspects: The Need to Reform School Policing in Washington State* (2017), <https://www.aclu-wa.org/docs/students-not-suspects-need-reform-school-policing-washington-state>.

123. As of July 2021, youth found to be truant can no longer be detained. Laws of 2019, ch. 312, §§ 1-2, <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5290-S2.SL.pdf#page=1>.

124. Truancy rates have fluctuated between 11.1% and 12.6% between the 2016-17, 2017-18, and 2018-19 school years. Krissy Johnson, Office of the Superintendent of Pub. Instruction, *2019 Update: Truancy Report* 7, Table 2 (2019), <https://www.k12.wa.us/sites/default/files/public/communications/2020documents/2019-12-Truancy.pdf>. Annual filings in 2019 were 10,859. Washington Courts, *Superior Court 2019 Annual Report Annual Caseload Report* 214 (2020), <https://www.courts.wa.gov/caseload/content/archive/superior/Annual/2019.pdf>. Washington Courts’ caseload reports and forecast details show a drop in truancy filings in 2020 and 2021, with 4,186 truancy petitions filed in 2020, and with 1,272 from January 2021 – September 2021. Washington Courts, *Superior Court Juvenile Dependency Cases Filed by Type of Case - 2020 Annual Report* (2021), <https://www.courts.wa.gov/caseload/?fa=caseload.showReport&level=s&freq=a&tab=juvDep&fileID=jdpfilyr>; Washington Courts, *Superior Court Juvenile Dependency Cases Filed by Type of Case – January 2021 through September 2021* (2021), <https://www.courts.wa.gov/caseload/?fa=caseload.showReport&level=s&freq=y&tab=juvDep&fileID=jdpfilyr>. While this is likely attributable to the remote learning required by the COVID-19 pandemic, it will be important to

truant.¹²⁵ However, the recent reforms detailed in Appendix B regarding truancy suggest that OSPI and policymakers are beginning to understand that a shift away from a punitive response to truancy is necessary.¹²⁶

But true disruption of the school to prison pipeline requires more than just addressing racially disproportionate and excessive discipline and reducing truancy rates. Disrupting the school to prison pipeline means creating a public education system that understands that student disengagement is a multi-factorial problem of which excessive discipline and truancy are single pieces.

The Road Map Project, a collaborative project undertaken by Seattle Education Access, UW School of Social Work, and Community Center for Education Results, recently published its findings that centered student voice and perspective, attempting to “drive change by amplifying the experiences of students who have been failed by the systems created to serve them.”¹²⁷ Using Seattle Education Access intake data, the report analyzed 339 short-answer responses to the question “Why did you leave the traditional academic pathway?” Coupled with additional in-depth student interview, the report highlighted the following common themes for how the public education system is failing students, falling into three categories:¹²⁸

monitor truancy rates as the new approach to truancy is implemented, and as schools return to normal in-person operation.

125. Johnson, *supra* note 124, at 11 - Chart 1, and 11-12 (higher rates of truancy among American Indian/Alaskan Native students, NHPI students, Black students, and Latinx students); *see also id.* at 13 – Chart 3 (comparing percent of truant youth to their proportional of total student population by federally reported race/ethnicity).

126. The other two status offenses—At Risk Youth (ARY) and Child in Need of Services (CHINS), are beyond the scope of this report. Readers are referred to the 2021 Gender and Justice Study for a treatment of both the race and gender disparities of all three status offenses. *2021 Gender & Justice Study*, *supra* note 18, at 435-40. The subcommittee notes that both ARY and CHINS petitions happen when a young person is already at a high level of crisis. The subcommittee’s recommendations that we turn our collective attention to providing the material conditions needed to thrive to young people and their families would, in theory, reduce the need for these crisis-level interventions.

The subcommittee chose to focus specifically on truancy petitions for two reasons. First, truancy petitions comprise the vast majority of petitions filed, and are therefore an important indication of systemic issues with our public education system. *2020 DCYF Report to Legislature*, *supra* note 19, at 12-13, Exhibit 7. Second, while a student found to be a truant can no longer be detained, *see* RCW 28A.225.090, truancy comprised the vast majority of status offenses that, up until the July 2021 change in law, resulted in contempt findings, further embedding young people in the juvenile legal system. *2020 DCYF Report to Legislature*, *supra* note 19, at 12, Exhibit 8. While the recent changes to the truancy laws signal a positive shift toward addressing the root causes of school absence and providing support, it is necessary to remain vigilant to ensure not only that truancy rates drop, but that we see a significant decrease in truancy petitions that result in contempt findings—which would signal that the policy changes are actually working.

127. Henry Joel Crumé et al., Road Map Project, *Creating Paths for Change: Understanding Student Disengagement and Reengagement* 4 (2020), <https://roadmapproject.org/wp-content/uploads/2020/02/Creating-Paths-for-Change-Understanding-Student-Disengagement-and-Reengagement.pdf>.

128. *Id.* at 6.

Racial Bias & Negative School Climate	Insufficient Academic Supports	Unmet Basic Needs
<ul style="list-style-type: none"> • Low adult expectations • Lack of racial representation among teachers • Exclusionary discipline • Bullying and peer conflict 	<ul style="list-style-type: none"> • Lack of transparency regarding academic standing • Lack of support for students' individual learning needs • Lack of support when a student changes schools 	<ul style="list-style-type: none"> • Lack of mental health services • Housing instability and family trauma • Navigating parenthood • Lack of support for medical issues

These systemic failures correspond directly with the subcommittee's recommendations regarding the education system, which include broad systemic change to ensure that the school environment, the teachers, and the curriculum are relevant to the needs and experience of youth of color.

Youth Articulated Broad Policy Goals - Education

- Eliminate the conditions that lead to policing, prosecution, and incarceration.
- Ensure that educators are culturally competent and increase the number of BIPOC staff in schools.
- Dedicate more robust resources to mental health counseling, including BIPOC mental health counselors.
- Implement curriculum that is relevant for youth of color, including ethnic studies, social justice and community organizing, financial literacy, and emotional literacy.
- Break down biases and hold teachers and other students accountable for racist actions in schools.
- Dismantle harmful and racist policies and practices in the education system that punish and push BIPOC youth out of schools and into the prison pipeline. Eliminate police in schools, court involvement for truancy, and zero tolerance and other racist disciplinary policies.
- Increase restorative justice and student led disciplinary boards, to replace exclusionary school discipline and policing as responses to conflict.
- Increase access to after school programs, job-training programs, and other ways for youth to earn money, gain skills, and build community.

These youth-articulated policy proposals are set forth in formal policy language in Part VI.

B. Family Regulation System

The subcommittee calls on the public, policy makers, and jurists to acknowledge the violence inherent in the family regulation system, the brunt of which falls on Black and Indigenous families. The purpose of the family regulation system is to separate families, first temporarily, in a dependency case, and then permanently, through the termination of parental rights. To properly understand this system, it is necessary to begin with a clear-eyed appreciation of the pain this system causes when operating as it is intended.¹²⁹ Other portions of this report center the experience of youth. But it is vital to recognize that children are beloved parts of larger families and communities. When children are removed from their families and communities, when those children experience harm, the impact extends beyond the child who is involved. When addressing the family regulation system in particular, this report and the related Appendix C focus on the harms to the family unit in addition to the specific harms to children to ensure that advocacy strategies support the entire family.

Family separation generates tremendous suffering, ripples through generations, and impacts communities well beyond the immediate family.¹³⁰ As the Washington Supreme Court has acknowledged,

In Native American communities across the country, many families tell stories of family members they have lost to the systems of child welfare, adoption, boarding schools, and other institutions that separated Native children from their families and tribes. This history is a living part of tribal communities, with scars that stretch from the earliest days of this country to its most recent ones.¹³¹

Citing a recent study, the Court noted that “[American Indian] adoptees compared to White adoptees were more likely to report alcohol addiction, alcohol recovery, drug addiction, drug recovery, self-assessed eating disorder, eating disorder diagnosis, self-injury, suicidal ideation, and

129. As Robert Cover has written, “Legal interpretive acts signal and occasion the imposition of violence upon others....Neither legal interpretation nor the violence it occasions may be properly understood apart from one another.” Robert M. Cover, *Violence and the Word*, 95 YALE L. J. 1601, 1601 (1986).

130. Dorothy Roberts, *The Community Impact of Racial Disproportionality: The Racial Geography of Child Welfare*, in RACIAL DISPROPORTIONALITY AND DISPARITIES IN THE CHILD WELFARE SYSTEM 235, 235-254 (Alan J. Dettlaff ed., 2021).

131. *Matter of Dependency of Z.J.G.*, 196 Wn.2d 152, 156–57, 471 P.3d 853 (2020); see also Vanessa M. Holden, *Slavery and America's Legacy of Family Separation*, BLACK PERSPECTIVES (Af. Am. Intell. Hist. Soc'y, July 25, 2018), <https://www.aaihs.org/slavery-and-americas-legacy-of-family-separation/>; Leah A. Hill, *Loving Lessons: White Supremacy, Loving v. Virginia, and Disproportionality in the Child Welfare System*, 86 FORDHAM L. REV. 2727, 2735–36 (2018) (“The presence of these seemingly innocuous measures in evaluating parents' capabilities belies the history of ideological racism inherent within the child welfare system, which is rooted in legal theories that, historically and intentionally, reinforced the institution of slavery and the inadequacy of black mothers.”); Christina White, *Federally Mandated Destruction of the Black Family: The Adoption and Safe Families*, 1 NW. J. L. & SOC. POL'Y 303, 304-305 (2006).

suicide attempt.”¹³²

Family separation cannot be discussed without acknowledging the pain of losing a child. The experience of losing a child through this system has been described as “institutionally orchestrated trauma.”¹³³ Research shows that “[s]elf-medicating with drugs and alcohol represented a crucial survival strategy practiced by women in attending to the trauma of separation.”¹³⁴ Those who have lost a child look for ways to numb the “vivid memories of events of separation,” which in turn leads “to the increased production of structural vulnerability (e.g., housing instability, intimate partner violence, incarceration, initiation of injection drug use and entry or re-entry into sex work).”¹³⁵ Research shows that mothers who have a child removed by Child Protective Services (CPS) have much higher rates of suicide attempts and completions than other women who receive mental health services, even when adjusting for many risk factors; and, losing a child results in the worsening of preexisting mental health conditions.¹³⁶

For children, the act of separating a child from their family is inherently traumatic¹³⁷ and has been connected to feelings of guilt, post-traumatic stress disorder (PTSD), isolation, substance abuse, anxiety, low self-esteem, and despair.¹³⁸ A study of foster care alumni in Washington and Oregon found that one in four experienced PTSD, a rate twice as high as that of U.S. war veterans.¹³⁹ Ultimately, the pain caused by this system is impossible to fully grasp.

Black and Indigenous communities in Washington experience family separation at a significantly higher rate than white families.¹⁴⁰ In 2020, the Seattle Times reported that Black, Indigenous, and

132. Z.J.G., 196 Wn.2d at 168 (quoting Ashley L. Landers et al., *American Indian and White Adoptees: Are There Mental Health Differences?*, 24 AM. INDIAN & ALASKA NATIVE MENTAL HEALTH RES. 54, 69 (2017), https://www.researchgate.net/publication/319257578_American_Indian_and_White_Adoptees_Are_Their_Mental_Health_Differences)).

133. Kathleen Kenny et al., “*I felt for a long time like everything beautiful in me had been taken out*”: Women’s Suffering, Remembering, and Survival Following the Loss of Child Custody, 26 INT’L J. DRUG POL’Y 1158 (2015), <https://www.sciencedirect.com/science/article/abs/pii/S0955395915001772?via%3Dihub> (“Women’s accounts of their lived experiences point to child custody loss as an overlooked source of institutionally orchestrated trauma.”).

134. *Id.* at 1164.

135. *Id.*

136. Elizabeth Wall-Wieler et al., *Suicide Attempts and Completions Among Mothers Whose Children Were Taken Into Care By Child Protection Services: A Cohort Study Using Linkable Administrative Data*, 63 CAN. J. PSYCHIATRY 170, 170-177 (2018), <https://journals.sagepub.com/doi/pdf/10.1177/0706743717741058>.

137. *Early Learning Needs Assessment*, *supra* note 115, at 51 (discussing that removal from parents triggering a permanent setting of the child’s stress responses system on high alert).

138. Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 528 (2019).

139. Casey Family Programs, *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study 1* (March 2005), https://caseyfamilypro-wpengine.netdna-ssl.com/media/AlumniStudies_NW_Report_FR.pdf.

140. According to the 2019 DCYF Child Welfare Racial Disparity Indices Report, the rates of intakes for Black and American Indian/Alaska Native (AI/AN) children/youth have been distinctly elevated relative to whites across

multiracial people make up 11% of Washington's population, yet 32% of the roughly 3,200 dependency cases filed in 2020.¹⁴¹ And Black and Indigenous children are overrepresented in foster care — 2.2 and 2.9 times more likely to be in foster care than white children, respectively, as of 2017 data.¹⁴² Children of color experience out of home placements at a disproportionately high rate: more than 51% of out-of-home placements are children of color, whereas the group accounts for only 44% of all children birth through 8 years.¹⁴³ DCYF's disaggregated race/ethnicity data for family regulation system involvement is presented in the table below:

Table 1. Number of children ages birth through 8 years with some form of involvement in the child welfare system, by race/ethnicity, 2019¹⁴⁴

	Washington State No.	No. of children in racial/ethnic group; Comparative Disproportionality (RRI)					
		Referred		Screened in		Placed out of home	
		No.	RRI	No.	RRI	No.	RRI
Indigenous	10,352	1,931	3.7	1,254	3.9	203	4.0
Asian/Pacific Islander	59,297	1,590	0.5	927	0.5	98	0.4
Black	29,939	3,515	2.3	2,246	2.4	426	2.8
Latinx	178,032	5,690	0.6	3,698	0.6	693	0.8
Multiracial	77,49	5,143	1.3	3,469	1.5	1,125	3.0
White	457,270	22,972	n/a	14,196	n/a	2,475	n/a
Total no. of children	814,014	47,341		29,316		5,070	

the reporting period (2012-2018). Black and Native American children were more likely than white children to be referred to CPS (Black children were 1.57 times more likely; Native American children 1.8 times more likely) and were more likely than white children to be screened-in for services after referral (Black children 1.62 times more likely; Native American children 1.89 times more likely). J. Christopher Graham, Wash. State Dept. of Children, Youth & Families, *2019 Washington State Child Welfare Racial Disparity Indices Report 2-4* (2020), <https://www.dcyf.wa.gov/sites/default/files/pdf/reports/CWRacialDisparityIndices2019.pdf>. DCYF further indicated that Black children were almost twice as likely, and Native American children more than twice as likely, to be placed in foster care as white children within a year of intake, which may demonstrate ongoing disparity. *Id.* Nationwide data from 2000-2016 reveals that American Indian and Alaska Native children are 2.7 times more likely than white children to ever experience the termination of both parents' rights, and Black children are 2.4 times more likely than white children to experience the termination of parental rights. Christopher Wildeman et al., *The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000–2016*, 25 CHILD MALTREATMENT 32-42 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6868298/>.

141. Nina Shapiro, *Is Washington State Taking Too Many Children From Their Parents? Movement Seeks to Overhaul Foster Care*, SEATTLE TIMES, Mar. 30, 2021, <https://www.seattletimes.com/seattle-news/politics/is-washington-state-taking-too-many-children-from-their-parents-movement-seeks-to-overhaul-foster-care/>.

142. *Early Learning Needs Assessment*, *supra* note 115, at 55.

143. *Id.* at 52, Table 4-15.

144. *Id.* Comparative disproportionality (RRI) calculated and added. The “placed out of home” numbers are as of 6/7/2019.

It is important to note that Native Hawaiians and Pacific Islanders are lumped together with children of Asian ancestry. Failure to disaggregate may mask disproportionalities experienced by Native Hawaiian and Pacific Islanders. For example, Table 2, *infra*, indicates that Native Hawaiian and Pacific Islander school-age youth are 3.3 times more likely to be homeless than are white school-age youth.

Indeed, Washington State has been publishing data on racial disproportionality for well over a decade, but that awareness has yielded little meaningful change.¹⁴⁵ And the pipeline from family separation involvement to juvenile court is well established in the literature.¹⁴⁶ An initial WSCCR multi-system prevalence report found that 43.9% of all youth referred to juvenile court in 2010 had a record of previous involvement with the family separation system.¹⁴⁷

It is no longer enough to acknowledge disproportionality or to simply document the ongoing violence against Black and Indigenous families. To begin to address the harms of this system, it is necessary to interrogate the justifications for family separation, asking: how do we convince ourselves that an act of violence, separating a family, is warranted? Do those justifications hold up to close examination? Such an inquiry is particularly important in the context of this system where the presumed good intentions of the various actors can shield them from scrutiny.¹⁴⁸

Only by looking at the narratives that justify family separation can we begin to understand how racial bias continues to be such a central feature of this system. Only when we have exposed these persistent narratives, and cast aside the baseless claims, can we begin to imagine a different way of caring for one another and supporting all children.¹⁴⁹

Appendix C sets forth empirical analysis detailing (1) how family separation harms children, (2) how structural factors like poverty rather than individual failings create risk for children, (3) how

145. See generally Marna Miller, Wash. State Inst. for Pub. Policy, *Racial Disproportionality in Washington State's Child Welfare System* (2008), https://www.wsipp.wa.gov/ReportFile/1018/Wsipp_Racial-Disproportionality-in-Washington-States-Child-Welfare-System_Full-Report.pdf; Alan J. Dettlaff et al., *It Is Not a Broken System, It Is A System That Needs To Be Broken: the upEND Movement to Abolish the Child Welfare System*, 14 J. PUB. CHILD WELFARE 500, 502 (2020), <https://doi.org/10.1080/15548732.2020.1814542>) ("It is important to note that racial disproportionality and disparities have not only been observed consistently over time, they exist both at the national level and across states and jurisdictions.").

146. See generally Catherine Pickard, Wash. State Ctr. for Court Research, *Multi-System Youth in Washington State: Prevalence by Jurisdiction* (2015), https://www.courts.wa.gov/subsite/wscrr/docs/MSY_Paper2_Final.pdf; Dettlaff et al., *supra* note 145, at 503.

147. Pickard, *supra* note 146, at 1, Figure 1. System involvement could include both referrals on offender matters, as well as status offenses. *Id.* at 1.

148. See, e.g., *Duchesne v. Sugarman*, 566 F.2d 817, 828 (2d Cir. 1977) (noting that lack of judicial review of removal of children from mother was a violation of due process, because "[o]f all tyrannies a tyranny sincerely exercised for the good of its victims may be the most oppressive . . . [T]hose who torment us for our own good will torment us without end for they do so with the approval of their own conscience." (quoting Joseph Goldstein, *Medical Care for the Child at Risk: On State Supervention of Parental Autonomy*, 86 YALE L.J. 645, 645 (1977) (quoting Lewis, *The Humanitarian Theory of Punishment*, 6 RES JUDICATAE 224, 228 (1952))).

149. As the system has changed and evolved over time, past justifications for family separation cannot be confused with the present-day narratives that perpetuate the family regulation system. The historical roots of our present-day system must be acknowledged, but the everyday justifications for perpetuating the system must also be examined.

discretionary decisions in the family regulation system invite the operation of racial bias, and (4) how adoption is not necessarily as permanent as the dominant narrative assumes.

C. Youth Homelessness

Youth homelessness and juvenile court involvement are not separate issues, but rather are overlapping challenges that have a two-way relationship. Youth experiencing homelessness report a high level of involvement with the juvenile legal system and youth involved with the juvenile legal system are more likely to report unstable housing.¹⁵⁰ A national study on youth homelessness showed that nearly half of young people experiencing homelessness had been to juvenile detention, jail, or prison.¹⁵¹ Black, Indigenous, and other youth of color are more likely to be trapped in a cycle of homelessness and detention because of the systemic racism and structural barriers inherent in our housing and law enforcement systems.

Washington state is in a housing crisis that also affects youth and young adults. From settler colonialism,¹⁵² segregation laws,¹⁵³ redlining,¹⁵⁴ and anti-Black violence,¹⁵⁵ systemic racism has

150. In a study comparing court-involved youth in Seattle-King County and non-court-involved youth who participated in the same work programs, researchers found that court-involved youth were more likely to have no permanent address and research on homeless adults consistently found high rates of prior incarceration, including when they were juveniles. See Paul A. Toro et al., *Homeless Youth in the United States: Recent Research Findings and Intervention Approach* 6-11 (Housing & Urban Development 2007 National Symposium on Homelessness Research 2007) (discussing D. Feldman & D. Patterson, Workforce Development Council of Seattle-King County Research & Development Committee, *Characteristics and program experiences of youthful offenders within Seattle-King County Workforce Investment Act (WIA) Programs* (2003)), <https://www.huduser.gov/portal/publications/homeless/p6.html>.

151. Chapin Hall at the Univ. of Chicago, *Missed Opportunities: Youth Homelessness in America* 10 (2017), <https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf>.

152. Displacement and segregation were baked into the design of the City of Seattle. While the federal government was forcibly seizing two thirds of reservation lands and redistributing the land to white Americans, the first Seattle Board of Trustees banned Indigenous Americans from entering the city. Danyelle Solomon et al., Ctr. for Am. Progress, *Systemic Inequality: Displacement, Exclusion, and Segregation* (Aug. 7, 2019), <https://www.americanprogress.org/issues/race/reports/2019/08/07/472617/systemic-inequality-displacement-exclusion-segregation/>; Jennifer Ott, *Seattle Board of Trustees passes ordinance, calling for the removal of Indians from the town, on February 7, 1865*, Hist. Link (Dec. 7, 2014), <https://www.historylink.org/File/10979>.

153. Most neighborhoods in Seattle and the suburbs adopted racially restrictive covenants designed to keep out non-white families by making it illegal to sell or rent property to Black, Asian, and other communities of color. Catherine Silva, Seattle Civil Rights & Labor History Project, *Racial Restrictive Covenants History: Enforcing Neighborhood Segregation in Seattle*, http://depts.washington.edu/civilr/covenants_report.htm.

154. The National Housing Act introduced the practice of “redlining”—“drawing lines on city maps delineating the ideal geographic areas for bank investment and the sale of mortgages,” which “made it exceedingly more difficult for non-Whites to purchase property because financing was refused in the only neighborhoods they were able to live.” *Id.*

155. Anti-Black and anti-integrationist violence such as cross-burnings and firebombs made moving into white neighborhoods either financially improbable without a mortgage – or life-threatening. See generally JEANNINE BELL, *HATE THY NEIGHBOR: MOVE-IN VIOLENCE AND THE PERSISTENCE OF RACIAL SEGREGATION IN AMERICAN HOUSING* (2013).

created a housing crisis that disproportionately affects Black, Indigenous, Latinx, and Native Hawaiian and Pacific Islander youth in Washington. Housing segregation also determines who is targeted by law enforcement because arrest is partly a function of location since areas that experience a greater police presence have more arrests.¹⁵⁶ Due to racial segregation built by the use of zoning laws, racial restrictive covenants, white violence, and redlining, predominantly Black neighborhoods are simultaneously over-policed when it comes to surveillance and social control, and under-served when it comes to emergency services.¹⁵⁷ In Washington, not only are the more segregated neighborhoods subject to higher police presence and arrests, but in King County, the greatest concentration of overall evictions also occurs in the most diverse neighborhoods, and Black households face disproportionately higher rates of eviction in any neighborhood where there is a substantial Black renting population.¹⁵⁸

Compounded by gentrification, intentional disruptions of economic and social prosperity, and our racist carceral system, it is no accident that Black and Indigenous youth, and certain other youth of color, are disproportionately forced into poverty; evicted from their homes; in foster care or shelter systems; couch surfing; or living in cars, tents, and other makeshift shelters on the streets to survive. From the 2019 Point in Time Count in King County, an estimated 34% of unaccompanied youth and young adults experiencing homelessness identified as Black, 20% identified as Latinx, and 10% identified as Indigenous youth.¹⁵⁹ School enrollment data from 2017-2018 also demonstrates that the percentage of Indigenous, Black, Native Hawaiian and Pacific Islander and multiracial students experiencing homelessness is significantly higher than their white and Asian counterparts.¹⁶⁰

[table on next page]

156. The Sentencing Project, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers* 6 (2nd ed. 2008).

157. Michael Siegel, *The Relationship Between Structural Racism and Black-White Disparities in Fatal Police Shootings at the State Level*, 110 J. NAT'L MED. ASS'N, 106, 106-116 (April 2018).

158. Timothy A. Thomas, *Forced Out: Race, Market, and Neighborhood Dynamics of Evictions* 27-28, 33 (2017) (Ph.D. dissertation, University of Washington) (on file with the University of Washington Library).

159. King County, *All Home, Count us In: Seattle/King County Point-In-Time Count of Persons Experiencing Homelessness* 63 (2019), http://allhomekc.org/wp-content/uploads/2019/05/2019-Report_KingCounty_FINAL.pdf.

160. *Early Learning Needs Assessment*, *supra* note 115, at 56, Table 4-16.

Table 2. Homeless student enrollment during the 2017-2018 school year, preschool through grade 12, by race/ethnicity and other demographic characteristics.¹⁶¹

	Total student population	No. experiencing homelessness	Comparative disproportionality (RRI)
Indigenous	16,447	1,214	3.0
Asian	91,297	966	.4
Black	53,750	4,536	3.4
Multiracial	96,240	4,042	1.7
Native Hawaiian/Pacific Islander	13,431	1,106	3.3
White	644,171	15,890	n/a

Involvement in the criminal court system exacerbates racial inequity and housing instability, and also increases the likelihood of both future incarceration and homelessness. A 2017 study on the issue in Washington State revealed that, of the youth released from the state's juvenile detention facilities, over 25 percent of them were homeless or had unstable housing within one year of their release.¹⁶² The numbers are almost certainly an underrepresentation of the scope of the problem, since the report only included youth who accessed food, housing, or cash assistance programs. Of those who exited the juvenile justice system in 2017 and became unhoused within a year after exiting, 30% were Black, 22% were Latinx, 21% were Indigenous youth, and 8% were Asian or Pacific Islander.¹⁶³ Of the youth exiting all systems of care, including behavioral health and foster care, being arrested or charged for a crime was a risk factor for becoming homeless for 84% of them.¹⁶⁴ Arrest or being charged for a crime was by far the highest risk factor for experiencing homelessness for youth exiting systems of care, higher than other risk factors including neglect or abuse, prior homelessness, or never having been employed.¹⁶⁵

In addition to ensuring that young people exiting juvenile detention are not exiting into homelessness, steps must be taken to prevent young people experiencing homelessness from entering the juvenile court system to begin with. Moreover, when young people make contact with the juvenile court system or law enforcement, rather than their housing instability being met with care and resources, they are punished for their survival actions. At every stage of contact with the

161. *Id.*

162. Dep't of Soc. & Health Servs., Research & Data Analysis Div., *Homelessness Among Youth Exiting Systems of Care in Washington State 2* (July 2020), <https://www.dshs.wa.gov/sites/default/files/rda/reports/research-11-254.pdf>.

163. *Id.*

164. *Id.*

165. *Id.*

juvenile court system, from citations and charges, to court access, to sentencing, and to eventual exit, housing instability and homelessness is met with punishment.

Appendix D sets forth a detailed analysis of how homelessness is criminalized, how youth face barriers to accessing court and other resources to stay in compliance with the law, how youth face barriers to accessing community-based alternatives when they are prosecuted, and finally how detention and incarceration contribute to and exacerbate homelessness.

While this report focuses on the systemic relationship between homelessness and involvement in the criminal legal system, especially as they relate to race, the subcommittee recognizes that there are many complicated dynamics that contribute to young people experiencing housing instability and homelessness and that there are different ways that youth may experience homelessness, including with their families, or alone/“unaccompanied.”¹⁶⁶ This report does not fully explore these complex dynamics, especially as they are impacted by the intersectional identities of youth and other systemic oppressions. Because it is important to consider in the context of developing policy solutions, we note that in addition to racial disparities, LGBTQ youth disproportionately face homelessness, as do youth who are themselves parenting. There can be a tendency to view youth homelessness through a lens of family-specific dynamics or conflict. However, like in the family regulation system, there are interlinking systemic failures that underly individual circumstances, including systemic oppressions related to gender and sexual identity and lack of access to healthcare, childcare, and other resources necessary for youth and families to thrive.

D. Race and Mental Health

Finally, any discussion of race disparities in the juvenile legal system must include how racism, explicit and implicit, individual and institutional, is a form of trauma. The experience of racial trauma,¹⁶⁷ or race-based traumatic stress (RBTS),¹⁶⁸ refers to the mental and emotional injury caused when a person experiences racial bias, ethnic discrimination, and/or hate crimes.¹⁶⁹ It also encompasses generational trauma, powerfully explained by Resmaa Menakam:

For well over 300 years, the Black body in America has been systematically brutalized, mutilated, murdered, abused, controlled, raped, objectified, and

166. See generally *Missed Opportunities: Youth Homelessness in America*, *supra* note 151.

167. Ibram X. Kendi urges the use “racist abuse” rather than “microaggression,” because “aggression is not as exacting a term. Abuse accurately describes the action and its effects on people: distress, anger, worry, depression, anxiety, pain, fatigue, and suicide. IBRAM X. KENDI, *HOW TO BE AN ANTI-RACIST* 47 (2019).

168. Ass’n for Behavioral & Cognitive Therapies, Fact Sheet, *Race-Based Traumatic Stress*, <https://www.abct.org/fact-sheets/race-based-traumatic-stress/>.

169. See generally Janet Helms et al., *Racism and Ethnoviolence as Trauma: Enhancing Professional Training*, 16 *TRAUMATOLOGY* 53, 53-62 (2010), <https://journals.sagepub.com/doi/abs/10.1177/1534765610389595>.

demonized by guns, whips, chains, and manacles; by shootings, lynchings, and rape; by laws, policies, social norms, and codes of behavior; and by images and concepts. For centuries, trauma upon trauma compounded.¹⁷⁰

While the subcommittee does not possess expertise in the fields of mental and behavioral health, it is nevertheless incumbent to understand racism as a trauma and link that understanding to the sea changes in how the criminal law regards young people. It is now universally understood that, in addition to neurodevelopmental differences inherent in young people's developing brains, trauma reduces culpability.

In *Miller v. Alabama*, the United States Supreme Court recognized that courts must consider the mitigating effect a young person's "family and home environment," as trauma arising in that environment mitigates that young person's culpability.¹⁷¹ While the formal *Miller* factor focuses primarily on the home and family environment, trauma-related mitigating factors do not exist solely within the four walls of a young person's home. The impact of adverse childhood experiences—including racial discrimination—which occur outside of a young person's home environment can result in trauma symptoms that are virtually indistinguishable from those caused by experiences in the home. As Washington law continues to evolve to ensure that young people's diminished culpability is accounted for in the criminal legal system, we cannot lose sight of *Miller*'s core recognition that trauma reduces culpability in other criminal legal contexts as well, which necessarily calls into question the severity with which young people are punished in the juvenile legal system.

To that end, Appendix E sets forth an explanation of recent empirical literature that links the experience of racism into the adverse childhood experience framework, acknowledging racism as a trauma that youth of color experience. The literature also explains how a young person's trauma can affect development and lead to behavioral challenges, underscoring that trauma plays a significant role in an individual's ability to navigate social situations, manage the unexpected, be in touch with inner emotional activities, and respond in ways that the dominant culture would expect.

It is therefore no coincidence that a huge percentage of those in the juvenile legal system legal system have one or more mental health disorders. As set forth in more detail in Appendix E, the relationship between mental health struggles and the juvenile incarceration environment is multi-layered and pervasive. Some contributing factors include barriers reducing access to mental health support, inequitable dispositions evident in referrals to therapeutic versus physical regimens,

170. RESMAA MENAKAM, MY GRANDMOTHER'S HANDS: RACIALIZED TRAUMA AND THE PATHWAY TO MENDING OUR HEARTS AND BODIES 90 (2017).

171. *Miller v. Alabama*, 567 U.S. 460, 477, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

criminalization of mental health struggles and traumatic exposure, and the lack of culturally competent providers and treatment.

These barriers that reduce access to mental health services contribute to overrepresented racial and ethnic populations in the juvenile system. As states decrease the availability of public mental health services, labeling youths' behavior as delinquent is likely to increase as a result of the lack of treatment.¹⁷² According to the Washington State Healthcare Authority, in 2019, one third of youth who were served by Apple Health and who needed mental health treatment did not receive treatment, and some racial and ethnic groups experienced lower levels of mental health treatment.¹⁷³ In addition, a lack of insurance coverage for mental health care and ineligibility to use public systems where some might earn too much money to qualify for public assistance creates additional barriers making receipt of mental health treatment difficult.

Further, the lack of accessible emergency mental health providers increases the tendency for police officers to respond in cases where Psychiatric Mobile Response Teams are better equipped to respond to mental health emergencies. Police officers responding to mental health calls too often criminalize those in need of help. Police officers are not trained to provide the support that is needed. Without accessible mental health treatment, behavior that would normally be addressed via healthcare is criminalized, funneling a disproportionate number of youth of color who cannot afford the care many of their white counterparts receive into a system that is ill-equipped to treat their needs. The juvenile legal system must grapple with how it criminalizes those trauma-linked behaviors. While specific health care recommendations are beyond the scope of expertise of those on the subcommittee, the subcommittee reemphasizes the youth-articulated goal that all young people have the material conditions needed to thrive, which should include access to trauma-informed, culturally competent, and comprehensive mental health supports.

VI

RECOMMENDATIONS

As this subcommittee did in the 2012 Report, we have presented evidence of race disproportionality in the juvenile legal system. And as in the recently released report, *Race and Washington's Criminal Justice System*, our examination of the data leads us to repeat the conclusions we reached ten years ago. In 2021, race *still* matters in ways that are not fair, that do not advance legitimate public safety objectives, that produce racial disparities in the juvenile legal system, and that undermine public confidence that our system is intended to do justice.

172. Katrina Hovey, *Mental Health and the Juvenile Justice System: Issues Related to Treatment and Rehabilitation*, 7 WORLD J. ED. 4 (2017), <https://files.eric.ed.gov/fulltext/EJ1157674.pdf>.

173. Wash. State Healthcare Authority Report to the Legislature, *Access to Behavioral Health Services for Children* 7 (2020), <https://www.hca.wa.gov/assets/program/access-behavioral-health-services-children-20201201.pdf>.

More fundamentally, however, the subcommittee asks that we all consider a new way to approach how we care for our young people, one that decenters the criminalization of youthful behavior and instead invests resources into community-led restorative justice approaches as our primary response to harm. Embracing change takes courage and so we invite the reader to wrestle with the Recommendations. Ask what they might mean for you and others; comment and offer critique. Regardless of whether you agree or disagree with the Recommendations, we ask that you join us in the dynamic work of offering youth a way out of our systems and on a path to success. Finally, because the recommendations work is a process that will continue beyond the publication of this report, readers are referred to the [Task Force 2.0 homepage](#)¹⁷⁴ for updated recommendations and for more information about implementation efforts.

A. Juvenile Legal System Recommendations

Racial disproportionality in the juvenile legal system has remained or increased since this Task Force last made recommendations in 2012. Continued disproportionality is a predictable outcome when the juvenile legal system was never constructed to serve or support BIPOC youth, when the systems that surround young people and their families continue to fail to effectively serve BIPOC youth, and when criminalization continues to be a default response to BIPOC youth behaviors. The following recommendations attempt to fundamentally shift that paradigm, focusing on non-criminal legal system responses to support youth and their families, and identifying opportunities for the criminal legal system to shift power and responsibility for redressing harm to communities.

The large, bold text in the text box reflects and emphasizes the youth-articulated bedrock principles from which the more specific youth-articulated goals flow, indicated in regular bold text. Below that, the normal text contains the specific policy proposals that will help achieve the youth articulated goal. Where possible, policy proposals are directed to particular audiences, reflected in *italics*. Consensus was not achieved on everything, and minority reports generated by subcommittee members are included where they exist. Readers are referred to Part I of this report for a youth-centered translation of these policies.

Youth-Articulated Bedrock Principles:

- 1. Ensure that everyone has the material conditions to thrive;**
- 2. Promote self-awareness and positive self-expression.**

Prevent youth involvement in the juvenile legal system by meeting their material needs through robust mutual aid infrastructure led by community-based organizations.

¹⁷⁴ <https://law.seattleu.edu/centers-and-institutes/korematsu-center/initiatives/task-force-20-x24772>. The recommendations on family regulation and homelessness will be posted here in the near term, but are not included in this report.

- Barriers to state services

- Build adolescent services response that is accessible across the state without any requirement for court involvement; design services to actively intervene and prevent juvenile and adult criminal court involvement. *State legislature; local governments; community-based organizations.*
- Streamline or eliminate eligibility and service barriers within DCYF and between public agencies to ensure that youth can readily access services like FRS, DDA support or BRS placements without having to jump through multiple/differing access or eligibility processes. *State agencies, including DCYFS, DSHS, HCA; state legislature.*

- Revenue to meet basic community needs; participatory budgeting

- Create a dedicated revenue stream for investment in housing access and community land trusts, universal access to health care and universal broadband. When such a funding source is established, prioritize return of funding to community-based organizations that are able to provide resources and mutual aid to local communities. *State legislature; local governments; community-based organizations.*
- Create a dedicated revenue stream to provide reparations to individuals and communities impacted by slavery or the occupation and destruction of indigenous land and property. *State legislature.*
- In each community, create a participatory budgetary process that is led by BIPOC people and allocates resources to BIPOC communities to build community-level resources to support youth and families. *County governments.*
- Create a state workgroup to create and provide resources for local governments on participatory budgeting and anti-racist budgeting. *State legislature.*
- Invest in hiring, training, and promoting community access to more health care providers, including mental health providers and inpatient substance abuse treatment providers/beds. *State legislature; local governments.*
- Increase opportunities for accessible/affordable/subsidized extracurricular activities led by community-based organizations that can increase youth connection to school and provide opportunities for skill development and healing. *Local school districts; community-based organizations; county governments; state legislature.*

Provide community healing for people who have been incarcerated.

- Fund and develop effective reentry and transition services that are community-based and culturally meaningful. *State legislature; county governments.*
- Meet basic needs for food, shelter, income/job pathways, and education for people being released from incarceration; include mental health and wellness support to address trauma in formerly incarcerated populations. *State legislature; county governments; state agencies, including Department of Health.*

Youth-Articulated Bedrock Principles:

3. Shift power from the criminal legal system to the community to respond after a young person has caused harm.

Invest in community-led responses to unfolding crisis, including alternatives to 911.

- 911/Crisis Response
 - Increase education to the general public about using 211 and 311 (non-emergency law enforcement response) as alternative places for referrals and services instead of 911. *Local governments; law enforcement.*
 - Revise local protocols for 911 dispatch/communications operators to identify the categories of calls for which non-police response is appropriate; incorporate revisions into training for 911 dispatch and communications operators. *Local government; community-based organizations; Washington State Criminal Justice Training Academy.*
- Community Safety and Intervention Resources
 - Build community safety teams and community hubs within neighborhoods, including de-escalation teams, mental health crisis response, and trauma response teams that are available to respond to crisis without police intervention. Ensure that response teams are embedded in community-led organizations that are trusted in the community. *Local government; state agencies; community-based organizations.*
 - Create community-led response and interventions to domestic violence perpetrated by a young person against a family member. *Local government; community-based organizations.*

- Invest in peer and community mentorship to identify and interrupt violence and teach productive, non-violent ways to address and resolve conflict. *Local government; state legislature; community-based organizations; local school districts.*

Eliminate youth interaction with law enforcement in schools, family regulation, and health care settings, with the ultimate goal of abolishing police interactions with young people.

- Law Enforcement Response to Youth Serving Agencies

- State agencies and recipients of state funding who provide services to young people should review and revise policies to significantly limit instances where police are called to engage with people receiving services or their families; this includes review by DCYF, medical facilities, mental health facilities, shelters, Office of Homeless Youth, and/or Dep't of Commerce. *State agencies, including DCYF; DOH; OHY; Dep't of Commerce; state-funded organizations; community-based organizations*

- Policing in Schools

- Pass legislation that prohibits schools from contracting with law enforcement and private security forces for police or private security presence in schools. *State legislature.*
- Eliminate the crimes of disturbing schools, RCW 28A.635.030, abusing or insulting teachers, RCW 28A.010, and willfully disclosing examination questions, RCW 28A.635.040. Amend the crime of willfully disobeying school administrative personnel to prohibit application of the statute to a student enrolled in the school. *State legislature.*
- Pass legislation requiring schools to use restorative justice or other school-based alternatives prior to calling police for any incident that does not involve imminent risk of serious physical injury to others. *State legislature.*
- Office of Superintendent of Public Instruction (OSPI) should review and evaluate school district policies, resources, and training to reduce or eliminate the use of police to provide interventions for in-school behaviors, and provide a report on the implementation of RCW 28A.320.124. *OSPI; local school districts.*

- Truancy and Dependency

- Amend Chapter 28A.225 RCW to eliminate the filing of truancy petitions in court and to decouple community-led truancy boards from the court petition process. Ensure continued state-level data collection and public reporting on absenteeism, referrals to community-truancy boards, and school-based interventions to address truancy (including disaggregation by race and other demographic factors). *State legislature.*
- Increase funding for attendance/student support liaisons in each school district tasked with engaging students and families at risk of becoming truant and identifying school-based changes and community-supports to increase attendance. *State legislature, local school districts.*
- Convene a working group to recommend best practices for community-based truancy boards and best practices to promote accountability among schools and school personnel for increasing student attendance. The working group should include representatives of BIPOC communities historically pushed out of schools, homeless and foster youth, and parents. *OSPI.*
- Reduce and eventually eliminate reliance on police and detention when youth in foster care or dependency proceedings require additional safety supports. (While SB 5290 prevents use of detention for violating a valid court order in noncriminal matters, law enforcement is still heavily involved in dependency and foster care settings, whether through issuance of warrants, calls from group homes to police to respond when youth's behavior is challenging, etc.; youth in foster care are also more at risk for detention on offender matters if they don't have a stable foster placement.) *State legislature; DCYF.*

Invest in community responses to harm that promote healing and restoration for all parties, as an alternative to the justice system.

- Restorative Pathways and Community Diversion

- Increase state funding for community design and response to youth offenses (similar to restorative community pathways in King County) to provide alternatives to prosecution/conviction in the juvenile system. *State legislature.*
- Transfer funds currently allocated to court diversion to fund community-based pre-filing diversion. Divest funds from juvenile legal system and invest in community responses to harm/pre-filing diversion. *Superior Courts; local governments.*
- Make state and county funds for restorative and pre-filing diversion programs available to young people up to age 25, including those involved in the adult criminal legal system. *Local governments; state legislature.*

- Victim Restoration
 - Establish a victims restoration fund that can be accessed by victims of harm engaged with community-based intervention teams, to provide opportunity for redress of harm without resort to the criminal legal system. *State legislature; local governments.*
- Holistic Defense
 - Provide an adequately resourced holistic defense/advocacy team in each county to support youth and family throughout contact with the juvenile justice system and to help youth and family advocate for resources to meet the needs of the youth. *Local governments; public defense agencies; state legislature.*
 - Within each holistic defense/advocacy team, include community ambassador positions that are funded by government resources. *Local governments; public defense agencies.*
 - Amend RCW 5.60.060 to extend the legal privilege provided to social workers and defense attorneys to community ambassadors participating in defense/holistic advocacy. *State legislature.*

Work to eliminate youth prosecution by increasing opportunities for pre-filing diversion and reducing the jurisdiction of juvenile courts.

- Diversion based on mental health needs
 - Expand HB 1524/ RCW 13.40.042 to permit law enforcement diversion of juveniles who are facing arrest for a felony offense and who have mental health crisis. *State legislature.*
 - Create state funding for more community-driven and law enforcement diversion programs to reduce harms to children who are arrested. *State legislature.*
 - Prosecutors should recognize that offenses occurring within a mental health or family regulation setting largely stem from a child's underlying mental condition, past history of trauma/neglect, or challenges within the state facilities themselves. In these circumstances, prosecutors should adopt policies of not filing charges or diverting for all cases not involving a sex offense or serious violent offense arising in mental health or family regulation settings. *County prosecutors.*
- Increasing Diversion Options and Referrals
 - Work with community organizations to develop diversion models outside of the court or court accountability board. *County prosecutors; public defense agencies; Superior Courts, community-based organizations.*

- Create disposition alternatives that partner with schools to ensure education and special education supports to help youth stabilize in schools. *County prosecutors; Superior Courts; local school districts.*
- Prosecutors should adopt policies to refer all cases eligible for diversion under statute, rather than exercising prosecutorial discretion to limit statutorily eligible diversions. The policies shall state that diversion is presumed the appropriate response unless the prosecutor has clear and convincing evidence that filing charges is necessary to protect public safety. Where available, the preference should be to refer to community-based pre-filing diversion over court diversion. *County prosecutors; Superior Courts.*
- As filings decrease due to diversion, make internal divestments from prosecutors/courts/defense to fund community responses to harm and pre-filing diversion. *Local governments; state legislature.*
- Juvenile Court Jurisdiction/ Decline to Adult Court
 - Increase the minimum age of juvenile court jurisdiction to at least 14.¹⁷⁵ *State legislature.*
 - Increase the maximum age of juvenile court jurisdiction to at least 20. *State legislature.*
 - Direct the Washington State Institution for Public Policy to research and report on developmentally appropriate responses to adolescent crime occurring in the ages of 21-25; convene a working group to develop recommendations for changes to the criminal legal system for this population. *State legislature.*
 - Adopt legislation keeping all youth under 18 in juvenile court. Repeal Washington's law's permitting automatic or discretionary decline of juvenile cases to adult court. *State legislature.*
 - Until the state legislature abolishes decline, decline cases should be presided over by judges who are assigned to hear juvenile cases and should be prosecuted by prosecutors who are experienced or have been trained in juvenile court. *Superior Courts; county prosecutors.*
 - Ensure that young people incarcerated pretrial who turn 18 while awaiting disposition are not incarcerated in adult facilities, including young people who are awaiting disposition on charges in superior court pursuant to automatic or discretionary decline. *Superior Courts; county prosecutors; state legislature.*

175. This is consistent with the 2021 A.B.A. Resolution recommending that all jurisdictions raise the minimum age of juvenile court jurisdiction to 14, as the “[t]he failure to set a meaningful standard of juvenile court jurisdiction results in the criminalization of childhood. A.B.A. Resolution, (August 2021), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2021/505-annual-2021.pdf>.

- **Minority Report** from King County Prosecuting Attorney’s Office Re: Juvenile Court Jurisdiction/ Decline to Adult Court
 - Children are indeed different than adults and should be treated differently by the criminal legal system when they cause harm. Juvenile Court should be the appropriate venue for holding children accountable, but any effort to eliminate the prosecution of children in adult court must also be accompanied by a concurrent effort to ensure that juvenile court jurisdiction is sufficient to meet the needs of rehabilitation, accountability, and to ensure community safety. Those working in the juvenile justice system need to be equipped with the ability to serve young people beyond age 21. It is well understood that brain development occurs until at least age 25. Accordingly, a juvenile court system that aims to serve the needs of juveniles who commit serious offenses must be legally mandated to provide services and supervision beyond 21 when appropriate and necessary.

Take measurable concrete steps to move towards zero youth detention/incarceration

- **Detention Screening and Release**
 - Local governments should review and extend policies for detention screening and release adopted during COVID-19 to maintain low detention admission rates after the pandemic abates. Adopt statewide practices for detention admissions and release to maintain low detention populations. *Local governments; Superior Courts; county prosecutors.*
 - The state legislature should adopt statewide detention intake and release criteria that limit detention to violent or sex offenses and require judges to use screen and release protocols. *State legislature.*
 - Decouple provision of services from detention of youth; ensure that all services available to youth in detention and probation are accessible in the community. *Superior Courts; local governments.*
- **Sentencing Grid**
 - Review sentencing guidelines and ranges with a racial equity lens; identify changes to the juvenile sentencing grid to eliminate the cumulative impact of policing and detention for youth of color. *Sentencing Guidelines Commission; county prosecutors; DCYF; Superior Courts.*
 - Revise the juvenile sentencing grid to eliminate incarceration in a Juvenile Rehabilitation facility as the “standard” disposition for juvenile offenses; instead, require sentencing judges to make specific individualized findings, based on clear and convincing evidence that (a) the juvenile poses a substantial, serious risk to public safety unless they are incarcerated at a juvenile prison; (b) youth incarceration will mitigate the threat; (c) the specific period of time is justified after

reviewing research showing that longer stays in juvenile rehabilitation facilities do not reduce recidivism; and (d) the court has accounted for the impact of race and implicit bias in punishment of youth of color. Each finding shall include an explanation of the evidence relied upon to make the finding. *State legislature.*

- Disposition and Detention Alternatives

- Unlock state funds that are under Juvenile Rehabilitation block grants to fund community diversion; review and modify current block grant funding from Juvenile Rehabilitation so that decisions and allocations reflect and implement community priorities. *DCYF; state legislature; community-based organizations.*
- Increase and expand the use of disposition alternatives/alternatives to incarceration. Ensure that alternatives to incarceration are the norm and incarceration in a local or Juvenile Rehabilitation facility is the exception. *Superior Courts; state legislature; DCYF.*
- Develop community-based alternatives to state incarceration that enable young people who are incarcerated to maintain relationships with community and receive services in their community, using the minimum amount of incapacitation necessary to protect public safety. *DCYF; local governments; state legislature*
- Local governments should research and identify alternatives to Electronic Home Monitoring (EHM) and secure detention; use resources saved from detention and EHM to provide effective services in the community. *Superior Courts; local governments.*
- Set specific goals and targets for reducing dispositions to Juvenile Rehabilitation through diversion and disposition alternative strategies. *County prosecutors; public defense agencies; Superior Courts; local governments; DCYF.*

- Electronic Home Monitoring

- Until detention and electronic home monitoring are abolished, courts should adopt guidance that (1) clarifies EHM is a form of detention; (2) prioritizes community placement without detention including EHM through community supports and less restrictive supervision; (3) If EHM is employed, clearly explain the need for EHM, define its goals, lay out incentives to eliminate EHM, create as needed and ensure supports are in place to engage youth on EHM, provide resources to family and support systems; allow for expanded zones and outdoor time through liberal and safe uses of passes; (4) articulate that EHM is only a short term option with regular check-ins to assess continued need; (5) provide streamlined, efficient and understandable process for passes; (6) increase training and understanding of technical malfunctions to avoid issues from malfunctioning equipment; (7) prevent automatic issuance of warrants for removal of monitoring bracelet and instead hold

a hearing on the record to determine next steps. *Superior Courts; local governments.*

Limit the impact of juvenile criminal history; ensure that juvenile records do not undermine economic opportunity or community integration, or result in longer terms of adult incarceration.

- Juvenile history as sentencing points
 - Eliminate the use of juvenile criminal history as points for adult sentencing and ensure that the change is retroactive. *State legislature.*
 - Eliminate the use of adult history resulting from auto or discretionary decline as points for adult sentencing, and ensure that change is retroactive. *State legislatures.*
- Minority Report from King County Prosecuting Attorney's Office Re: use of adult history from auto or discretionary decline
 - Today, only juveniles who commit the most serious offenses are eligible for transfer to adult court. These offenses are Murder in the First/Second Degree, Homicide By Abuse, Manslaughter in the First Degree, Assault in the First Degree, Kidnapping in the First Degree, Rape in the First Degree, Assault in the First Degree, and any attempt to commit such crimes (see RCW 13.40.110). In rare circumstances, juveniles with exceptional prior conviction history involving serious felonies who then commit violent offenses could also be tried in adult court (see RCW 13.04.030). As such, individuals implicated by this recommendation would only be individuals convicted and sentenced for the most serious offenses and circumstances that concern community safety. While these individuals should be able to continue with their lives free from concern that harm they caused as juveniles could still present legal jeopardy in the future, this principle needs to be balanced with an interest in protecting the community from repeat violent offenders. Prosecutors would propose that this recommendation not apply to points related to declined offenses where a person is subsequently convicted of a violent offense as defined by RCW 9.94A.030(58).
- Juvenile Records Access:
 - Make juvenile court and law enforcement records confidential to the general public; eliminate publicly accessible websites with juvenile records. Enable researchers to access de-identified data and groups of juvenile court and law enforcement records from which juvenile names and other data that could reasonably be expected to identify the juvenile have been redacted. *Administrative Office of the Courts; Supreme Court; state legislature; law enforcement agencies.*

- Amend GR 31 to extend and make permanent a prohibition on the courts selling bulk disseminations of juvenile records via contract. Prohibit entities accessing Washington court records or databases from retaining juvenile criminal history records in their own databases used to provide background checks for employment, housing, education, licensing, or access to credit. *Administrative Office of the Courts; Supreme Court.*
- Adopt a court rule to ensure that all case captions refer to the juvenile by initials, rather than names; ensure that appellate cases publicly available refer to the juvenile by initials, rather than names, in the body of the opinion and in publicly available briefing. *Supreme Court; Courts of Appeal; Superior Courts.*
- Create an Office of Youth Ombuds with access to confidential juvenile court records, and task the ombuds with providing oversight of juvenile legal systems. *State legislature.*
- Amend RCW 13.50.260 to require courts to regularly hold administrative sealing hearings and to grant orders sealing and vacating all juvenile criminal history records when the juvenile is no longer incarcerated or on supervision. *State legislature.*
- Amend RCW 13.50.260 to require courts to regularly hold administrative expungement hearings to physically and electronically destroy juvenile criminal history records when the juvenile has turned 18, and is no longer incarcerated or on supervision. *State legislature.*
- Make changes to RCW 13.50.260 retroactive; administratively vacate, seal, and expunge all records of juveniles who have turned 18 and are no longer incarcerated or on supervision. *State legislature.*

Improve data collection, to more effectively disaggregate the impacts of the criminal legal system on communities.

- Pass legislation improving data collection under HB 1214 (2018) to more effectively disaggregate school calls to police, so that data disaggregates Native Hawaiian and Pacific Islander students (separate from Asian students) and multi-racial students. *State legislature*
- Evaluate and publish disaggregated race and ethnicity data and in discretionary and auto-decline on a yearly basis. *County prosecutors; Superior courts; Supreme Court.*
- Publish quarterly data, disaggregated by county, age, race, gender showing referrals from law enforcement, diversions, diversion completion, filing, and resolution of juvenile charges. *Superior Courts; county prosecutors; Supreme Court.*
- Develop data tracking and disaggregation protocols to ensure effective tracking of the impact of criminal legal system on Pacific islander/Native Hawaiian, Latinx, and multiracial children. Work with community leaders to develop protocols. *Law enforcement agencies; county prosecutors; Superior Courts; Supreme Court.*

B. Education Recommendations

As with the juvenile legal recommendations, the youth-articulated goals, indicated in bold text, are animated by the three bedrock principles articulated above. In this set of recommendations, the regular bold text indicates youth-articulated goals for our public education system. The normal text below each goal contains the specific policy proposals that will help achieve the youth articulated goal. Where possible, policy proposals are directed to particular audiences, reflected in *italics*. Readers are referred to the [Task Force 2.0 homepage](https://law.seattleu.edu/centers-and-institutes/korematsu-center/initiatives/task-force-20-x24772)¹⁷⁶ for a youth-centered translation of these policies.

Eliminate the conditions that lead to policing, prosecution, and incarceration.

- Ensure that community input, particularly the input of BIPOC students, families and educators, is sought and incorporated when as the professional educational standards board revises and updates cultural competency standards for educators. *Professional Educators Standards Board; State Legislature*
- Amend RCW 28A.415.445 to increase state funding for professional development days related to cultural competence, diversity, equity, and inclusion from one day per year to two; explicitly include anti-racism as a topic that educators should be trained on.e. *State Legislature*
- Set specific goals for increased representation of BIPOC teachers and staff in each school district. *Local School Districts*
- Allocate state funding for paying parent/community members as part or full time staff members to work in classrooms and school buildings. *State Legislature*

Dedicate more robust resources to mental health counseling, including BIPOC mental health counselors.

- Include mental health counselors as part of basic state education funding, with minimum ratios consistent with recommendations by the American School Counselor Association and higher ratios allocated to schools with higher rates of BIPOC students and students living in poverty. Require schools to hire mental health counselors consistent with the recommended ratios. *State legislature*
- Invest in tele-health and remote resource availability in areas without sufficient youth mental health counselors. *State legislature/local school districts*
- All schools implement universal screening, beginning in elementary school, to identify strengths and needed supports for young people and families; this can include implementing Positive Behavioral Intervention & Supports (PBIS) or other model that

¹⁷⁶ <https://law.seattleu.edu/centers-and-institutes/korematsu-center/initiatives/task-force-20-x24772>.

includes generalized supports for students without requiring a 504 plan or IEP to access school-based supports. Parents and community members should be involved in identifying screening tools and ensuring privacy and other protections for students. *State legislature/local school districts/OSPI*

- Invest in behavioral health support specialists who can consult with/train teachers to develop and implement strategies to support teachers. *State Legislature*
- Increase state resources for recruitment/training mental health counselors from local communities (I.e., paraeducator to counselor training programs, teacher to counselor training programs). *State legislature*

Implement curriculum that is relevant for youth of color, including ethnic studies, social justice and community organizing, financial literacy, and emotional literacy.

- Create model ethnic studies units integrated into core curriculum standards for each grade/academic subject. *OSPI*
- Create a model ethnic studies curriculum for elementary, middle, and high school.
- Increase teacher training in ethnic studies curriculum. *OSPI*
- Add social justice/community organizing tools and examples to K-12 social studies curriculum standards. *OSPI/State Board of Education*
- Fully implement state standards for financial education. *Local School Districts*
- Require each school district to provide social emotional learning and other emotional literacy curriculum. *State Legislature*
- Provide students with the resources they need to effectively participate in school curriculum and activities, including subsidized school supplies, field trips, and extracurricular activities. *Local school districts.*
- Ensure that every student has access to reliable internet and a computer, both in school and at home. *State legislature, local school districts.*

Break down biases and hold teachers and other students accountable for racist actions in schools.

- Require each school district to develop and implement a racial equity resolution and plan. *State Legislature*
- Revise bullying and harassment protocols to specifically identify race-based bullying and harassment and identify specific action steps to prevent and hold teachers and students accountable for race-based bullying and harassment. *OSPI; Local School Districts*
- Require each school district to develop and implement a bullying and harassment prevention plan that specifically identifies strategies to prevent bullying and harassment based on race, ethnicity, and other identities. *OSPI, Local School Districts*

- Provide training for educators and students on how to use restorative justice principles to build a positive and inclusive school climate, provide a space for members of the school community to identify racist actions, and enable people to acknowledge the harm that has been done and create commitments towards change. *Local School Districts, Community based organizations, OSPI.*

Dismantle harmful and racist policies and practices in the education system that punish and push BIPOC youth out of schools and into the prison pipeline. Eliminate police in schools, court involvement for truancy, and zero tolerance and other racist disciplinary policies.

- Community Wellness
 - Ensure that each school district creates and implements a meaningful community engagement process that invites parents and students, including BIPOC families and students to co-design a school community wellness plan to support students, families, and educators. This could include increased resources for counselors, community mentors, social workers, mental health professionals, school social workers, parent and peer educators. *Local school districts/state legislature*
 - Create state funding for students and community members to be compensated for participation in co-design of school wellness plan. *State legislature*
 - Work to increase student and parent engagement with school budget development, including providing resources to help students and families understand the budget development process and ways they can engage. *Local school districts.*
- Truancy/School Attendance
 - Require schools to keep students in their school of choice when students have to move between placements/homes due to dependency, foster care, criminal justice involvement. *State legislature*
 - Amend Chapter 28A.225 RCW to eliminate the filing of truancy petitions in court and to decouple community-led truancy boards from the court petition process. Ensure continued state-level data collection and public reporting on absenteeism, referrals to community-truancy boards, and school-based interventions to address truancy (including disaggregation by race and other demographic factors). *State legislature.*
 - Increase funding for attendance/student support liaisons in each school district tasked with engaging students and families at risk of becoming truant and identifying school-based changes and community-supports to increase attendance. *State legislature, local school districts.*

- Convene a working group to recommend best practices for community-based truancy boards and best practices to promote accountability among schools and school personnel for increasing student attendance. The working group should include representatives of BIPOC communities historically pushed out of schools, homeless and foster youth, and parents. *Office of Superintendent of Public Instruction.*
- Create and fund disposition alternatives that partner with schools to ensure education and special education supports to help youth stabilize in schools. *County prosecutors, superior court, local school districts.*
- Eliminate Police in Schools
 - Increase non-police resources to support safe school climates and effective conflict resolution, including hiring mentors and counselors for students who are from the local community. *Local school districts.*
 - Pass legislation that prohibits schools from contracting with law enforcement and private security forces for police or private security presence in schools. *State legislature.*
 - Eliminate the crimes of disturbing schools, RCW 28A.635.030, abusing or insulting teachers, RCW 28A.010, and willfully disclosing examination questions, RCW 28A.635.040. Amend the crime of willfully disobeying school administrative personnel to prohibit application of the statute to a student enrolled in the school. *State legislature.*
 - Pass legislation requiring schools to use restorative justice or other school-based alternatives prior to calling police for any incident that does not involve imminent risk of serious physical injury to others. *State legislature*
 - Until legislation is passed removing police from schools, OSPI should provide a report on the implementation of RCW 28A.320.124, which requires school districts to have policies, resources, and training to reduce or eliminate the use of police to provide interventions for in-school behaviors.⁴ *OSPI; Local School Districts*
- Exclusionary Discipline
 - Adopt legislation to prevent suspensions and expulsions from state-funded early childhood education programs. *State Legislature*
 - Adopt legislation to prevent suspensions and expulsions of children from elementary and middle school. *State Legislature*
 - Eliminate suspension and expulsion for subjective offenses such as disorderly conduct, disrespect, disturbing schools, and “other behavior”. *State Legislature; local school districts*

- Allow parents/students to bring a lawsuit/administrative complaint against school districts that are denying students who have been suspended/expelled and denied equitable education services. *State legislature.*

Increase restorative justice and student led disciplinary boards, to replace exclusionary school discipline and policing as responses to conflict.

- Work with community-based organizations to design model restorative justice programs for local school districts. *OSPI*
- Create state funded training and technical assistance program for restorative justice programs in schools. Restorative justice programs should focus both on prevention of harm/conflict (building a positive and inclusive school climate) and on providing a response to harm. *OSPI/State Legislature*
- Implement restorative justice programs in middle and high schools. *Local School Districts*
- Create and fund disposition alternatives that partner with schools to ensure education and special education supports to help youth stabilize in schools. *County prosecutors, superior court, local school districts.*

Increase access to after school programs, job-training programs, and other ways for youth to earn money, gain skills, and build community.

- Increase opportunities for accessible/affordable/subsidized extracurricular activities led by community-based organizations that can increase youth connection to school and provide opportunities for skill development and healing. *Local school districts; Community based organizations; County governments; State legislature*

Closing Remarks from the Task Force Co-Chairs

It is said that children are our future.

This report presents hard truths about how the juvenile legal system and the web of other systems, including education and family regulation, treat children. These systems are failing too many children, with children of color disproportionately impacted. We are failing.

The Juvenile Justice Subcommittee rightly centered the experience of young people who are most impacted by these systems. It is now on all of us to listen to the young people, to take seriously these recommendations.

It is on us to act, to give our most vulnerable children—too often children of color—a chance at the future they deserve.

Sincerely,

Deans Mario L. Barnes, Annette E. Clark, and Jacob H. Rooksby
Co-Chairs, Task Force 2.0: Race and Washington's Criminal Justice System

Statistical Evidence of Disproportionate Minority Contact in Washington's Juvenile Legal System

There is clear evidence of persistent overrepresentation of youth of color at each stage of the juvenile legal system, with little improvement since the 2012 Report. Although arrest rates have dropped in the last decade, and progress has been made in reducing overall arrest and detention rates, youth of color continue to be disproportionately arrested, referred to juvenile court, transferred to adult court, prosecuted, detained, and incarcerated compared to their white peers. In fact, Black/white race disproportionality has increased, indicating that progress is disproportionately benefiting white youth.

In addition, an important data justice issue is the failure to disaggregate the Asian category between Asian and NHPI, such that the experience of NHPI young people are erased.

A. Disproportionality in Policing and Arrests

In the 2012 Report, the subcommittee reported that according to the Washington State Center for Court Research's (WSCCR)¹ analysis of statewide court data from 2009, Black youth were nearly twice as likely as white youth to be arrested but did not include data about arrest rates. The most recent available data from 2016 indicates that comparative disproportionality has worsened, with Black youth nearly three times as likely as white youth to be arrested.

Between 2009 and 2018, the overall juvenile arrest rate in Washington State dropped by 58% from 50.0 per 1,000 in 2009 to 18.4 per 1,000 in 2018 and remains lower than the national juvenile arrest rate (21.4 per 1,000).² Despite this overall drop, the Relative Rate Index (RRI) shows that, in 2016, Black, Native American, and Hispanic youth remain overrepresented (defined as a RRI above 1.00) in arrests, with Black youth being the most disparately impacted with an RRI of 2.94.³ Though the RRIs for arrests of Native American and Hispanic youth are not quite as substantial as that of Black youth, they remain overrepresented with RRI values of 1.74 and 1.12 respectively.⁴

1. The Washington State Center for Court Research (WSCCR) is the research arm of the Administrative Office of the Courts. It was established in 2004 by order of the Washington State Supreme Court to maintain an independent capacity for objective research within the judicial branch. Order No. 25700-B-440, *In the Matter of the Establishment of the Washington State Center for Court Research* (2004), <http://www.courts.wa.gov/wscctr/>.

2. Wash. State Dep't of Children, Youth & Families, *Washington State Juvenile Justice Report to the Governor & State Legislature* 3-4 (August 2020), <https://dcyf.wa.gov/sites/default/files/pdf/2020WA-PCJJgov.pdf> [hereinafter *2020 DCYF Report to Legislature*].

3. William Feyerherm, FFY 2018 Office of Juvenile Justice & Delinquency Prevention Title II Formula Grant Application, 2018-50017-WA-JF, *Compliance with the Disproportionate Minority Contact (DMC) Core Requirement* 5, 8 (2018), <https://dcyf.wa.gov/sites/default/files/pdf/2018DMCPlan.pdf>.

4. *Id.*

Table 1. 2016 Washington State Juvenile Arrests by Race⁵

	Population (10-17)	Number of Arrests	RRI
White	445,318	7,216	x
Black	43,646	2,076	2.94
Indigenous	12,911	364	1.74
Latinx	143,335	2,610	1.12
Asian	69,735	366	N/A

In some areas, race disproportionality is even worse. For example, in King County, Black youth are almost 7 times as likely to be arrested than their white counterparts.⁶

These numbers are consistent with the Washington State Department of Children, Youth & Families’ finding that, as of 2018, “Black, Hispanic and American Indian/Alaska Native youth...remained overrepresented for all stages of the court system involvement for Washington as a whole.”⁷

B. Disproportionality in Referral and Diversion

The 2012 Report noted that, based on WSCCR’s data analysis, Black and American Indian/ Native Alaskan youth were more than twice as likely to be referred to court than white youth. And, with the exception of Asian/Pacific Islanders (although the earlier data was not disaggregated, as discussed above), youth of color were less likely to receive a diversion relative to white youth.

More detailed data since 2012 reveals that these disproportionalities appear to have worsened. In 2018, a total of 16,906 juvenile referrals were made across the state of Washington. Despite the fact that 79.03% of all Washington youth between ages ten and seventeen in 2018 were white,⁸ only 8,650 (51.2%) referrals were for white youth, while 2,462 (14.6%) for Black youth, 560 (3.3%) for Asian or Pacific Islander youth, 555 (3.3%) for American Indian or Alaska Native youth, 4,150 (24.5%) for Hispanic youth, and 529 (3.1%) for other or unidentified youth.⁹ The RRI for the referral of Black youth is 3.8, meaning that Black youth are nearly four times as likely

5. *Id.* at 4-5 (Displays a combination of data from Tables 1, 3, and 4).

6. *Id.* at 8.

7. 2020 DCYF Report to Legislature, *supra* note 2, at 9-10.

8. Charles Puzzanchera et al., Office of Juvenile Justice & Delinquency Prevention, *Easy Access to Juvenile Populations: 1990-2019* (using 2018 data), <https://www.ojjdp.gov/ojstatbb/ezapop/>.

9. 2020 DCYF Report to Legislature, *supra* note 2, at 59.

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to be referred to the juvenile court than white youth.¹⁰ The RRI for Hispanic youth referrals is 1.4 and the RRI for American Indian or Alaska Native youth referrals is 2.5.¹¹

Of the 16,906 juvenile referrals made in Washington in 2018, 13,078 became juvenile cases. Once again, white youth only made up 6,665 (51%) of juvenile cases, while Black youth made up 1,918 (14.7%), Asian or Pacific Islander youth made up 455 (3.5%), American Indian or Alaska Native youth made up 432 (3.3%), Hispanic youth made up 3,276 (25%), and 332 (2.5%) of cases were comprised of youth who identified as another race or youth for which race was unknown.¹²

From there, 10,465 cases proceeded to either adjudication or diversion.¹³ A juvenile adjudication is similar to a conviction in adult court. An adjudication is typically entered by a juvenile court upon finding that a youth has committed an offense.¹⁴ Juvenile diversion, on the other hand, consists of “a contract between a juvenile accused of an offense and a diversion unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution.”¹⁵ A diversion contract may include community service, restitution, counseling, development programming, curfew, and no contact orders.¹⁶

While youth of color are overrepresented in most aspects of the juvenile legal system, including arrest, referral, and adjudication, youth of color are underrepresented when it comes to diversion.¹⁷ Of the 13,078 juvenile cases in Washington in 2018, 4,966 were adjudicated and 5,499 were diverted. White youth represented 3,072 (55.86%) of diversion but only 2,510 (50.54%) of adjudications.¹⁸ In comparison, Black youth made up only 516 (9.38%) of diversions but accounted for 775 (15.61%) of adjudications, and Hispanic youth made up 1,364 (24.8%) of diversions while representing 1,313 (26.44%) of adjudications.¹⁹

10. *Id.* at 9, 11.

11. *Id.*

12. *Id.* at 65.

13. *Id.* at 73.

14. Wash. State Caseload Forecast Council, *2018 Washington State Juvenile Disposition Guidelines Manual* 28 (2019).

15. RCW 13.40.080(1).

16. RCW 13.40.080(2).

17. *2020 DCYF Report to Legislature*, *supra* note 2, at 43.

18. *Id.* at 73.

19. *Id.*

Table 2. Racial Disparities in Juvenile Referrals, Cases, Diversion, and Adjudication.²⁰

	Juvenile Referrals		Juvenile Cases		Juvenile Diversion		Adjudication	
	No.	RRI	No.	RRI	No.	RRI	No.	RRI
Indigenous (21,505 youth, 2.9%)	555	1.7	432	1.7	158	1.4	188	2.3
Asian/Pacific Islander (80,106 youth, 10.9%)	560	0.5	455	0.5	188	0.4	151	0.5
Black (52,153 youth, 7.1%)	2,462	3.1	1,918	3.2	516	2.0	775	3.8
Latinx (153,668 youth, 21.0%)	4,150	1.8	3,276	1.8	1,364	1.8	1,313	2.1
White (579,482 youth, 79.0%)	8,650	n/a	6,665	n/a	3,072	n/a	2,510	n/a
Other/Unknown	529	n/a	332	n/a	201	n/a	49	n/a
Total (733,246 Washington youth, age 10-17)	16,906		13,078		5,499		4,966	

C. Disproportionality in Decline

Decline is the practice of transferring youth from the juvenile legal system to the adult criminal legal system.²¹ Under RCW 13.04.030, juvenile courts in Washington have exclusive original jurisdiction over matters relating to juvenile offenses, dependency, termination of a parent-child relationship, out-of-home-placement, and placement of a child under the interstate compact.²² However, there are exceptions to the juvenile courts exclusive jurisdiction over juvenile offenses.²³ Some exceptions raise the option of discretionary decline, while other exceptions result in mandatory decline or “auto-decline.”²⁴

A motion for discretionary decline may be raised by the prosecutor, the juvenile respondent, or by the court.²⁵ When determining whether to grant discretionary decline, the court must “consider the

20. See *id.*; Puzzanchera et al., *supra* note 8.

21. Cindy Arends Elsberry, Wash. Defender Ass’n., *Juvenile Auto Decline and Decline* (May 30, 2019), https://www.opd.wa.gov/documents/00737-2019_WDAPracticeAdvisory.pdf.

22. RCW 13.04.030(1).

23. *Id.*

24. *Id.*; RCW 13.40.110.

25. RCW 13.40.110(1).

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relevant reports, facts, opinions, and arguments presented by the parties and their counsel” and find “that the declination would be in the best interest of the juvenile or the public.”²⁶ A youth may be considered for discretionary decline when one of the following conditions are met:

- (1) The youth is fifteen years of age or older and they are accused of a serious violent offense;
- (2) The youth is less than fifteen years of age and they are accused of murder in the first or second degree; or
- (3) The youth, of any age, has committed custodial assault and they are already serving a juvenile sentence until at least the age of twenty one years old.²⁷

In 2018, the Washington State Legislature updated the decline statute, limiting the scope of auto-decline.²⁸ Under Washington’s current auto-decline laws, youth will be transferred to adult court if they are sixteen or seventeen years of age and they fall into one of two categories:

- (1) The youth allegedly committed a serious violent offense under RCW 9.94A.030; or
- (2) The youth allegedly committed a violent offense under RCW 9.94A.030 and they have a history of:
 - a. One or more serious violent offenses
 - b. Two or more violent offenses
 - c. Three or more separately prosecuted class A felonies, class B felonies, vehicular assault, manslaughter in the second degree after they were thirteen years of age; or
 - d. Rape of a child in the first degree.²⁹

In 2012, the subcommittee noted that WSCCR’s data analysis found that youth of color were overrepresented in transfers to the adult criminal system. Black youth made up 31% of the transfers to adult court, while they represent only 6% of the juvenile population. Latinx and Asian youth were also overrepresented in the population of youth transferred to the adult system.

26. RCW 13.40.110(3).

27. This text paraphrases the statutory language in RCW 13.40.110(1).

28. See Final Bill Report: E2SSB 6160, WA State Legislature (2018), <https://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/Senate/6160-S2.E%20SBR%20FBR%2018.pdf?q=20201113113228>.

29. *Id.*

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In its 2020 report, the Washington State Department of Children, Youth, and Families reported that while the overall number of cases declined to adult court dropped,³⁰ youth of color remain disproportionately declined out of juvenile court jurisdiction.³¹ In 2018, 114 juvenile cases were declined in the state of Washington.³² Of those declined cases, 34 (29.8%) of the youth involved were white, 35 (30.7%) were Black, and 39 (34.2%) were Hispanic.³³ Based on these statistics, the RRI for the decline of Black youth is 11.44 while the RRI for the decline of Hispanic youth is 4.33. This means that Black youth are over 11 times more likely to be denied juvenile court jurisdiction compared to white youth and Hispanic youth are over 4 times more likely to be denied juvenile court jurisdiction compared to white youth.³⁴

These stark disproportionalities were confirmed in a comprehensive review, conducted by Dr. Heather Evans and Dr. Steven Herbert and approved for public dissemination by the Administrative Office of the Courts, that examined all instances where juveniles were adjudicated as adults in Washington between 2009-2019.³⁵ The overwhelming majority of children convicted in Washington State are sentenced as juveniles (97% of convictions). Among those juveniles who were sentenced as adults for their most recent conviction, 495 children were transferred to adult court through the “auto-decline” process, and 294 were sent to adult court through a discretionary hearing initiated by prosecuting attorneys.³⁶ Expressed as a percentage, of those children tried and convicted as adults, 37.5% were in adult court following a motion filed by prosecutors. Like what was found by DCYF, this review found that youth of color were disproportionately overrepresented in discretionary decline and auto-decline cases.³⁷ It dug more deeply than did DCYF and concluded that these disproportionalities cannot be explained by differences that may exist based on a youth’s criminal history or type of offense for youth in different groups.³⁸

The authors’ statistical analysis is presented below:³⁹

30. 2020 DCYF Report to Legislature, *supra* note 2, at 100, Exhibit 8.1.

31. *Id.* at 101, Exhibit 8.2.

32. *Id.*

33. *Id.*

34. Relative Rate Index was calculated by dividing the number of decline cases by the population for each racial group, then dividing the rates for youth of color by the rates for white youth. The 2018 juvenile populations for each race were collected using the OJJDP “Easy Access to Juvenile Populations” tool. Puzzanchera et al., *supra* note 8.

35. Heather Evans & Steven Herbert, *Juveniles Sentenced as Adults in Washington State, 2009-2019* (2021).

36. *Id.* at 17.

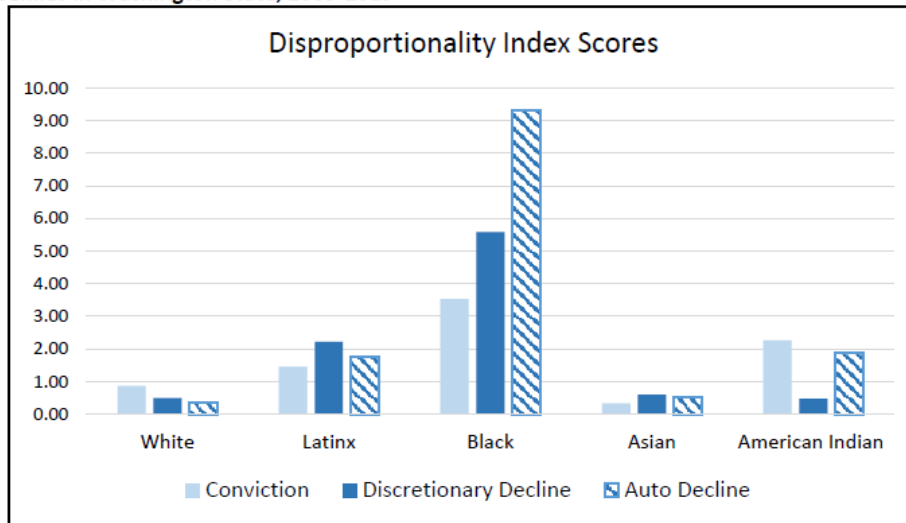
37. *Id.* at 19-20 (“When examined in the context of the ethno-racial composition of youth living in Washington State, racial disparity measures demonstrate a stark overrepresentation of children of color among juveniles selected for adult sentencing during 2009-2019. This is true for both discretionary and auto-declines.”).

38. *Id.*

39. *Id.* at 21, Figure 4.

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Figure 4. Disproportionality Index Scores for Conviction, Discretionary Decline and Auto Decline Rates of Juveniles in Washington State, 2009-2019



Source: Authors' analysis of AOC Data; Washington State population data by race and age downloaded from U.S. Census Bureau, State Characteristics: Population Estimates Table "SC-EST2019-ALLDATA6: Annual State Resident Population Estimates for 6 Race Groups (5 Race Alone Groups and Two or More Races) by Age, Sex, and Hispanic Origin: April 1, 2010 to July 1, 2019".

D. Disproportionality in Incarceration Rates

The 2012 Report noted that relative to white youth, both Black and Asian/Pacific Islander youth were more likely to be incarcerated in Washington State Juvenile Rehabilitation (JR) facilities. While Black youth made up 6% of the Washington population, they made up 21% of youth sentenced to JR facilities. Black youth were incarcerated in JR facilities at a rate 3.5 times greater than their population share. The 2012 Report did not calculate comparative disproportionality, or RRI.

In 2018, there were a total of 11,719 juvenile admissions to detention facilities with a detention rate of 7.8 per 1,000.⁴⁰ This represents a 6.5% decline in juvenile admissions from the previous year.⁴¹ Approximately 50% of admissions were white youths and approximately 48.6% of detention admissions were youths of color.⁴² In 2019, there were a total of 10,623 juvenile admissions to detention facilities with a detention rate of 7.2 per 1,000.⁴³ This represents a 9.4% decline in juvenile admissions from the previous year.⁴⁴ However, approximately 47.7% of

40. Amanda B. Gilman & Rachael Sanford, Wash. State Ctr. for Court Research, *Washington State 2018 Juvenile Detention Annual Report* 4 (2019).

41. *Id.*

42. *Id.* at 10.

43. *Id.* at 6 (2021).

44. *Id.*

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admissions were white youths and approximately 52.3% of detention admissions were youths of color; an increase over the previous year.⁴⁵ Year over year in this one example, detention of white youths decreases in comparison to youth of color. Year over year in this one example, race disproportionality increases, consistent with what has been observed over a longer term with regard to arrests, referrals to court versus diversion, and auto-decline and discretionary decline.

As with the other stages of the criminal legal system, we see Black, Latinx, and Native American youth overrepresented in incarceration rates with Black youth again being the most disparately impacted followed by Native American youth and then Latinx youth. As of 2017, Washington State incarcerated about 115 youth per 100,000.⁴⁶ However, the incarceration rate for white youth was 73 per 100,000 whereas Black youth were incarcerated at the rate of 386 per 100,000 which represents a Black-white disparity⁴⁷ of 5.29; a 28% increase over a 10-year period (from 2007 to 2017).⁴⁸ Native American youth were incarcerated at a rate of 232 per 100,000 which represents a Native American-white disparity of 3.18.⁴⁹ Latinx youth in Washington were incarcerated at a rate of 136 per 100,000 which represents an Latinx-white disparity of 1.86.⁵⁰ Though the numbers for Native American and Latinx youth show a marginal decline in incarceration over a 10-year period (a 3% decline for Native American youth and a 1% decline for Latinx youth), the disparity rates continue to indicate comparative disproportionate overrepresentation of Native American and Latinx youth in juvenile detention.⁵¹

2017 Washington State Juvenile Detentions by Race⁵²

	N/100,000	RRI	% Change (2007-2017)
Black	386	5.29	+28%
Indigenous	232	3.18	-3%
Latinx	136	1.86	-1%
Asian	n/a	n/a	n/a

45. *Id.* at 11.

46. Josh Rovner, Sentencing Project, *Racial Disparities in Youth Incarceration Persist* 6 (Feb. 2021), <https://www.sentencingproject.org/publications/racial-disparities-in-youth-incarceration-persist/>.

47. Disparities are calculated by comparing the incarceration rates for white youth per 100,000 with Black youth per 100,000. *Id.* at 7.

48. *Id.*

49. *Id.* at 9.

50. *Id.* at 8.

51. *Id.* at 8-9.

52. *Id.* at 7-9 (this table displays a combination of data from Tables 2, 3, and 4 from the cited source).

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The Subcommittee also recognizes the important intersectional work conducted by the Gender and Justice Commission that examined overrepresentation of girls of color in juvenile detention. In a recent report based on 2019 admission detention data, the Commission found that 27.3% of detention admissions were accounted for by girls.⁵³ Non-white girls accounted for 13.4% of all admissions, or roughly half of all female admissions. The Commission observed overrepresentation of American Indian/Alaskan Native (Native), Hispanic (Latinx), and Black girls. Specifically, Native girls made up 2.4% of the female youth population, but 7.0% of female detention admissions in 2019; Latinx girls made up 18.5% of the female youth population, but 24.6% of female detention admissions; and Black girls made up 4.9% of the female youth population, but 14.6% of female detention admissions.⁵⁴

The statewide rate of detention admission is 7.9 per 1,000 female youth.⁵⁵ “Within the five largest counties, rates differed greatly between racial categories and geographies, from 1.7 for white girls in King County to 73.2 for Black girls in Spokane. Racial disproportionality in the detention of Black girls was consistent statewide, albeit to varying degrees; every qualifying jurisdiction (with 10 or more admissions of Black girls) in the state reported a detention rate for Black girls higher than the statewide rate for all girls (7.9).”⁵⁶

Equally as important as the measures of disproportionality was the revelation that girls are far more likely to be admitted to detention for less serious offenses than their male counterparts.⁵⁷ Thirty-nine point three percent of all female admissions in 2019 were due to an alleged or adjudicated misdemeanor offense, compared to 28.9% of all female admissions for a felony charge, 11.5% for a criminal violation, and 16.0% for a violation related to a non-offender matter. By comparison, the foremost reason for male youth admission to detention was an alleged or adjudicated felony charge.⁵⁸

53. Aliyah Abu-Hazeem et al., *Minority & Justice Comm’n & Wash. State Ctr. for Court Research, Executive Summary, Girls of Color in Juvenile Detention in Washington State* (Dec. 2020), <https://www.courts.wa.gov/subsite/mjc/docs/MJC%20Special%20Detention%20Report%202020.pdf>.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

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Further, detention for nonoffender matters include a higher proportion of girls of color and white girls, when compared to their male counterparts.⁵⁹ While new legislation prevents the use of detention in nonoffender matters, further study is warranted to understand the impacts.⁶⁰

59. Amanda B. Gilman & Rachael Sanford, Wash. State Ctr. for Court Research, *The Use of Detention for Non-Offender Matters in Washington State* 6, <https://ccyj.org/wp-content/uploads/2020/11/Examining-the-use-of-detention-for-Becca-youth-in-Washington-State.pdf>.

60. For example, monitoring and follow is necessary to ensure that arrest rates do not go up as detention for status offenses go down.

An Empirical Look at How Public Education in Washington Is Failing Children and Youth of Color

A. Early Education

Early childhood education—ranging from birth to third grade¹—is not about merely learning the basic academic skills to succeed.² It is an opportunity for children to learn the crucial social and emotional skills to holistically develop.³ It is the foundation of a child’s learning trajectory for the rest of their lives.⁴ School districts and states do not fund early education adequately in communities that serve children of color, which unfairly creates additional social and economic barriers for children and their families.

Washington is home to more than 800,000 children between the ages of 0-8 years,⁵ and almost one half of them are children of color.⁶ More than one-third of all children under the age of 8 years living in households where the income is at or below the 200 percent of the federal poverty level (FPL), and AI/AN, Black, Latinx, and NH/PI children are more likely to live in households with incomes less than 200% of the FPL.⁷ Children of color and Indigenous children made up 47.3 percent of the class of entering kindergarteners in Washington’s public schools in 2019 and are expected to make up a greater share in the future years. Yet children of color and children from tribes are under-represented among children who arrive ready for kindergarten (41% of children who arrive ready are from tribal communities or communities of color) and over-represented among children who are not yet ready (54% of children who are not yet ready are from tribal communities or communities of color).⁸ Among the explanations for this gap are that a higher portion of children of color are from low-income households, and linguistic barriers in the way the

1. Danielle Ewen, Nat’l Inst. For Early Educ. Research, *Using ESSA to Build a Birth-to-Third Grade Early Education Continuum* (July 25, 2017), <https://nieer.org/2017/07/25/using-essa-build-birth-third-grade-early-education-continuum>.

2. Nat’l Univ., *Why Is Early Childhood Education Important?* (Nov. 30, 2021), <https://www.nu.edu/resources/why-is-early-childhood-education-important/>.

3. *Id.*

4. *Id.*

5. Wash. State Dep’t of Youth, Children & Families, *2020 - Washington’s Statewide Early Learning Needs Assessment* 35 (2020) [hereinafter *Early Learning Needs Assessment*].

6. *Id.* at 36, Table 4-2.

7. *Id.* at 38.

8. *Id.* at 60, Table 4-9.

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Kindergarten readiness assessment is administered that prevents teachers from meeting the needs of children.⁹

Despite the undeniable importance of early childhood education on a child's trajectory, students of color are far too often removed from the very environment that should foster a sense of belonging and holistic growth. According to a national study conducted by the U.S. Department of Education in 2016, Black children make up 19 percent of the preschool population in the U.S., yet represent 47 percent of preschool suspensions.¹⁰ The disparate discipline of Black children in preschool reflects the gaps in culturally responsive pedagogy, as well as the implicit biases that impact relationships, perceptions, and actions against these students.¹¹

Many experts in pre-k programs have demonstrated concerns around the excessive discipline practices for this nation's youngest learners.¹² Research shows that teachers with large class sizes and long preschool days tend to expel children from the classroom at higher rates.¹³ Teachers who reported a high degree of job stress also resorted to expulsions more frequently than other teachers.¹⁴ There must be a culture shift in the expectations of teachers and resources that are provided to them in order to set up children in early education for success.¹⁵

While a thorough exploration of early education is beyond the scope of this report, it is clear that children of children of color and their families are hardest hit by inadequate funding of a robust early education program. COVID is currently threatening the already meager progress of early education in Washington state, particularly for children in poverty and those with disabilities.¹⁶

9. *Id.* at 60.

10. Adrienne Garro et al., *A Consultation Approach to Target Exclusionary Discipline of Students of Color in Early Childhood Education*, 25 CONTEMP. SCH. PSYCHOL. 124 (2021) (using 2016 data, researchers demonstrated that while Black students comprised approximately 19% of the preschool population, yet they represented 47% of school suspensions).

11. *Id.*

12. Christina A. Samuels, *Pre-K Suspension Data Prompt Focus on Intervention*, EDUC. WEEK (March 31, 2014).

13. *Id.*

14. *Id.*

15. *Id.*

16. James Drew, *COVID-19 Threatens 'Meager Progress' on State's Early Childhood Education*, NEWS TRIB., May 3, 2020, <https://www.thenewstribune.com/news/coronavirus/article242373216.html>.

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Washington only invests one percent of the state budget on early learning.¹⁷ This lack of foundation is detrimental to the development of children.¹⁸ In addition to the problem of inadequate funding, their access to early learning programs are affected by multiple factors, including but not limited to access and affordability, system navigation, the need for comprehensive free or affordable health care, mental health services for both children and parents, and need for basic material support for housing, food, and transportation.¹⁹ For families of color, racial equity issues experienced at both the institutional level and program level pose significant additional barriers.²⁰ Further complicating the racism families experience within the early education system are historical traumas, geographic²¹ isolation, mass incarceration of communities of color, and exclusion from economic systems.²²

More fundamentally, as the 2020 DCYF Needs Assessment calls out, that data show “the persistence of disparities in achievement over time, [and] demonstrate that the pipeline as a whole is not effective at ameliorating low achievement, but rather is passing along low achievement to each subsequent level.”²³ The Assessment also recognizes the failure of public systems to lift up the families and children most in need of robust supports:

This pattern is unlikely to change until every point in the service system embraces its role in not simply maintaining existing levels of achievement but supporting children and families so that children’s achievement is enhanced at every level.

Outreach participants expressed frustration about these gaps for children of color. The need to address this disparity was frequently cited in public comments, and some participants said that the system has inherent institutional bias that must be addressed. This view is supported by the relationship seen between lower levels of kindergarten readiness and opportunity gaps later in life. Disparities persist over

17. *Id.*; see generally Rasheed Malik et al., Ctr. for Am. Progress, *The Coronavirus Will Make Child Care Deserts Worse and Exacerbate Inequality* (June 22, 2020), <https://www.americanprogress.org/issues/early-childhood/reports/2020/06/22/486433/coronavirus-will-make-child-care-deserts-worse-exacerbate-inequality/>.

18. Drew, *supra* note 16; see also Malik, *supra* note 17.

19. *Early Learning Needs Assessment*, *supra* note 5, at 35; Appendix B, 3-20

20. *Id.* at Appendix B, 3, 8-9.

21. *Id.* at 62.

22. *Id.* at Appendix B, 8-9.

23. *Id.* at 62.

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time, and public systems do not successfully mitigate early inequities — a failure of the fundamental purpose of these systems.²⁴

DCYF’s most recent Early Learning Coordination Plan is centered in eliminating long-standing inequities in early learning outcomes for Black, Brown, Indigenous, and other marginalized groups including their families. There remains deep disproportionality related to race and ethnicity in accessing services and achieving positive outcomes. Washington’s early learning strategy is driven by two goals: (1) achieve a 90% statewide kindergarten readiness rate and (2) eliminate race and income as predictors of readiness. The Coordination Plan sets forth an aspirational vision for access to high-quality services designed to promote healthy development and school readiness for children. Both agency documents champion the promotion of statewide collaboration of statewide, regional, and community partners representing the diversity of the state with an emphasis on programs and services that are integral to meeting the needs of a diverse community. Those needs encompass, but are not limited to, addressing the physical, cognitive, and social-emotional development of Washington’s children.

At the core of the early learning coordination plan’s values are five topic areas: Healthy Children and Families; Strong, Nurturing, Safe and Supported Families; Positive Early Learning Experience; Supported Early Learning Workforce; Powerful Communities and Responsive System. The guiding principles on the plan include developing strategies meant to be inclusive while making sure communities identified as underserved and marginalized receive the needed resources and supports with the purpose of resolving longstanding inequities. Age groups covered in this coordinated plan include prenatal to age 8.

DCYF states that the vision of coordinating the early learning coordination plan goals and strategies were co-created with a diverse group of community partners consisting of over 150 dedicated individuals focused on a targeted universalism²⁵ framework to ensure the strategies explicitly name the commitment to eliminate racial, bias, and discrimination in communities. If the community input process is as robust and inclusive as described, and the agency can demonstrate outcomes consistent with these goals, the plan will go a long way toward providing quality early education to Washington’s children.

24. *Id.* at 62.

25. For an explanation of targeted universalism approach to policy making, see, e.g., John A. Powell et al., Haas Institute for a Fair and Inclusive Society, *Targeted Universalism Policy & Practice*, <https://belonging.berkeley.edu/targeted-universalism>.

B. Educational Outcomes and Experiences in K-12 Demonstrate that Schools Are Failing BIPOC Students

Schools are failing to holistically support BIPOC students in Washington K-12 schools, and these students are underperforming as a result. In 2017, Washington State ranked 41, 42 and 43 for graduation rates for Black, Native and Latinx students and ranked 44 for low-income students.²⁶ One of nine students in Washington did not graduate in 2019. One in four Black students in the state did not graduate, for Latinx students that number was 3 of 20, one of four Native students did not graduate and one of six students from low-income backgrounds did not receive their high school diploma.²⁷ As school districts have tried to address low graduation rates over the last decade, advocates are observing—and youth are experiencing—a perverse incentive structure that emphasizes student push out (transfer out of district or to alternative schools where graduation rates are not tracked) or push through (where students are given credits without actually learning foundational academic skills).

The Road Map Project, a collaborative project undertaken by Seattle Education Access, UW School of Social Work, and Community Center for Education Results, recently published its findings that centered student voice and perspective, attempting to “drive change by amplifying the experiences of students who have been failed by the systems created to serve them.”²⁸ Student reasons for disengagement often fall in three categories: racial bias and negative school climate; insufficient academic supports; and a lack of access to services to address family instabilities and basic needs.²⁹ Racial bias and resulting exclusionary school discipline are key drivers of students’ experiences of negative school climate and school disengagement.³⁰

Students expressed they feel as though most of the support offered in their schools go to high achieving students and not to students who are struggling. One student shared, “counselors are really focused on these kids who are doing well, and the kids that they knew were going to succeed they would get the help.” Students who have individual learning needs also turn away from school when they feel they are not getting adequate help. A student noted how a lack of continuity in

26. The Education Trust, *Right Direction. Miles to Go: Closing the Widening Achievement Gaps in Washington State* 2 (August 2020), <https://edtrust.org/wp-content/uploads/2014/09/Right-Direction.-Miles-to-Go-November-2020.pdf>.

27. *Id.* at 3.

28. Henry Joel Crumé et al., Road Map Project, *Creating Paths for Change: Understanding Student Disengagement and Reengagement* 4 (2020), <https://roadmapproject.org/wp-content/uploads/2020/02/Creating-Paths-for-Change-Understanding-Student-Disengagement-and-Reengagement.pdf>.

29. *Id.* at 6.

30. *Id.*

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special education services undermined her ability to succeed in school. After a math support class was no longer available, she says, “I just gave up on math eventually because I was like, ‘I can’t do work with it. I’m not getting the help I need.’” Insufficient academic support for struggling students can cause them to disengage.³¹

Students who do not complete high school may also be facing challenges outside of school that result in trauma. Trauma can significantly affect social relationships and mental health that without support, can undermine school engagement.³² One student describes her experience with unstable housing and mental health and its impact on her schooling, “We lost the apartment, and we became homeless ... Long list of just living at hotels and living with my friends... So that was really hard. And then that’s where the school problems started ... Because, you know, it’s like depression. So, you’re sad, you’re dealing with death, you’re dealing with everything... so you’re gonna miss some days of school.”³³

The failure to provide an education that meets the needs of BIPOC students has significant consequences, as poor academic performance can often be a strong predictor of future legal system involvement. The recent cohort study by Washington State Center for Court Research of 3,396 students from Academic year 2009-2010 with juvenile legal system involvement demonstrates a strong link between poor academic performance and later court involvement. “Court-involved students are likely to have a history of poor performance on standardized math and reading tests. For example, among youth sentenced to Juvenile Rehabilitation only 1 out of every 10 had successfully passed a standardized math test in grades 6-8, while 1 in 4 had met criteria in reading during the same time period.”³⁴ And only 18% of students in 8th or 9th grade during the year of their qualifying offense earned sufficient credits (6 or more) in 9th grade to graduate high school within 4 years.³⁵ The researchers concluded that “students who receive juvenile justice dispositions have already experienced school failure well before court contact.”³⁶

31. *Id.* at 6.

32. *Id.* at 9.

33. *Id.*

34. See, e.g., Carl McCurley et al., Ctr. for Court Research, *Students Before and After Juvenile Court Dispositions: Student Characteristics, Education Progress, Juvenile Court Dispositions, and Education Outcomes in Washington* State 1 (2017), <https://www.courts.wa.gov/subsite/wscctr/docs/Education%20and%20Juv%20Ct%20Dispositions%20finalrev.pdf>.

35. *Id.* at 1-2 (2017).

36. *Id.* at 13.

C. Racially Disproportionate Discipline & the School to Prison Pipeline

Compounding K-12 schools' failure to meet the needs of BIPOC children is the well-documented problem that in Washington State, BIPOC children experience more frequent and severe discipline compared with their white peers.

RCW 28A.600 includes several important statutes related to provision of discipline in schools, including enforcement rules, expulsion rules, excluding someone from the classroom, and re-engaging suspended students.³⁷ These laws apply to K-12 students. While there are statewide laws governing discipline practices, a significant amount of deference is given to school districts to set discipline policies.

Enrollment and exclusion data from the 2019-20 school year gathered and published by the Office of Superintendent of Public Instruction's Report Card reveals that students of color are overrepresented when it comes to behavioral violations, with Indigenous students being more than twice as likely to experience exclusion, Black students two and a half times more likely to experience exclusion, and Latinx students nearly one and a half times more likely to experience exclusion.³⁸

[table on next page]

37. See generally RCW 28A.600; OSPI, Discipline Q&A, <https://www.k12.wa.us/sites/default/files/public/studentdiscipline/pubdocs/Parent%20Q%26A%202019%20-%20English.pdf>.

38. Wash. Office of Superintendent of Pub. Instruction, *Report Card, Discipline Rate by Student Demographics (2019-20)*, <https://washingtonstatereportcard.ospi.k12.wa.us/ReportCard/ViewSchoolOrDistrict/103300>, [hereinafter OSPI Report Card] (click on "Diversity Report" tab, then select "Discipline Rate by Student Demographics" on left hand column). Behavioral violations include short-term suspension, long-term suspension, emergency expulsion, or expulsion for a discipline related incident. *Id.* (hover over any of the bar graphs on the Discipline Rate By Student Demographics page and the definition appears).

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Relative Rate Index of Behavioral Violations³⁹

	Total enrollment 2019-2020	Total exclusionary actions 2019- 2020	Rate	Relative Rate Index
Latinx	273,455	7,949	2.9%	1.45
Indigenous	14,992	790	5.3%	2.65
Black	51,417	2,581	5%	2.5
NH/PI⁴⁰			3.9%	1.95
White	600,261	11,945	2.0%	n/a

In other words, this data demonstrates that students of color are overrepresented in discipline and white students are underrepresented in discipline.⁴¹ And, with the exception of a marginal improvement in RRI with respect to Indigenous students, the disproportionality as calculated above based on 2019-2020 data has worsened compared to relative rates from the 2016-2017 school year: Indigenous students were 2.28 times more likely to be excluded from Washington schools than white students, Black students were 2.45 times more likely to be excluded, Latinx students were 1.36 times more likely to be excluded, and Native Hawaiian/Other Pacific Islander students were 1.49 times more likely to be excluded than white students.⁴² Further, data for Latinx students is often not disaggregated and may not accurately reflect the discipline disproportionality.

39. *Id.* (data is from the Report Card; RRI is subcommittee's calculation using OSPI data).

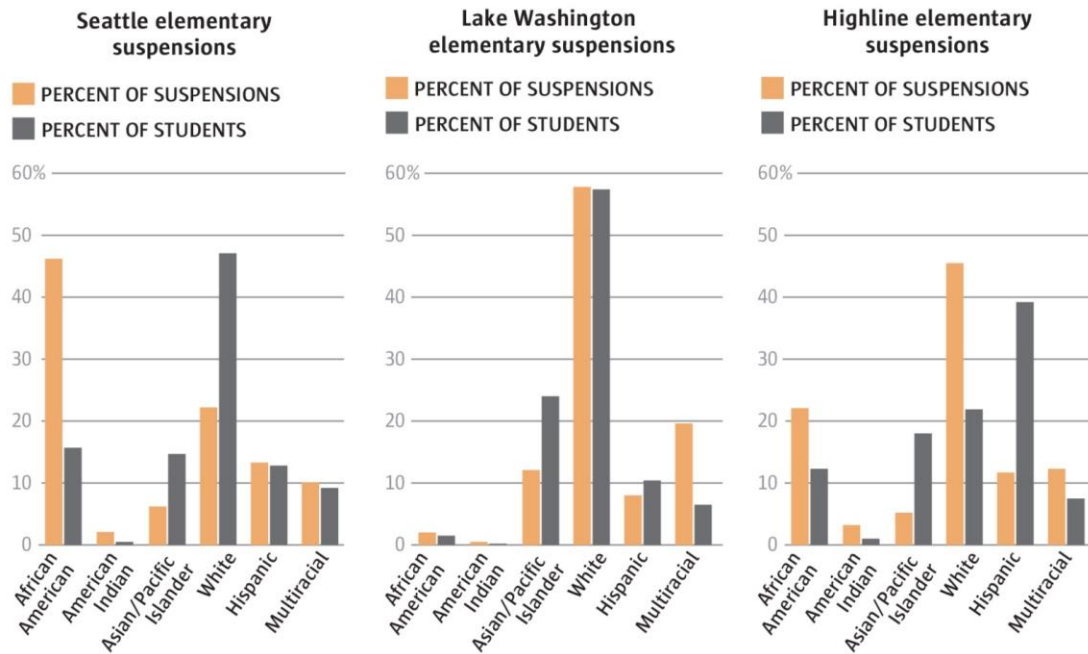
40. The Report Card Data did not give the total enrollment number or the total excluded for students identify as NH/PI, but did state that 3.9% of Native Hawaiian/Pacific Islanders are excluded. The rate of exclusion is higher than that of the white discipline rate of 2.0%. *Id.*

41. *See id.*

42. Wash. Office of Superintendent of Pub. Instruction, *Equity in Discipline Theory of Action 2* (August 2019), https://www.k12.wa.us/sites/default/files/public/cisl/images/2019_08%20Equity%20in%20Discipline%20Theory%20of%20Action%20Background%20Document.pdf.

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When the discipline data is disaggregated by age, it is clear that the racial divide in school discipline starts in elementary school.⁴³ The following demonstrates this racial and ethnic divide in elementary schools in Seattle, Lake Washington, and Highline.⁴⁴



School behavior is often an opportunity to understand the needs of students, the lack of staff training, and the importance of school culture. However, when schools respond to student behavior with exclusion, the response marginalizes students and reduces their likelihood of graduation. High school students are considered on track if they pass all their attempted credits by the end of 9th grad. Yet for each of the last 6 school years, long term suspensions⁴⁵ have made up between 10.7% and 13.9% of all exclusions.⁴⁶ In the 2019-20 school year, at the 9th and 10th grade levels, long term suspensions made up 16.7% and 16.1% of exclusionary discipline.⁴⁷ Each time a school

43. Claudia Rowe, *Race Dramatically Skews Discipline, Even in Elementary School*, SEATTLE TIMES (June 23, 2015).

44. *Id.*

45. A suspension is considered long term when it is ten or more days. OSPI Report Card (click on “Report Card,” select “Exclusion Days Rate” on the left hand column, select “Trend” at the top of the graph, and view the definitions for each category of exclusion).

46. *Id.* (click on “Report Card,” select “Exclusion Days Rate” on the left hand column, select “Trend” at the top of the graph to display exclusion data by type of exclusion and year from 2014-2019).

47. *Id.* (click on “By Grade” at the top of the graph).

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district removes a student from school, that student is significantly more at risk of dropping out of school entirely. At such an important time in a student’s life where it is crucial for them to remain in school, a significant number of students are experiencing long term exclusions when it matters most.

The Office of Superintendent of Public Instruction (“OSPI”) has cited racial bias and the cultural disconnect between students and staff as factors that contribute to the racially disparate outcomes of school discipline in Washington State.⁴⁸ While implicit racial bias, including the adultification of youth of color discussed in the report,⁴⁹ are contributing factors to race disproportionality in discipline, other factors must also be considered. As set forth above, the failure to wholistically support students of color is also responsible for feeding into the school to prison pipeline—students may disengage because they feel schools are not meeting their needs. Further, the trauma that many students experience outside of school manifests in their behavior in school, with the schools often responding with exclusionary discipline rather than providing therapeutic and other supports to those students. Further contributing to the pipeline are schools that host SROs on campus, discussed in more detail below, where police may become involved when students become rowdy or disruptive.⁵⁰ All of these factors support the conclusion that the school system is underserving students of color, who both are disengaging and being pushed out of schools.

D. Police Presence in Washington Schools

Police officers have become a regular part of the environment in Washington schools. Police officers, sometimes called “campus resource police officers” or “school resource police officers” are present on some school campuses every day.⁵¹ BIPOC and low-income students are over policed in Washington schools. Walla Walla Public Schools have an officer assigned to its alternative high school, where 80 percent of students are low- income, but not to its comprehensive high school, where only 45 percent of students are low-income.⁵² The Central Kitsap School District has a police officer assigned to only one of three high schools, which is also the high school with the largest enrollment of students of color and low-income students in the district.⁵³

48. *Equity in Discipline Theory of Action*, *supra* note 42 at 4.

49. *Id.* at 14-15.

50. *See generally* Vanessa Hernandez, American Civil Liberties Union-Wash., *Students Not Suspects: The Need to Reform School Policing in Washington State* (2017), <https://www.aclu-wa.org/docs/students-not-suspects-need-reform-school-policing-washington-state>.

51. *Id.* at 3.

52. *Id.* at 6.

53. *Id.*

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The Edmonds School District reported a similar trend, a police officer is placed in only one of its five high schools also with the largest enrollment of students of color and low-income students.⁵⁴ In Seattle Public Schools, “School Emphasis Officers” were placed at three of the district’s nine middle schools. These three schools have student populations that are, on average, 77 percent students of color and 67 percent low-income, compared with a district-wide average of 38 percent students of color and 38 percent low income.⁵⁵

Increased police presence at schools increases the likelihood of student involvement in the criminal legal system. In Washington State, students may be criminally charged for disturbing school.⁵⁶ The ACLU reviewed court data from the past 20 years and found over 800 cases where a juvenile was charged with disturbing school.⁵⁷ This indicates it is likely that some Washington students are being charged with crimes for disciplinary matters. Further, there is research that suggests the contacts young people have with police may increase the likelihood contacted individuals will participate in illegal behaviors.⁵⁸

The labeling theory argues that an individual who has experienced an arrest may be perceived as “deviant” by police, peers, teachers, employers, and others.⁵⁹ The stigma of a “deviant” label creates subsequent barriers to education, employment, or other important socializing institutions and limits available opportunities.⁶⁰ These barriers can lead to engagement in deviant behavior and development of deviant attitudes/identities.⁶¹ Moreover, young people who are arrested or have been court-involved become targets after their initial incident. Police provide an initial “criminal” label and then respond to the label by increasing surveillance and/or creating a lower threshold for re-arrest when an individual has a prior record. Individuals who experience an arrest are more likely than their peers who engage in similar levels of illegal behavior to be re-arrested.⁶² As explored in the next section, court involvement also poses serious risk to academic performance.⁶³

54. *Id.* at 5.

55. *Id.*

56. RCW 28A.635.030.

57. Hernandez, *supra* note 50, at 8.

58. Anne McGlynn-Wright et al., *The Usual, Racialized, Suspects: The Consequence of Police Contacts with Black and White Youth on Adult Arrest*, SOC. PROBLEMS 4 (Oct. 31, 2020), <https://doi.org/10.1093/socpro/spaa042> (advance access version; paginated version forthcoming).

59. *Id.* at 5.

60. *Id.*

61. *Id.*

62. *Id.*

63. See generally McCurley et al., *supra* note 34.

E. Academic Performance After Court Involvement

Court involvement is associated with higher dropout and lower graduation rates. In a study following the education outcomes of those enrolled in 8th or 9th grade in academic year 2010-2011, only 20% of those students involved with the juvenile court in 8th or 9th grade graduated from high school, compared with 74% of their court non-involved peers.⁶⁴ The study found that “[e]ven after controlling for student demographics, differences in service needs, and previous academic performance, the study found that court involvement, on its own and regardless of court case type, was a predictor of whether a student would graduate, dropout, or earn a GED.”⁶⁵

The same cohort analysis mentioned above—analyzing 3,396 students from academic year 2009-2010 with juvenile legal system involvement—found that only 18% of students earned six or more credits in 9th grade, and just 23% of the cohort had graduated at the end of at least 5 years of follow up, whereas Washington State’s class of 2015 4-year graduation rate was 78.1%.⁶⁶ Results were worse for youth with more serious sanctions—13% of youth on probation and 16% of youth committed to Juvenile Rehabilitation had graduated.⁶⁷

Black students were overrepresented for all dispositions, but especially for Juvenile Rehabilitation dispositions, making up 22% of students sentenced to Juvenile Rehabilitation in comparison to 10% of all cohort youth receiving disposition and only 4% of the 2010 15-year-old population.⁶⁸ While the cohort analysis did not include any intersectional analysis, it is also worth highlighting the prevalence of history of special education eligibility in those with juvenile court involvement,⁶⁹ as well as the vast majority—86%--of cohort students with juvenile court dispositions who qualified for Free or Reduced Price lunch, compared with less to one-half who are eligible state-

64. Arina Gertseva et al., Ctr. for Court Research, *Achievement Gap: Education Outcomes of Court-Involved Students* 1-2 (2017), <https://erdc.wa.gov/publications/justice-program-outcomes/achievement-gap-education-outcomes-court-involved-students>.

65. *Id.* at 2.

66. McCurley et al., *supra* note 34, at 1-2.

67. *Id.*

68. *Id.* at 1.

69. Twenty-four percent (24%) of the study cohort of students with juvenile court dispositions and 32% of cohort students sentenced to either probation or Juvenile Rehabilitation had a history of special education eligibility, compared to a general student population prevalence of 13%. *Id.* at 9.

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wide.⁷⁰ Housing instability was also prevalent, with 17% of court involved youth are experiencing homelessness.

As the researchers of this study noted, “court-involved youth frequently face multiple overlapping challenges known to negatively impact school achievement, including household poverty..., education disabilities as indicated by special education eligibility, and a history of homelessness.”⁷¹ And the researchers noted that the academic performance and outcomes were “consistently worse for students sentenced to local sanctions or to JR than for those, usually with less serious charges, who enter into diversion agreements.”⁷² Finally, the researchers noted the problematic interrelationship between the trend of poor educational outcomes for BIPOC students—the same students who are more likely to receive harsher sentences that, again, correlate with poor school outcomes.⁷³

F. Truancy

i. Legal Framework

“Truancy” is a term for chronic unexcused absences from school.⁷⁴ “Truant youth are at risk for deterioration in school performance, which has been reliably linked to dropping out of school, current and future substance abuse problems, teen pregnancy, marital instability, criminal behavior, and current and future incarceration.”⁷⁵ “The research shows that missing 10% of the school year, or just two days a month, can greatly impact students’ chances of reading at grade level by third grade and significantly reduce the chances of students graduating from high school.”⁷⁶ These statistics also emphasize the importance of eliminating expulsion and suspension as a response to student need, because missed days of school impact long-term graduation rates.

70. *Id.* at 1-2.

71. *Id.* at 14.

72. *Id.*

73. “Black, Latino, and American India/Alaska Native students are at particular risk for poor school outcomes, and are more likely to receive more restrictive sentences.” *Id.*

74. American Civil Liberties Union, *Parents’ Guide to Public School Discipline in Washington* 4 (2017).

75. Stephanie Cross, Wash. State Statistical Analysis Ctr., *Truancy In Washington State: Academic Performance and Educational Outcomes among Truant Youth* 5 (2018), <https://erdc.wa.gov/publications/justice-program-outcomes/truancy-washington-state-academic-performance-and-education>.

76. Wash. Office of Superintendent of Pub. Instruction, *UPDATE: Truancy Report*, 2 (2019) [hereinafter OSPI Truancy Report].

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Washington and many other states have sought to mitigate truancy by enacting laws and involving the juvenile court system.⁷⁷ By law, children in Washington between the ages of eight and eighteen are required to attend a public school unless an exception applies.⁷⁸ School districts must monitor attendance and take statutorily specified actions whenever a student has an unexcused absence.⁷⁹ The more unexcused absences a student has, the more the district is required to intervene, and the more severe the consequences become for the student.⁸⁰

In reporting on student attendance in Washington, OSPI defines truancy as seven or more unexcused absences in a month or fifteen or more in a year.⁸¹ The benchmark of seven unexcused absences in a month is the point at which the school district is authorized to file a truancy petition with the juvenile court.⁸² Filing a petition is mandatory for students with fifteen unexcused absences in a year or seven in a month.⁸³

A truancy petition is a formal request that the juvenile court take measures to compel a student to attend school. Historically, the truancy petition process has threatened serious consequences for students, the most severe being juvenile detention.⁸⁴ Before July 2021, if a student failed to comply with a court order mandating their attendance, the court was authorized to find them in contempt and order them detained.⁸⁵ In fact, Washington State had one of the highest national rates of detention for “status offenses,” specifically truancy.

77. Alexandra Ricks & Sino Esthappan, Urban Inst., *States are looking beyond the juvenile justice system to address school truancy* (Aug. 20, 2018), <https://www.urban.org/urban-wire/states-are-looking-beyond-juvenile-justice-system-address-school-truancy> (“Twenty-four states and DC treat truancy as a problem that can be solved through punitive measures in the juvenile or family court systems, though policies concerning student age and state definitions of truancy vary.”).

78. RCW 28A.225.010. This legal requirement, along with truancy proceedings and other juvenile status offenses, were enacted by the “Becca Bill” in 1996. See RCW 13.32A.

79. RCW 28A.225.151 (data collection and reporting requirements); RCW 28A.225.020 (steps for responding to unexcused absences). While districts have some discretion in defining what constitutes an unexcused absence, it generally means that a child has “failed to attend the majority of hours or periods in an average school day” and “failed to meet the school district’s policy for excused absences.” RCW 28A.225.020(2).

80. Initial steps include notifying the student’s parents and holding a parent-teacher conference.

81. OSPI Truancy Report, *supra* note 76, at 4-5.

82. See *id.* (citing RCW 28A.225.030). When a student has five unexcused absences, filing a truancy petition is one of three options that a district may choose from. RCW 28A.225.030(2)(c). The others are entering into an attendance agreement with the student and their parent, or referring the student to a community truancy board. RCW 28A.225.030(2)(a), (b).

83. RCW 28A.225.030(1).

84. RCW 28A.225.090(2)(b) (2019).

85. RCW 28A.225.090(4) (2019); Laws of 2019, ch. 312, § 14, <https://lawfilesexxt.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5290-S2.sl.pdf> (eliminating the use of the valid court order exception to place

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The truancy petition process, however, has undergone major changes in recent years; most significantly, juvenile courts no longer have authority to impose detention as a punishment for truancy.⁸⁶ Another prominent change is the increased role of Community Engagement Boards (“CEB”). A CEB is a board of community members trained to serve students and their families in working to overcome barriers to school attendance.⁸⁷ Whereas previously the decision whether to use the predecessor to CEBs, Community Truancy Boards (“CTB”) was left to the discretion of individual districts, in 2016 Washington made them mandatory.⁸⁸ Now, when a district files a truancy petition with the juvenile court, the petition is automatically stayed while the student is referred to a CEB.⁸⁹ Only if CEB intervention is unsuccessful can the petition proceed to hearing before the juvenile court.⁹⁰ Even then, a hearing is not required if alternative methods would be successful.⁹¹

youth in detention for noncriminal behavior and amending RCW 28A.225.090(2), (4) to eliminate use of detention for failure to comply with court’s order, or failure to comply with a court-approved order with a Community Truancy Board).

86. Laws of 2019, ch. 312, § 14 <https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Senate/5290-S2.sl.pdf> (eliminating the use of the valid court order exception to place youth in detention for noncriminal behavior); *see also* RCW 28A.225.090 (effective July 1, 2021) (detention is not among the options the court has upon finding a child has failed to comply with the terms of the court order, or a court-approved order with a CEB); RCW 7.21.080(1)(c) (“Beginning July 1, 2021, youth may not be committed to juvenile detention as a contempt sanction for truancy proceedings under chapter [28A.225](#) RCW, and a warrant may not be issued for such youth for failure to appear at a court hearing that requires commitment of such youth to juvenile detention.”). Some jurisdictions, such as King County, have already eliminated detention as a punishment for truancy. Wash. State Inst. for Pub. Policy, *An Evaluation of the 2016 Act to Promote Attendance and Reduce Truancy*, 28 (2020), http://www.wsipp.wa.gov/ReportFile/1734/Wsipp_An-Evaluation-of-the-2016-Act-to-Promote-Attendance-and-Reduce-Truancy_Report.pdf, [hereinafter *2016 Truancy Report*].

87. RCW 28A.225.025. Effective August 1, 2021, Community Truancy Boards were renamed Community Engagement Boards. Laws of 2021, ch. 119 (ESSB 1113), <https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Senate/5290-S2.sl.pdf>?cite=2021%20c%20119%20C2%A7%2015. Community Truancy Board (CTB) is used in this Appendix when discussing the truancy process before August 1, 2021; Community Engagement Board (CEB) is used when discussing the current state of truancy law.

88. RCW 28A.225.026 (“By the beginning of the 2017-18 school year, juvenile courts must establish, through a memorandum of understanding with each school district within their respective counties, a coordinated and collaborative approach to address truancy through the establishment of a community truancy board or, with respect to certain small districts, through other means as provided in subsection (3) of this section.”).

89. RCW 28A.225.035(4)(a).

90. RCW 28A.225.035(6).

91. *Id.* (“Such actions may include referral to an existing community truancy board, use of the Washington assessment of risks and needs of students (WARNS) or other assessment tools to identify the specific needs of individual children, the provision of community-based services, and the provision of evidence-based treatments that have been found to be effective in supporting at-risk youth and their families.”).

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These changes reflect a growing awareness that punishment, such as detention, causes more harm than good. “[J]ust one court appearance increases the chance a young person will drop out of school. It is a troubling contradiction that the response to truancy can itself lower academic achievement.”⁹² Policymakers and educators in Washington state appear to recognize this. In its 2019 truancy report, OSPI observed “a shift away from primarily punitive responses to truancy to viewing all absences as potential early warning signals,” and the “general sense is that educators are shifting from a primarily punitive approach to attendance to one that looks at the root cause of absences and provides support.”⁹³

ii. Implementation and Outcomes

Notwithstanding recent changes to the legal framework for combating truancy, overall truancy rates have held steady along with profound racial and ethnic disproportionalities among students reported as truant.⁹⁴ For instance, while Latinx students comprise 24% of Washington’s student body, they account for 33.9% of students reported as truant.⁹⁵ And while Black/African American youth make up 5% of Washington students, they are reported as truant at a rate of just over 8%.⁹⁶ Similar disparities exist for Indigenous and multiracial students.⁹⁷

92. Ricks & Esthappan, *supra* note 77.

93. OSPI Truancy Report, *supra* note 76, at 1-2; *see also* Amanda Gilman & Rachael Sanford, Wash. State Ctr. for Court Research, *Washington State 2018 Juvenile Detention Annual Report* 11 (2019), https://www.courts.wa.gov/subsite/wscctr/docs/2018_DetentionReport_Final.pdf (reporting that, in 2018, “[t]here was an 11.3% decrease in the number of [detention] admissions for non-offender matters between 2017 and 2018, with the greatest decrease (-21.1%) observed for truancy-related admissions”).

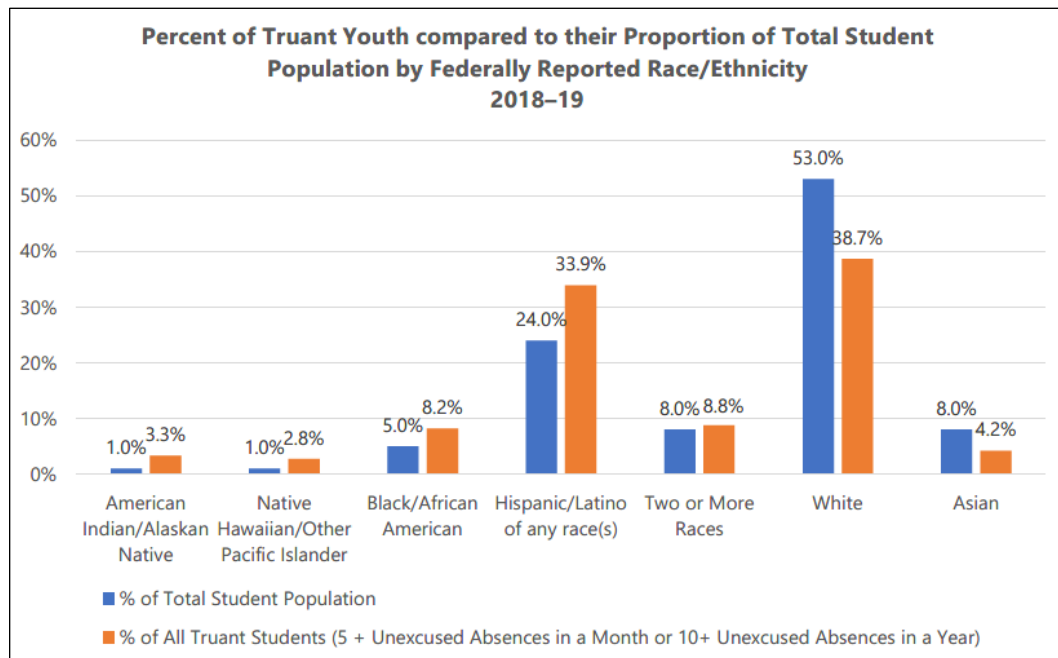
94. OSPI Truancy Report, *supra* note 76, at 13.

95. *Id.*

96. *Id.*

97. *See id.*

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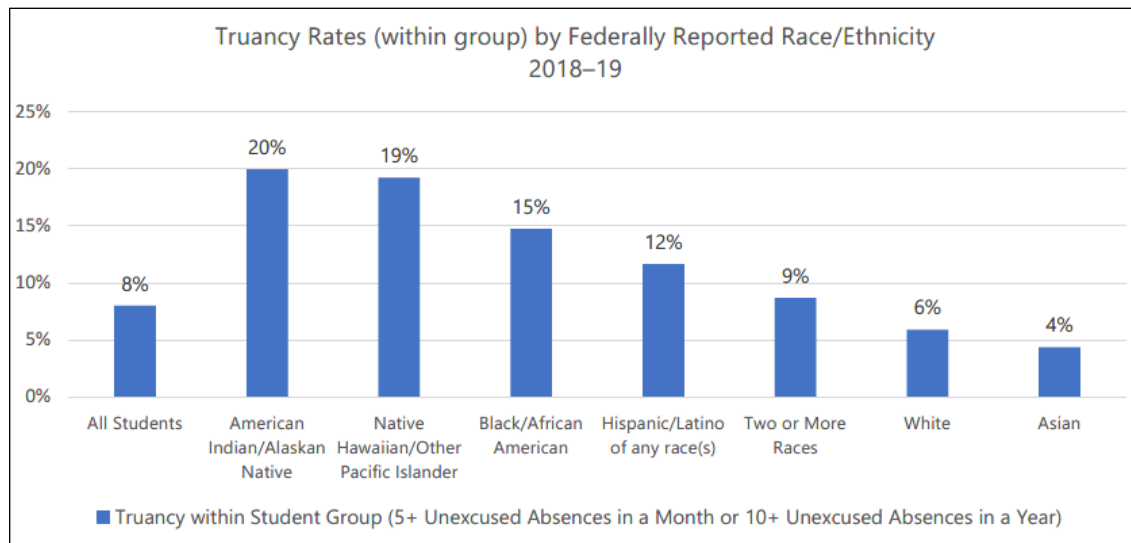
Meanwhile, overall truancy rates are not decreasing. “There are more students who were truant in 2019, following the trend from the previous two years. With an increase of .8% over two years, it’s clear that truancy rates are not declining.”⁹⁸ As these rates persist, so too do the racial and ethnic disparities noted above.⁹⁹ Whereas 8% of all students are reported as truant, the rates of truancy among youth of color are much higher—20% for American Indian/Alaskan Native students, 19% for Native Hawaiian/Pacific Islander students, 15% for Black/African American students, and 12% for Hispanic/Latinx students.¹⁰⁰

98. *Id.* at 7.

99. *Compare id.* at 13 with *id.* at 4 (2017) (reflecting similar racial and ethnic disproportionalities among truant youth in 2017 as reported in 2019).

100. *Id.* at 11.

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As noted, the response that Washington state has chosen for combating truancy is for school districts to intervene by filing a truancy petition and, while that process has historically threatened detention, there is a shift toward a more holistic, community-based response by staying all petitions while the student is referred to a CEB.

In practice, however, districts file petitions for only 11% of truant students (at least 7 unexcused absences in a month or 15 in a year).¹⁰¹ A full explanation for the low rate at which districts file petitions is unknown, but interviews with juvenile court administrators have revealed several possible reasons that deter districts from filing, such as hesitancy to involve the court system in attendance issues, reluctance to involve students in the juvenile legal system, and a lack of resources, training, or personnel.¹⁰²

Whatever the reason, the low overall rate of truancy filings is not the only issue—the demographics of students petitioned are racially and ethnically disproportionate. Of the 11% filed, districts file petitions at a notably higher rate for white students.¹⁰³ Whereas white students make up 38.7% of students reported as truant, they account for 45% of all petitions filed.¹⁰⁴ By contrast, Latinx

101. *Id.* at 18. This percentage from the 2018/19 school year has been reported differently by WSIPP, which found that “[t]he average school district petitioned only 14% of the students with enough absences to qualify for a petition.” 2016 *Truancy Report*, *supra* note 86, at 21.

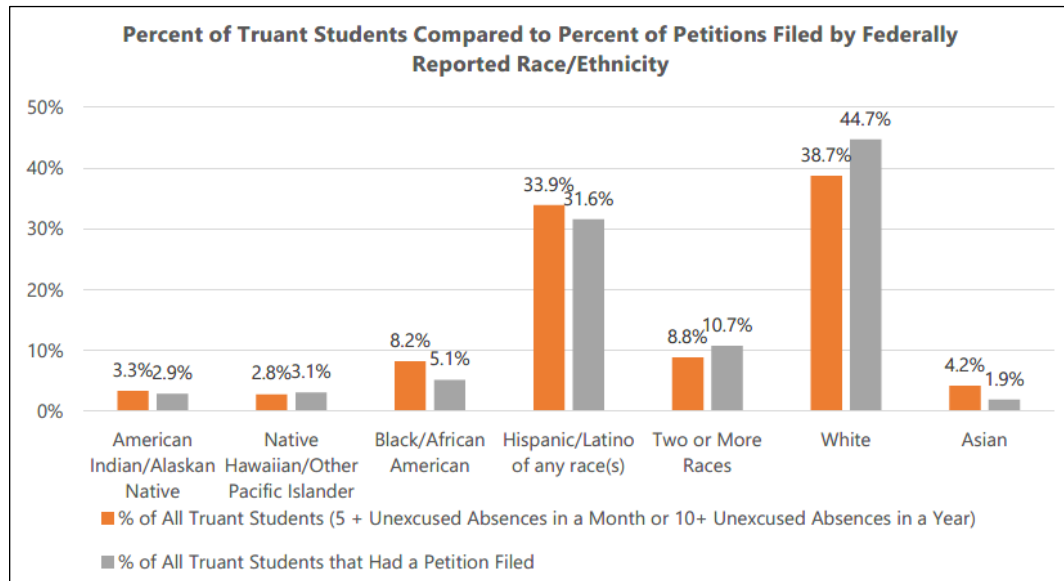
102. *Id.* at 22.

103. OSPI Truancy Report, *supra* note 76, at 20.

104. *Id.*

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students comprise 33.9 % of students reported as truant, but they account for 31.6% of petitions.¹⁰⁵ Similarly, while Black students account for 8.2% of students reported as truant, they comprise 5.1% of students petitioned.¹⁰⁶



Further, even though referral to a CEB is a mandatory step following the filing of a petition, such referrals are only made for 53% of students petitioned.¹⁰⁷ And among those students, referrals were made at lower percentages for particular racial and ethnic groups than others.¹⁰⁸ For instance, whereas 61% of white students with a truancy petition were referred, only 33% of Black/African American students received a referral.¹⁰⁹

^{105.} *Id.*

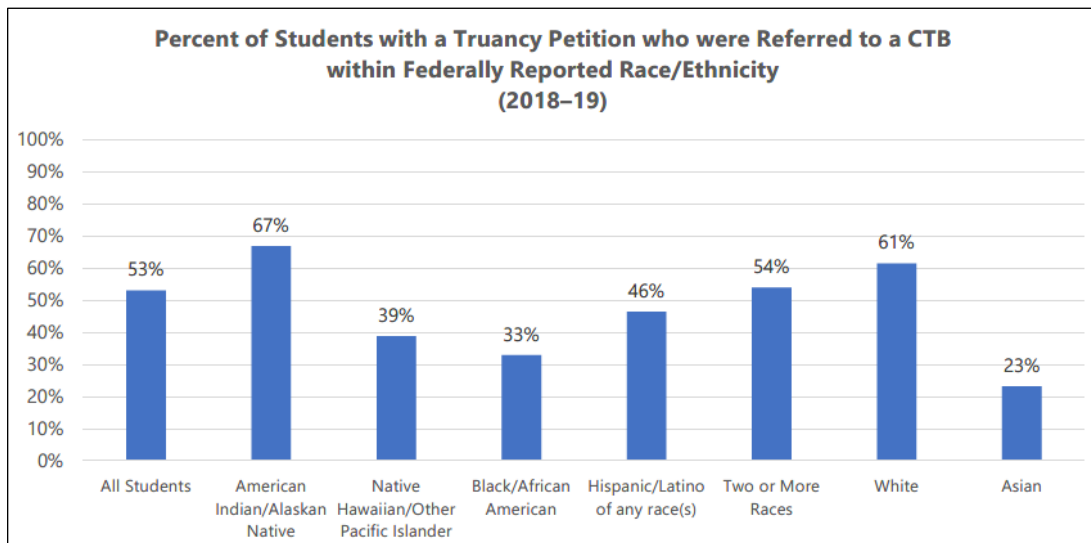
^{106.} *Id.*

^{107.} *Id.* at 22.

^{108.} *See id.*

^{109.} *Id.*

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The low and disproportionate rates at which truancy petitions are filed and students are referred to CEBs raise serious doubts about the efficacy of Washington’s recent changes to the truancy process. In a recent report on the new legal framework for combatting truancy, WSIPP “found no evidence that the legislation has improved student outcomes in general,” as “[u]nexcused absences increased over the study time period and dropout rates remained steady.”¹¹⁰ Likewise, in its most recent truancy report to the legislature, OSPI questioned whether “the truancy process, as detailed in the law, [is] the best way to re-engage students and address barriers to attendance.”¹¹¹ OSPI also observed that, “[i]f filing a petition is seen as an opportunity to re-engage the student and seek community wraparound supports, this data could indicate that certain groups of students have more access to that support.”¹¹²

The education recommendations in Part VI speak directly to the complexity of the issues addressed here, highlighting the need to eliminate court involvement for truancy; the need for more diverse teachers, robust anti-racism practices in schools that hold both teachers and students accountable for racist acts, and design and implementation of culturally responsive curriculum driven by students and families of color; and finally the need to create a safe school culture, which includes but is not limited to eliminating police from schools.

110. *2016 Truancy Report*, *supra* note 86, at 1. While it is possible “that outcomes might have been worse had the law not passed,” WSIPP was not able to confirm this in its report. *Id.*

111. OSPI Truancy Report, *supra* note 76, at 25.

112. *Id.*

Race and the Family Regulation System

A. Family Separation Harms Children

The principal justification that is used to separate families is the belief that when children are unsafe at home, removing them from their families and placing them in out-of-home care will make them safer. That assumption has been deeply undermined by research on the harms associated with out of home care.

Researchers specializing in child welfare have found that, “for children who have experienced maltreatment, out-of-home placement provides little to no measurable benefit in terms of cognitive or language outcomes, academic achievement, mental or behavioral health, or suicide risk.”¹ And, out-of-home care may cause additional harm by increasing a child’s “risk of juvenile and adult criminal behavior, increased risk of Reactive Attachment Disorder, and increased risk of early mortality.”²

One study of children in Illinois found that, compared to their peers who remain in comparably unsafe households, children who are placed in foster care were more likely to experience delinquency, had higher rates of teen pregnancy, and had worse employment outcomes as adults.³ In the Northwest, studies show that foster care alumni are less likely to be employed than the general population and more than one in five alumni experience homelessness after leaving foster care.⁴

Further, we now know that foster care is not necessarily safe. In one study of foster homes in the Pacific Northwest, one-third of youth reported experiencing some form of maltreatment, neglect, or abuse by a foster parent or other adult in their foster home.⁵ It is even more concerning when maltreatment is at the hands of those tasked with ensuring the safety of these children. A recent KING 5 investigation revealed that Washington “DCYF managers withheld hotel beds from some

1. Erin Sugrue, *Evidence Base for Avoiding Family Separation in Child Welfare Practice: An Analysis of Current Research – July 2019*, at 7 (Alia 2019), <https://aliainnovations.egnyte.com/dl/Wz6o3au5hP?submissionGuid=b0be1075-eba9-4fdc-b0c8-b02fc698753b>.

2. *Id.*

3. *Id.* at 8-9 (discussing Illinois study); Joseph R. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583, 1598-1602 (2007) (Illinois study).

4. Peter J. Pecora et al., *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* 37 (Casey Family Foundation, rev. Mar. 14, 2005), https://caseyfamilypro-wpengine.netdna-ssl.com/media/AlumniStudies_NW_Report_FR.pdf.

5. *Id.* at 34.

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foster kids, and they instructed social workers to make the foster youth uncomfortable with inadequate sleeping arrangements, like in cars without blankets and in state offices without beds” when kids acted out or refused placements.⁶

While these risks exist for all children who enter foster care, the risk of experiencing these outcomes is exacerbated for Black and Indigenous children.⁷ For example, “[a]s a result of the anti-Black racism and entrenched inequality that pervade our society, Black children in America are already at risk of poor outcomes over the course of their lives including economic hardship, poor health, low educational attainment, teen births, criminal legal involvement, emotional distress, and suicidal ideation.”⁸ The added trauma of forced separation from their parents and placement in foster care compounds other disadvantages and makes it all the more likely that these negative outcomes will be realized.⁹ Bruce Knutson and Joel Odimba, the co-chairs of Uniting for Youth Executive Steering Committee stated in the Foreword that the recent ground-breaking study of King County showed that “involvement in child welfare is related to worse outcomes in the juvenile justice system on many levels – such as time spent in detention and recidivism – when compared to youth with no or limited involvement in the child welfare system. These outcomes, particularly for youth of color and females, worsened if the youth had more extensive involvement in the child welfare system.”¹⁰

Therefore, to the extent that we tell ourselves a story that family separation is justified to keep children safe, that justification requires a thorough reassessment. While on the extreme end of the spectrum of maltreatment it may be true that a child is safer when removed, it is incorrect to assume that a child who is unsafe at home is necessarily any safer if removed by the state.

6. Taylor Mirfendereski & Chris Ingalls, *No Bed, No Blanket: Social Workers Blow Whistle on Washington Forcing Foster Youth to Sleep in Cars, Offices as Punishment*, KING 5 (May 20, 2021), <https://www.king5.com/article/news/investigations/no-bed-no-blanket-social-workers-blow-whistle-on-state-forcing-foster-youth-to-sleep-in-cars-offices-as-punishment/281-ae353838-1cf0-48bb-991e-179e70cc20cb>.

7. See Alan J. Dettlaff et al., *It Is Not a Broken System, It Is A System That Needs To Be Broken: the upEND Movement to Abolish the Child Welfare System*, 14 J. PUB. CHILD WELFARE 500, 503 (2020), <https://doi.org/10.1080/15548732.2020.1814542> (identifying these harms with respect to Black children).

8. *Id.* (citations omitted).

9. *Id.*

10. Gregory Halemba & Gene Siegel, *Doorways to Delinquency: Multi-System Involvement of Delinquent Youth in King County (Seattle, WA)*, at iv (Nat’l Ctr. for Juvenile Justice, Sept. 25, 2011), <http://www.juvjustice.org/sites/default/files/resource-files/Doorways%20to%20Delinquency%20Multi-System%20Involvement%20of%20Delinquent%20Youth%20in%20King%20County%20Seattle%20WA.pdf>.

B. The Disproportionate Involvement of Low-Income Families Reveals that Structural Factors Like Poverty, Not Individual Failings, Create Risk for Children

The family regulation system is built on an assumption that children are unsafe because of the individual failings of their parents – that if parents could be convinced to address their own “issues,” their child would be safer and better off. So much of the family regulation system is predicated on the belief that faults unique to the parent and family must be corrected with “services” to address those deficiencies.

Yet this view entirely overlooks structural factors like poverty that more often make up the difference between safety and risk for children. We know that families with financial means use drugs and alcohol, have substance use disorders, have mental health struggles, and experience domestic violence.¹¹ But financial security both shields those families from exposure to the family regulation system and allows families to keep children safe despite other destabilizing factors.

A focus on individual failings ignores the research that demonstrates an overwhelming correlation between poverty and involvement in the family regulation system. “Over 90% of children and youth involved with the ... [family regulation system], in Washington and across the nation, are from low-income households below 200% of the Federal Poverty Level (FPL).”¹² Children of color are disproportionately represented among low-income families in Washington State – 65% of Latinx children, 60% of Black children, and 59% of Indigenous children live below 200% of the federal poverty level.¹³ Further, there is a growing number of “economically disconnected” families that neither work nor receive benefits. In 2016, 20% of family regulation system-involved families were economically disconnected.¹⁴ Economically disconnected caregivers are most likely

11. E.g., Susan E. Collins, *Associations Between Socioeconomic Factors and Alcohol Outcomes*, 38 ALCOHOL RES. 83, 92 (2016) (literature review of numerous studies shows that “individuals with higher SES (or living in area with higher SES) engage in more frequent and heavier drinking”); Suniya S. Luthar et al., *Adolescents from Upper Middle Class Communities: Substance Misuse and Addiction Across Early Adulthood*, 30 DEV. & PSYCHOPATHOLOGY 315, 329 (2017) (discussing elevated levels of marijuana and cocaine use among upper middle class youth); Zlatka Rakovec-Felser, *Domestic Violence and Abuse in Intimate Relationship from Public Health Perspective*, 2 HEALTH PSYCH. RES. 62, 64 (2014) (victims “can be found in all social and economic classes and can be wealthy, educated, and prominent as well as undereducated and financially destitute”).

12. Wash. State Dep’t of Children, Youth & Families, *Using Data in DCYF to Advance Racial Equality* 3 n.1 (Jan. 2021, rev. May 2021), <https://dcyf.wa.gov/sites/default/files/pdf/reports/OIAAEquityData2021.pdf>.

13. Partners for Our Children, *Poverty & Involvement in the Child Welfare System* 1 (Jan. 2016), <https://partnersforourchildren.org/sites/default/files/Poverty%20and%20Child%20Welfare%20Involvement%205-3-16.pdf>. The number of children in poverty receiving resources like Temporary Assistance to Needy Families (TANF) has declined in recent years. In 2016, 19 of every 100 children living in poverty in Washington State were estimated to be connected with TANF – a reduction by half from 2009 when 39 of every 100 children were connected to the program. (2016). *Id.*

14. *Id.* at 2.

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to report an unmet basic need such as housing, medical services, or of finding and keeping a job, all circumstances which make it harder for parents to keep their children safe and meet their basic needs.¹⁵

Further, living in poverty impacts mental resources. Research in brain science has shown poverty-related concerns can strain mental resources reducing cognitive capacity for other tasks, including essential parenting abilities. This can have a long-term influence on children: exceptionally stressful events experienced in childhood, such as sustained economic hardship, are linked to negative outcomes later in life (e.g., obesity, alcoholism, and depression).¹⁶ Living in poverty often equates with fewer community resources. Low-income families often lack other family or friends to be able to help, because those family and friends are similarly burdened and touched by the system.

It should be apparent that families impacted by the family regulation system do not suffer from a lack of care for their children or a lack of “parenting skill”;¹⁷ instead they often lack the financial means to address emergencies or illnesses that other families, wealthy families, can manage. It should also be apparent that the “parenting deficiencies” that result in state action against families living in poverty, issues like substance use disorders, do not necessarily require family separation or state intervention; we know this because wealthy families with identical problems are essentially immune from system involvement.

Finally, when families living in poverty become ensnared in the family regulation system, the response is to remove their children (which likewise precludes any access to TANF they may have had) and to instead pay other people, often middle-class white people, to care for their children. This system has resources to aid and stabilize families but institutional and structural barriers that prevent those resources from going to the families who need it the most.

C. Discretionary Decisions in the Family Regulation System Invite Racial Bias and Arbitrariness

The family regulation system further relies on the assumption that its decisions are based on objective criteria and legal standards that make the system predictable and fair. Practitioners tell a

15. *Id.*

16. *Id.*

17. Eli Hager, *The Hidden Trauma of “Short Stays” in Foster Care* (Marshall Project, Feb. 11, 2020), <https://www.themarshallproject.org/2020/02/11/the-hidden-trauma-of-short-stays-in-foster-care>.

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very different story. Many decisions in this system are based on assessments of future risk and turn on vague standards, like the “best interests of the child,” that invite racial bias and arbitrariness.

In June of 2020, the Secretary of DCYF called for an elimination of the “implicit bias that seeps into everything we do.”¹⁸ Recognizing the role of implicit bias is an important first step, but it is insufficient unless we also acknowledge the built-in discretion in the system that allows for such bias to flourish.

Because the vast majority of dependency cases in Washington stem from allegations of neglect, it is very common to see families in the system even when there is no evidence that the child has been harmed; instead, the allegations are based on concerns about the likelihood of future harm to the child. Predicting future harm is, necessarily, a highly subjective inquiry. A study performed in 1999 revealed that family regulation system actors disagreed nearly 50% of the time when given a hypothetical about whether a child should be removed from his/her/their parents.¹⁹ This same study showed that family regulation system actors and protective service line workers vary widely in the decisions they made on identical cases; they fail to remove children from their families when that is called for and remove children when unnecessary.²⁰

Discretionary decisions about what is best for children, like so many decisions in the family regulation system, invite racial bias.²¹ In a system that is focused on assessing risk and safety, Black families must contend with widespread societal bias that correlates Blackness with dangerousness.²² Likewise, Indigenous families must overcome deeply ingrained perceptions of

18. Ross Hunter, *Message from Secretary Hunter: Advancing Racial Equity* (June 4, 2020), <https://www.dcyf.wa.gov/news/message-secretary-hunter-advancing-racial-equity>. See also Lawrence M. Berger, Marla McDaniel & Christina Paxson, *Assessing Parenting Behaviors Across Racial Groups: Implications for the Child Welfare System*, 79 SOC. SERV. REV. 653 (2005) (finding pronounced evidence of racial bias in the assessment of black parenting behaviors when conducted by white interviewers); Rakesh Beniwal, *Implicit Bias in Child Welfare: Overcoming Intent*, 49 CONN. L. REV. 1021, 1026, 1063-67 (2017) (noting as to agency behavior “the volume of resources required to stamp out the problem of implicit bias pales in comparison to the sheer dearth of resources available”).

19. Peter H. Rossi et al., *Understanding Decisions about Child Maltreatment*, 23 EVAL. REV. 579 (1999), <https://journals.sagepub.com/doi/10.1177/0193841X9902300601>.

20. *Id.*

21. Vivek Sankaran, *With Child Welfare, Racism Is Hiding in the Discretion*, IMPRINT: YOUTH AND FAMILY NEWS (June 21, 2020), <https://imprintnews.org/child-welfare-2/with-child-welfare-racism-is-hiding-in-the-discretion/44616>; Martin Guggenheim, *The Right to be Represented but Not Heard: Reflections on Legal Representation for Children*, 59 N.Y.U. L. REV. 76 (1984) (noting that what is in the best interest of the child is an extremely complicated question where what is best for the child is rarely obvious).

22. Equal Justice Initiative, *Presumption of Guilt*, <https://eji.org/issues/presumption-of-guilt/> (last visited Dec. 6, 2021).

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indigenous family dysfunction and pervasive substance misuse.²³ What’s more, race inflects both the distrust with which the system views Black and Indigenous families and also the inherent value the system places on white family ideals.²⁴ It is all but impossible to divorce notions of “good parenting” from racialized ideals constructed and reproduced by white women.

Racial bias informs decision-making in other, less obvious, ways as well. One example of institutional bias that operates within the family regulation system comes from a recent examination of the influence on child welfare cases where Court-Appointed Special Advocates (CASAs) are involved. CASAs are volunteers appointed by a Juvenile Court judge who are authorized to become involved in a child’s dependency case, gain access to the child’s records, and advocate for the best interest of the child. The CASA acts as a factfinder for the judge based on court documents, social workers’ files, and educational, medical, and therapy records. They also speak with the child, family, school officials, health care providers, and other professionals involved in the child’s life. The CASA uses this information paired with firsthand observations to advocate in court and in school.²⁵ CASA volunteers are overwhelmingly white middle-class women²⁶ and their opinions are afforded tremendous weight in dependency cases.²⁷

A study published in 2020 found that “overall, children appointed a CASA have a significantly lower odds than children without a CASA of achieving permanency.”²⁸ In other words, foster children with CASAs are: less likely to be reunified with parents; less likely to find permanence in the form of guardianship by a relative; and more likely to “age out” of foster care without a home. These findings are consistent with other studies, including studies that CASA programs have undertaken of themselves.²⁹ And yet, CASAs remain a central aspect of the dependency

23. See *In re Dependency of Z.J.G.*, 196 Wn.2d 152, 180, 471 P.3d 853 (2020) (ICWA “was meant to prevent states from removing children based on stereotypical ideas, without respect for social and cultural differences”).

24. Amy Mulzer & Tara Urs, *However Kindly Intentioned: Structural Racism and Volunteer CASA Programs*, 20 CUNY L. REV. 23, 69-70 (2017).

25. *Id.* at 25.

26. *Id.* at 24.

27. King County Superior Court Blog, *Thanking Those Who Help Children: CASA Volunteers*, <https://kingcountysuperiorcourt.wordpress.com/2019/02/13/thanking-those-who-help-children-casa-volunteers/> (judge describing how she relies on CASAs “to get a more accurate read on what was going on in the family”).

28. Cynthia Osborne et al., *The Effect of CASA on Child Welfare Permanency Outcomes*, 25 CHILD MALTREATMENT 328, 328 (2020).

29. Caliber Associates, *Evaluation of CASA Representation: Final Report* 43-45 (1999), <https://perma.cc/GMM6-WQBT> (finding in a study commissioned by the National CASA Association that children who had a CASA volunteer were less likely to have been reunified with their parents as of 18 months after the investigation closed less likely to have been in relative care, and more likely to be in out of home care (not including relative care)); Davin Youngclarke et al., *A Systematic Review of the Impact of Court Appointed Special Advocates*, 5

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system – volunteers given party status and the right to opine on the fundamental rights of complete strangers. The system reveals its biases by telegraphing who it deems trustworthy. “A critical examination of CASA programs suggests we adopt a deep skepticism when the views of privileged white people are allowed to dominate over the view of the families most directly impacted by the system, however well-intentioned these voices seem.”³⁰

Finally, even beyond discretionary decisions, many so-called “objective” criteria often bootstrap racial discrimination from other systems into dependency cases. The family regulation system often relies on background checks and criminal history checks to evaluate parents and families, importing racial bias in those systems into dependency cases.³¹ Likewise, contact with law enforcement plays an important role in determining referrals, and families of color are disproportionately and over policed.³²

D. Adoption Is Not Necessarily Permanent

Another justification offered both in support of family separation and the permanent termination of parental rights is the belief that a child who is separated from their family and adopted is going to have a “better” life in a new, secure, and permanent home.

Perhaps surprisingly, adoption is far less “permanent” than the conventional narrative assumes.³³ Nationwide, researchers consistently report adoption disruption rates that range from about 10 to

J. CTR. FOR FAMILIES, CHILD. & CTS. 109, 119 (2009) (finding CASA assigned cases were more likely to end in adoption, equally likely to result in reunification, and equally likely to result in long-term foster care placements); U.S. Dep’t of Justice, Office of the Inspector Gen., *National Court Appointed Special Advocate Program* 19 (2006) (Audit Report 07-04), <https://perma.cc/ZAN5-2K7F> (finding that children in CASA assigned cases were “more likely to be adopted and less likely to be reunified with their parents”); Kathy Brennan et al., Washington State Court Appointed Special Advocate Program Evaluation Report 30, 53 (Jan. 2010), <https://perma.cc/3AT4-LLXZ> (comparing volunteer CASAs and career CASA staff and contract GALs and finding only twenty-nine percent of CASA assigned cases resulted in reunification, compared with thirty-six percent for contract GALs and thirty-eight percent for CASA staff).

30. Mulzer & Urs, *supra* note 25, at 73.

31. See generally Children’s Bureau/ACYF/ACF/HHS, *Background Checks for Prospective Foster, Adoptive, and Kinship Caregivers* (2018), <https://www.childwelfare.gov/pubPDFs/background.pdf>.

32. “American child protection systems depend on police, medical personnel, teachers, and other professionals and community members to leverage their routine interactions with children and families into a broad and diffuse network for maltreatment surveillance. This dependence turns practices and biases from external organizations into key features of the processes through which maltreatment reports are generated.” Frank Edwards, *Family Surveillance: Police and the Reporting of Child Abuse and Neglect*, RSF: RUSSELL SAGE FOUND. J. SOC. SCI. 50, 64 (2019).

33. Children’s L. Ctr., *Foster Care to Adoption – Not Always Permanent*, <https://www.clcny.org/Broken-Adoptions.html>; Megan Twohey, *Adopted Girl: “My Parents Didn’t Want Me. I Didn’t Want to Live*, NBC NEWS

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25 percent—depending on the population studied.³⁴ Disruption is used to describe an adoption process that ends after the child is placed in an adoptive home and before the adoption is legally finalized. Dissolutions (adoptive relationships that end after the adoption is legally finalized) are more difficult to measure because, at the time of legal adoption, a child’s records may be closed, first and last names and Social Security numbers may be changed, and other identifying information may be modified.³⁵

In Washington, DCYF calculates a ratio of adoptions where the child was later displaced (resulting in a new foster care placement) to the number of total adoptions finalized each year. In 2019, that ratio was 6.2 displacements per 100 finalized adoptions.³⁶ DCYF recognizes that this is an imperfect metric and that there are many problems with collecting accurate data on adoption displacement. It is significant that 6 out of every 100 adoptions result in a new foster care placement; even so, the number of adoptions that break down (but don’t result in a new foster care placement) is almost certainly higher.

Likewise, there is increasingly reason to question whether children in adoptions are in fact “better off.” Children who are adopted from stranger foster care have significantly higher odds of experiencing health problems.³⁷ Children who experienced adoption are about 4 times as likely to have a reported suicide attempt.³⁸ Research also suggests that all adopted children are at risk of elevated behavior problems and that adopted foster youth are more behaviorally impaired than non-foster adopted children.³⁹ Finally, adoptee narratives, particularly in cases of cross-racial

(Sept. 11, 2013), <https://www.nbcnews.com/news/investigations/adopted-girl-my-parents-didnt-want-me-i-didnt-want-v20425102>.

34. Children’s Bureau, *Adoption Disruption and Dissolution* 2 (June 2012), https://www.childwelfare.gov/pubpdfs/s_disrup.pdf.

35. Research nationwide shows that a small number, between one and five percent of adoptions dissolve. *Id.* However, there are many reasons to believe that is an under count of the number of adopted children who are not being cared for by their adoptive families. Rachel Blustein, *The Adoption System’s Lost Children*, DAILY BEAST (June 26, 2017), <https://www.thedailybeast.com/the-adoption-systems-lost-children>.

36. Wash. State Dep’t of Children, Youth & Families, *Families First Prevention Services Plan: Prevention Plan* 10 (Dec. 20, 2019), https://www.dcyf.wa.gov/sites/default/files/reports/12192019_FFPSA%20Prevention%20Plan%20FINAL.pdf.

37. Kristin Turney & Christopher Wildeman, *Mental and Physical Health of Children in Foster Care*, 138:5 PEDIATRICS (2016), <https://pediatrics.aappublications.org/content/138/5/e20161118>.

38. Margaret A. Keyes et al., *Risk of Suicide Attempt in Adopted and Nonadopted Offspring*, 132:4 PEDIATRICS, 639 (2013).

39. Cassandra Simmel, et al., *Adopted Foster Youths’ Psychosocial Functioning: A Longitudinal Perspective*, 12 CHILD & FAMILY SOC. WORK 336 (2007).

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adoption, often describe feelings of loss and disconnection stemming from the experience of adoption.⁴⁰ While these limited studies and stories should not be generalized too widely, they should give pause, and at least generate some doubt about the pervasive narrative the adoption is necessarily a happy ending for a child.

Indeed, we must question not only whether children are in fact “better off” in adoptive homes but, more importantly, why we assume they would be? Narratives of adoption are steeped in whiteness – in a picket-fence image of a “better” life. This image, of a child rescued from squalor and delivered to a better place, depends both on the demonization of families, particularly families of color who have lost their children to the system, and the elevation of white families who have stepped in to “rescue” those children. Ultimately, a system that prefers adoption to allowing children to remain in their families and communities is relying, at least in part, on race and class bias.

These prepackaged assumptions do not merely perpetuate racist norms, they also operate like blinders, preventing an accurate assessment of child safety which puts children at risk. The strength of the adoption-as-happy-ending narrative can overwhelm evidence to the contrary. One deeply tragic recent example involved the Hart family – two white adoptive parents who murdered their six adoptive children, all children of color.⁴¹ Those children had relatives and family that fought for them,⁴² but their family members ultimately lost to the “Harts’ carefully crafted narrative of a passel of formerly abused black children and two progressive white moms fighting for them.”⁴³ Indeed, that narrative grounded in the superiority of white parenting and the “luck” of Black children to gain access to white homes, gave the adoptive parents “cover for their own abuse.”⁴⁴

Clearly, public policy should not be based on individual stories, no matter how tragic – whether those stories describe children harmed in adoptive homes or by their own families. Further, no one

40. E.g., NICOLE CHUNG, *ALL YOU CAN EVER KNOW: A MEMOIR* (2018); GABRIELLE GLASER, *AMERICAN BABY: A MOTHER, A CHILD, AND THE SHADOW HISTORY OF ADOPTION* (2021).

41. Roxanna Asgarian, *Before Children’s Grisly Deaths, a Family Fought for Them and Lost*, APPEAL (Jul. 12, 2018), <https://theappeal.org/before-childrens-grisly-deaths-a-family-fought-for-them-and-lost/>.

42. *Id.*

43. *Id.*; see also Rachel Aviv, *The Kentler Experiment: A German sexologist ran a program that placed foster children with pedophiles. How could this happen?*, NEW YORKER, July 26, 2021 (noting that “Kentler’s experiment seemed to rest on the idea that some children are fundamentally second class, their outlook so compromised that any kind of love is a gift, a proposition that colleagues apparently accepted too”).

44. *Id.* Stories of abuse in adoptive homes are not isolated. For example, in one case the state recommended adoption in home in which it was later shown that the adoptive parents abused five girls physically, sexually, and psychologically, both before and after they were adopted. *H.B.H. v. State*, 192 Wn.2d 154, 160, 429 P.3d 484 (2018).

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is arguing that all adoptions are necessarily unsafe. Rather, it is time to question the implicit association that drives so much decision-making in this system, that “adoption = better.”

Instead, research shows that children who are placed with their loved ones, relatives and family friends, fare better than children who are adopted by non-kin. These arrangements, called “kinship placements” allow children to be placed with a grandparent, relative, or close family friend who is not a parent. Children are able to maintain a sense of belongingness, which is vitally important in mitigating the trauma of any prior maltreatment and the trauma of removal.⁴⁵ According to one study comparing children in kinship care with those in stranger care, the more time youth spend with family while in out-of-home care, the more likely they are to maintain lifelong family connections and find a legal permanent placement.⁴⁶ Time in kinship care was also associated with fewer critical safety incident reports, higher school achievement, and better mental and physical health.⁴⁷

Kinship care is also more stable and longer lasting. According to one study, after controlling for demographic and placement characteristics, children in kinship care had significantly fewer placements than did children in foster care, and they were less likely to still be in care, have a new allegation of institutional abuse or neglect, or to be involved with the juvenile justice system.⁴⁸ Research shows that, if not returned to parent, placing a child with family (*regardless of the legal*

45. Heidi Redlich Epstein, *Kinship Care Is Better for Children and Families* (A.B.A. Child Practice Law Today, July/Aug. 2017), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/july-aug-2017/kinship-care-is-better-for-children-and-families/.

46. Yvonne Humenay Roberts et al., *The Impact of Placement with Family on Safety, Permanency, and Well-Being* 7 (Casey Family Programs, Nov. 2008), <https://caseyfamilypro-wpengine.netdna-ssl.com/media/1896-CS-From-Data-to-Practice-2018.pdf>.

47. *Id.* at 6.

48. Marc A. Winokur et al., *Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes*, 89 FAMILIES IN SOC’Y: J. CONTEMP. SOC. SERVS. 338 (2008). Importantly, however, this study also showed that relative care was associated with lower rates of reunification, a troubling dynamic that requires further exploration. In terms of the benefits of kinship care, this study shows that, in Washington, children are significantly less likely to experience a placement disruption if placed with a relative. Pew Charitable Trusts, *Time for Reform: Support Relatives in Providing Foster Care and Permanent Families for Children* 1 (2007) https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster_care_reform/supportingrelativespdf.pdf; see also “Kinship caregivers are relatives or suitable other persons” under DCYF policy. *Policy No. 4527. Kinship Care: Searching for, Placing with, and Supporting Relatives and Suitable Other Persons*, Policies & Procedures, Wash. State Dep’t of Child., Youth, & Fam., § Definitions, <https://www.dcyf.wa.gov/4500-specific-services/4527-kinship-care-searching-placing-and-supporting-relatives-and-suitable>. It should be noted that in 2009, the Washington State Legislature amended the dependency statutes governing disposition and other child placement provisions by changing all references to “relatives” with regard to placement of a child to read “relatives and other suitable persons.” See Chapter 491, Laws of 2009, 61st Legislature, 2009 Regular Session, §§ 1, 2, 5.

mechanism used) is the most lasting arrangement – longer lasting than adoption by strangers.⁴⁹ Yet, all too often, relative caregivers who love and fight for their family members, are rejected in favor of the purported benefits of adoption by white people.

E. Conclusion

Parents who have lost their children, describe it as “modern-day slavery, a form of kidnapping” – indeed, parents are clear that the system is not helping them, and those parents who do “get something” out of it still don’t want that “help” under the condition of losing their children or being policed.⁵⁰ According to scholar and expert Dorothy Roberts, family regulation is a “starkly segregated, oppressive system.”⁵¹ “Not only does the system have a racist impact, but racism is at the heart of the system’s oppressive ideology and how it operates – ‘serving’ families by taking children away.”⁵² A close examination of how this system justifies itself reveals that it is well past time to undertake a radical reimagining of how what it means to actually “serve” children and families.

As we undertake this necessary reimagining of the family regulation system, it is critical to listen to and center children.

49. See Mark F. Testa, *The Quality of Permanence - Lasting or Binding - Subsidized Guardianship and Kinship Foster Care as Alternatives to Adoption*, 12 VA. J. SOC. POL’Y & L. 499 (2005).

50. *Abolition Is the Only Answer: A Conversation with Dorothy Roberts*, RISE MAG. (Oct. 20, 2020), <https://www.risemagazine.org/2020/10/conversation-with-dorothy-roberts/>.

51. *Id.*

52. *Id.*

APPENDIX D – RACE AND YOUTH HOMELESSNESS

Race and Youth Homelessness

The body of the report sets forth the structural factors and data showing that housing instability and homelessness disproportionately affects Black, Indigenous, Latinx, and Native Hawaiian/Pacific Islander youth in Washington. This appendix examines in more detail how homelessness is criminalized, how youth face barriers to accessing court and other resources to stay in compliance with the law, how youth face barriers to accessing community-based alternatives when they are prosecuted, and finally how detention and incarceration contribute to and exacerbate homelessness.

A. Unhoused Youth Are Criminalized

Policies that restrict who can exist in public spaces punish young people solely because they do not have a safe and stable place to live. Youth may become involved with the criminal system by being cited or charged for survival acts such as sitting, sleeping, trespassing while seeking shelter, or performing other life-sustaining acts in public.¹ Many of the ordinances and policies used to restrict actions associated with homelessness, such as panhandling or sleeping in public spaces, were passed in response to the increase in homelessness in the 1980s, and replaced laws that were traditionally used to police people of color and poverty but had been judicially overturned, such as Jim Crow, anti-Okie, and vagrancy laws.² Similarly, today's restrictions also serve to police primarily unhoused youth of color surviving in public spaces.

Young people experiencing homelessness can also come into contact with law enforcement in more complex ways. A young person may be couch surfing and have trouble getting to school each day, leading to a truancy charge.³ Due to traumatic stress, a young person living on the street or another unsafe environment may become hypervigilant, leading to a fight at school and potentially an assault charge. Youth of color in King County report that due to their difficulty in

1. Sixty percent of homeless youth in a national study reported being fined for “quality-of-life offenses”, such as panhandling, sleeping or camping in public, and loitering. Nell Bernstein & Lisa K. Foster, Cal. Research Bureau, *Voices from the Street: A Survey of Homeless Youth by Their Peers* 5 (2008), <https://www.issuelab.org/resources/11579/11579.pdf>.

2. Chris Herring et al., *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 SOC. PROBS. 131, 132 (2020), <https://academic.oup.com/socpro/article/67/1/131/5422958>.

3. In 2019, 1,267 truancy petitions were filed, and of those petitions, 28% were for Latinx children, 16.7% were for Black children, 13% were for multiracial children, and 11.6% were for Asian Pacific Islander children. King Cty. Office of the Exec., King Cty. Juvenile Justice Statistics, *King County Juvenile Legal System Statistics Comparison of 2019 and 2020 through June 30th*, at 4 (last visited Dec. 6, 2021), https://www.kingcounty.gov/~media/depts/executive/performance-strategy-budget/CJ%20Strategy%20and%20Policy/Data%20and%20Reports/JLS_Comparison_2019_compared_to_2020_Jan-June_-_FINAL.ashx?la=en. For a more thorough treatment of truancy, see Appendix B.

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accessing basic needs such as food, shelter, healthcare, and personal hygiene, they had to engage in activities such as shoplifting for food, sleeping in unsafe places, or engaging in sex work.⁴ Some young people who had previous experience in juvenile detention facilities even voluntarily went to jail or detention to meet their basic needs, despite the cost to their mental and physical stability that involvement in the criminal court system causes.⁵

In Washington, young people of color often receive severe consequences for developmentally normal activities and behaviors, which sometimes can lead to a loss of housing. For example, spending a night in detention can lead to loss of housing, especially if the public housing authority or the landlord learn of the detention and make assumptions about the youth's safety due to the underlying allegations—forcing parents to choose between maintaining their housing and having that child remain in their home.⁶ Punitive school policies that include financial punishments have a demonstrated disproportionate impact on young people of color,⁷ and while the Washington Legislature has taken steps to end detention for truancy charges,⁸ financial punishments may still remain and affect housing stability for young people.

B. Unhoused Youth Face Barriers to Accessing Court and Resources

Transient young people often do not receive notice of tickets or court dates due to lack of a current mailing address and are often unaware that they have been ordered to appear in court. Aside from not receiving notice due to a lack of a mailing address, there are numerous barriers that unhoused youth face that make appearing in court and abiding by court orders difficult. Attendance at court or fulfilling probation requirements requires planning and resources. Sickness, lack of transportation, physical or mental health barriers, substance use disorders, work, school, and the everyday realities of trying to obtain food and shelter can also create barriers to addressing citations or offenses. Young people also may not understand the need to attend court appearances or hearings.

4. Carrie Lippy et. al., *King County Youth of Color Needs Assessment: The Experiences, Strengths, and Needs of Homeless & Unstably Housed Youth of Color* 30 (May 2017), <https://static1.squarespace.com/static/566c7f0c2399a3bdabb57553/t/597fd3ed893fc098807bb872/1501549553222/Youth+of+Color+Needs+Assessment+Final+Report.pdf>.

5. *Id.*

6. *See, e.g., id.* at 18.

7. *See* Henry Giroux, *Racial Injustice and Disposable Youth in the Age of Zero Tolerance*, 16 INT'L J. QUALITATIVE STUD. EDUC. 4 (2003), <https://www.tandfonline.com/doi/abs/10.1080/0951839032000099543>; Nancy Heitzeg, *Education or Incarceration: Zero Tolerance Policies and the School to Prison Pipeline*, Forum on Public Policy Online (2009), <https://eric.ed.gov/?id=EJ870076>.

8. *See* RCW 7.21.080(c).

Critically, the Washington Supreme Court recently passed JuCr 7.16, which quashed all outstanding and future warrants due to an alleged “Violation of a Court Order” or for “Failure to Appear” unless a finding of serious public safety threat is made in the record of the case to support the Violation of a Court Order warrant, or if individual circumstances of the Failure to Appear poses a serious threat to public safety.⁹ By limiting the issuance of warrants unless individual circumstances pose a serious threat to public safety, the new court rule will positively impact unhoused youth by ensuring that fewer young people are incarcerated for behaviors like missing court or violating a court order.

However, there are still circumstances where young people experiencing homelessness or housing instability are issued warrants. For example, “run warrants,” or “pick up orders,” are often used for young people who leave their foster homes or supportive housing.¹⁰

Warrants can get in the way of young people attaining shelter,¹¹ housing, gaining employment, participating in apprenticeship programs, accessing public and federally assisted housing and food stamps, or getting a driver’s license.¹² The many consequences of having outstanding warrants are extensive and can contribute to the cycle of arrest, detention, default, and rearrest for young people. This cycle can cause and worsen trauma in youth and can make them more resistant to seeking help, recovering in treatment, and thrive in stable housing in the future.

C. Unhoused Youth Face Barriers to Community-Based Alternatives, and Diversion, and May Face Longer Periods of Incarceration and Detention

Youth without access to a consistent caregiver and stable housing are often unable to access community-based alternatives to incarceration. Prosecutors may not offer a youth without stable housing the same plea bargain a stably housed youth may receive. For example, if a young person is eligible for community based chemical dependency services but does not have a stable adult caregiver or stable housing, the community-based plan may not be offered to the youth.

9. WSR 20-23-109, Rules of Court, State Supreme Court, *In the Matter of the Proposed New JuCR 7.16 – Governing Warrant Quashes* (Nov. 6, 2020), <http://lawfilesexst.leg.wa.gov/law/wsr/2020/23/20-23-109.htm>.

10. Wash. State Dep’t of Children, Youth & Families, Policies and Procedures, 4550. *Youth Missing from Care* (Aug 2004, rev. June 2018), <https://www.dcyf.wa.gov/4500-specific-services/4550-youth-missing-care>.

11. “A CRC or approved youth shelter will not accept a child with outstanding warrants or a child in need of medical attention or in need of an emotional or behavioral crisis evaluation, in accordance with RCW 71.05.153.” Seattle Police Department Manual, 15.220- *Child Welfare* (2019), <https://www.seattle.gov/police-manual/title-15---primary-investigation/15220---child-welfare>.

12. The DMV may check to see if there are outstanding warrants and can at times arrest on site.

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Statewide data shows that young Black youth are more than four times as likely, and Indigenous youth are three times more likely than white youth to be referred to juvenile court.¹³ The data also shows an increase in young people of colors' involvement at later stages of the system and at serious decision points such as when a young person is being offered a diversion (rather than prosecuted) and at the decision point to incarcerate.¹⁴ Indeed, Black youth are 40% less likely than white youth to receive a diversion or deferred disposition.¹⁵ Disproportionality increases throughout the stages of the juvenile criminal system because each decision made by police, prosecutors, probation officers, and judges are based on decisions from the preceding decision point and create a cumulative discriminatory effect.¹⁶ This cumulative discriminatory effect can especially harm young people experiencing homelessness, as they are not only majority youth of color, but are also discriminated against in sentencing due to their housing status.

For example, in manifest injustice dispositions, courts often rely on non-statutory factors such as “lack of parental control” or “need for treatment and services” to justify upward departures that lengthen sentences for youth who may not have a stable home.¹⁷ Though courts may not use Juvenile Rehabilitation (JR) facilities to house youth simply because the community lacks resources to treat their needs or because they are dependent children,¹⁸ and although the Juvenile Justice Act explicitly does not allow a court to commit a young person to an institution solely because of the lack of facilities,¹⁹ courts can circumvent this issue by relying on non-statutory factors. The arguments for the continued reliance on using non-statutory factors as aggravating factors in sentencing young people are misplaced and disproportionately risk affecting those who are dependents of the state, unhoused, and those affected by factors such as economic status. Justice González also recently warned that racial bias can infect a juvenile probation counselor's report, which can then be relied upon by the trial court in imposing a harsher disposition.²⁰ These

13. Wash. State P'ship. Council on Juvenile Justice & Wash. State Dep't of Soc. & Health Servs., *2017 Annual Report to the Governor and State Legislature* 3, (2017) <https://www.dcyf.wa.gov/sites/default/files/pdf/JJ-AnnualReport2017.pdf>; see also *id.* at 5, Exhibit 2.

14. *See id.* at 5.

15. *Id.*

16. *See id.*

17. *See, e.g., State v. M.J.D.*, No. 52009-1, 119 Wn. App. 1009, 2203 WL 22683360 (Nov. 10, 2003); *State v. T.E.H.*, 91 Wn. App. 908, 918, 960 P.2d 441 (1998); *State v. S.S.*, 67 Wn. App. 800, 817, 840 P.2d 891 (1992); *State v. Rice*, 98 Wn.2d 384, 396, 655 P.2d 1145 (1982).

18. RCW 13.40.150(4)(d),(e).

19. RCW 13.40.150(5).

20. *State v. B.O.J.*, 194 Wn.2d 314, 332, 449 P.3d 1006 (2019) (González, J., concurring).

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are issues that are longstanding and have been reported since 1982, when the use of manifest injustice dispositions were considered inappropriately used for “treatment”—imposing upward departures if the young person was not attending school or if the youth or parents had a negative attitude towards the court.²¹

Similarly, many youth advocates have witnessed courts using detention to house and treat youth. Youth advocates have also witnessed the juvenile court system refusing to release unhoused youth early, or holding unhoused youth past their release date, because judges fear releasing young people into homelessness. The Washington State Legislature took notice of the cycle of detention to homelessness and pledged to stop releasing youth from public systems of care such as juvenile detention and juvenile rehabilitation into homelessness by the end of 2020.²² Despite the deadline, this goal is unlikely to be met in the near future. Due to the budget deficit caused by the global pandemic, there does not appear to be funding for the independent, transitional, and supportive housing necessary for young people exiting systems of care.

Young people will continue to exit detention into homelessness until more appropriate housing is available for youth. Releasing youth, even if it is into homelessness, is still likely preferable to keeping them incarcerated past their release date. Incarceration is not an appropriate, just, healthy, or productive means to house young people – it only increases trauma, because the experience of confinement itself is traumatic.²³ The practice of using detention to house youth and the practice of keeping youth incarcerated for longer periods because of their housing status only further punishes young people for their circumstances and exacerbates their housing instability.

D. Detention and Incarceration Cause and Exacerbate Homelessness

Many young people exit juvenile incarceration into homelessness. As previously mentioned, in Washington State, over 25 percent of young people exiting JR facilities were homeless or had unstable housing within one year of their release, and 80 percent of those young people were youth

21. Richard A. Doyon, Wash. State Dep’t of Soc. & Health Servs., *Report: Factors Related to the Use of Manifest Injustice In Juvenile Court Sentencing* - No. 02-20, at 14, 15, 17 (1982), <https://www.dshs.wa.gov/sites/default/files/rda/reports/research-2-20.pdf>.

22. See Laws of 2018, ch 157, §§ 1-3, <https://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6560-S.SL.pdf#page=1>; see also Dep’t of Commerce, Office of Homeless Youth, *Improving Stability for Youth Exiting Systems of Care* (2020), <https://www.commerce.wa.gov/wp-content/uploads/2020/02/Youth-Exiting-Systems-of-Care.pdf>.

23. Thalia González, *Youth Incarceration, Health, and Length of Stay*, 45 FORDHAM URB. L. J. 45, 64 (2017).

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of color.²⁴ Even for youth whose charge is unrelated to homelessness, an arrest can exacerbate an already unstable living situation or introduce uncertainty into a currently stable living situation.

While there is a data gap in identifying the full scope of youth homelessness state wide,²⁵ in 2014, in Pierce County, parents refused to pick up 417 youth from detention, and there were another 146 kids for whom a parent could not be found.²⁶ A similar problem occurred in Spokane County in 2014, where 104 incarcerated youth were not picked up by parents.²⁷ This may be in part because of the challenge in meaningfully engaging parents, given the location of juvenile jails and the difficulty of scheduling visits with working parents.²⁸ Anecdotally, these situations often involve youth who were adopted out of foster care whose adoptive parents give up on supports and services for the young person when their needs increase as they reach adolescence.²⁹ Although Washington law requires that youth exiting county detention facilities be released to a parent or responsible adult or to the Department of Children, Youth, and Families (DCYF),³⁰ significant barriers exist between young people's access to services upon exiting JR.³¹ Abandoning a child to JR or a detention facility is often a way young people enter back into homeless.

Some youth released from detention with no place to go will end up at state run Crisis Residential Centers (CRCs) or licensed youth shelters where they can only stay briefly, usually about three weeks at most—but admission to these programs and services are hard to obtain.³² There are only a handful of independent living programs for young people in Washington state, and youth typically cannot apply for housing while they are still institutionalized, even if they know they will

24. Wash. State Dep't of Health & Human Servs., *Homelessness Among Youth Exiting Systems of Care in Washington State* 2 (2020), <https://www.dshs.wa.gov/sites/default/files/rda/reports/research-11-254.pdf>.

25. Legal Counsel for Youth & Children, *Empty Promises: Homeless Minors, Our Community's Failure to Adequately Serve Them, and Hope for a Way Forward* 2 (2017), <https://static1.squarespace.com/static/533dcf7ce4b0f92a7a64292e/t/59ef65eaf14aa17cd5a0ce56/1508861422254/2017+Empty+Promises.pdf> [hereinafter *Empty Promises*].

26. *Id.* (citing Columbia Legal Services, *Falling Through the Gaps, How a Stay in Detention Can Lead to Youth Homelessness* 2 (2015).

27. *Id.*

28. *See Empty Promises*, *supra* note 25, at 20-21; 24-25.

29. For a more thorough discussion of the challenges youth face when exiting the juvenile legal system, *see id.* at 24-26.

30. RCW 13.40.050(7).

31. *Empty Promises*, *supra* note 25, at 25.

32. *See id.* at 20.

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be exiting into homelessness.³³ Additionally, studies show that homeless youth with experience in JR are much less likely to access homeless housing and services than their peers who have exited the family regulation system, perhaps because of the barriers they face in obtaining housing due to histories of criminal activity and/or drug use.³⁴ Many young people end up on the street or find their own way relying on personal networks.

One of the greatest barriers that prevents unhoused youth from accessing resources and services is that the services that exist often do not work for them. Transitional housing may be far from their school, job, or community. Accessing system resources may also mean they cannot maintain relationships they want. Accessing resources can also be exceedingly complicated—appointments must be prearranged; physical locations of services are hard to reach; and administrative hurdles can be too high. Even when young people do reach services, they can be unreliable. If a shelter is full, it is easy to give up the next time.

Young people experiencing homelessness may also fear a system has incarcerated them in the past, fear their inability to pay the fines imposed on them, fear removal from their community, and fear future incarceration. Fearing a system that has punished and incarcerated them, they often hide out, avoiding school or shelters—places where they can obtain safe and supportive services and maintain connections to their community. Young people experiencing homelessness are also more likely to be victims of crimes,³⁵ and their fear of arrest and incarceration can prevent them from seeking help when they need it. As discussed in more detail in the report’s treatment of collateral consequences of court involvement, *supra* Part IV, a juvenile record can also prevent young people from accessing certain shelters, housing, gaining employment, participating in apprenticeship programs, and many other resources.

Ultimately, incarceration only perpetuates youth homelessness. Involvement, or the threat of involvement, with the carceral system exacerbates homelessness by pushing young people further into hiding and increasing barriers to accessing services. Incarcerating youth widens fissures and conflict in family and increases trauma, which puts young people at a higher risk of not having a viable place to live and being trapped in a cycle of detention and homelessness.

33. For a thorough discussion of the barriers to independent living programs and recommendations for improving and expanding access to these programs, see *id.* at 22-23, 31.

34. Courtney Noble, *Youth Homelessness in Washington, Landscape Scan 9* (2016), https://www.awayhomewa.org/wp-content/uploads/2016/09/YouthHomelessnessWA_LandscapeScan_August-2016.pdf.

35. See *Empty Promises*, *supra* note 25, at 3.

Race and Mental Health

A. Race Trauma / Race-Based Traumatic Stress

A growing body of research confirms that experiences of racial discrimination can, like other Adverse Childhood Experiences (ACEs), have serious negative effects on a person's physical, mental, and emotional health.¹ The empirical literature that is set forth below is intended to give readers a broad overview of how racism fits into the legal and scientific framework establishing that childhood trauma reduces culpability. Understanding it within that framework leads stakeholders in the juvenile legal system to recognize race-based trauma as a distinct trauma that, like other types of trauma, reduces a young person's culpability. However, the medical and scientific classification of race-based trauma into a Western disease model is one that is contested within the relevant scientific and medical communities, and, more importantly, presents a danger of reinscribing racism by stigmatizing the victim of injury as a person with a disorder. While there is an association between racial and ethnic discrimination and trauma-related symptoms, there is an alternative way that scholars are classifying and understanding the effects of racism not as a mental disorder like PTSD, but instead as an emotional and/or psychological injury.² For a more thorough discussion of this issue, readers are referred to the explanation provided in the California Reducing Disparities Project.³ With the understanding of the complex issues that arise in attempting to classify the experience of racism into medical taxonomy, the subcommittee provides the following high-level overview of some of the literature in this area.

Researchers working with the original CDC-Kaiser ACEs study⁴ recognized that the experience of childhood trauma may look different depending on the population studied. A subsequent study, the "Philadelphia Urban ACE Survey," continued ACEs research by examining the impact of

1. Janet E. Helms et al., *Racism and Ethnoviolence as Trauma: Enhancing Professional and Research Training*, 18 TRAUMATOLOGY 65, 68 (2012).

2. Cal. Reducing Disparities Project, *"We Ain't Crazy! Just Coping with a Crazy System": Pathways into the Black Population for Eliminating Mental Health Disparities* 28-30, 65 (V. Diane Woods et al. eds., 2012), https://cpehn.org/assets/uploads/2021/05/African_Am_CRDP_Pop_Rept_FINAL2012.pdf [hereinafter "*We Ain't Crazy!*"].

3. *Id.*

4. The original ACE study conducted by Kaiser Permanente and the Centers for Disease Control and Prevention found a "strong dose response relationship between the breadth of exposure to abuse or household dysfunction during childhood and multiple risk factors for several of the leading causes of death in adults." Vincent Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults*, 14 AM. J. PREVENTATIVE MED. 245, 251 (1998). These include risky behaviors like smoking, alcohol or drug abuse, overeating, and promiscuity. *Id.* at 252-53.

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childhood trauma in a more diverse city.⁵ While prior ACEs studies had surveyed primarily white, middle class, and highly educated individuals, a majority of the Philadelphia survey respondents were people of color who had never attended college.⁶ The Philadelphia study expanded the definition of ACE to include “being treated badly or unfairly because of your race or ethnicity.”⁷ The study found that 34.5 percent of survey respondents—and one out of every two Black survey respondents—reported experiences of perceived racial discrimination.⁸ Like the Kaiser report before it, the Philadelphia study found a correlation between ACEs and risky health behaviors.⁹

The inclusion of racial discrimination as an ACE in the Philadelphia study is consistent with significant research establishing that experiencing racial discrimination is traumatic and, like other forms of trauma, can have significant consequences on an individual’s mental and emotional wellbeing.¹⁰ Studies have shown that “day-to-day” experiences of racial discrimination—even if not in the form of a stressor the DSM-5 would classify as trauma inducing—can result in trauma symptoms.¹¹ Race-based stressors have been shown to produce psychological and emotional injury similar to other events—like combat or natural disasters—that can result in PTSD.¹² Individual responses to race-based stressors include extreme emotional distress, hypervigilance, and avoidance behaviors—all symptoms normally associated with PTSD.¹³

A meta-analysis of 138 studies published between 1996 and 2011 found that, among African Americans, “negative psychological responses to racism carry many features associated with trauma” including significant negative psychological and physical symptoms.¹⁴ The analysis

5. Pub. Health Mgmt. Corp., *Findings from the Philadelphia Urban ACE Survey 2* (2013), <https://www.rwjf.org/en/library/research/2013/09/findings-from-the-philadelphia-urban-ace-survey.html>.

6. *Id.* at 2, 4.

7. *Id.* at 7.

8. *Id.* at 13.

9. *Id.* at 24.

10. Hector Myers et al., *Cumulative Burden of Lifetime Adversities: Trauma and Mental Health in Low-SES African American and Latino/as*, 7 PSYCHOL. TRAUMA: THEORY, RES., PRAC., & POL’Y 243, 244 (2015); Robert T. Carter, *Racism and Psychological and Emotional Injury: Recognizing and Assessing Race-Based Traumatic Stress*, 35 COUNSELING PSYCHOLOGIST 13, 14-15 (2007); Thema Bryant-Davis et al., *Racist Incident-Based Trauma*, 33 COUNSELING PSYCHOLOGIST 479 (2005).

11. Myers, *supra* note 10, at 248.

12. Carter, *supra* note 10, at 28.

13. *See id.* at 65-66.

14. Alex Pieterse et al., *Perceived Racism and Mental Health Among Black American Adults: A Meta-Analytic Review*, 59 J. COUNSELING PSYCHOL. 1, 6 (2012).

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further found that not only is the experience of racial discrimination among African Americans “ubiquitous,” but it is reliably shown to be associated with psychological distress.¹⁵

Children who experience racial discrimination are likely to feel more depressed; report greater levels of stress, anxiety, hopelessness and loneliness; and are less likely to have a positive self-image.¹⁶ A study of the effects of perceived personal and institutional racism on Black boys aged ten to fifteen found that such experiences were related to anger and various forms of delinquency.¹⁷ The children who participated in the study also reported “feelings of inadequacy, somatic complaints, and low self-esteem” correlated with perceived experiences of racial discrimination.¹⁸ Perhaps not surprisingly, adolescent experiences of racial discrimination are closely associated with engagement in “risky behaviors” including substance abuse, smoking cigarettes, shoplifting, and vandalism.¹⁹

The symptoms associated with childhood experiences of racial discrimination closely mirror the findings of the ACE studies where childhood trauma was shown to be closely linked with smoking, alcohol and drug abuse, depression, and suicidal behavior in adults.²⁰ The correlation between experiences of racial discrimination and engagement in risky health behaviors suggests that, like the other forms of childhood trauma, racial discrimination causes trauma that negatively impacts a juvenile’s ability to consider long-term consequences and make well-reasoned decisions.

Even if a child has not experienced a single overt instance of blatant racism, the effects of racial discrimination, like other forms of trauma, can accumulate over a person’s lifetime, increasing the likelihood that individuals who regularly experience racial discrimination will develop trauma symptoms.²¹ A recent study on the impact of racial discrimination on African American and Latinx individuals supported the idea of cumulative trauma.²² The study found that the frequency with

15. *Id.*

16. Vanessa Nyborg et al., *The Impact of Perceived Racism: Psychological Symptoms Among African American Boys*, 32 J. CLINICAL CHILD & ADOLESCENT PSYCHOL. 258, 264 (2003); Myers, *supra* note 10, at 252.

17. *Id.*

18. *Id.*

19. *Id.*; Elma Lorenzo-Blanco, *Profiles of Bullying Victimization, Discrimination, Social Support, and School Safety*, 86 AM. J. ORTHOPSYCHIATRY 37, 38 (2016).

20. Felitti et al., *supra* note 4, at 252-53.

21. Nicholas Sibrava et al., *Posttraumatic Stress Disorder in African American and Latinx Adults: Clinical Course and the Role of Racial and Ethnic Discrimination*, 74 AM. PSYCHOLOGIST 101, 108 (2019), <https://psycnet.apa.org/fulltext/2019-01033-009.pdf>.

22. *Id.*

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which an individual experiences discrimination is significantly correlated with important indicators of mental and emotional wellbeing.²³ Finally, “[t]rauma can also be inherited genetically. Recent work in genetics has revealed that trauma can change the expression of the DNA in our cells, and these changes can be passed from parent to child.”²⁴

Even subtle and unintentional forms of discrimination can have a serious negative impact on the mental health of individuals.²⁵ Research has shown that individuals who experience racial abuse are more “likely to exhibit negative mental health symptoms including depression, anxiety, and a lack of behavioral control.”²⁶ These negative mental health symptoms can exacerbate certain neurobiological characteristics of developing juvenile brains.

Further, childhood trauma, which we should understand as including race-based trauma discussed above, can detrimentally impact both neurological and social development.²⁷ Experiences of trauma can impede the brain’s “information processing, social learning, and self-regulation” functions and can cause traumatized youth to “perceive and encode social cues differently than non-traumatized individuals.”²⁸ Consequently, trauma can cause individuals to become more aggressive and to “over-perceive aggression by others.”²⁹ Children who experience trauma may develop a “variety of developmental problems” and “experience developmental risks for inadequate maturation and adaption later in life.”³⁰

Because of the way trauma can affect a child’s development, experiences of trauma can lead to “highly maladaptive behaviors, such as serious, violent and chronic (SVC) delinquency.”³¹ Studies have found a correlation between childhood trauma and “aggression, impulsivity, deviant peer

23. *Id.*

24. RESMAA MENAKAM, MY GRANDMOTHER’S HANDS: RACIALIZED TRAUMA AND THE PATHWAY TO MENDING OUR HEARTS AND BODIES 40-41 (2017) (citing Rachel Yehuda et al., *Holocaust Exposure Induced Intergenerational Effects On FKBP5 Methylation*, 80 BIOLOGICAL PSYCHIATRY 372, 872-80 (2016), <https://www.sciencedirect.com/science/article/pii/S0006322315006526?via%3Dihub>)).

25. Kevin Nadal et al., *The Impact of Racial Microaggressions on Mental Health: Counseling Implications for Clients of Color*, 92 J. COUNSELING & DEV. 57, 62 (2014).

26. *Id.*

27. See, e.g., Judith Baer & Tina Maschi, *Random Acts of Delinquency: Trauma and Self-Destructiveness in Juvenile Offenders*, 20 CHILD & ADOLESCENT SOC. WORK J. 85 (2003).

28. *Id.*

29. *Id.* at 87.

30. Nicholas Perez et al., *A Path to Serious, Violent, Chronic Delinquency: The Harmful Aftermath of Adverse Childhood Experiences*, 64 CRIME & DELINQ. 3, 4 (2018).

31. *Id.* at 3.

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imitation, school difficulties, substance abuse problems, and mental illness.”³² Unsurprisingly, 75-93 percent of youth entering the juvenile legal system have experienced some form of childhood trauma.³³ Some studies have shown that rates of PTSD in juveniles who are involved with the legal system are close to the rates found in soldiers returning from war.³⁴ This relationship between childhood trauma and subsequent behavioral challenges makes clear that such trauma—including race based trauma—diminishes the penological justifications of retribution and incapacitation in cases involving young people.

Unfortunately, as set forth in detail below, our systems continue to criminalize those young people with mental health needs rather than provide them the necessary supports.

B. Mental Health Struggles Are Criminalized and Exacerbated in the Juvenile Legal System

Fundamentally, the juvenile legal system is not a therapeutic system and does not address the underlying needs of these young people. On a national scale, 70% of youth in contact with juvenile legal system have preexisting mental health struggles;³⁵ researchers have also found that young people with what mental health professionals categorize as “externalizing disorders”³⁶ are significantly more likely to recidivate.³⁷ Researchers have long known of the strong link between youth who struggle with substance abuse and their involvement in the juvenile legal system.³⁸

32. *Id.* at 9.

33. Michael Baglivio et al., *The Relationship Between Adverse Childhood Experiences (ACE) and Juvenile Offending Trajectories: A Juvenile Offender Sample*, 43 J. CRIM. JUST. 229, 230 (2015).

34. Kristine Buffington et al., *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency*, 61 JUV. & FAM. CT. J. 13, 14 (2010).

35. Nat’l Ctr. for Youth Opportunity & Justice, *Critical Intervention Mapping for Juvenile Justice*, https://ncyoj.policyresearchinc.org/img/resources/NCYOJ_CIM_Flyer-298639.pdf; see also Office of Juvenile Justice & Delinquency Prevention, *Intersection Between Mental Health and the Juvenile Justice System* 1 (2017), <https://ojjdp.ojp.gov/mpg/literature-review/mental-health-juvenile-justice-system.pdf>.

36. “Externalizing disorders” include aggressive, anti-social disorders. *Id.* at 4.

37. *Id.* at 5 (discussing studies showing existence of certain mental health struggles increases risk of recidivism); see generally Svetlana Yampolskaya & Emmeline Chuang, *Effects of Mental Health Disorders on the Risk of Juvenile Justice System Involvement and Recidivism Among Children Placed in Out-of-Home Care*, 82 AM. J. ORTHOPSYCHIATRY 585, (2012), <https://psycnet.apa.org/record/2012-27485-014?doi=1> (Florida study assessing the mental health needs of multi-system youth in Florida).

38. Edward P. Mulvey et al., Office of Juvenile Justice & Delinquency Prevention, *Substance Use and Delinquent Behavior Among Serious Adolescent Offenders* 2 (2010), <https://www.ojp.gov/pdffiles1/ojjdp/232790.pdf> (summarizing studies establishing the strong link between substance abuse and juvenile legal system involvement); see also *Critical Intervention Mapping for Juvenile Justice*, *supra* note 35 (46% of youth in the juvenile legal system struggle with substance abuse, compared with 8% of the general population).

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Similarly, 90%³⁹ of youth in contact with the juvenile system have traumatic event exposure compared to 25% of the general population.⁴⁰ Further, youth in the system die by suicide at 3 times the rate of the general population.⁴¹

Young people with behavioral health problems often decline in detention, where mental health struggles are often exacerbated.⁴² According to OJJDP, many juvenile correctional facilities typically employ responses to suicidal threats and behaviors that further endanger the youth, such as solitary confinement. Impacts of solitary confinement occur long after youth have been released from isolation, and can manifest as hypersensitivity to stimuli, perceptual distortions and hallucinations, anxiety, rage, revenge fantasies, heart palpitations, sleep disorders, self-mutilation, and suicidal ideation.⁴³

Criminalizing youth with mental health needs and youth who struggle to deal with trauma further disadvantages youth who need different support than juvenile facilities are designed or able to provide. This targeted criminalization is detrimental to youth because their mental state is negatively impacted by incarceration, and equally detrimental to families who are tasked with seeking treatment post-incarceration for their children who may be in worse mental states post-incarceration than they were prior to incarceration.⁴⁴

Criminalization of mental health needs also perpetuates racial and ethnic disproportionality in the juvenile legal system. According to a recent statewide study in Pennsylvania that examined the effect of race on placement decisions, researchers determined that “race is a strong predictor of commitment to facilities using different modalities, with [B]lack youth most likely to be sent to programs emphasizing physical regimen... and white youth most likely to be committed by the

39. *Critical Intervention Mapping for Juvenile Justice*, *supra* note 35.

40. *Id.*

41. Fred Meserve & Kathleen Skowrya, Nat'l Ctr. For Mental Health & Juvenile Justice, *Caring for Youth with Mental Health Needs in the Juvenile Justice System: Improving Knowledge and Skills* 4 (2015), https://ncyoj.policyresearchinc.org/img/resources/Caring_for_Youth_With_Mental_Health_Needs-692212.pdf.

42. See generally Barry Holman & Jason Zidenberg, Justice Policy Inst., *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006), https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/dangers_of_detention.pdf.

43. Shauna Sowersby, 'Nothing short of torture': WA to restrict youth solitary confinement, CROSSCUT (Mar. 12, 2021), [https://crosscut.com/2020/03/nothing-short-torture-wa-restrict-youth-solitary-confinement_\(detailing_testimony_in_support_of_recent_legislation_limiting_use_of_solitary_confinement_in_juvenile_detention_facilities,_and_summarizing_detrimental_effects_of_solitary_confinement_on_developing_brains\)](https://crosscut.com/2020/03/nothing-short-torture-wa-restrict-youth-solitary-confinement_(detailing_testimony_in_support_of_recent_legislation_limiting_use_of_solitary_confinement_in_juvenile_detention_facilities,_and_summarizing_detrimental_effects_of_solitary_confinement_on_developing_brains)).

44. See Meserve & Skowrya, *supra* note 41, at 1-3 (describing how juvenile legal systems are ill-equipped to treat young people's mental health and substance abuse struggles, and how treatment by juvenile legal system further traumatizes young people).

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court to therapeutic programs.”⁴⁵ The researchers concluded: “[t]he predictive power of race and ethnicity...remain significant and strong after controlling for both legal factors and social or familial (i.e., needs-based) characteristics.”⁴⁶ Relatedly, according to a 2016 systematic review of articles that examined racial disparities among referrals to mental health and substance abuse services from within the juvenile legal system, “most of the studies published from 1995 to 2014 found that there was at least some race effect in determining which youths received services, even when including statistical controls for mental health or substance use diagnosis or need.”⁴⁷ If white youth are granted therapeutic treatment compared to Black and Latinx youth who are more likely to be sent to physical regimen programs, this trend implies that white youth are perceived to be less blameworthy and more amenable to treatment, while youth of color are perceived to be more culpable for their crimes and less responsive to treatment.⁴⁸

In Washington, while the probation rate decreased between 2011-2015, the prevalence of mental health problems was high across all years and steadily increased over time from 56.8% in 2011 to 63.3% in 2015; further, more than two-thirds of youth entering probation for the first time between 2011-2015 reported high levels of trauma, with youth of color overrepresented in that group.⁴⁹

While African-American/black youth make up approximately 4% of youth in Washington State, they comprised 10.8% of first-time probationers in 2011 and 14.2% in 2015. Native American/Alaskan Native youth made up 2% and 1% of youth in Washington State in 2011 and 2015, respectively, but they comprised 3.6% of first-time probationers in 2011 and 4.3% in 2015. Furthermore, between 2011 and 2015, while the percentage of European American/white youth among first-

45. Jamie J. Fader et al., *The Color of Juvenile Justice: Racial Disparities in Dispositional Decisions*, 44 SOC. SCI. RES. 126, 137 (2013). Decision outcomes for Latinx youth were most similar to those for Black youth, but Latinx youth were still less likely to be sent to physical regimen programs and more likely to be committed to therapeutic programs than their Black counterparts. *Id.*

46. *Id.*

47. *Intersection Between Mental Health and the Juvenile Justice System*, *supra* note 35, at 6.

48. See, e.g., Fader et al., *supra* note 45, at 138 (“Our findings that white youth are more likely to receive dispositions to therapeutic modalities and black youth to physical regimen programs thus suggests that white youth are seen as youth as less blameworthy for their offenses and responsive to treatments while black, and to a less extent Latino, youths are more culpable for their behaviors and deserving of placements more similar to viewing them as small adult criminals.”).

49. Bo-Kyung Elizabeth Kim et al., *Statewide Trends of Trauma History, Suicidality, and Mental Health Among Youth Entering the Juvenile Justice System*, 68 J. ADOLESCENT HEALTH 300, 303, 305 (2021), <https://www.sciencedirect.com/science/article/pii/S1054139X20303001#>.

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time probationers decreased by 6%, African-American/black youth increased by 32% and Native American/Alaskan Native youth increased by 19%.⁵⁰

Even as fewer youth started probation for the first time each year during the period studied, the youth now entering the system have higher, more complex needs, necessitating a therapeutic approach that is sensitive to the “collective environmental trauma experienced primarily by youth of color,” which traditional trauma informed care does not take into account.⁵¹

Within the context of overincarceration of youth of color,⁵² placing a disproportionate number of youth of color in detention centers where mental health struggles are exacerbated and depriving these youth the opportunity to undergo therapeutic treatment creates a large group of individuals who may continue to have mental health struggles over their lifetimes and which may extend intergenerationally.

C. Culturally Relevant Care

In the extensive report by the California Reducing Disparities Project mentioned above, researchers and clients provide important insight into health disparities for Black people. In addition to the racism Black people experience in the mental and behavioral health settings, many Black people also “fail to access health services because they feel the services provided are not relevant to their experience.”⁵³ Treatment approaches rarely factor environmental difficulties from the larger social context into mental evaluations and responses, so treatments are not adequately providing a holistic, culturally competent response.⁵⁴ The western concept of mental health creates a one size fits all approach that ignores the experiences and needs of non-white communities.⁵⁵ Diagnoses by providers who have only been trained in a majority culture completely disregard research that supports including family and community throughout the healing process.⁵⁶

The qualitative and quantitative findings in the California report are likely applicable to Washington. Even if youth of color access mental health supports, the lack of culturally competent

50. *Id.* at 303.

51. *Id.* at 305.

52. *See generally Report and Recommendations to Address Race in Washington’s Juvenile Legal System* at Part II; Appendix A.

53. “*We Ain’t Crazy!*”, *supra* note 2, at 69-81.

54. *Id.* at 65.

55. *Id.*

56. *See id.*

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treatment and providers (either within or outside of the juvenile legal system) also contributes to the disproportionality of youth of color with mental health struggles. Providers cannot effectively respond to psychosocial needs of Black youth and other youth of color without understanding the history of enslavement and racist policing, and how both have transformed into a codified denial of human rights. As discussed above, because of the engrained racism that youth of color experience regularly, as well as generational trauma, youth of color have an increased likelihood of adverse childhood experiences, which negatively impacts mental health. If most cultural trauma is routinely overlooked when providers diagnose and treat youth of color, treatment is not appropriately tailored to result in a positive outcome and the trauma manifests in behaviors which are then criminalized (or, if being treated within the system, potentially exacerbated).

D. Conclusion

Criminalizing youth with mental health needs and subjecting them to environments exacerbating their health needs perpetuates disproportionate contact with the legal system, rather than viewing the mental health needs and the associated behaviors as a public health issue that merits a well-resourced and community-led response. Disparately cycling BIPOC youth through the juvenile system continues to harm generations of people.

Although recommendations in this area are outside of the expertise of those on the subcommittee, readers are referred to the recommendations included in the California Reducing Disparities Project.⁵⁷

57. *Id.* at 249-258.

APPENDIX F – RECOMMENDATIONS PROCESS

Juvenile Justice Subcommittee Recommendations Process

Adopted by the subcommittee at the April 6, 2021 subcommittee meeting

The first step in formulating recommendations is to recognize that organizations and individuals representing community concerns and interests of those most impacted by the juvenile legal system and the ecosystem within which it operates have already articulated a set of recommendations with respect to many aspects of the current juvenile legal system, family regulation system, and educational system. In recognition that those most impacted possess the expertise to define the arc of change, the proposal is as follows:

1. Those most impacted by the juvenile legal system will set the overarching goals that define the arc of change. The first phase of this happened on 4/20, when youth in the youth advocacy program at CHOOSE 180 and Community Passageways presented their goals. Other youth involved in advocacy with Community Passageway, Creative Justice, Rainier Beach Action Coalition, and PICA-WA, are also participating in setting goals. These goals will be adopted as the overarching goals of the subcommittee.
 - a. Further goals pertaining to early ed, child welfare, homelessness, education, and provision of mental health services will be generated by youth from the community led orgs above, as well as via The Mockingbird Society (and possibly others). The same process set forth in this process document will apply to these recommendations.
2. For those on the task force not representing impacted communities, the work is to accept those goals rather than to challenge them or attempt to redefine or superimpose other visions.
3. The next phase of work is to define a roadmap/set of recommendations for how to achieve each of the stated goals. Recommendations may be generated/proposed by anyone on the subcommittee or brought in from external sources. The subcommittee is proposing that the recommendations will be organized in a different format than in the 2012 report. The recommendations will be set forth in three columns, identifying the stated goals of the youth on the left, the proposed policy recommendations in the middle, and the institutions called upon to implement the proposed changes on the right.
4. When the subcommittee meets to formulate or otherwise discuss/debate policy recommendations, the subcommittee will allow space to generate new recommendations but agree to flag them as such, put an explicit time cap on the initial discussion, and have a point person to provide proposal to group with any further research needed for full and informed conversation at a later date
5. To build in accountability to the stated goals of impacted youth, each proposed recommendation will be adopted only if it furthers those goals. To assess whether a

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particular recommendation furthers the stated goals, that recommendation will be scrutinized according to an adapted rubric from [Critical Resistance](#):

- a. Does the recommendation reduce funding to the targeted institution and/or does the recommendation channel funding to community systems already in place and created by those most impacted?
 - b. Does the recommendation challenge the notion that the institution in question meets its stated purpose (i.e., that police increase safety, that child welfare helps children more than harms them, that the education system serves all children equally, that early ed is accessible to those who need it most, that JR rehabilitates rather than, that the court system is impartial and provides access equal justice for all, etc.)?
 - c. Does the recommendation reduce/restrict or otherwise redirect the power/authority/discretion held by that particular institution, where that power/authority/discretion has been routinely used to harm BIPOC and their communities?
 - d. Does the recommendation reduce the scale of the institution in question and/or does the recommendation articulate a different and acceptable purpose for the institution with built in accountability structures?
6. If consensus on a particular recommendation/set of recommendations appears impossible, any member of the subcommittee can stop the deliberations, at which point the subcommittee can agree to further deliberate (with a time limit), or determine that in impasse has been reached. Those members of the subcommittee who, for whatever reason, cannot endorse a particular recommendation or set of recommendations, will have the opportunity to indicate as much in the final report. For those subcommittee members who wish to set forth recommendations that are not consistent with the criteria in paragraph 5, they will have the opportunity to provide an alternative set of recommendations that will function as a minority report.
 7. All subcommittee members, particularly those who work within the systems we all acknowledge need to change, must get uncomfortable and think big. Those with positional power are invited to acknowledge it and use it to effect change.
 8. The aim of the subcommittee is to produce a set of recommendations that will be useful to both 1) advocates who can refer to these recommendations in furtherance of the multi-faceted strategies already taking place in the community, and 2) systems people who can refer to these recommendations in committing to steps that will be consistent with/in furtherance of the stated goals of those most impacted.