

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

As the Editors-in Chief of *Gonzaga Law Review* and *Seattle University Law Review*, we represent the flagship legal academic publications of Washington's two Jesuit law schools. We are pleased to present this report as a joint publication and to highlight the important work of the Task Force 2.0 Juvenile Justice Subcommittee.

Sincerely,



Carly C. Roberts
Editor-in-Chief
Gonzaga Law Review



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Editor-in-Chief
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Report and Recommendations to Address Race in
Washington's Juvenile Legal System: 2021 Report to the
Washington Supreme Court

*Submitted by the Task Force 2.0 Juvenile Justice Subcommittee**

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Task Force 2.0

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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 and 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

PARTICIPATING ORGANIZATIONS AND INSTITUTIONS

American Civil Liberties Union of Washington
El Centro de la Raza
CHOOSE180
Community Passageways
Gonzaga University School of Law
Fred T. Korematsu Center for Law and Equality – Seattle University
School of Law
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
Team Child

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. See WASH. STATE SUP. CT. GENDER & JUST. COMM'N, 2021: HOW GENDER AND RACE AFFECT JUSTICE NOW: FINAL REPORT (2021), https://www.courts.wa.gov/subsite/gjc/documents/2021_Gender_Justice_Study_Report.pdf [<https://perma.cc/XW7V-7949>] [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

Given the nature of an ad hoc task force, whose work extended over a seventeen-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. 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

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.

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” are often 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 9.33 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

2. Task Force 2.0 Research Working Group, *Race and Washington's Criminal Justice System: 2021 Report to the Washington Supreme Court*, 57 GONZ. L. REV. 119 (2022), 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 eighteen and older or the number of white persons between eighteen and sixty-four years of age, the Research Working Group has chosen to use total population figures.

Delinquency Prevention to measure disproportionate minority contact (DMC).

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, 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

4. See Noncriminal Youth Detention, 2019 Wash. Sess. Laws, ch. 312.

5. Ian F. Haney López, *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.

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 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.

7. Susan Saulny, *Counting by Race Can Throw Off Some Numbers*, N.Y. TIMES (Feb. 9, 2011), <http://www.nytimes.com/2011/02/10/us/10count.html?scp=1&sq=race%20counting&st=cse> [<https://perma.cc/SE2J-GQDC>].

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

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 U.S. CENSUS BUREAU, *Race/Ethnicity and the 2020 Census*, CENSUS 20/20 (Mar. 23, 2019), <https://www.census2020now.org/faces-blog/same-sex-households-2020-census-r3976> [<https://perma.cc/68QF-AE6N>] (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-blackstyleguide.php#:~:text=At%20the%20Columbia%20Journalism%20Review%2C%20we%20capitalize%20Black%2C,context%20risks%20following%20the%20lead%20of%20white%20supremacists> [<https://perma.cc/S7F3-TCHD>].

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 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. SOCIO. 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 ten 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 that were

13. RSCH. WORKING GRP., JUVENILE JUSTICE SUBCOMMITTEE, JUVENILE JUSTICE AND RACIAL DISPROPORTIONALITY: A PRESENTATION TO THE WASHINGTON SUPREME COURT (2012), https://digitalcommons.law.seattleu.edu/korematsu_center/117/ [<https://perma.cc/7AEU-2FY2>] [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 youths’ perception of themselves, as well as the speaker’s thinking and decision-making. NAT’L JUV. DEF. CTR., *Seeing What’s Underneath: A Resource for Understanding Behavior & Using Language in Juvenile Court* (2021), <https://njdc.info/wp-content/uploads/A-Resource-for-Understanding-Behavior-Using-Language-in-Juvenile-Court.pdf> [<https://perma.cc/H3TN-89VN>].

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, *supra* note 13.

16. These reforms include but are not limited to:

- The codification of our Supreme Court’s decision in *State v. Houston-Sconiers*, 391 P.3d 409 (2017), requiring consideration of the mitigating qualities of youth and affording sentencing court’s broad discretion to disregard mandatory sentencing schemes, 2020 Wash. Sess. Laws ch. 141, § 1, <https://lawfilesexxt.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5488-S2.SL.pdf?q=20201125180512> [<https://perma.cc/38EE-FZG8>];
- The elimination of detention for status offenses, 2019 Wash. Sess. Laws, ch. 312, §§ 1–2, <https://lawfilesexxt.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5290-S2.SL.pdf#page=1> [<https://perma.cc/R557-LVR4>];
- The extension of juvenile rehabilitation to twenty-five, 2019 Wash. Sess. Laws, ch. 322, §§ 1–3; <https://lawfilesexxt.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, 2018 Wash. Sess. Laws 543, ch. 82, §§ 1, 4, 5, <https://lawfilesexxt.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6550-S.SL.pdf#page=1> [<https://perma.cc/K2CK-TSYQ>].
- The narrowing of the crimes subject to auto decline, 2018 Wash. Sess. Laws 831, ch. 162, § 1, <https://lawfilesexxt.leg.wa.gov/biennium/2017->

recommendations in the 2012 Report, have made incremental change but have largely left intact the juvenile legal system as it was described nearly ten 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.

18/Pdf/Bills/Session%20Laws/Senate/6160-S2.SL.pdf#page=1 [https://perma.cc/9U5S-N22H]; and

- The Youth Equality and Reintegration Act (YEAR Act), which eliminated most non-restitution legal financial obligations for young people convicted of less serious crimes, as well as instituted automatic sealing during administrative hearings, 2015 Wash. Sess. Laws 1404, ch. 265, §§ 1, 3, 6, 7, <https://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/Senate/5564-S2.SL.pdf#page=1> [https://perma.cc/WS2P-K7HH]. See also COLUMBIA LEGAL SERVS., FAQ ON THE YEAR ACT (SB 5564) (2015), <https://columbialegal.org/wp-content/uploads/2019/04/YEAR-Act-FAQ.pdf> [https://perma.cc/8Q67-UPHV]. Effective February 1, 2021, JuCR 7.16 quashed outstanding warrants due to violation of court orders or failure to appear, as well as limited the issuance of new warrants to instances where the violation of a court order or “[f]ailure to [a]pppear poses a serious threat to public safety.” JuCR 7.16.

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.

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

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.

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 continue to disparately harm 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, focus 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 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 the accumulated disadvantages and disparities, the 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, it 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 do not 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 Wi-Fi/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 the government spends its money. The state should provide resources to teach government 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 do not want to see the young person arrested or charged with a crime.

What needs to change?

- Empower and 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 does not 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 do not 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 twenty-five.

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 nine in some cases) and some young people are prosecuted as adults, which exposes them to longer sentences, adult prison, and a lifelong criminal record. The courts do not focus on the needs of young people who are charged with crimes and do not 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 fourteen can be charged with a crime and brought into the legal system.
- Instead of moving young people to adult court when they turn eighteen, raise the age of juvenile court up to twenty-one years old.
- Explore options for different ways to treat young adults ages twenty-one to twenty-five 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 eighteenth 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 are not jailed with adults if the alleged offense occurred while they were under age eighteen.

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 do not 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 overuse 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 support to make sure they are successful when they enter 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 youths. Juvenile court convictions can also 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 eighteen 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 sentences can reenter the community and have their basic needs met, including food, shelter, income and job pathways, education, and healthcare and 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 NH/PI students are not put under the broader umbrella of API.
- Make sure data collected by county prosecutors and state courts regarding youth prosecuted in adult court also includes a category for NH/PI separate from API.
- County prosecutors and courts should track and publish data four 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 NH/PI, 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

19. See WASH. STATE DEP'T OF CHILD., YOUTH & FAMS., WASHINGTON STATE JUVENILE JUSTICE REPORT TO THE GOVERNOR & STATE LEGISLATURE 52–53 (2020),

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 seven times as likely as white youth to be arrested,²² and Black youth are nearly four 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 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 4.25 that of the rate involving white children, Latinx youth at a rate 1.74 times that of white youth, and Indigenous children at a rate 2.72 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

<https://www.dcyf.wa.gov/sites/default/files/pdf/2020WA-PCJGov.pdf> [<https://perma.cc/KDU2-T2JP>] [hereinafter 2020 DCYF REPORT TO LEGISLATURE].

20. *See id.* at 10 Exhibit 9.

21. *See* AMANDA B. GILMAN & RACHAEL SANFORD, WASH. STATE CTR. FOR CT. RSCH., WASHINGTON STATE 2019 JUVENILE DETENTION ANNUAL REPORT 7 (2021), <http://www.courts.wa.gov/subsite/wscsr/docs/Detention%20Report%202019.pdf> [<https://perma.cc/W4UZ-32UU>].

22. WILLIAM FEYERHERM, COMPLIANCE WITH THE DISPROPORTIONATE MINORITY CONTACT (DMC) CORE REQUIREMENT 7 tbl.8 (2018), <https://dcyf.wa.gov/sites/default/files/pdf/2018DMCPlan.pdf> [<https://perma.cc/HXW8-LUWJ>].

23. 2020 DCYF REPORT TO LEGISLATURE, *supra* note 19, at 11 Exhibit 10.

24. *Id.*

25. HEATHER D. EVANS & STEVEN HERBERT, JUVENILES SENTENCED AS ADULTS IN WASHINGTON STATE, 2009–2019, at 21 (2021), https://www.opd.wa.gov/documents/00866-2021_AOCreport.pdf [<https://perma.cc/T8NF-SPUL>].

26. *Id.*

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 the adultification of youth of color,³¹ which can mean justice officials perceive youth of color as “more culpable for 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

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 of Black children than their white counterparts. In a seminal study on adultification of Black youth, researchers demonstrated that Black children do not receive the same presumption of childhood innocence as their white peers. Phillip Atiba Goff, Matthew Christian Jackson, Brooke Alisson Lewis Di Leone, Carmen Marie Culotta & Natalie Ann DiTomasso, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCH. 526, 539–40 (2014). For Black girls, gender stereotypes compound the harmful effects of adultification bias. REBECCA EPSTEIN, JAMILIA J. BLAKE & THALIA GONZÁLEZ, CTR. ON POVERTY & INEQ., GEO. L., 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> [https://perma.cc/RFJ6-ADPT].

32. EVANS & HERBERT, *supra* note 25, at 3 (internal citations omitted); see also Aneeta Rattan, Cynthia S. Levine, Carol S. Dweck & Jennifer L. Eberhardt, *Race and the Fragility of the Legal Distinction Between Juveniles and Adults*, 7 PLOS ONE, at 2 (2012) (surveying of 735 white Americans demonstrated significantly more support for imposition of life without parole on a hypothetical fourteen-year-old Black defendant than in the identical hypothetical where defendant was white).

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 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

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).

35. *Id.* at 616–17 (citing Sanford Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1187–91 (1970)).

36. *Id.* at 617.

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, forty-three inmates had cleared the building suite and a road, erected a brickmaking plant that produced 850,000 bricks, and excavated two building sites.⁴¹

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 rehabilitation⁴³ 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

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 (1967) (quoting Mack, *supra* note 37, at 120).

39. *State v. Saenz*, 283 P.3d 1094 (Wash. 2012) (citing *State v. Rice*, 655 P.2d 1145 (Wash. 1982)).

40. Jack M. Holl & Roger A. Pederson, *The Washington State Reformatory at Monroe: A Progressive Ornament*, 67 PAC. NW. Q. 21, 25 (1976).

41. *Id.*

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).

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

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

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 MENNEL, *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)).

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.

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

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

58. *Id.* at 628 (quoting WARD, *supra* note 53, at 105).

59. *Id.*

60. Feld & Moriearty, *supra* note 45, at 764.

61. *Id.*

62. See 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 fourteen-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.*

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-board/> [<https://perma.cc/Q9SA-2LLM>]; 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).

66. Nick Estes & Alleen 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>

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 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 fifty-three courts across the United States found that Black children were grossly

[<https://perma.cc/HW4N-9GG7>]. See generally *In re Dependency of Z.J.G.*, 471 P.3d 853, 859–61 (Wash. 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.

72. *Id.* at 632.

73. *Id.*

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 [B]lack Americans in every stage of our criminal and juvenile justice systems."⁷⁹ As set forth in the introduction, though, 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

74. *Id.* at 632–33.

75. *See generally In re Gault*, 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, e.g., 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. Letter from Debra L. Stephens, C.J., & Charles W. Johnson, Barbara A. Madsen, Susan Owens, Steven C. González, Sheryl Gordon McCloud, Mary I. Yu, Raquel Montoya-Lewis & G. Helen Whitener, JJ., Washington Sup. Ct., to Members of 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> [<https://perma.cc/9293-49PD>].

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 . . . [B]ecause [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 becoming 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

80. OFF. OF JUV. JUST. & DELINQ. PREVENTION, DISPROPORTIONATE MINORITY CONTACT TECHNICAL ASSISTANCE MANUAL 2-10 (4th ed. 2009), https://www.ncjrs.gov/html/ojjdp/dmc_ta_manual/dmcfull.pdf [<https://perma.cc/2XCC-B6J5>].

81. *Id.*

82. See generally *Report on Race and Washington’s Criminal Justice System*, *supra* note 2, at 9–26.

83. WASH. STATE CTR. FOR CT. RSCH., JUVENILE RECIDIVISM IN WASHINGTON STATE: A 2014 COURT COHORT AND 2015 JUVENILE REHABILITATION RELEASE COHORT 1 (2020), <https://www.courts.wa.gov/subsite/wscrc/docs/2014%20Juvenile%20Recidivism%20in%20Washington%20State.pdf> [<https://perma.cc/4T7J-XUGV>].

court cohort, those with adjudicated court cases had an overall recidivism rate or 44%, and those with diversions had a much lower rate of 21.7%.⁸⁴

*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:

Consequence 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 effects 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 eleven 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

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, *see supra* note 16, coupled with the recommendations to 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. AM. BAR ASS'N., RESOLUTION 505, at 4 (2021), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2021/505-annual-2021.pdf> [<https://perma.cc/8VA9-LEWR>] (footnotes omitted) (regarding raising the minimum age for prosecution of children to fourteen).

86. Anne McGlynn-Wright, Robert D. Crutchfield, Martie L. Skinner & Kevin P. Haggerty, *The Usual, Racialized, Suspects: The Consequence of Police Contacts with Black and White Youth on Adult Arrest*, SOC. PROBS. 1, 9 (2020), <https://academic.oup.com/socpro/advance-article-pdf/doi/10.1093/socpro/spaa042/36169911/spaa042.pdf> [<https://perma.cc/R6MM-J5CH>] (advance access version; paginated version forthcoming).

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.

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

87. *Id.* at 5.

88. BARRY HOLMAN & JASON ZIEDENBERG, JUST. POL'Y 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 [<https://perma.cc/HT4X-8PER>].

89. *Id.* at 2–3 (footnotes omitted).

goals.⁹⁰ Forty to fifty percent of youth with juvenile court involvement dropped out of or disappeared from school.⁹¹

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 five 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—according to Washington State Center for Court Research, 13% of youth on probation and 16% of youth committed to Juvenile Rehabilitation had graduated.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

90. See generally IMPROVING INSTITUTIONAL EDUC. PROGRAMS & OUTCOMES TASK FORCE, REPORT TO THE GOVERNOR AND THE LEGISLATURE (2020), https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=IIEPO%20Final%20Report_4ab7b9ab-e7b2-4262-9f21-97953cdb4be8.pdf [<https://perma.cc/G2WT-4GPC>]. 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. H.R. 2116, 66th Leg., 2020 Reg. Sess. § 1 (Wash. 2020).

91. CARL MCCURLEY, ALEX KIGERL & ANDREW PETERSON, WASH. STATE CTR. FOR CT. RSCH., 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 [<https://perma.cc/77XV-HQJU>].

92. *Id.* at 1–2.

93. *Id.*

94. WASH. REV. CODE § 13.50.050(2) (2021) (“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 allow for the release of juvenile records without restriction. LINDA SZYMANSKI, NAT'L CTR. FOR JUV. JUST., PUBLIC JUVENILE COURT RECORDS (2000), http://www.ncjj.org/PDF/Snapshots/2000/vol5_no10_publicrecords.pdf [<https://perma.cc/PYN9-6LTV>].

navigate.⁹⁶ In some instances, sealing is accomplished administratively and does not occur until after a young person reaches eighteen.⁹⁷ A youth may not know whether their record was administratively sealed. The YEAR Act⁹⁸ allowed more youth to become eligible to seal their records because it 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 be amended, electronic records that are released prior to the sealing date may continue to exist after sealing, including on the Internet and at credit reporting agencies. Youth have little or no control¹⁰⁰ over previously

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. S.B. 5204, 62nd Leg., 2011 Reg. Sess. § 4 (Wash. 2011). 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. H.B. 1651, 63rd Leg., 2014 Reg. Sess. §§ 1, 3–5. This 2014 Act also shifted the framework for sealing in that it requires that courts *shall* seal records where requirements are met, *id.*; WASH. REV. CODE § 13.50.260(4), and may in other cases, WASH. REV. CODE § 13.50.260(3).

97. WASH. REV. CODE § 13.50.260(1) (2021).

98. The legislature amended the record sealing laws in 2015, passing the Youth Equality and Reintegration Act. S.B. 5564, 64th Leg., 2015 Reg. Sess. §§ 1, 3, 6, 7 (Wash. 2015).

99. *State v. Ogle*, No. 50492-8-II, 2018 WL 1729778, at *2 (Wash. Ct. App. Apr. 10, 2018) (holding that a superior court is required to grant a motion to seal a juvenile offender's court records when the statutory conditions are met, but 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*, 374 P.3d 63, 66 (2016) (upholding the blanket release of Level I sex offender registry information, even as to juveniles).

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. The King County Superior Court acknowledged the harm that online access causes to youth when it agreed to work on its portal system to restrict online access to only victims and their families and members of the media, and stated:

[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 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 when it enacted 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

101. *See generally* RIYA SAHA SHAH & JEAN STROUT, JUV. L. CTR., FUTURE INTERRUPTED: THE COLLATERAL DAMAGE CAUSED BY PROLIFERATION OF JUVENILE RECORDS 15–16 (2015), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf> [<https://perma.cc/RC4H-6943>].

102. Letter from King Cnty. Superior Ct., to Anita Khandelwal, Director, Dep't of Pub. Def. (Oct. 15, 2021) (on file with author).

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:

[T]he 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. A 2009 study of New York low-wage employment opportunities 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. Black [applicants] were only half as likely to receive a callback or job offer relative to equally qualified

103. State v. S.J.C., 352 P.3d 749, 761 (2015) (internal quotations and citations omitted).

104. Amy L. Solomon, *In Search of a Job: Criminal Records as Barriers to Employment*, NAT’L INST. JUST. J., June 2012, at 42, 46 (citing Harry J. Holzer, Steven Raphael & Michael A. Stoll, *Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers*, 49 J.L. & ECON. 451, 453–454 (2006)); see also Harry J. Holzer, Steven Raphael & Michael A. Stoll, *How Willing Are Employers to Hire Ex-Offenders?*, FOCUS, Summer 2004, at 40, 41 (noting 40% of employers surveyed reported that they 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, 937–75 (2003) (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> [<https://perma.cc/QYX2-X45U>].

white [applicants]; 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 white [applicants], then Latino [applicants], and finally [B]lack [applicants] 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 denial 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 records from renting, and the difficulty of finding employment makes 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 (ABA) passed a resolution in 2010 recognizing that extra

106. Devah Pager, Bruce Western & Bart Bonikowski, *Discrimination in a Low-Wage Labor Market: A Field Experiment*, 74 AM. J. SOCIO. 777, 792–93 (2009); 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., WASH. REV. CODE § 9.96A.020 (2021).

108. See, e.g., WASH. REV. CODE § 13.40.265 (2021).

109. See, e.g., ANDREA R. COLEMAN, U.S. DEP'T OF JUST., EXPUNGING JUVENILE RECORDS: MISCONCEPTIONS, COLLATERAL CONSEQUENCES, AND EMERGING PRACTICES 8–9 (2020), <https://ojjdp.ojp.gov/publications/expunging-juvenile-records.pdf> [<https://perma.cc/3SA8-BE29>]; DIANA TATE VERMEIRE, NATHAN MERLUZZI & LAURA JOHN RIDOLFI, ACLU & 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 3 (n.d.) (analyzing 2001–2007 employment data), https://www.aclunc.org/sites/default/files/balancing_the_scales_of_justice.pdf [<https://perma.cc/DK4K-V5D4>].

110. See, e.g., 24 C.F.R. § 982.553 (2002); 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 COM., 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), <http://www.commerce.wa.gov/wp-content/uploads/2015/11/hau-ohy-report-2016-update.pdf> [<https://perma.cc/YU2Z-K6VJ>].

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 and stated:

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 provide resources to enable their success. The next part of the Report explores the broader ecosystem youth face to better understand the challenges so that solutions can be developed.

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

112. Press Release, Jane Singleton, Am. Bar. Ass'n, (Mar. 8, 2010) (on file with Seattle University Law Review); *see generally* SHAH & STROUT, *supra* note 101; COLEMAN, *supra* note 109.

113. *See, e.g.*, Alex R. Piquero, *Disproportionate Minority Contact*, FUTURE OF CHILD., Fall 2008, at 59; *see also* OFF. OF JUV. JUST. & DELINQ. PREVENTION, *supra* note 80.

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 and 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?
- 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 is 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 the 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 DCYF Needs Assessment calls out, the 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 are rife 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

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

115. WASH. STATE DEP’T OF CHILD., YOUTH & FAMS., WASHINGTON’S STATEWIDE EARLY LEARNING NEEDS ASSESSMENT 35, app. B at 3–20 (2020) [hereinafter EARLY LEARNING NEEDS ASSESSMENT], <https://www.dcyf.wa.gov/sites/default/files/pdf/2020StatewideNeedsAssessment.pdf> [<https://perma.cc/Q77A-N65G>].

116. *Id.* at app. B at 3, 8–9.

117. *Id.* at app. B at 8–9.

118. *Id.* at app. B at 8–9.

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 app. B; WASH. STATE DEP’T OF CHILD., YOUTH & FAMS., 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 [<https://perma.cc/6J3G-Q5U6>].

120. MCCURLEY, KIGERL & PETERSON, *supra* note 91, at 1–2.

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 students' involvement in the juvenile legal system, and data indicate that normal student behavior that could be dealt with in school is being criminalized. Data also suggest 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 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

121. *Id.* at 1–2.

122. See generally VANESSA HERNANDEZ, ACLU, 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> [<http://perma.cc/XB43-YGAD>].

123. As of July 2021, youth found to be truant can no longer be detained. S.B. 5290, 66th Leg., 2019 Reg. Sess. §§ 1–2 (Wash. 2019).

124. Truancy rates have fluctuated between 11.1% and 12.6% between the 2016–2017, 2017–2018, and 2018–2019 school years. KRISSY JOHNSON, OFF. OF THE SUPERINTENDENT OF PUB. INSTRUCTION, UPDATE: TRUANCY REPORT 7 tbl.2 (2019), <https://www.k12.wa.us/sites/default/files/public/communications/2020documents/2019-12-Truancy.pdf>. Annual filings in 2019 were 10,859. WASH. CTS., SUPERIOR COURT 2019 ANNUAL REPORT ANNUAL CASELOAD REPORT 214 (2020), <https://www.courts.wa.gov/caseload/content/archive/superior/Annual/2019.pdf> [<https://perma.cc/X8DV-E745>]. 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 to September 2021. *Caseloads of the Courts of Washington: Superior Court Juvenile Dependency Cases Filed by Type of Case - 2020 Annual Report*, WASH. CTS., <https://www.courts.wa.gov/caseload/?fa=caseload.showReport&level=s&freq=a&tab=juvDep&fileID=jdpfilyr> [<http://perma.cc/S795-2MSW>]; *Caseloads of the Courts of Washington: Superior Court Juvenile Dependency Cases Filed by Type of Case - January 2021 Through November 2021*, <https://www.courts.wa.gov/caseload/?fa=caseload.showReport&level=s&freq=y&tab=juvDep&fileID=jdpfilyr> [<http://perma.cc/4AJF-NA5W>]. While this is likely attributable to the remote learning required by the COVID-19 pandemic, it will be important to 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, 11–12 (illustrating higher rates of truancy among American Indian/Alaskan Native students, NH/PI 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 1, 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

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 and attempted 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 interviews, the report highlighted the following common themes for how the public education system is failing students, falling into three categories:¹²⁸

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* WASH. REV. CODE § 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 also 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, DANIKA MARTINEZ, NICOLE YOHALEM & ANNIA YOSHIKUMI, 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> [<https://perma.cc/RZ5E-GGJV>].

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 and 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

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, 235–54 (Alan J. Dettlaff ed., 2021).

131. *Matter of Dependency of Z.J.G.*, 471 P.3d 853, 856 (2020); see also Vanessa M. Holden, *Slavery and America’s Legacy of Family Separation*, *BLACK PERSPS.* (July 25, 2018), <https://www.aaihs.org/slavery-and-americas-legacy-of-family-separation/> [http://perma.cc/E897-

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 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

E8EJ]; 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, 304–05 (2006).

132. Z.J.G., 471 P.3d at 861 (quoting Ashley L. Landers, Sharon M. Danes, Kate Ingalls-Maloney & Sandy White Hawk, *American Indian and White Adoptees: Are There Mental Health Differences?*, AM. INDIAN & ALASKA NATIVE MENTAL HEALTH RSCH., 2017, at 54, 69).

133. Kathleen S. Kenny, Clare Barrington & Sherri L. Green, “*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, 1163 (2015) (“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, Leslie L. Roos, Marni Brownell, Nathan Nickel, Dan Chateau & Deepa Singal, *Suicide Attempts and Completions Among Mothers Whose Children Were Taken into Care by Child Protection Services: A Cohort Study Using Linkable Administrative Data*, 63 CANADIAN J. PSYCHIATRY 170, 170–77 (2018).

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).

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 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—they are 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 eight years.¹⁴³ DCYF's disaggregated race/ethnicity data for family regulation system involvement is presented in the table below:

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

139. PETER J. PECORA, RONALD C. KESSLER, JASON WILLIAMS, KIRK O'BRIEN, A. CHRIS DOWNS, DIANA ENGLISH, JAMES WHITE, EVA HIRIPI, CATHERINE ROLLER WHITE, TAMERA WIGGINS & KATE HOLMES, CASEY FAM. PROGRAMS, IMPROVING FAMILY FOSTER CARE: FINDINGS FROM THE NORTHWEST FOSTER CARE ALUMNI STUDY 1 (2005), https://caseyfamilypro-wpengine.netdna-ssl.com/media/AlumniStudies_NW_Report_FR.pdf [<https://perma.cc/U9XX-T2JY>].

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 white youth across 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 DEP'T OF CHILD., YOUTH & FAMS., 2019 WASHINGTON STATE CHILD WELFARE RACIAL DISPARITY INDICES REPORT 2–4 (2020), <https://www.dcyf.wa.gov/sites/default/files/pdf/reports/CWRacialDisparityIndices2019.pdf> [<https://perma.cc/T5DL-7P7T>]. 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, Frank R. Edwards & Sara Wakefield, *The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000–2016*, 25 CHILD MALTREATMENT 32, 32–42 (2020).

141. Nina Shapiro, *Is Washington State Taking Too Many Children from Their Parents? Movement Seeks to Overhaul Foster Care*, SEATTLE TIMES (Apr. 29, 2021), <https://www.seattletimes.com/seattle-news/politics/is-washington-state-taking-too-many-children-from-their-parents-movement-seeks-to-overhaul-foster-care/> [<http://perma.cc/MV7Y-7ZRV>].

142. EARLY LEARNING NEEDS ASSESSMENT, *supra* note 115, at 55.

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

Table 1. Number of children ages birth through eight 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	

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

144. *Id.* Comparative disproportionality (RRI) calculated and added. The “placed out of home” numbers are as of June 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 white school-age youth.

145. See generally MARNIA MILLER, WASH. STATE INST. FOR PUB. POL’Y, 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 [<https://perma.cc/UK7P-JVLN>]; Alan J. Dettlaff, Kristen Weber, Maya Pendleton, Reiko Boyd, Bill Bettencourt & Leonard Burton, *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) (“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 CT. RSCH., MULTI-SYSTEM YOUTH IN WASHINGTON STATE: PREVALENCE BY JURISDICTION (2015), https://www.courts.wa.gov/subsite/wscrr/docs/MSY_Paper2_Final.pdf [<https://perma.cc/35BU-SSLQ>]; Dettlaff, Weber, Pendleton, Boyd, Bettencourt & Burton, *supra* note 145, at 503.

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: 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 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

147. PICKARD, *supra* note 146, at 1 fig.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 n.24 (2d Cir. 1977) (noting that lack of judicial review of removal of children from mother was a violation of due process because “‘of all tyrannies a tyranny sincerely exercised for the good of its victims may be the most oppressive Those 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))).

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.

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, AMY DWORSKY

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 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

& PATRICK J. FOWLER, HOMELESS YOUTH IN THE UNITED STATES: RECENT RESEARCH FINDINGS AND INTERVENTION APPROACHES 6-11 (2007) (discussing DEBORAH FELDMAN & DAVIS PATTERSON, 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> [<https://perma.cc/TQ24-RVGQ>].

151. VOICES OF YOUTH COUNT, MISSED OPPORTUNITIES: YOUTH HOMELESSNESS IN AMERICA 10 (2017), <https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf> [<https://perma.cc/N2D4-T27S>].

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, Abril Castro & Connor Maxwell, *Systemic Inequality: Displacement, Exclusion, and Segregation*, CTR. FOR AM. PROGRESS (2019), <https://www.americanprogress.org/issues/race/reports/2019/08/07/472617/systemic-inequality-displacement-exclusion-segregation/> [<https://perma.cc/VGM2-D27G>]; Jennifer Ott, *Seattle Board of Trustees Passes Ordinance, Calling for Removal of Indians from the Town, on February 7, 1865*, HISTORYLINK.ORG (Dec. 7, 2014), <https://www.historylink.org/File/10979> [<https://perma.cc/73SQ-XV86>].

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, *Racial Restrictive Covenants History: Enforcing Neighborhood Segregation in Seattle*, SEATTLE CIV. RTS. & LAB. HIST. PROJECT (2008), http://depts.washington.edu/civilr/covenants_report.htm [<https://perma.cc/83QQ-W269>].

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).

156. THE SENT’G PROJECT, REDUCING RACIAL DISPARITY IN THE CRIMINAL JUSTICE SYSTEM: A MANUAL FOR PRACTITIONERS AND POLICYMAKERS 6 (2d ed. 2008).

when it comes to surveillance and social control and underserved 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 the 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

157. See generally Aldina Mesic, Lydia Franklin, Alev Cansever, Fiona Potter, Anika Sharma, Anita Knopov & 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, 106–16 (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. ALL HOME, COUNT US IN: SEATTLE/KING COUNTY POINT-IN-TIME COUNT OF PERSONS EXPERIENCING HOMELESSNESS 63 (2019).

160. EARLY LEARNING NEEDS ASSESSMENT, *supra* note 115, at 56 tbl.4-16.

Table 2. Homeless student enrollment during the 2017–2018 school year, preschool through grade twelve, 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	0.4
Black	53,750	4,536	3.4
Multiracial	96,240	4,042	1.7
Native Hawaiian/Pacific Islander	13,431	1,016	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% 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 because 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, 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

161. *Id.*

162. TAYLOR DANIELSON, JIM MAYFIELD, CALLIE BLACK & BARBARA FELVER, DEP'T OF SOC. & HEALTH SERVS., RSCH. & DATA ANALYSIS DIV., 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> [<https://perma.cc/TX72-G3N6>].

163. *Id.*

164. *Id.* at 3.

165. *Id.*

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, they are punished for their survival actions rather than being met with care and resources for their housing instability. At every stage of contact with the juvenile court system, from citations and charges, to court access, to sentencing, and to eventual exit, housing instability and homelessness are 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 it relates 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 or “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 underlie 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, implicit, individual, and institutional, is a form of trauma. The experience of racial trauma,¹⁶⁷ or race-based

166. See generally VOICES OF YOUTH COUNT, *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:

traumatic stress (RBTS),¹⁶⁸ refers to the mental and emotional injury caused when a person experiences racial bias, ethnic discrimination, 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 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 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 of 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, that 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 the *Miller* Court'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

distress, anger, worry, depression, anxiety, pain, fatigue, and suicide." IBRAM X. KENDI, HOW TO BE AN ANTIRACIST 47 (2019).

168. See generally ASS'N FOR BEHAV. & COGNITIVE THERAPIES, FACT SHEET: RACE-BASED TRAUMATIC STRESS, <https://www.abct.org/fact-sheets/race-based-traumatic-stress/> [<https://perma.cc/J5PW-474G>].

169. See generally Janet E. Helms, Guerda Nicolas & Carlton E. Green, *Racism and Ethnoviolence as Trauma: Enhancing Professional Training*, 16 TRAUMATOLOGY 53, 53–62 (2010).

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 (2012).

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 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 multilayered and pervasive. Some contributing factors include barriers reducing access to mental health support, inequitable dispositions evident in referrals to therapeutic versus physical regimens, 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 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, which funnels a disproportionate number of youth of color who cannot afford the care many of their white counterparts

172. Katrina A. Hovey, Staci M. Zolkoski & Lyndal M. Bullock, *Mental Health and the Juvenile Justice System: Issues Related to Treatment and Rehabilitation*, WORLD J. EDUC., 2017, at 3–4.

173. WASH. STATE HEALTH CARE AUTH., ACCESS TO BEHAVIORAL HEALTH SERVICES FOR CHILDREN 7 (2020), <https://www.hca.wa.gov/assets/program/access-behavioral-health-services-children-20201201.pdf> [<https://perma.cc/FWA7-QU7J>].

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.

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 homepage¹⁷⁴ for updated recommendations and 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

174. *Task Force 2.0*, SEATTLE UNIV. SCH. OF L., <https://law.seattleu.edu/centers-and-institutes/korematsu-center/initiatives-and-projects/race-and-criminal-justice-task-force/task-force-20/> [<https://perma.cc/X3SZ-YYFD>]. The recommendations on family regulation and homelessness will be posted here in the near term but are not included in this report.

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 noncriminal 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.

- 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 or 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 and beds. *State legislature; local governments.*
- Increase opportunities for accessible, affordable, and 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 or 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 crises, 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 and 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 crises 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, nonviolent 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, or Department of Commerce. *State agencies, including DCYF; DOH; OHY; Department 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.635.010, 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 RCW Chapter 28A.225 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 and 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 S.B. 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, etcetera. Youth in foster care are also more at risk for detention on offender matters if they do not 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 and 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 and 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 twenty-five, 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 opportunities 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 H.B. 1524/RCW 13.40.042 to permit law enforcement diversion of juveniles who are facing arrest

for a felony offense and who have a 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 and 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 prefiling diversion over court diversion. *County prosecutors; superior courts.*
 - As filings decrease due to diversion, make internal divestments from prosecutors, courts, and defense to fund community responses to harm and prefiling diversion. *Local governments; state legislature.*

- Juvenile Court Jurisdiction/ Decline to Adult Court
 - Increase the minimum age of juvenile court jurisdiction to at least fourteen.¹⁷⁵ *State legislature.*
 - Increase the maximum age of juvenile court jurisdiction to at least twenty. *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 twenty-one to twenty-five; 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 eighteen in juvenile court. Repeal Washington's laws 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 eighteen 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.*
- **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,

175. This is consistent with the 2021 ABA Resolution recommending that all jurisdictions raise the minimum age of juvenile court jurisdiction to fourteen, as “[t]he failure to set a meaningful standard of juvenile court jurisdiction results in the criminalization of childhood.” AM. BAR ASS’N, *supra* note 85, at 1.

accountability, and ensuring community safety. Those working in the juvenile justice system need to be equipped with the ability to serve young people beyond age twenty-one. It is well understood that brain development occurs until at least age twenty-five. 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 age twenty-one 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 and 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, and use 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 explains the need for EHM, defines its goals, lays out incentives to eliminate EHM, creates as needed and ensures supports are in place to engage youth on EHM, provides resources to family and support systems, and allows for expanded zones and outdoor time through liberal and safe uses of passes; (4) articulates that EHM is only a short-term option with regular check-ins to assess continued need; (5) provides streamlined, efficient, and understandable process for passes; (6) increases training and understanding of technical malfunctions to avoid issues from malfunctioning equipment; and (7) prevents 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 or 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, 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 the 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 disidentified 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 Ombud 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 eighteen 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 eighteen 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 H.B. 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 multiracial 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, and 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 Native Hawaiian/Pacific Islander, 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 homepage¹⁷⁶ 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 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. *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 parents and 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

176. Error! Hyperlink reference not valid. *Task Force 2.0, supra* note 174.

students living in poverty. Require schools to hire mental health counselors consistent with the recommended ratios. *State legislature.*

- Invest in telehealth 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 models that include 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 and train teachers to develop and implement strategies to support teachers. *State legislature.*
- Increase state resources for recruiting and 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 and 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 and 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 codesign 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, and parent and peer educators. *Local school districts; state legislature.*

- Create state funding for students and community members to be compensated for participation in codesign 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 and School Attendance
 - Require schools to keep students in their school of choice when students have to move between placements or homes due to dependency, foster care, and criminal justice involvement. *State legislature*
 - Amend RCW Chapter 28A.225 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 and 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.635.010, 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. *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 and students to bring a lawsuit or administrative complaint against school districts that are denying students who have been suspended or 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 and conflict by 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, and 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 impacted most 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