

THE ROLE OF SCIENCE IN REDUCING RACIAL AND ETHNIC DISPARITIES IN THE JUVENILE JUSTICE SYSTEM

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Abstract

In recent years, we have witnessed various efforts by the federal government to advance our justice system and improve public safety. Collaborations across justice and service agencies and research on what works in criminal justice policy have been central in criminal justice reform activities. Within the juvenile justice arena, reducing rates of victimization and delinquency, as well as implementing strategies to reduce racial and ethnic disparities remain priorities. In this essay, I discuss how research on neuroscience and brain development, and racial and ethnic disparities in justice system outcomes has informed juvenile justice policy and procedural protections for youth. I also review how school policies and practices can perpetuate racial and ethnic disparities in justice outcomes. Throughout the essay, I discuss the federal government's role in supporting research to advance policies and practices designed to reduce these harms. I highlight the implications of these activities and ways in which data and research can continue to play a key role in realizing equal opportunity and justice for all youth, especially as they are the most vulnerable members of society.

Keywords: Juvenile Justice, Delinquency, Racial and Ethnic Disparities, Department of Justice, National Institute of Justice

INTRODUCTION

In recent years, criminal justice reform and the advancement of a fair and equitable justice system have been central elements of the national conversation on the administration of justice. Whether it is the relationship between police departments and communities, mass incarceration, gun violence or threats of violent extremism, crime and the administration of justice are at the forefront of U.S. policy and practice.

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Fifty years after the findings from the President's Commission on Law Enforcement and Administration of Justice (1967), we again seek to find the blueprint for criminal justice reform.

One of the objectives of the Commission's report, *The Challenge of Crime in a Free Society* (1967) was the creation of a more fair and just criminal justice system, including increasing the level of trust between communities and criminal justice actors. A key element in achieving this objective is the recognition that race and ethnicity are central concepts in crime and the administration of justice. Research shows a consistent pattern of racial inequalities in crime, victimization, and criminal justice outcomes (Bridges and Steen, 1998; Lauritsen and Heimer, 2010; Martinez 2002; Miller 2008; Peterson and Krivo, 2010; Sampson et al., 2005; Tonry 2011; Western 2006). In many ways, the national conversation about criminal justice reform is a national conversation about racial disparities in the criminal justice system and their impact on citizens' perceptions of the legitimacy of the justice system.

Although adults are overwhelmingly the targets of criminal justice policies, children and youth are also deeply impacted by crime and justice system interventions. The consequences of violence in our communities are far reaching, and those consequences are even more serious and long lasting for children and youth. Children who are exposed to violence are at a higher risk for long-term physical, mental, and emotional harm (Heinze et al., 2017). Violence places children and youth at greater risk of failing in school and employment, future victimization, and involvement in the juvenile and criminal justice systems. Because violence disproportionately affects communities of color, minority children are most likely to encounter these harms.

Despite a recent decline in the number of delinquency cases processed by juvenile courts throughout the country—including the number of commitments to juvenile correctional facilities (Hockenberry and Puzanchera, 2017)—data show significant minority youth overrepresentation in the juvenile justice system (The Sentencing Project 2017). In particular, racial and ethnic youth comprised 69% of incarcerated youth in 2015, with racial disparities between Black and White youth in custody increasing 22% from 2001 to 2015. The most recent national juvenile court statistics indicate that Black, Native American, and Hispanic youth are all more likely to be incarcerated than White youth (Hockenberry and Puzanchera, 2017).

In light of these patterns, what role is science playing to advance our understanding of the intersection of race, ethnicity, and juvenile justice outcomes, and more broadly in uncovering and addressing the harms experienced by young people of color? As the Director of the National Institute of Justice (NIJ), Department of Justice (DOJ) from 2015–2017, I witnessed multiple federal efforts designed to advance research and create policies to reduce racial and ethnic disparities in delinquency and juvenile justice outcomes. Given my window into federal policymaking and the current state of research in this area, I believe that *how* we police our communities and schools, and provide care, custody, and treatment for justice involved youth are defining criminal justice and civil rights issues.

In the following discussion, I highlight the role of neuroscience and brain development in juvenile justice and what it means for the fundamental due process rights of youth, especially racial and ethnic minority youth. I also discuss the role of schools in perpetuating racial and ethnic disparities in justice outcomes. I conclude by discussing how science can best inform juvenile justice policy, with an eye towards realizing equal opportunity and justice for all youth.

NEUROSCIENCE AND JUVENILE DELINQUENCY: TRANSFORMING THE JUVENILE JUSTICE SYSTEM

Advances in behavior and neuroscience research have important implications for youth violence, the justice system, and civil rights. Scientific advances confirm that brain development continues well into a person's twenties, meaning that young adults have more psychosocial similarities to children than to older adults, including the impulsiveness of young teenagers (Casey et al., 2008). The interplay between brain development and the environment was a key feature of the National Research Council's report, *Reforming Juvenile Justice: A Developmental Approach* (2013). This research significantly influenced juvenile justice practice, as evidenced in recent Supreme Court decisions which referenced adolescent brain research to support Justices' conclusion that adolescents' immaturity makes them less culpable than adults (see, *Graham v. Florida* 2010; *Miller v. Alabama* 2012).

In light of the development of brain science, many policymakers and children's advocates promote responses to youth crime that are developmentally appropriate and trauma informed. This is especially important for youth exposed to violence, abuse, or neglect during childhood. Researchers have found that individuals who experienced childhood trauma may be hyper-reactive to perceived threats, have difficulty calming down, and exhibit impulsive behavior. Work in this area is tremendously useful for justice system actors, especially law enforcement, given their contact with community members in need or crisis. Fortunately, policing experts have provided guidance on how police officers should be trained to recognize and appropriately respond to trauma in order to improve early interventions for children exposed to violence and to de-escalate incidents involving traumatized individuals (Dudley 2015).

RACE, ETHNICITY, AND CHILDREN'S EXPOSURE TO VIOLENCE

Efforts to ensure the fair and equitable treatment of youth in the justice system must take into account the vulnerability of children, in particular, their risk of exposure to violence. A national survey conducted by the Office for Juvenile Justice and Delinquency Prevention (OJJDP) and the Centers for Disease Control and Prevention (CDC) found that more than 60% of children were exposed to violence in the past year. Either directly through crime or abuse in their homes, schools, and communities, or indirectly through witnessing an act or threat of violence, one in ten children have been exposed to *multiple* types of violence. Exposure to violence places children's human development, effective learning, and overall well-being at risk (Finkelhor et al., 2009).

The Department of Justice (DOJ) under the leadership of Attorney General Holder created the National Taskforce on Children Exposed to Violence to address the epidemic levels of exposure to violence faced by our nation's children. The Taskforce's report explains how to identify exposure to violence among children, and how to integrate prevention, intervention, and resilience across systems. The report also illustrates the financial costs of children's exposure to violence, especially when the financial burden on public systems, including child welfare, social services, law enforcement, juvenile justice, and education, is combined with the loss of productivity over children's lifetimes. The Taskforce concluded that the cost of violence and abuse is about a third of every dollar spent on healthcare. In essence, violence not only causes physical and mental challenges that hinder children and youths' success in later life, but it also overwhelms already burdened local governments.

The National Forum on Youth Violence Prevention, supported by a federal coordinating team that includes the U.S. Departments of Justice, Education, Housing, Labor, and Health and Human Services and the CDC, represents a network of fifteen communities and federal agencies that work together to share information and build local capacity around youth violence prevention. The communities use prevention, intervention, enforcement, and reentry strategies to stop violence and sustain their accomplishments. In 2014, nine out of ten cities reported reductions in homicide and juvenile violent crime. Nonfatal shootings also dropped in these cities compared to previous years. Some cities have reported changes in quality of life measures such as increased school retention, better policing practices, and the passage of state legislation and local tax measures to leverage resources.

The DOJ's Office for Victims of Crime has invested over \$14 million to improve responses to male survivors of violence, particularly boys and young men of color and their families. These demonstration sites are working to strengthen victim service providers' knowledge and skills regarding the needs and rights of these victims and to implement innovative programs and practices that foster a better understanding of the needs of young males within the criminal and juvenile justice systems. NIJ is supporting an evaluation of these demonstrations to examine what strategies each site used and if improvements in the response to male survivors were achieved.

The implications of these initiatives and scientific work for minority children and youth are profound given that racial/ethnic minorities are most likely to reside in communities characterized by poverty and crime. It is also important to note that minorities are subject to increased formal control and punishment, which leads to heightened risk and vulnerabilities for youth of color (Feld 1999; Leiber 2003; Spohn 2015; Tonry 1995). Importantly, scientific evidence has shown that the trauma and stress that comes with living in communities with high rates of violence, along with historical and current forms of racial discrimination, can influence human development (Kuzawa and Sweet, 2009).

Scientific work that takes into account the structural and environmental factors that affect minority youth and lead to health disparities, not just exposure to violence, are highly needed. The recognition that race and ethnicity are shaped by structure, historical context, and criminal justice policies that target certain communities and lead to higher rates of imprisonment for people of color would also advance this work. Further, efforts that take into account that exposure to violence varies across race, ethnicity, gender, and neighborhoods will lead to prevention programs that most effectively support vulnerable communities.

THE CRITICAL YET UNKNOWN ROLE OF LEGAL COUNSEL IN JUVENILE COURT

Advocating and defending children's rights is a cornerstone of the justice system. It was at the heart of the landmark U.S. Supreme Court decision, *In re Gault* (1967), which granted due process rights to youth in juvenile court, including the right to an attorney, to notification of charges, to cross examine witnesses, and the right against self-incrimination. Over the past fifty years, many court actors and advocates have worked towards fulfilling the promise set forth fifty years ago. It is clear that defending children's rights, in particular their procedural rights in juvenile court, is a priority for many.

The Department of Justice's Office for Access to Justice (ATJ) plays a key role in ensuring that all justice involved populations have access to counsel. The mission

of ATJ is to ensure that justice outcomes are fair and accessible to all, regardless of individuals' wealth and status. ATJ staff work with federal partners, local, state, and tribal justice systems to increase access to counsel and legal assistance. During my time with the DOJ, attempts were made to increase the federal budget to support and scale ATJ efforts to include the development of indigent defense and a civil legal aid delivery system, as well as to fund research on the quality of legal assistance. In the area of juvenile justice, the Office for Juvenile Justice and Delinquency Prevention assumed a leadership role in providing youth in juvenile court with such services. The OJJDP, through its *Smart on Juvenile Justice: Enhancing Youth Access to Justice Initiative*, awards grants to states to develop strategies to ensure that youth in the juvenile justice system have fair and equal access to legal representation.

Despite these efforts by the federal government, gaps remain in granting youth these protections. A recent report by the National Juvenile Defender Center (2017) highlighted existing barriers to access to counsel, including eligibility procedures for access to counsel, representation taking place too late in the court process, fees for access to a public defender, lenient policies regarding waiver of counsel, and limited access to counsel after commitment. Given the individualized form of justice found within juvenile courts, these challenges may be more profound in some jurisdictions than others (Feld 1991).

Although efforts by the federal government, in particular OJJDP, to provide counsel to youth are making inroads on this issue, there is much that remains unknown about how best to support local and state jurisdictions in providing counsel to youth. For example, research is needed to better understand how not having access to counsel or quality counsel shapes youths' experiences in the juvenile justice system and manifests in juvenile court processes and outcomes. Further, the racial and ethnic disparities in front end and back end processes of juvenile court (Bridges and Steen, 1998; Leiber 2009; Rodriguez 2013) may in some way be due to the failure to provide youth of color with counsel at critical stages of processing, making them particularly vulnerable to the dangers of arbitrary decision making. To date, only eleven states provide counsel regardless of financial status. Scientific work is needed to better understand how race, ethnicity, family resources, and access to counsel mitigate or exacerbate existing inequalities for youth, families, and communities of color.

EFFECTIVE CARE AND TREATMENT OF YOUTH IN FACILITIES

Policies around the care, custody, and treatment of confined youth is an area that continues to evolve, in light of growing scientific evidence on adolescent development and the harms of incarceration. As previously noted, reform efforts throughout many states have led to reductions in overall youth incarceration. However, racial and ethnic disparities in incarceration have increased over time. While the harms of detention and incarceration are well noted in the literature (Leiber and Fox, 2005; Leiber et al., 2016; Rodriguez 2013), there are limited alternatives to incarceration, and across various jurisdictions, corrections officials must continue to rely on correctional facilities to provide care and custody of youth.

The incarceration of youth in juvenile facilities, jails, and prisons has received notable attention given the research that supports community-based alternatives for youth in lieu of confinement. Tailoring treatment to subpopulations, given youths' risks and needs, is a critical element in increasing the overall well-being of youth. A challenge in these efforts has always been having indicators on all racial and ethnic minority youth entering the justice system, particularly Hispanic youth. Because national arrest

estimates are captured by race but not ethnicity, it is very difficult to estimate the number of Hispanics in the justice system. In direct response to the demographic shifts in our country and this gap in data, the former Administrator of OJJDP, Bob Listenbee, led efforts to create the first national report on the handling of delinquency cases involving Hispanic youth and the opportunity for future data collection and analyses of Hispanic youth in the juvenile justice system. Although the metrics are not national estimates, they provide more insight into the care and treatment of Hispanic youth than has ever existed before.

Solitary Confinement of Youth

The experience of Kalief Browder, a sixteen-year-old who spent three years in Rikers Island awaiting trial for a crime he did not commit, brought much attention to the use of restrictive housing in the United States. Restrictive housing, commonly known as solitary confinement or administrative segregation, is a common practice in corrections. During his confinement, Kalief spent the majority of his time in solitary confinement and attempted suicide four times. After his release, Kalief struggled to readjust back into the community. His period of confinement either created or exacerbated psychological conditions, producing severe trauma and leading to his suicide a year after his release.

Despite its frequent use, research on how corrections administrators use restrictive housing and its impact on inmates, staff, and the organizational climate is very limited. The lack of research in this area contributed to my decision as NIJ Director to commission scholars from an array of disciplines to write about the current state of knowledge in this area. Their work led to the volume, *Exploring the Use of Restrictive Housing* (National Institute of Justice 2016). As a growing number of researchers examine the effects on inmates and correctional systems (Reiter 2016), local and state corrections officials are developing strategies to restrict its use, especially for youth and those with mental illness.

A number of states were committed to restricting youth solitary confinement long before Kaleif's story was reported. OJJDP staff had been meeting with the Council of Juvenile Correctional Administrators to discuss alternative approaches to solitary confinement. OJJDP also dedicated funding towards developing a comprehensive toolkit to help states reduce and end the use of solitary confinement in juvenile justice facilities. In January 2016, President Obama announced his decision to ban solitary confinement for juveniles in the federal prison system. Many considered the President's action symbolic given that less than thirty children were directly housed in Bureau of Prison facilities. However, the President's action was also meant to motivate state and local jurisdictions to take similar actions.

Devoting resources to create an evidence base in this area resulted in national, state, and local discussions about the basis for this correctional strategy, in particular for examining under what conditions it should be utilized. Corrections officials have assumed a leadership role in reducing the number of inmates housed in restrictive housing both in the adult and juvenile systems. The federal government has played an active role in encouraging jurisdictions to create alternatives to restrictive housing in hopes of supporting and scaling those efforts. Although there are no national estimates on the number of minority youth who have experienced restrictive housing, one could argue that minority youth are overrepresented given the disproportionate number of racial and ethnic minorities in correctional facilities. Hence, efforts to reduce the use of this correctional strategy would directly affect minority youth.

SCHOOLS AND THE JUSTICE SYSTEM: PATHWAYS TO INCARCERATION

Keeping schools safe is a priority in all communities. Doing so requires a range of activities such as building partnerships between educators and law enforcement, creating a positive school climate, implementing effective disciplinary policies, providing access to quality behavioral and mental health services, and working with families. The “school-to-prison pipeline” clearly falls within this policy area. The phrase is routinely used to describe the process by which children are pushed out of schools, often for minor infractions of school rules, and into the justice system. Zero tolerance policies lead to immediate and severe sanctions for students. Students may find themselves suspended or expelled, and fall behind in their coursework, leading to a greater likelihood of disengagement with educational institutions. Research has found that the effects of these pushout processes have been most profound for communities of color; racial and ethnic minority students are at a higher risk for these processes and sanctions (Kupchik and Ward, 2014).

The policing of students by law enforcement is a key component of these processes. In light of recent tragedies in schools, police presence has been perceived as a necessary element towards protecting children and educators from shooters, while at the same time assisting in the discipline of school infractions. Grants from DOJ’s Office of Community Oriented Policing Services (COPS Office), which is dedicated to promoting community policing, provide funds for police agencies seeking to place resource officers (SROs) in schools. Over the years, this has resulted in an increase in school referrals to juvenile court systems which some argue criminalizes youth for minor disruptive acts. Although national data on justice outcomes for school referrals do not exist, efforts to reduce the number of students entering the pipeline is a priority, given the various negative impacts on educational trajectories and overall well being.

In an effort to better understand and improve school safety, in 2014, Congress provided appropriations for the launch of the Comprehensive School Safety Initiative, which seeks to improve the safety of our nation’s schools and students through rigorous research that produces practical knowledge. The initiative is designed to support projects on a wide range of issues, including SRO training and effectiveness, mental health and trauma informed responses, exclusionary discipline and restorative justice, and the use of social media to prevent student violence. Given its broad scope, it was designed around having a strong partnership between educators, researchers, mental health professionals, and law enforcement.

Within the DOJ, NIJ staff worked closely on this issue with COPS, OJJDP and the Civil Rights Division, as well as with the Departments of Education, Homeland Security, and Health and Human Services. For example, NIJ staff coordinated with the COPS Office to ensure that the latest scientific research is being used in providing guidance to police agencies seeking SRO grants. In direct response to the request for research in this area from the Civil Rights Office and COPS Office, as NIJ Director, I wrote a Dear Colleague letter calling for studies on how to reduce disparities on the basis of race, national origin (including English Learners), sex, and disability in the school discipline process. I also asked the academic community to pursue research examining school pushouts and the circumstances, consequences, and alternative education options available for students who experience them. Further, I noted the need for studies that examine the role and functions of SROs and other law enforcement and security officers within schools. The academic community responded and a variety of high-quality studies addressing these important topics were funded.

Schools play a critical role in communities, yet are often disconnected from larger discussions around juvenile delinquency prevention and juvenile justice. The research

supported under this initiative will have a profound impact on how communities and key institutions respond to juvenile crime and the number of minority youth that come into the system. The policing of youth takes place in communities and schools. Ongoing research in this area will not only produce metrics on the pushout process and key correlates of that process but also on how best to intervene so that educators, mental health specialists, and police officers have access to resources and services to keep youth, especially minority youth, connected and engaged in schools. Strategies that leverage what we know from prevention science on collaborative planning and problem-solving that includes educators, students, parents, and community members may be particularly useful in this arena. Also, administrators of schools and juvenile justice systems can assume a leadership role in this area by making school engagement, academic achievement, and career education a priority for the youth they serve. Scholars in the fields of criminology, education, adolescent development, and behavioral health must continue to work with schools to better understand the pathways to delinquency and justice system involvement. This work will require further focus on at-risk behavior in schools and how best to respond to such behavior in light of increased police presence.

PUTTING THE PIECES TOGETHER: SCIENCE, JUVENILE JUSTICE AND CIVIL RIGHTS

As the juvenile justice system continues to evolve, we must ask, how far have we come, where will science take us, and what do we need to do to ensure that youth are provided with fair and equitable treatment? In recent years, we have seen criminal justice practitioners adopt evidence-based practices and a developmentally appropriate approach to juvenile justice. The federal government, in particular OJJDP through its Smart on Juvenile Justice Initiative, is providing jurisdictions with technical assistance, assessment tools, and training to implement effective community-based approaches to juvenile crime and youth violence. As a result, states are reinvesting their resources and expanding community-based alternatives for youth. Today, we also see brain science used to advocate for raising the age of juvenile court jurisdiction to twenty-four. Importantly, neuroscience and neuroimaging protocols are still developing and have not been offered as evidence for youth responses in the courtroom. In fact, the scientific community has not yet agreed on protocols for ascertaining conclusions from a brain scan. This is further complicated by the fact that some legal and medical researchers caution against drawing inferences from a few scans to a whole population of adolescents. Also, extensive research shows that maturity is a product not only of brain development but parenting, trauma, and environmental and social factors (National Research Council 2013). Future research will reveal how these efforts impact rates of recidivism and overall public safety.

Next Step

There is clear evidence of federal government efforts seeking to protect vulnerable children and ensure the fair and equitable treatment of youth in the justice system. However, the goal of these federal efforts is to support state and local agencies that are directly working with youth to prevent and intervene early in life. Ensuring that these programs are sustainable is critical. This means that they must survive changes in federal, state, and local leadership and have access to funding resources and technical assistance over the long term. The federal government can lead the way and catalyze change, but it is local actors who must lead these programs towards sustainability.

Continued attention to these issues will require engaging and educating justice actors, policymakers, and the public on the long term harms of violence on children and the important role that science and the juvenile justice system play in addressing those harms. In order to expand the evidence base in this area, we must be able to lower our disciplinary walls and learn from scholars and practitioners developing innovative programs and conducting research with implications for reducing racial and ethnic inequalities in crime and justice outcomes. It is clear that the study of youth violence and juvenile justice includes many actors and an array of scholars from various disciplines.

I began this essay by highlighting the key role that neuroscience is playing in the juvenile justice policy arena. As a social scientist, I am pleased to see science inform policy that directly affects how we improve the well-being of youth, families, and larger communities. At the same time, there are limits to the science that we have, and in some areas no data, metrics, or science exists. Yet, the fact remains that criminal justice policy will be created, with or without science. My experience over the years working with local, state, and federal criminal justice agencies has shown me that reaching out *and* listening to criminal justice professionals routinely leads to more effective use of research in policy and practice. Key in those engagements is the admission that as researchers, we simply do not have all the answers and that science is still developing.

CONCLUSION

As reforms to the federal criminal justice system continue to take place, there is significant momentum and energy throughout levels of government to improve the well being of children and youth, and identify and address racial and ethnic disparities in crime, victimization, and justice outcomes. Justice officials, alongside civil rights advocates, policymakers, and community members, remain committed to realizing a fair and just criminal justice system. While it is unclear how changes in DOJ policies will affect public safety, data and the scientific enterprise will continue to play a key role in identifying the short- and long-term effects of DOJ policies on crime and how best to reduce harm to those most impacted by violence. Key elements in the effective utilization of science in criminal justice policy include collaboration across disciplines and continued engagement between criminal justice professionals and policymakers.

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