The Complex Maze of the Juvenile Justice System in Wisconsin and Its Impact on Youth of Color

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RACE TO EQUITY

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Wisconsin's Juvenile Justice System

Wisconsin's juvenile justice system operates like a complex maze with many points of entry. Navigating the maze-like-system is difficult and finding a point of exit is even more difficult. The complexities of the juvenile justice system and the biases that exist within the system are preventing many children in Wisconsin from thriving—particularly children of color. Wisconsin is locking up too many youth of color in a system that doesn't address the needs of developing youth brains, and is threatening the livelihood of families and communities throughout the state. Policy makers and stakeholders should work to address the increasing racial disparities that is harming youth and families of color.

This report explores the current state of Wisconsin's juvenile justice system, within the context of growing disparities between racial and ethnic minority youth. It begins with an overview of the organizational structure of Wisconsin's juvenile justice system before moving on to an exploration of the historical and current trends as it relates to system outcomes for youth. Lastly, the report examines the changing context of juvenile justice in Wisconsin and concludes with a discussion of steps for moving forward towards a more age-appropriate, evidence-based, and equitable system that benefits all youth in Wisconsin.

Juvenile justice is the area of criminal law applicable to persons not old enough to be held responsible for criminal acts. In the state of Wisconsin, the age for criminal culpability is set at 17 years. Juvenile law is mainly governed by state law and most states have enacted a juvenile code. The main goal of the juvenile justice system is rehabilitation rather than punishment

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Introduction

The juvenile justice system is the primary system used to interact with youth who are convicted of a delinquent or criminal offense. Youth are thought to be extremely impressionable and to have a great capacity for rehabilitation, which is why, for the most part, they are housed in separate facilities from adults.

Youth who are housed in adult facilities have been found to develop higher rates of learned violence and recidivism; compared to youth who are housed in a separate facility with other youth. Therefore, it is important that youth experience a separate system from adults that focuses on activities that are suitable for juveniles based on their cognitive, emotional, physical, and behavioral capacities.

Although the youth justice system is a preferred structure to the adult criminal justice system, youth involvement in any justice system—even the juvenile system—is cause for concern. Youth contact with the justice system matters because it can have profound negative impacts on a youth's mental and physical well-being, as well as negatively impact their current and future education and employment.[1] Additionally, research on juvenile corrections has found that confinement can negatively affect youth in custody and "lead to further involvement in the juvenile and adult criminal justice systems rather than interrupting the offending cycle or facilitating rehabilitation." [2]

In Wisconsin, the age of youth involved in the juvenile justice system is ten to sixteen years old. However, one can still be under jurisdiction of the juvenile justice system through age 18. Currently, all seventeen-year-olds who commit a criminal act in Wisconsin go directly into the adult criminal justice system. There are different ways in which youth can become involved in the juvenile justice system. Some youth become involved in the system because they have been accused of committing a delinquent or criminal act, while other youth come into contact with the system for status offenses.

A delinquent act is defined as the violation of a state or federal criminal law, or a contempt of court, which has been committed by a youth who is ten years of age or older. Whereas a status offense is an action that is only illegal because of the youth's age—such as truancy, underage drinking, and running away from home. The juvenile justice system intervenes in delinquent behavior through police interaction, courts, and correctional involvement; with the underlying goal of rehabilitation. Moreover, youth experiencing contact with the juvenile justice system can face a variety of consequences including probation, community service, youth court, youth incarceration, and alternative schooling.

The System's Changing Context

Wisconsin's juvenile justice system has experienced substantial changes in recent years. These changes are a result of ongoing research that has examined and improved the understanding of tough-on-crime juvenile justice policies and their negative consequences. This research has driven the creation of new policies and practices that have helped expand youth programing and alternatives to arrest and incarceration, as well as shift what is considered an offense worthy of arrest or incarceration.

Despite overall juvenile arrest and incarceration rates declining in recent years, racial and ethnic inequities in Wisconsin's juvenile justice system, as well as nationally, have not been following this same trend. In fact, as overall contact with the system has been declining, racial and ethnic inequalities within the system are increasing. Contact with the system has been decreasing for all youth; however, there has been a greater decrease for white youth than there has been for youth of color. This does not mean that white youth are committing less crimes than youth of color.[3] Rather, it simply means that less white youth are getting caught and getting arrested for the crimes that they are committing.[4]

Racial and ethnic differences in youth behaviors do not explain why youth of color continue to be, increasingly, disproportionately represented at every decision point in the juvenile justice system. A study by The Sentencing Project[5] which explored racial disparities in youth commitments and arrests found that despite there being "few differences as it relates to either delinquent behaviors or status offense," these similarities tend to not be reflected in arrest rates between Black and white teenagers.

Organization of Wisconsin's Juvenile Justice System

The juvenile justice system in Wisconsin is complex and can be challenging for people who are not working in or with the system to understand. Youth become involved with the juvenile justice system because they are accused of committing a delinquent or criminal act, or for status offenses. Not all of these cases, however, are formally processed through the courts.

In Wisconsin there are two primary doors through which youth enter the juvenile justice system—the corrections system or the community-based justice system. The primary difference between these entry-points is that entry via the correctional system involves entering secure facilities while the community-based system does not. Although there is variation within each of these systems in regards to how restrictive the settings are, the community-based system provides the greatest amount of flexibility. Juvenile court judges have the ability to draw from a range of legal options to meet both the safety needs of the public and the treatment needs of the youth. However, youth are still all too often confined to correctional facilities that resemble adult prisons and jails, and routinely has imposed correctional practices such as solitary confinement, strip searches, and the use of chemical and mechanical restraints.

Detention Centers: Juvenile detention facilities are locked facilities approved by the Department of Corrections for the secure, temporary holding of youth. These facilities are operated by counties. Secure detention can be used prior to disposition if the youth meets any of the following criteria: probable cause for delinquent act and risk of harm to another; flight risk; they are younger than 15-years-old and being held for proceedings under adult court jurisdiction; or being detained as a result of an order to arrest/detain. Additionally, secure detention can be used after disposition for any of the following reasons: being held for a 72-hour hold; as a sanction for a violation of the disposition order. Courts are prohibited from placing youth in a juvenile detention facility for more than 30 consecutive days, unless it is an eligible "juvenile detention facility." [6] Facilities such as these offer programs for post-adjudicated youth such as placement in a 180/365 program.[7] [i] With just a few exceptions, courts are prohibited from placing youth in a juvenile detention facility for more than thirty consecutive days.

Corrections System: The Division of Juvenile Corrections within the Department of Corrections (DOC) currently operates two secure juvenile correctional facilities: [ii] Lincoln Hills School for Boys and Copper Lake School for

i 180/365 programs: These are programs designed to allow the placement of juvenile justice system involved youth in a detention facility with the goal of getting them into a system of care model, for up to 365 days, that will facilitate the youth "doing a 180" behavioral turnaround over the course of that period.

ii Secure facility: The use of confinement fixtures or features to restrict the movements and activities of youth within the juvenile facility. Confinement features usually include security doors or external gates that are locked by staff to confine the youth within a specific building or area in the facility.

Girls. It also runs the Grow Academy, which is a less-secure residential placement for boys, providing a 120-day curriculum focused on agriculture science and serve a maximum of 12 youth. This placement is considered less-secure because it does not utilize security features such as locked gates in order to confine youth. The Department of Health Services (DHS) operates a secure mental health unit, the Mendota Juvenile Treatment Center, which is a 29-bed secure treatment facility for teen boys. Youth are transferred to this facility if they present highly disruptive behavior and a failure to respond to treatment at a juvenile corrections facility.[8]

Community Based Justice System: The Department of Children and Families (DCF) is the state agency responsible for fiscal and programmatic oversight[iii] for the Youth Aids[iv] allocation and the community-based youth justice system. DCF oversees the community services that the county provides to youth as diversion services and post-disposition services. Diversion services are services provided as part of a Deferred Prosecution Agreement (DPA) including, but not limited to counseling, assessment and treatment, restitution, community service, and teen court. Post-disposition services include a range of services available under Section 938.34, Wisconsin Statutes, including counseling, supervision, placement in a group home, foster home, or residential center, and electronic monitoring.

Additionally, the state operates one community placement option—the Juvenile Corrective Sanctions Program—in which youth may return to the community but are placed under intense surveillance, monitored electronically, and must follow a strict schedule. Youth may also be given a Type 2 status, where they are placed in a less restrictive out-of-home-placement, but may be administratively transferred to different placements, including more restrictive ones, as necessary.[9] A Type 2 juvenile correctional facility status is available to both DOC, as a condition of aftercare, and to the juvenile court, as a dispositional option. When given Type 2 institutional status by DOC or the court, a youth is allowed to serve all or part of his or her dispositional period in a less-restrictive community placement, rather than in a Type 1 juvenile correctional facility.[10]

[iii] Responsibilities of fiscal and programmatic oversight of youth justice system include: youth justice standards of practice; training, including juvenile court intake worker training; data collection and analysis; and consultation and technical assistance to counties.

[iv] Youth Aids: A program that provides each county with an annual allocation of state and federal funds from which a county may pay for juvenile delinquency-related services, including out-of-home placements and non-residential, community-based services for youth in the juvenile justice system.

Brief History of Juvenile Justice in Wisconsin

Wisconsin's juvenile justice system has seen substantial change over the last decade. Overall, youth interaction with the juvenile justice system has been steadily decreasing at every point of contact. According to a previous report published by Kids Forward,[11] the state has seen a steady decrease in the number of youth arrests and in the average daily population in juvenile correctional institutes. These numbers, however, do not tell the whole story. Between the years 2003 and 2013, Wisconsin saw a significant increase in racial and ethnic disparities between white youth and youth of color, with youth of color being disproportionality arrested at higher rates and disproportionality placed in the system.

The Good News: Overall Numbers are Declining

Trends in crimes involving youth in Wisconsin have notably shifted over the last one to two decades. Youth crime has significantly declined, resulting in fewer juvenile arrests and institutional placements. For example:

- In 2002 youth ages 10-17 were being arrested at a rate of 187 arrests per 1,000 youth, by 2016, that rate had reduced to 72 arrests per 1,000 youth.
- The number of youth arrests for violent crimes has declined by 48% since 2002.
- The number of youth waived into adult court has dropped by 72% since it peaked in 2005.
- In 2002, the average daily population juvenile correctional institutions was 866 youth. By 2016, the average daily population decline to 227 youth per day.

Wisconsin's juvenile correctional institutes include the Lincoln Hills School for Boys and the Copper Lake School for Girls. These facilities have come under great scrutiny in recent years for findings of abuse and neglect. For this reason, counties have greatly reduced the number of youth they send to these facilities and have instead been working to find local alternatives for youth offenders. Interestingly, the average number of youth held in juvenile detention centers has remained fairly stable since 2002 but did see an increase of 18% from 2015 to 2016. This could be a result of counties reducing the number of youth they are sending to Wisconsin's Lincoln Hills School for Boys and Copper Lake School for Girls and are instead opting to hold them in detention centers closer to home.[12]

The Bad News: Racial Disparities are Increasing

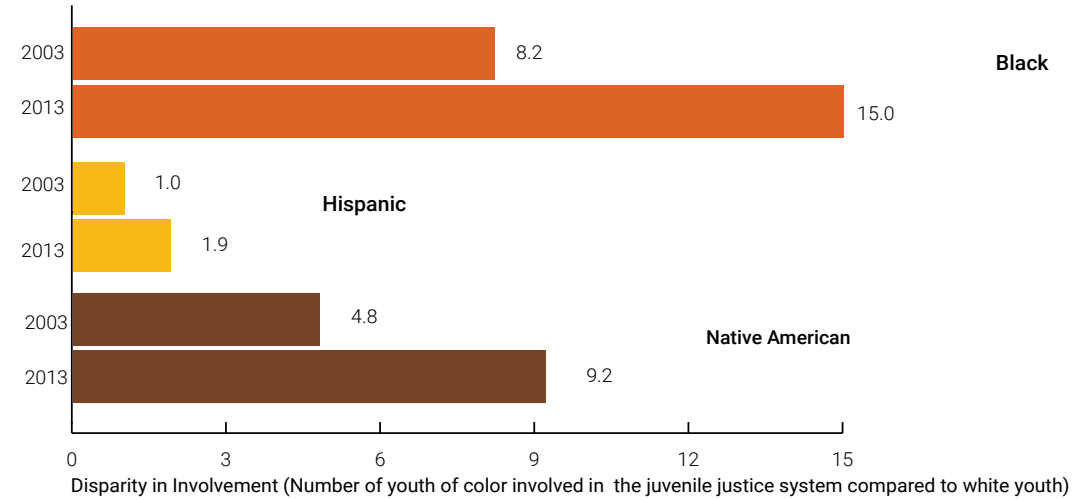
The racial disproportionality of youth of color who have contact with our justice system remains among the highest in the nation. In fact, as overall youth arrests and placements have been declining in Wisconsin, youth of color in the juvenile justice system has actually been increasing. Between the years 2003 and 2013, Wisconsin saw a significant increase in racial and ethnic disparities between white youth and youth of color. Wisconsin's Black to white disparity in the juvenile justice system increased by 82% during these years (see chart one below)[13]

It is important to note that the disparities are not the result of youth of color committing more crimes. Juvenile commitments in Wisconsin are declining for all youth, but are declining at a faster rate for white youth. This is true at all points of contact in Wisconsin's juvenile justice system and can be attributed to many different factors—none of which are that youth of color are committing more crimes.

Chart 1:

Racial Disparities In The Juvenile Justice System Nearly Doubles Between 2003 and 2013

Involvement for Youth of Color Compared to White Youth



Source: The Sentencing Project

Current Issues in the Juvenile Justice System

Unfortunately, Wisconsin's juvenile justice system has many glaring issues that must be addressed in order to ensure the safety and well-being of its youth. One of its greatest challenges is the overrepresentation of youth of color across all stages in the system. There are many contributing factors to these disparities, and it is imperative that they be addressed.

Contributing Factors to the Overrepresentation of Youth of Color

In the state of Wisconsin, there is a disproportionate representation of youth of color across all stages of the juvenile justice system. Additionally, research suggests that youth of color receive harsher treatment than their white counterparts at nearly every stage of the juvenile justice process. For example, on average youth of color are confined and sentenced for longer periods and are less likely to receive alternative sentences or probation compared to white youth. Some argue that this overrepresentation and harsher treatment of youth of color in the juvenile justice system is a result of those youth committing more crimes than white youth. However, this is simply not accurate. A deeper analysis of these disparities is much more complicated and points to numerous contributing factors. Some of these contributing factors include differential police policies and practices, location of offenses, different reactions of victims, punitive juvenile laws, and racial bias within the justice system.[14] The following are explanations for how some of these contributing factors may lead to youth of color having disproportionate contact in the juvenile justice system:

Racial Bias

Racial Bias embedded within the juvenile justice system is a contributing factor for the overrepresentation of youth of color. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) completed an analysis of studies spanning twelve years, which revealed that in about two-thirds of the studies, "negative race effects" (meaning race explains why youth of color remain in the system) were present at various stages of the juvenile justice process.[15]

Additionally, racial bias of victims of crime may be a factor in the overrepresentation of youth of color in the justice system. For example, white victims of crime may disproportionately perceive their offenders to be youth of color.

Law Enforcement

Police policies and practices often result in the targeting of low-income urban neighborhoods and the use of group arrest procedures, which both contribute to disproportionate contact with youth of color. Research shows that nationally, Black youth are arrested at twice the rate of their white peers for drug crimes. However, studies also show that white youth are just as likely—or even more so—to be involved in illegal drug use and sales. This disproportionality is a direct result of differential police policies and practices.[16]

Jurisdiction/Location

Studies show that results within the juvenile justice court system can depend on the jurisdiction in which the youth is processed.[17] For example, cases adjudicated in urban areas have been found to be more likely to result in harsher punishments than similar cases adjudicated in non-urban areas. Additionally, populations of color tend to be concentrated in urban areas, thus resulting in a geographic effect that works to over-represent youth of color in the justice system statewide.

Another contributing factor related to urbanization is the location and visibility of crimes committed by youth of color. According to the OJJDP white youth are more likely to use and sell drugs in their homes, while youth of color are more likely to do so on street corners or in public neighborhood gathering spots. This results in higher numbers of youth of color arrests for drug-related crimes as they are more exposed to systems.

Punitive Juvenile Laws

Fear of the 'super predator' in the 1990s led to many states, including Wisconsin, enacting "automatic transfer laws" to exempt certain crimes from juvenile court jurisdiction. Under these laws, a youth is automatically referred to adult court for adjudication based on the alleged crime. The legislation also provided prosecutors and judges with more discretion to try youth as adults.

Research indicates that automatic transfer provisions have disproportionately affected youth of color. OJJDP's data shows that African American and Native American youth are more likely to face conviction in adult court, especially for drug-related crimes.[18]

How These Factors Are Reflected in Wisconsin's Juvenile Justice System

Perhaps one of Wisconsin's greatest challenges is the high rates of disproportionality for youth of color at all points of contact with the juvenile justice system—generally referred to as Disproportionate Minority Contact (DMC). Although youth of color are overrepresented in the juvenile justice system across the country, Wisconsin's DMC remains among the worst in the nation.

Arrests

The number of youth arrested in Wisconsin has declined drastically for over a decade. In fact, the number of youth arrested declined by 65% between 2002 and 2016. Additionally, the overall rate of juvenile arrests has declined steadily. The rate of overall juvenile arrests declined by 62% between 2002 and 2016.[19]

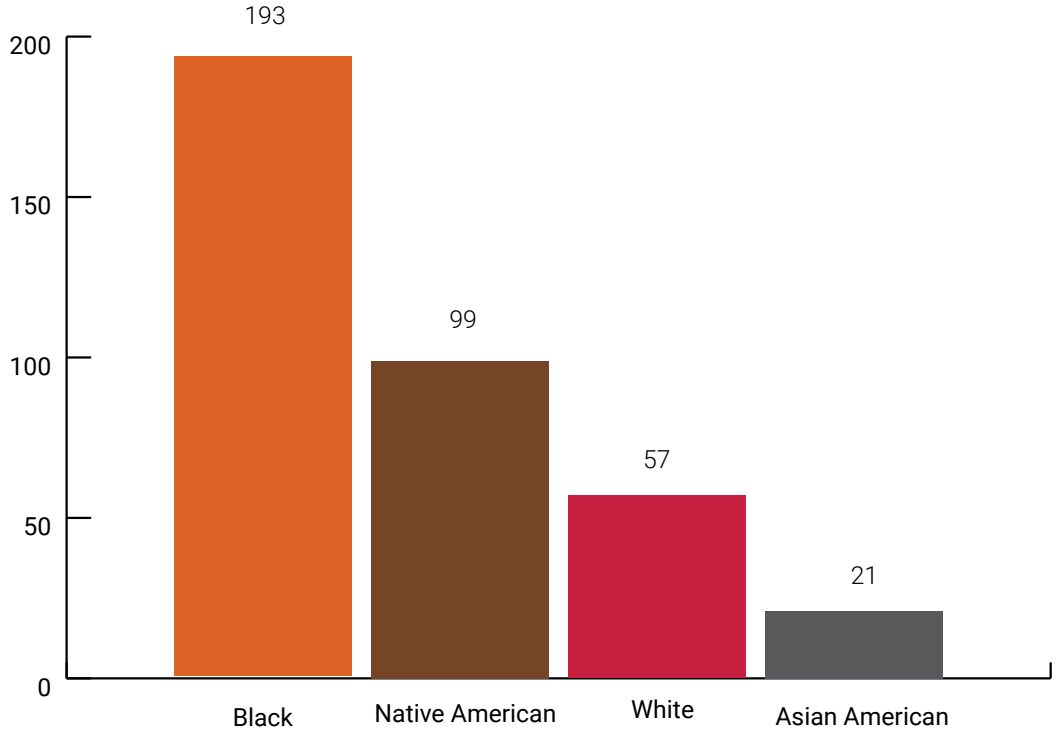
It's concerning that even though overall juvenile arrest rates are declining, when broken down by race, the same trend does not exist. The arrest rate for white youth is declining faster than the arrest rate for youth of other races; particularly African American and American Indian youth. This is resulting in an increase in the disproportionate number minority youth in Wisconsin's juvenile justice system.

Chart two illustrates this racial disparity in arrest rates for the year of 2016. The arrest rate for White youth in 2016 was 57 arrests per every 1,000 youth. In comparison, there were 193 arrests per every 1,000 African American youth and 99 arrests per every 1,000 American Indian youth. This means that in 2016 African American youth were over three times as likely to be arrested as their White counterpart. Additionally, American Indian youth were almost twice as likely to be arrested as white youth. Unfortunately, this is reflective of an on-going trend in recent years in Wisconsin's junveile justice system.

Chart 2:

Wisconsin Youth Arrests by Race

Arrest Rates by Race for Juveniles (youth ages 10-17) in Wisconsin per 1000 in 2016.



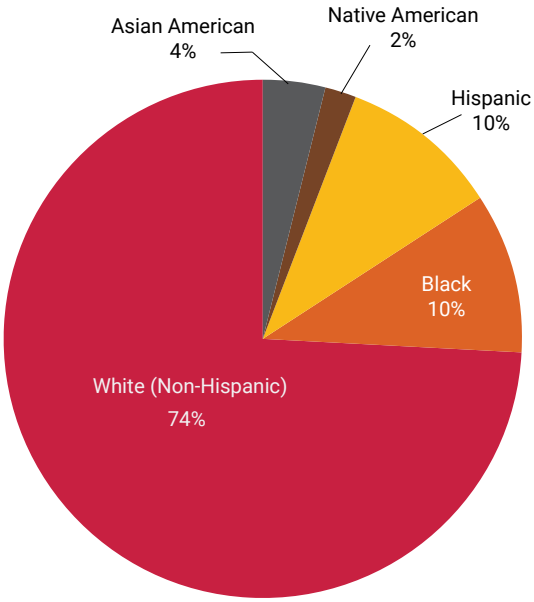
Source: Wisconsin Department of Justice and Office of Juvenile Justice and Delinquency Prevention

Chart 3:

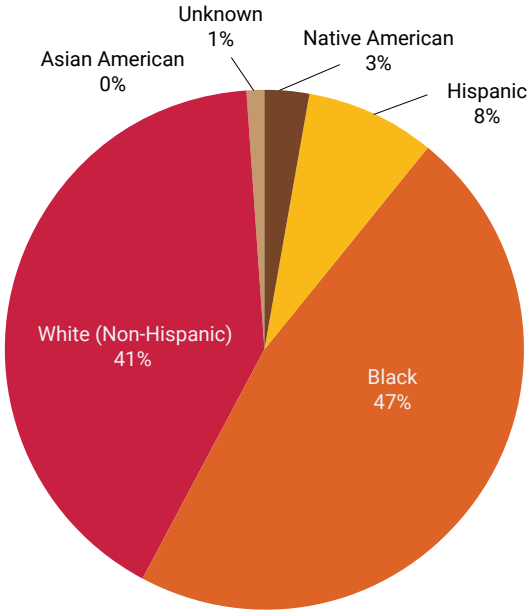
Black Youth Are Overrepresented in Wisconsin Juvenile Detention Facilities

Black Youth Make Up Almost 50% of the Detention Population Despite Making Up 10% of the Youth Population

Total Youth Population in 2016 (ages 10-16)



Youth In Detention Population 2016 (ages 10-16)



Source: Department of Justice's Juvenile Secure Detention Registry

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Secure Detention

Unlike Juvenile Corrections Institutions (JCI), which are meant for long-term care, juvenile detention facilities hold youth for short-term stays. The intent of juvenile detention facilities is to hold alleged delinquent youth who pose a substantial risk of physical harm to themselves or another person or are likely to run away so as to be unavailable for court. Juveniles can also be held in detention facilities while they are awaiting placement in a JCI.

On trend with youth arrests, Wisconsin has seen significant racial disproportionality within the youth admitted to secure detention as well. Chart three illustrates the racial make-up for the total youth population (ages 10-16) in Wisconsin in 2016.

White youth made up the vast majority of Wisconsin's youth in 2016, at 84%. The remaining 16% of the youth population was made up of Black youth (10%), Asian youth (4%), and American Indian youth (2%). Given the make-up of Wisconsin's youth population in 2016, one would expect for white youth to also make-up the majority of youth in secure detention. However, this was not the case. In reality, Black youth made up around 50% of the secure detention population in 2016.[20] This is significant given that Black youth only made-up 10% of the overall youth population that year. Additionally, American Indian youth made-up more than 2% of the secure detention population in 2016,[21] which indicates that youth in this population were being placed in secure detention at a higher rate than white youth.

Overall Commitments

One of the most dramatic declines in Wisconsin's juvenile justice system has been in the number of youth housed in Wisconsin's Juvenile Correctional Institutions (JCIs). Wisconsin's secure JCIs include the Lincoln Hills School for Boys and the Copper Lake School for Girls. Youth are placed in a JCI when a court has found that the youth has committed an offense which, if committed by an adult, would subject them to at least six months of incarceration, as well as finding that a restrictive setting is needed to ensure community safety.

Once again, the recent dramatic decline in the number of youth housed in Wisconsin's JCIs, while an overarching positive change, does not at all reflect the racial disparities seen within the facilities. For example, between 2001 and 2015, overall juvenile correctional placements fell by 54% in the nation.[22] However, overall youth placements in Wisconsin have declined faster than Black youth placements. As a result, Wisconsin saw its juvenile justice racial disparities at least double from 2001 to 2015. In fact, Wisconsin's juvenile justice system now home to the fifth-highest Black-White racial disparity rate in the country. As of 2015, the Black-White racial disparity in Wisconsin's youth incarceration was 15 to 1.[23] This means that it is 15 times more likely that a Black youth is incarcerated than a White youth. [v]

Additionally, as of 2015, the Latino-white racial disparity in Wisconsin's youth incarceration was 2.3 to 1.[24] This means that for every one white youth that is incarcerated, about two Latino youth are also incarcerated. Charts four and five illustrate these racial disparities in youth placement rates. As previously discussed in this report, these disparities are not simply a result of youth of color committing more crimes.[vi]

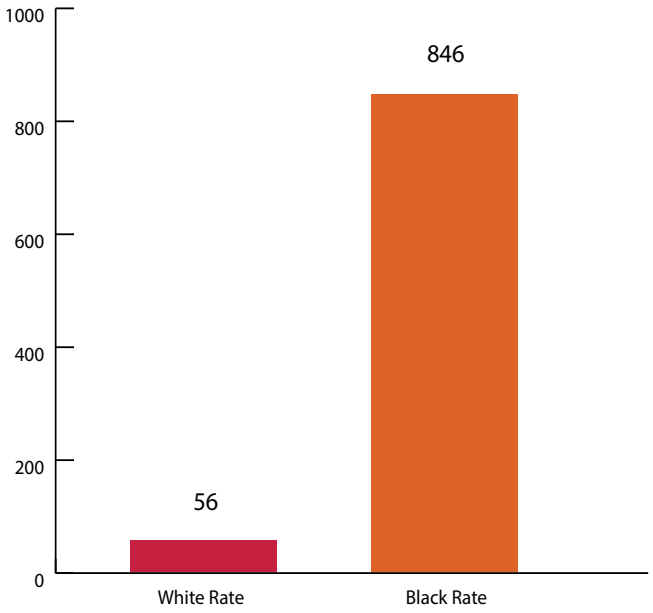
v These numbers are based on a one-day count data collection method, which gives a picture of the standing population in juvenile facilities in Wisconsin.

vi This section of the report addresses black-white placement disparities and Latino/white placement disparities. Disparities exist for other populations—including the American Indian and Asian populations—but the data for those populations is currently not available.

Chart 4:

Black Youth More Likely To Be Placed In Juvenile Correction Facilities Than White Youth

2015 Rates Per 100,000



Source: The Sentencing Project

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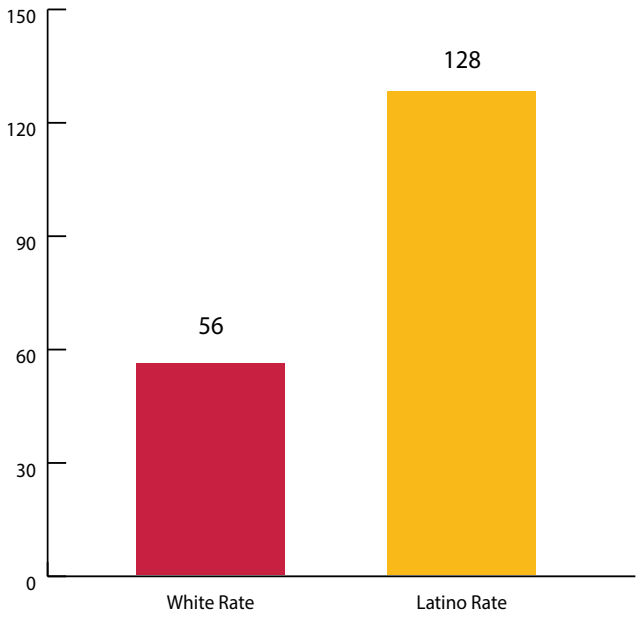
Chart 5:

Latino Youth More Likely To Be Placed in Juvenile Correctional Facilities Than White Youth

2015 Rates Per 100,000



Source: The Sentencing Project

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The Future Context of Juvenile Justice in Wisconsin

The state of Wisconsin is on the brink of making some critical changes to its juvenile justice system. These changes include closing DOC's two secure juvenile correctional facilities and passing a bill that would transfer 17-year-olds back to the juvenile justice system.

Closing Lincoln Hills School for Boys and Copper Lake School for Girls

In July of 2017, U.S. District Judge James Peterson issued an injunction requiring the state to drastically reduce the use of solitary confinement, pepper spray, and restraints at Wisconsin's juvenile prison complex. The injunction was a result of a lengthy investigation into the Lincoln Hills and Copper Lake facilities. The criminal probe examined allegations of prisoner abuse, child neglect, sexual assault, intimidation of witnesses and victims, strangulation, broken bones, and tampering with public records. The multi-year investigation found that the teen inmates' constitutional rights were likely being violated.[25]

The crisis at Lincoln Hills and Copper Lake is rooted in systemic breakdowns, lax management and confusion over policies, a lack of communication, and chronic staff shortages. In addition, officials trained staff improperly, failed to preserve video evidence, didn't document serious incidents, and often shirked their duty to report matters to parents, police, and social service agencies. The result was widespread abuse, including over-use of pepper spray for breaking minor rules, and solitary confinement for months at a time; typically only getting out of their cells for an hour or two a day while still being chained to a desk or in a belt held by guards.[26]

In March of 2018, a Wisconsin bill (AB 953) was passed that called for the closure of Lincoln Hills School for Boys and Copper Lake School for Girls by 2021. In its place, smaller, regional youth facilities will be constructed. Additionally, the Mendota Juvenile Treatment Center will be expanded to accommodate more juveniles, and counties will be authorized to establish their own secured residential care centers for children and youth. Additionally, a council will be created to study juvenile corrections issues and evidence-based practices for juveniles. A grant program will also be created, under which counties can apply for state funding towards the cost of establishing or constructing secured residential care centers for children and youth. The goal of this bill is to reform Wisconsin's juvenile justice system into an age-appropriate, trauma-informed system that aims at rehabilitation of youth, rather than punishment.

Reforms Being Considered

The passing of this bill is a step in the right direction. However, the work is not yet finished. There is still a great deal of work to be done in order to insure the safety and well-being of our youth. Wisconsin desperately needs to look to other states who have already created juvenile justice models that have proven far more successful than large youth correctional facilities. For example, for over 30 years now, Missouri's juvenile justice model has proven to produce far lower recidivism than other states, shown an impressive safety record, and positive youth outcomes—all with a budget far smaller than that of many states with less-enviable outcomes. It has done this by offering a more humane, constructive, and positive approach to the juvenile justice system. The model is epitomized by six core characteristics: small and non-prisonlike facilities, close to home; individual care within a group treatment model; safety through relationships and supervision, not correctional coercion; building skills for success; using families as partners; and focusing on aftercare.[27]

Alternatives such as Missouri's model are especially important when taking into consideration the inner-workings of the adolescent brain. According to a 2016 report published by the Harvard Kennedy School's Program in Criminal Justice Policy and Management and the National Institute of Justice,[28] the current youth prison model, which emphasizes confinement and control, often exacerbates youth trauma and inhibits positive brain development, which can have life-long consequences. They assert that the youth prison model should be replaced with community-based programs and, for the few youth who require secure confinement, smaller home-like facilities that prioritize age-appropriate rehabilitation (Schaffer, 2016). In addition, juvenile justice should rely more on public health, restorative justice, procedural justice and trauma-informed approaches to resolve behavior and promote healthy brain development.

It is obvious that the current model of juvenile corrections at Lincoln Hills and Copper Lake is not working. Not only is it not working, but it is abusive and dangerous, and is negatively affecting both the youth inmates and the prison staff. As a result, the state must study other state's juvenile justice models, do its research to understand trauma-informed approaches for youth, and re-allocate funds in order to increase implementation of community facilities that are closer to the youth's family and focus on rehabilitation rather than harmful punitive measures.

Wisconsin's 2nd Chance Bill

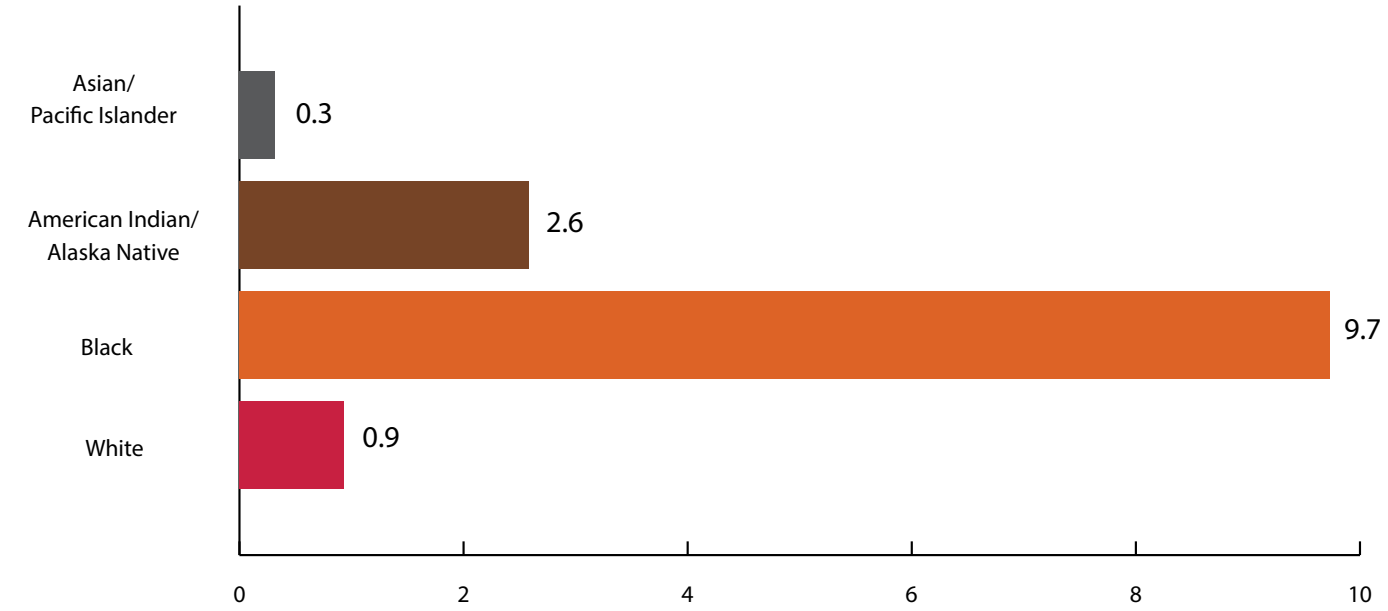
For many years now, Wisconsin's 2nd Chance Bill has been proposed, but has failed to get passed by both the Wisconsin State Assembly and the Wisconsin State Senate. The purpose of the proposed 2nd Chance Bill is to reduce crime, recidivism, and cost to taxpayers [due to decreased chance of recidivism and future crime] by returning non-violent, first-time 17-year-old offenders back to the juvenile justice system. The bill reverses some of

Chart 6:

A Number of Factors Contribute to Black Youth Being Disproportionately Arrested for Violent Crimes

Factors Include Differential Police Policies and Practices, Racial Bias, and Location of Offenses

Violent Crime Youth (ages 10-17) Arrests by Race in 2016



the changes that were enacted in 1995, which reduced the age at which a person is considered an adult for purposes of prosecution from 18 to 17. Under this bill, first-time, non-violent 17-year-olds would have their cases filed in the juvenile system as opposed to adult court. However, violent and repeat offenders would remain under the jurisdiction of the adult court. Under this bill, the judge would still retain the discretion to waive the offender to the adult criminal system on a case-by-case basis.

Only about 1 in 20 arrests of 17-year-olds in Wisconsin are for a serious crime. In addition, only about 1 in 50 arrests are for offenses classified as violent. This means that the majority of arrests of 17-year-olds are for relatively minor, non-violent offenses.[29]

Unfortunately, there is no centralized data collected at various decision points in the criminal justice process, so it is difficult to know exactly how many 17-year-olds would be affected if this bill were passed. However, based on records collected from CCAP (Wisconsin Circuit Court Access) and the Public Defender's Office, it was estimated in 2015 that about 1,600 more 17-year-olds would have been referred to juvenile court statewide under the proposed policy.[30]

This bill is a step in the right direction for the 17-year-old population in Wisconsin. However, the state should consider the negative impact that this bill could potentially have on the already persistent racial disparities in Wisconsin's juvenile justice system. As we know, youth of color, especially Black youth have a disproportionately high rate of contact at all points of the juvenile justice system. Additionally, we know that location of delinquency as well as racial bias play a critical factor in higher arrest rates for youth of color. This means that Wisconsin already has a disproportionate number of youth of color being arrested for all crimes, including violent crimes, and being arrested multiple times. Chart six illustrates the youth arrest rates for violent crimes in 2016. Passing this bill could increase racial and ethnic disparities in Wisconsin's juvenile justice system by sending a higher rate of white 17-year-olds to the juvenile system, while keeping a higher rate of 17-year-olds of color (especially Black youth) in the adult criminal system.

This is an especially important matter when considering the long-term benefits of transferring 17-year-olds back to the juvenile justice system. Transferring 17-year-olds to the juvenile system has shown to reduce recidivism, lower the rate of youth-assaults in adult facilities, lower 17-year-old offender suicide and self-harm rates, and increase access to needed, age-appropriate treatment and services. In addition, juvenile offender files are sealed, which would increase the number of 17-year-old offenders who go on to graduate from high school, obtain post-secondary education, obtain housing and employment, and are able to vote. Lastly, returning 17-year-olds to the juvenile system has proven to have long-term economic net-gain due to a reduced re-offense rate of youth and a reduction in crime and victimization in Wisconsin – leading to stronger families and safer communities. Thus, it is imperative that Wisconsin policy makers and legislators reform the current proposed 2nd Chance Bill and advocate for ALL 17-year-old offenders to be transferred back to the juvenile justice system.

Moving Forward – Recommendations

Prevailing trends in Wisconsin's juvenile justice system over the last two decades demonstrate that smart reforms can not only produce reductions in the number of youth entering the juvenile system, but that such reductions can occur alongside reductions in youth-involved crime—suggesting that involving more youth in the juvenile justice system may not be the most effective strategy for reducing youth-involved crime. Kids Forward believes the following five recommendations should be implemented to improve Wisconsin's juvenile justice system:

Close Lincoln Hills School for Boys and Copper Lake School for Girls and Reform the System

Large correctional institutions do not align with best-practice in regards to youth. Additionally, the current circumstances within these institutions are not appropriate for any people, especially our children. It is imperative that juvenile justice leaders in Wisconsin work to understand and implement trauma-informed, evidence-based practices that focus on rehabilitation of youth, rather than punitive consequences. This process begins by closing down Lincoln Hills and Copper Lake and implementing/building smaller facilities closer to the youths' families and communities.

Improve Wisconsin's 2nd Chance Bill

Before passing Wisconsin's 2nd Chance Bill, legislators should reform the bill to include all 17-year-olds. As discussed, it is likely that passing this bill in its current state will increase racial disparities within Wisconsin's juvenile justice system. Transferring all 17-year-olds to the juvenile justice system will ensure that all youth receive the age-appropriate rehabilitation services needed in order to become productive adults and contributing members to society. Studies have shown that transferring all 17-year-olds to the juvenile system will reduce recidivism and lead to safer communities. Additionally, making this change to the bill will insure that there is no risk of unintentionally further widening the gap of racial and ethnic disparities in Wisconsin's juvenile justice system.

Work to Reduce the Need for Juvenile Facilities

The proposed bill to close Lincoln Hills School for Boys and Copper Lake School for Girls is a good first step in Wisconsin's efforts to reform its juvenile justice system. However, it is only a first step. Research tells us that there really is no safe amount of incarceration for children. Therefore, juvenile justice reform must be a holistic approach that includes changes to current infrastructure, as well as investments in evidence-based programs that work to prevent juvenile delinquency in the first place.[31] This holistic approach includes ensuring the following:

a. Every child has access to high-quality early childhood education programs: Research shows that early childhood programs can shape the future trajectory of a child's life. Children who participate in these programs are more likely to succeed academically and less likely to exhibit delinquent behaviors later in life.

b. Zero-tolerance policies are removed from schools: Simply put, these policies do not work. There is a strong link between out-of-school suspensions and future justice involvement. Additionally, similar to the juvenile justice system, these policies disproportionately impact students of color. They are also more likely to decrease school-wide academic achievement than they are to stop any future misbehavior.

c. All youth have access to health care: Justice involved youth are more likely than their peers to have unmet physical and mental health needs. Access to appropriate medical care could prevent initial justice involvement as well as decrease the likelihood of recidivism. For many children in Wisconsin, access to health care comes in the form of BadgerCare. However, current state policy terminates BadgerCare enrollment for youth in correctional placement. Additionally, re-enrollment is not guaranteed before re-entering back into the community. This policy must be changed in order to ensure the well-being all youth in Wisconsin.

d. Increase community resources for diversion: Diversion programs focus on identifying and addressing the underlying needs of the youth and emphasize the importance of early intervention supports in order to avoid any interaction with the juvenile justice system. Ensuring mental health screenings and service matching to the needs of the youth has been proven to ensure long-term behavior change versus simply imposing punitive sanctions.

By identifying and addressing the root cause of behaviors, early on, involvement in the juvenile justice system should greatly decrease.

Advocate for More Inclusive Data Collection

Juvenile justice professionals should advocate for more inclusive data collection around data that allows us to track Hispanic/Latino youth throughout the system. That way we can better understand how the system is serving or is not serving these youth. At this time, Wisconsin does not have an organized method for collecting data on Hispanic/Latino populations. This could be resulting in a lack of resources and services being offered to these youths both before and after entering the juvenile justice system.

Additionally, there is a lack of data on juvenile justice decision points and outcomes for smaller racial and ethnic youth populations in Wisconsin such as American Indian youth. On indicators where there is disaggregated data including American Indian youth we find large disparities suggesting a critical need to monitor the impact of juvenile justice policy on these youth and to inform the work of American Indian juvenile justice advocates. This is true for other small racial and ethnic minority groups in the state whose small population size means that in data they are either lumped in with other groups (making it difficult to identify the specific community impact and/or burden) or have their data suppressed. We need data that allows us to examine the disparate impact of the juvenile justice system across the racial and ethnic populations constituting our state.

We recommend that juvenile justice data producing entities consider releasing disaggregated period data (multiyear aggregates) when a racial and ethnic minority population's counts are too small to guarantee the preservation of the involved youth's anonymity. Such data will guarantee that we have some insight, which is better than none, into these youth populations' involvement and presence in the juvenile justice system.

Give Youth a Voice!

Juvenile justice reform efforts should more directly engage youth who have had first-hand experience with the juvenile justice system and whose experiences could help shape more effective prevention and diversion programs. Additionally, youth can be great assets to reform efforts; they bring unique perspectives based on personal experience, energy, passion and creativity. Bringing youth into the change process also helps them develop into responsible adults by giving them real opportunities to be heard and to make a difference in their communities. Youth are the population most directly affected by the juvenile justice system, and yet all too frequently adults fail to involve them in the change process. It is time Wisconsin makes the changes necessary to meaningfully incorporate youth into the juvenile justice reform process!

Conclusion

This report has explored the current state of Wisconsin's juvenile justice system, the persistent issue of racial inequality within the system, and steps for moving forward towards a more age-appropriate, evidence-based, and equitable system that benefits all youth in Wisconsin. In recent years disproportionate minority contact has increasingly become a complex issue for Wisconsin's juvenile justice system. There is a vast amount of research on racial disparities within the juvenile justice system. Using this research and other resources, the state of Wisconsin must strengthen efforts to reduce disproportionate minority contact and improve fairness and proper treatment of all youth in its juvenile justice system.

Terms and Definitions

Adjudication of Delinquency

A juvenile court judge's determination as to whether or not a youth committed a delinquent offense. A juvenile's adjudication is like an adult criminal conviction, but generally does not subject the youth to the same direct and collateral consequences (Juvenile Law Center, 2018).

Disparity

The likelihood of someone in a group experiencing a positive or negative outcome as compared to someone else in another group. For the purpose of this report, this is a comparison between a racial or ethnic minority and a non-minority.

Disproportionality

Compares the proportion of a particular group that experiences a specific outcome, status, or condition compared to that group's proportion of the total population. Using the same example of unemployment, in 2011, Dane County Blacks made up 17.7% of the unemployment but are only 4.1% of the total labor force population. This result in a disproportionality ratio of 4.3 (17.7% Black unemployed / 4.1% Blacks in the labor force = 4.3).

Juvenile Justice

The area of criminal law applicable to persons not old enough to be held responsible for criminal acts. In the state of Wisconsin, the age for criminal culpability is set at 17 years. Juvenile law is mainly governed by state law and most states have enacted a juvenile code. The main goal of the juvenile justice system is rehabilitation rather than punishment.

The **number** of juvenile arrests is simply the number of juvenile arrests reported by law enforcement.

The **rate** of juvenile arrests is a calculation that takes into account the number of juvenile arrests compared to the number of delinquency-age youth in the population, thereby accounting for changes in demographics over time.

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Race to Equity is a project of Kids Forward. The mission of Kids Forward is to inspire action and promote access to opportunity for every kid, every family, and every community in Wisconsin. We envision a Wisconsin where every child thrives.