

# CHAPTER 1:

## INTRODUCTION

The Commission [on the Future of the West Virginia Judicial System] envisions a court system . . . that is accessible and responsive, timely in its decisions and processes, fair and just, and accountable for its rulings, conduct, and use of resources. As befits its role, it is a wholly independent entity but collaborates with other agencies and organizations so that it may more effectively fulfill its mission. Every individual and matter that comes before it is accorded respect and dignity. It is a system marked by integrity.<sup>1</sup>

Almost ten years ago, the Commission on the Future of the West Virginia Judicial System included the foregoing paragraph in its final report to the Supreme Court of Appeals of West Virginia (the Court). Public perception of the court system's integrity, however, is damaged by West Virginia's place in the national puzzle comprising minorities - in particular, African-American males -- who are disproportionately made subject to arrests, court proceedings, convictions and confinement. This overrepresentation is known as disproportionate minority contact (DMC).<sup>2</sup> DMC has been found in West Virginia through the research of state agencies, in reported records, and in the research supporting a petition before the Court.

The Task Force to Study Perceived Racial Disparity in the Juvenile Justice System seeks to determine what procedures, policies and practices within the system are contributing to DMC in West Virginia, and how to reduce DMC and even any perception thereof. After beginning its efforts, the Task Force recognized that to address the issues stated above fully, the work would need to be completed in stages over a number of years. Therefore, this is an Interim Report to the Court providing as follows:

- the history of Task Force creation (Chapter 1);
- information on DMC and racial disparity, including definitions and findings from past studies (Chapter 2);
- methods the Task Force used to reach its objectives (Chapter 3);

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<sup>1</sup> Supreme Court of Appeals of West Virginia. Commission on the Future of the West Virginia Judicial System. Final Report. (Charleston, WV: West Virginia Supreme Court of Appeals, 1998) 15. Attached hereto as Appendix 1.

<sup>2</sup> In 2002, Congress amended the Federal Juvenile Justice Delinquency Prevention Act (JJJPA) (42 U.S.C. 5601, *et seq.*) that governs distribution of funds to states for addressing DMC. The amendment changed DMC from its original meaning, "disproportionate minority confinement," to "disproportionate minority contact." "Confinement" focused on youth who were in secure facilities. Use of the term "contact" broadened the phrase DMC to include any point along the juvenile justice continuum where youth may come in contact with a person, agency, policy, practice or procedure that may result in further exposure to the juvenile or criminal justice systems.

- programs in West Virginia that may reduce DMC and racial disparity in the juvenile justice system (Chapter 4);
- findings and related recommendations for the Court and Task Force (Chapter 5); and
- conclusions and suggestions from other research (Chapter 6).

## The Petition

In July 2001, a petition was filed with the Court for “Promulgation of Rules and Standards to Ensure Equal Treatment in West Virginia’s Juvenile Justice System” (“Petition”).<sup>3</sup> In a letter to former Chief Justice Warren McGraw, petitioner Robert M. Bastress noted that, “Although the Supreme Court is not responsible for the disturbing statistics cited in our petition, we who have prepared it believe the Court has the authority and capacity to initiate measures to address the striking overrepresentation of African-American youths through all phases of the juvenile justice system.”

The Petition presented some data from a report titled Minority Youth and Juvenile Justice in West Virginia, including that

. . . while African-American youth represent 4% of West Virginia’s juvenile population, in 1998, they represented 9% of juvenile court referrals, 18% of juveniles placed in detention, 17% of juveniles in correctional facilities, and in 1999, 52% of juveniles waived to adult criminal court. By comparison, White [*sic*] youth are underrepresented at most stages of the juvenile process. In 1998, White [*sic*] youth represented 95% of the state’s juvenile population, 89% of juvenile court referrals, 79% of juveniles placed in detention, and 80% of youth placed in correctional facilities, and, in 1999, 42% of juveniles waived to adult criminal court<sup>4</sup>

Further, the report provided data on juvenile arrests by race, including that in Charleston, West Virginia, “arrest rates for African-American youth are high in comparison to the percentage of African-American youth in Charleston’s juvenile population, 22.1%.”<sup>5</sup> The report included a table indicating that African-American youth made up 48% of juvenile arrests in Charleston, West Virginia in 1998, and that the rate increased to 52% of juvenile arrests by 2001.<sup>6</sup>

The report further explained that,

. . . when looked at [*sic*] from the perspective of the proportion of juveniles in the state’s population, Whites [*sic*] represented 95% of the state’s total

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<sup>3</sup> Appendix 2.

<sup>4</sup> Charleston Public Safety Council Youth Task Force and Community Development Outreach Ministries. Minority Youth and Juvenile Justice in West Virginia. (Charleston, WV: Community Development Outreach Ministries, United Methodist Church, 2001) Executive Summary.

<sup>5</sup> Charleston Public Safety Council 9.

<sup>6</sup> Charleston Public Safety Council 9.

juvenile population and 42% of juvenile [sic] waived to adult status in court, while African-Americans represented 4% of the state's juvenile population and 53% of juveniles waived to adult status in court.<sup>7</sup>

Also, the report included that "West Virginia's rates of overrepresentation of African-American youth exceed national rates at all but one stage of the juvenile justice system for which data was available. West Virginia does not admit juveniles sentenced in adult criminal court to adult state prisons."<sup>8</sup>

Finally, as quoted in the Petition, the report included that,

In an index of minority overrepresentation developed by dividing each state's proportion of minority youth detained or committed to juvenile justice facilities by the proportion of minorities in each state's juvenile population, West Virginia earned the nation's worst ranking. West Virginia is the only state with an index value of over 5.0 in each of three indexed categories. No other state comes close. An index of over 1.0 indicates minority overrepresentation. The national index value across the three categories averaged 1.8.<sup>9</sup>

Other agencies have published data regarding the DMC problem in West Virginia, including the Charleston Public Safety Council, which cited a 1997 report on racial disparity in West Virginia authored by Donna Hamparian.<sup>10</sup> According to the Building Blocks for Youth Initiative, Hamparian's report

showed that African-American youth were overrepresented in 13 of the 27 sample counties; in commitments to the Department of Corrections in 13 of the sample counties; and in out of state placements in nine of the sample counties. That data revealed that the overrepresentation of African-American youth began at arrest. It increased at detention where African-American youth accounted for 30% of the secure detentions in the sample counties; and increased even more to commitments to the Department of Corrections where African-American youth accounted for 39% of all DOC commitments from the 27 sample counties.<sup>11</sup>

Further, the West Virginia Division of Criminal Justice Services (DCJS)

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<sup>7</sup> Charleston Public Safety Council 27.

<sup>8</sup> Charleston Public Safety Council 31.

<sup>9</sup> The Supreme Court of Appeals of West Virginia. Administrative Docket Petition for Promulgation of Rules and Standards to Ensure Equal Treatment in West Virginia's Juvenile Justice System. 5 July 2001 *quoting* Charleston Public Safety Council Youth Task Force and Community Development Outreach Ministries. Minority Youth and Juvenile Justice in West Virginia. (Charleston, WV: Community Development Outreach Ministries, United Methodist Church, 2001) 2.

<sup>10</sup> Hamparian, Donna. Additional Analyses of Minority Overrepresentation in West Virginia. Champaign, IL: Community Resource Associates, Inc., 1997.

<sup>11</sup> Building Blocks for Youth. Resources for Disproportionate Minority Youth / Overrepresentation of Youth of Color. <<http://www.buildingblocksforyouth.org/issues/dmc/studies.html>>.

previously acknowledged DMC and dealt with the issue by (1) creating a DMC subcommittee of the Governor's Committee on Crime, Delinquency and Correction, Juvenile Justice Division, referred to as the State Advisory Group (SAG); (2) requesting technical assistance from the Office of Juvenile Justice Delinquency Prevention (OJJDP); (3) implementing a system to give project preference to counties having high DMC ratios; and (4) providing funds for cultural diversity training for West Virginia juvenile justice professionals. West Virginia, through the DCJS, continues to comply with the Federal Juvenile Justice Delinquency Prevention Act (JJDP A).<sup>12</sup>

In response to these findings of DMC in West Virginia, the petitioners requested that the Court do the following:

- appoint a fact-finding and advisory committee to investigate the extreme racial disparities in West Virginia's juvenile justice system and to make recommendations for rules, standards, or other measures to eliminate those disparities;
- promulgate rules and standards for the fair and equal administration of justice for juveniles in West Virginia; and
- use [the Court's] prestige and authority to engage the other branches of government in West Virginia toward addressing and eliminating the racially disparate treatment of African-American juveniles before they enter and after they leave the judicial system.

When asked to provide specifics, the petitioners responded with a proposed action plan<sup>13</sup> requesting that the Court

- develop guidelines for juvenile justice proceedings;
- identify, eliminate or modify laws and policies (of law enforcement, the courts, juvenile probation and corrections) that impose an adverse, disparate impact on minorities that is either unnecessary or unjustified;
- appoint a liaison or coordinator to "facilitate and formalize" communications between the court system and various state agencies and private groups for the accumulation and sharing of data, for program development, for identifying sources of grant money, and for sharing resources;
- conduct additional research, especially the use of self-reporting crime studies and multiple regression analyses, to inform the Court as to the causes and extent of racial disparity in the system; and
- appoint a task force to address the issue of minority overrepresentation in the juvenile justice system.<sup>14</sup>

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<sup>12</sup> Federal Juvenile Justice Delinquency Prevention Act (JJDP A) (42 U.S.C. 5601, *et seq.*).

<sup>13</sup> Appendix 3.

<sup>14</sup> Supreme Court of Appeals of West Virginia . Administrative Docket Petition for Promulgation of Rules and Standards to Ensure Equal Treatment in West Virginia's Juvenile Justice System. Action Plan Proposed by Professor Robert M. Bastress, et al., 2001. 1 - 2.

## Task Force Creation

The Court responded to the Petition by creating the Task Force to Study Perceived Racial Disparity in the Juvenile Justice System, establishing the initial ten-member Task Force in May, 2002. The Task Force noted that the Final Report of the Commission on the Future of the West Virginia Judicial System explained, “It is fundamental to the integrity of the court system that it be free of bias. The special role of the judiciary in our system of government demands not only that justice be dispensed impartially, but that the perception of impartiality be maintained.”<sup>15</sup> Therefore, the Court included the word “perceived” when naming the Task Force because, coupled with its commitment to eliminating racial disparity in West Virginia’s juvenile justice system, the Court desired to address the compounding problem of public *perception* that such disparity exists.

The Task Force met for the first time on August 23, 2002. Initially, the Task Force worked on its mission statement, objectives, and action plan. After thoughtful deliberation, the Task Force decided its overall mission was to assess, monitor, and address racial disparity in West Virginia’s juvenile justice system.

The Task Force adopted objectives as follows:

1. Devise and implement a methodology for gathering meaningful data as to the experience of minority youth in the juvenile justice system, and disseminate such data to the Court, the Legislature, and any other entities or agencies who are practical “stakeholders” in the matter.
2. Identify and develop policies that maximize the potential for children in the juvenile justice system to receive fair, individualized, and meaningful treatment.
3. Ensure that juveniles who engage in criminal conduct receive appropriate sanctions and remedial services;
4. Explore ways in which to collaborate with law enforcement agencies, schools, mental hygiene providers, and community organizations to establish effective diversion programs, truancy and dropout programs, and effective after-school, weekend, and summer programs to provide at-risk children with safe, productive alternatives to the streets.
5. Develop ideas for partnership programs with educational, religious, corporate, and social service organizations in order to serve juveniles in need.
6. Gather and disseminate research data and other information about programs, policies, and practices in other jurisdictions that could further the mission of the Task Force.

The Task Force projected that its work could be completed in three phases.

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<sup>15</sup> Supreme Court of Appeals of West Virginia. Commission on the Future of the West Virginia Judicial System. Final Report 53.

### **Phase I:**

- Analyze data of official juvenile justice database records.
- Analyze data of the stakeholder survey sent to circuit court judges, family court judges, magistrates, prosecuting attorneys, and public defenders.
- Disseminate information gathered from the town meetings held throughout the state regarding juvenile justice in West Virginia.
- Develop recommendations from the outcomes of the town meetings.
- Present an Interim Report to the Court of the Task Force's findings and recommendations.

### **Phase II:**

- Continue consideration and analysis of previous data collected.
- Identify laws and policies (of law enforcement, the courts, juvenile probation, and corrections) that impose an adverse, unnecessary or unjustified disparate impact on minorities, in order to eliminate such laws or policies.
- Research systemically the use of self-reporting crime studies and multiple regression analyses to inform the Court as to the causes of the existence of racial disparity.
- Interview juveniles and juvenile justice system participants and conduct focus groups.
- Collaborate with community organizations.

### **Phase III:**

- Present annual reports to the Court.
- Collaborate with community organizations.
- Monitor the progress of changes enacted in juvenile justice policies and procedures.

## **Funding**

To assure that the initial fiscal needs of the Task Force were met, the Court acquired a Projects Solutions Grant from the State Justice Institute (SJI) in the amount of \$18,577. The Court also earmarked \$5,000 from its Special Projects Funds to assist in covering Task Force expenses. Also, SAG awarded the Task Force a \$5,000 grant. Further, the SAG allocated an additional \$20,000 to provide training on identifying and reducing DMC to West Virginia prosecutors, law enforcement, and judicial officers. Members of the SAG were asked to collaborate with the Task Force on a variety of activities and recommendations, and the groups have two members in common.

## **Commission on the Future of the West Virginia Judicial System**

Findings and recommendations from the Commission's Final Report serve to direct and support the work of the Task Force. The report recognized that

Although West Virginia has not experienced the influx of ethnic and minority groups that has occurred in other states, there is increasing diversity in the population. The impact of this increase in diversity is confined to certain areas of the State and the groups involved often represent a distinct labor pool. The Court system must be prepared to accommodate and address the needs of a more pluralistic society.<sup>16</sup>

Further, the report recognized that the poor public perception of court system performance has to be addressed if confidence in the system and decisions arising within it are to be maintained.

With this knowledge, the Commission contracted with the West Virginia University Survey Research Center to conduct a statewide, random-sample telephone survey asking whether respondents agreed or disagreed with the statement: "West Virginia courts treat people equally." Specifically, the survey asked whether respondents felt that "[p]eople get the justice they deserve." While a little more than a quarter of the survey's 712 respondents were neutral, close to half either disagreed or strongly disagreed with the statement about the fairness and equality of the court system.

Regarding bias on the basis of race, the Commission heard testimony that addressed the African-American community's lack of confidence in the court system. This lack of confidence was engendered by: the underrepresentation of African-Americans on juries; disparate sentencing practices; inequality in setting bond in criminal cases; lack of enforcement of hate crime statutes; and underrepresentation of minorities in the law enforcement and judicial system workforces.<sup>17</sup>

### **Annie E. Casey Foundation -- Dr. John P. Rhoads**

During its first meeting in August, 2002, the Task Force teleconferenced with Dr. John P. Rhoads. Dr. Rhoads has been affiliated with the Annie E. Casey Foundation's Juvenile Detention Reform Initiative since its inception in 1992. Previously, Dr. Rhoads served as both Chairperson of the Bay Region of the Chief Probation Officers of California's Probation Services Task Force, and as a member of California's Family and Juvenile Law Advisory Committee of the Judicial Council. A noted authority on juvenile justice reform, Dr. Rhoads has served on a number of statewide committees, including

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<sup>16</sup> Supreme Court of Appeals of West Virginia. Commission on the Future of the West Virginia Judicial System. Final Report 7.

<sup>17</sup> Supreme Court of Appeals of West Virginia. Commission on the Future of the West Virginia Judicial System. Final Report 54.

California's Blue Ribbon Commission on Out-of-State Probation Placement, the State Board of Corrections Standard Review Executive Steering Committee, and the Coalition Against Sexual Assault Strategic Forum. Dr. Rhoads also served as Chair of the Santa Cruz County Criminal Justice Council.

Dr. Rhoads urged the Task Force to consider pragmatic strategies that can correct problems on the local institutional level. Two key components in this regard are (1) the admission of juveniles into correctional facilities, and (2) the length of their stays. DMC issues can be examined and addressed more effectively by breaking down these key components into subcomponents and at decision-making points during the process.

Dr. Rhoads discussed his work with the Annie E. Casey Foundation, which is a "private charitable organization dedicated to helping build better futures for disadvantaged children in the United States."<sup>18</sup> In December 1992, the Foundation the Juvenile Detention Alternatives Initiative (JDAI) with the purpose of demonstrating "that jurisdictions can establish more effective and efficient systems to accomplish the purposes of juvenile detention."<sup>19</sup> The Task Force used JDAI publications as a starting point in terms of general strategies.

The eighth volume, in a JDAI published series titled Pathways to Juvenile Detention Reform, reports ways to reduce racial disparity in juvenile detention. The volume's second chapter, titled "Guiding Principals [*sic*] for reducing DMC in Detention" explicates the following bullet points:

- All children should be treated equally within the juvenile detention system.
- Racial disparities in detention occur because of both conscious and subconscious racism.
- Disparities in detention are often unintended consequences of seemingly race-neutral practices.
- Data must be collected and carefully analyzed to inform efforts to reduce racial disparity in the detention system.
- Leadership makes a difference.
- Both individuals and agencies have a responsibility to address this issue.

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<sup>18</sup> The Annie E. Casey Foundation, Annual Report (Baltimore, Maryland, 1993) inside cover.

<sup>19</sup> Hoytt, Eleanor Hinton, Vincent Schiraldi, Brenda V. Smith and Jason Ziedenberg, Pathways to Juvenile Detention Reform: Reducing Racial Disparities in Juvenile Detention. (Baltimore, MD: The Annie E. Casey Foundation, 2001) 4.

- While we cannot control all the factors that lead to racial disparities, there are things we can control and change in the detention system.<sup>20</sup>

In the same volume of Pathways, chapter five elaborates on the following lessons learned from the JDAI.

1. Without a commitment to juvenile detention reform in general, reducing racial disparities is unlikely.
2. An explicit focus on reducing racial disparities is essential.
3. Reducing racial disparities requires authoritative leadership.
4. Describing the problem must be performed in terms of flexible efforts.
5. Emphasize action, not just discussion or training.
6. Broad, diverse coalitions can facilitate DMC reduction.
7. Individual agencies can make a difference.
8. Keep the police in the work.
9. Data really helps [*sic*].
10. It is possible to reduce racial disparities in juvenile detention.<sup>21</sup>

### **Nestor Consultants -- Michael Lindsey, J.D., Ph.D.**

The Task Force first learned about Dr. Michael Lindsey, the President and CEO of Nestor Consultants, Inc., when the OJJDP granted a DCJS request for technical assistance. Dr. Lindsey conducted training at a Court-sponsored Probation Conference and made four statewide presentations on cultural competency in the juvenile justice system for magistrates, judges, other court personnel, prosecutors, public defenders, and law enforcement. In 2005, the Court acquired a grant from the SJI providing funding for Dr. Lindsey to facilitate a “Train-the-Trainers” program, for specific court and criminal service personnel. The training was based on Dr. Lindsey’s own cultural competency curriculum. The Task Force is very appreciative to Dr. Lindsey for providing his expertise in developing concepts, providing research and literature reviews, and organizing materials for this report to the Court.

### **National Conferences**

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<sup>20</sup> Hoytt 13 – 15.

<sup>21</sup> Hoytt 65 – 70.

The Task Force's efforts were reinforced and enhanced by the attendance of several Task Force members at various national conferences that addressed racial, ethnic, and juvenile issues, including DMC. Magistrate Carol Wolfe of Gilmer County Magistrate Court, and Julie Palas, former Special Projects Counsel for the Supreme Court of Appeals of West Virginia, attended the National Consortium on Racial and Ethnic Fairness in the Courts held April 10 - 12, 2003, in Detroit, Michigan. Also, Magistrate Carol Wolfe attended the 2004 Midwest Region Training Conference and National Juvenile Justice Summit in Indianapolis, Indiana, from June 7 - 11, 2004.

Charged with continuing the coordination of the Task Force's remaining efforts, including seeing this Interim Report through to completion, Jennifer Singletary, Special Projects Counsel, attended the National Consortium's annual meeting in May, 2007.

### **The Supreme Court of Appeals of West Virginia**

The Supreme Court of Appeals of West Virginia, as the administrative body for the West Virginia judicial system, is to be commended for implementing many of the recommendations in the Final Report from the Commission on the Future of the West Virginia Judicial System. Such enacted recommendations include creation of the Public Trust and Confidence in the Judiciary Committee (now adjourned); the Committee on Equality in the West Virginia Judiciary; the Task Force for Self-Represented Litigants; the Commission on Mental Hygiene Reform; Mental Health and Drug Court Diversion Programs; the Court Improvement Program Oversight Board (which monitors court performance in the area of child abuse and neglect); this Task Force; and a soon-to-be-appointed Access to Justice Commission.

In September, 2002, the Court expanded the scope of its Committee on Equality in the West Virginia Judiciary to include issues of ethnicity, race, religion, national origin, disability, age, sexual orientation, political affiliation, socioeconomic status, pregnancy, and marital status. Another effort by the Court includes the August, 2004, participation of the Honorable Justice Joseph P. Albright; Administrative Director of the West Virginia Court System, Mr. Steven D. Canterbury; law clerk Tom Rodd; and First Circuit Chief Probation Officer James Lee on a panel specifically discussing issues related to juvenile justice, hosted by Wheeling Jesuit University for court personnel, juvenile advocates, and attorneys. Additionally, the Court sponsors educational and other special events throughout the year such as an annual recognition of Law Day; the LAWS program that gives students the opportunity to participate with and learn about Supreme Court cases; and training opportunities for employees on ethics, bias-free behavior, neutral language, and diversity issues.

# CHAPTER 2:

## CONTEXT

This chapter first provides definitions of relevant terms as they pertain to DMC and then summarizes federal laws governing DMC issues. Next, the chapter provides a summary of juvenile justice in West Virginia and a review of some other states' efforts to deal with DMC, followed by a list of some DMC contributing factors.

The following definitions were gleaned from a report published in 2001 by the Commission on Behavioral and Social Sciences and Education report titled Juvenile Crime, Juvenile Justice<sup>22</sup> and are paraphrased from that same source, except where otherwise noted.

### Definitions

**Race** is not biological, genetic, or otherwise scientific. It is a social construct related to "individual identity, collective consciousness, and institutional life."<sup>23</sup> Some racial categories are black or African-American, white or Caucasian, and Native American.

**Disparity** is the probability that a particular outcome -- such as short-term versus long-term detention -- differs for distinct groups. Disparity may lead to overrepresentation. In other words, there may be differing probabilities of receiving a particular outcome or treatment based, to some degree, on race.

**Minority Overrepresentation** describes the existence of a larger proportion of minorities at various stages within the juvenile justice system (such as intake, detention, adjudication, and disposition) than would be expected based on that specific minority's proportionate presence in the general population.

**Discrimination** occurs when juvenile justice decision-makers treat one group of juveniles differently from another group of juveniles based wholly, or in part, on their gender, race, sexual orientation, social class, and/or ethnicity, among other factors.

**Disproportionate Minority Confinement** exists when the proportion of youths detained or confined in secure detention or correctional facilities or jails who are members of minority groups exceed their specific minority groups' proportionate representation in the general population.<sup>24</sup>

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<sup>22</sup> Commission on Behavioral and Social Sciences and Education (CBASSE). Juvenile Crime, Juvenile Justice. (Washington, D.C.: National Academy of Sciences, 2001) 229 – 230.

<sup>23</sup> Bobo, L.D. "America Becoming: Racial Trends and Their Consequence." Racial Attitudes And Relations At The Close Of The Twentieth Century. Vol. I (2001): 264.

<sup>24</sup> Federal Juvenile Justice Delinquency Prevention Act (JJJPA) (42 U.S.C. 5601§ 223(a)(23)).

**Disproportionate Minority Contact** requires an examination of possible disproportionate representation of minority youth at each decision-making point along the juvenile justice system continuum.<sup>25</sup>

**Cultural Competence** is a concept drawn from a model used in the mental health and social services fields that indicates a set of behaviors, attributes, and policies enabling an agency to work effectively in cross-cultural situations. “Cultural competence” is not a fixed characteristic of an agency; rather, it is an on-going developmental process for addressing diversity and is often defined as a system or a model.<sup>26</sup>

## The JJDPA

In an online publication, the Building Blocks for Youth Initiative reported the following about the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA), as amended in 1988 and 1992 by the U.S. Congress:

[The JJDPA] provides the major source of federal funding to improve states' juvenile justice systems. The JJDPA was developed with a broad consensus that children should not have contact with adults in jails and other institutional settings and that status offenders should not be placed in secure detention. Under the JJDPA and its subsequent re-authorizations, in order to receive federal funds, states are required to maintain core protections for children.

One such protection is that states are required to assess and address the disproportionate confinement of minority juveniles in all secure facilities. Studies indicate that minority youth receive tougher sentences and are more likely to be put in jail than non-minority youth for the same offenses. With minority children making up one-third of the national youth population but two-thirds of children in confinement, this provision requires states to gather information and assess the reason for disproportionate minority confinement.<sup>27</sup>

As of 2002, the JJDPA now requires juvenile delinquency prevention efforts and strategies for effectuating systemic improvement designed to reduce DMC. States receiving formula grants under the JJDPA address DMC through the following phases: identification, assessment, intervention, evaluation, and monitoring. Each state must

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<sup>25</sup> Federal Juvenile Justice Delinquency Prevention Act (JJDPA) (42 U.S.C. 5601§ 223(a)(22).

<sup>26</sup> Cox, Judith A. Addressing Disproportionate Minority Representation Within the Juvenile Justice System. (Santa Cruz, CA: Santa Cruz County Probation Department, 2000) 9. Attached hereto as Appendix 4.

<sup>27</sup> Building Blocks for Youth. Resources for Disproportionate Minority Youth / Overrepresentation of Youth of Color. <<http://www.buildingblocksforyouth.org/issues/jjdpa>>.

provide progress reports, a three-year plan, and subsequent plan updates [in compliance with § 223(a)(22)]. The OJJDP reviews the submitted plans and updates them annually. Any state that fails to address the DMC in its juvenile justice system may lose twenty percent of its grant allocation for the year.

## **Other States' Efforts**

For years after legislation governing DMC passed in 1988, states moved slowly to address the issue. When efforts began, data collection methods were limited; however, a body of research now substantiates that there is a national DMC problem, particularly regarding disproportionate minority incarceration in secure juvenile correctional facilities.

While African-Americans are most consistently overrepresented, it has been demonstrated that the minority group with the highest representation in a geographical region is the over-represented minority for that region.<sup>28</sup> For example, in states along the United States southern border, overrepresentation reflects the Latin American, Asian and African-American communities; while in states with Native American reservations, the Native American community is overrepresented. In Hawaii, American Samoans are overrepresented more than four times as frequently than any other Hawaiian ethnic group by the indicators measured (including arrests, secure detention, family court cases, and secure confinement.) Interestingly, among Hawaii's population, Samoans are the minority that most closely visually resembles African-Americans.

Forty states are developing or implementing plans to address DMC. Other states are undertaking efforts such as

- examining decision-making policies and practices of police, prosecutors, courts, and probation agencies, to identify where racial disparities occur in the system;
- increasing cultural diversity of program staff;
- developing guidelines such as detention criteria, which reduce or eliminate racial disparities;
- providing support training for juvenile justice system personnel;
- developing, supporting and expanding delinquency prevention programs;
- increasing the availability of and improving the quality of diversion programs; and
- developing community-based alternatives to secure detention and incarceration.

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<sup>28</sup> See Appendix 5 for a bibliography of sources demonstrating this hypothesis.

## DMC Factors

The following section explicates factors that research suggests make some contribution to the DMC problem.

The 1993 Coalition for Juvenile Justice Annual Report identifies five principal causes of DMC: (1) economic, social, and cultural issues (such as poverty, single-parent families, segregated socialization, lack of education, and high minority unemployment); (2) subjective decision-making in the juvenile justice system; (3) overt discrimination and racism in America and the juvenile justice system; (4) cultural, social, ethnic, and racial insensitivity; and (5) under-representation of persons of color in decision-making positions.<sup>29</sup>

In a report prepared for this Task Force by Dr. Stephen M. Haas, Director of the Division of Criminal Justice Service's Criminal Justice Statistical Analysis Center, Haas revealed that researchers had found the following set of possible explanations for overrepresentation:

- *Indirect effects.* Decision-makers consider race-related variables, such as family status, gang status, and school participation . . . producing racially aligned effects.
- *Cumulative effects.* These come about as a result of collectively consistent differences in justice processing. Systemic differentiations -- however slight or insignificant each instance may appear in isolation -- can accumulate to have a marked effect on minorities in the system.
- *Geographically-marked Justice.* This refers to the differences in justice philosophy and resources that occur from place to place. For example, if most of a state's minority juveniles reside in places that either have relatively few community options or in which the justice system is particularly oriented toward community safety (through removal), then there will be overrepresentation statewide, even though minority and majority youths may be treated with similar sanctions within specific counties.<sup>30</sup>

The increasing influx of minority youth in the juvenile justice system is one of the major contributors to the overrepresentation of people of color in the criminal justice system later on. This transfer occurs in primarily two ways: either through the accumulation of a juvenile delinquency record or by waiver to criminal court where the juvenile is tried as an adult. There is increasing evidence that even more minority youth will enter the

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<sup>29</sup> Coalition for Juvenile Justice, Pursuing the Promise: Equal Justice For All Juveniles (Washington, D.C., 1993). 1993 Annual Report, 14-21, Coalition for Juvenile Justice, Washington, D.C. (1994).

<sup>30</sup> Leonard, K.K. Minorities in Juvenile Justice. (Thousand Oaks, CA: Sage Publications, 1995).

criminal justice system by a third and more direct route -- through criminal court rather than juvenile court.<sup>31</sup>

West Virginia juvenile law either allows or requires a transfer of a juvenile delinquent to adult status when certain circumstances exist. The law also allows review and return to juvenile status at age eighteen if it appears that an inappropriate transfer has taken place. No juvenile is ever housed in an adult facility or with adult inmates, if transferred, until the age of eighteen, and then only after the Court has reviewed and approved the move and confirmed the original transfer. Even at age eighteen, these transferred juveniles may be treated as youthful offenders and placed into a non-prison rehabilitative program.

The most common factors contributing to DMC were found in the juvenile justice and educational systems, among socioeconomic conditions, and within the family.<sup>32</sup> Research from the OJJDP, U.S. Department of Justice, provides the following underlying factors that contribute to minority overrepresentation.

### Juvenile Justice System

- Racial/ethnic bias
- Insufficient diversion options
- System "labeling"
- Barriers to parental advocacy
- Poor justice system and community integration

### Socioeconomic Conditions

- Low-income jobs
- Few job opportunities
- Urban density/high crime rates
- Few community support services
- Inadequate health and welfare resources

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<sup>31</sup> Mann, Coramae Richey. "A Minority View of Juvenile Justice." 51 Wash. & Lee L. Rev 465 (1994).

<sup>32</sup> Information supporting this hypothesis was obtained from 44 states. Responses were received from 29 state Juvenile Justice Specialists, and OJJDP state representatives provided information on 15 states. Two states (South Dakota and Wyoming) are not participating in the Formula Grants Program, and information was unavailable in four states. Puerto Rico is exempt from the DMC core requirement, and the other four territories are exempted from further DMC studies because they have determined that DMC does not exist in their facilities of confinement. (OJJDP, U.S. Department of Justice.)

## Educational System

Inadequate early childhood educational opportunities  
Inadequate prevention programs (early dropouts)  
Inadequate education quality overall  
Lack of cultural education, cultural role models

## The Family

Single-parent homes  
Economic stress  
Limited time for supervision

Dr. Michael Lindsey, in his report titled, "The Overrepresentation of Ethnic Minority Youths in the Juvenile Justice System" provided the following list of additional documented causes of overrepresentation.

- Lack of cultural perspective and cultural competence
- Lack of wrap-around services (support to youth and their families for basic living needs, treatment, educational and health issues, etc.)
- Lack of access to effective legal representation
- Ambivalence of federal commitment to the overrepresentation mandate
- Lack of societal rules and/or regulations
- Bias in assessment instruments, reports, and practices
- Absence of early developmental education on citizenship and responsibility
- Disintegration of family and community
- Data and research inadequate at the local level
- Incompetence of service providers
- Insufficiency of support for teaching single, female parents how to parent effectively
- Insufficiency of probation and after-care
- Lack of ethnic minorities making key decisions about juveniles
- Lack of intensive early diversion programs

- Lack of nexus between juvenile crime and disposition, particularly property crimes
- Lack of programs providing structured supervision
- Lack of youth employment opportunities
- Lack of “family friendly” workplaces or service agencies
- Notion that juveniles will survive any disposition
- Overrepresentation not deemed a significant problem by key decision-makers
- Racism
- Parents ill-prepared to negotiate the juvenile justice system
- Parents not viewed as capable/competent treatment allies
- School expulsion policies
- Legislative practices
- Subjectivity in decision-making in the system
- Systemic discomfort with targeting special needs of minority at-risk juveniles
- Lack of intervention in high-risk communities, especially for prevention.<sup>33</sup>

Finally, Dr. Lindsey explained that these lists are neither complete nor prescriptive, and admitted that there certainly may be other factors that contribute to DMC not identified here. However, Lindsey asserted that a community may enjoy a significant and meaningful reduction in DMC without attempting to address each of these concerns, and that these factors merely help in appreciating the pervasive nature of the problem.

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<sup>33</sup> Lindsey, Michael. “The Overrepresentation of Ethnic Minority Youths in the Juvenile Justice System” *quoting* Chunn, Gwenn. “Disproportionate Minority Confinement (DMC) Dirty Dozen . . . and a spare dozen more” for which there is no full citation available.

# CHAPTER 3:

## METHODS

During the Task Force's inaugural meeting, Dr. John P. Rhoads identified two key components for addressing DMC successfully. First, those in positions of leadership must believe that DMC is a problem and must support the effort to reduce the offending contact. Second, data must be collected regarding key decision-point mapping.

The Court demonstrated its belief that DMC is a problem by responding to the Petition, including its creation of the Task Force. Consequently, the Task Force developed a comprehensive research plan to reevaluate existing data and to collect current information via system surveys, town meetings, public hearings, and through the work of field specialists. The Task Force used additional methods to study perceived DMC in the West Virginia juvenile justice system. Specifically, Task Force methods involved procuring technical assistance from the OJJDP, reviewing other states' efforts in reducing DMC, distributing a juvenile justice stakeholders' survey, conducting town meetings around the state, consulting DMC experts, and reviewing national conference materials.

This chapter explicates the methods employed by the Task Force. Note, however, some Task Force research methods -- specifically, conducting a review of other states' efforts in addressing DMC and distributing the juvenile justice stakeholders' survey -- are discussed at length elsewhere in this report.<sup>34</sup>

The Task Force plan's research objectives were as follows:

Identify the extent to which racial disparity exists, both before and after entry into the juvenile justice system, within . . . the past five years unless sufficient data is not available.

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<sup>34</sup>A review of other states' efforts in addressing DMC is included beginning at page 13 of this report; and the results from the juvenile justice stakeholders' survey are discussed herein beginning at page 41.

Identify if and how the system contributes to racial disparity by answering the question: are white and non-white juveniles with similar charges and from similar geographic areas treated with parity at each decision point in the juvenile justice system?

Identify evidence-based methods for improving the juvenile justice system if evidence shows the juvenile justice system is contributing to racial disparity.

Recommend an evaluation tool for measuring the effectiveness of the above methods on their ability to improve the juvenile justice system.

Recommend a monitoring process for the juvenile justice system.

## **Technical Assistance**

In November, 2002, Ms. Angela Saunders,<sup>35</sup> Task Force member and former Senior Juvenile Justice Specialist with the DCJS, requested technical assistance in addressing DMC from the OJJDP. The technical assistance was approved and provided by the Development Services Group (DSG) from Washington, D.C. The following are five desired outcomes that Ms. Saunders requested that the technical assistance provide:

details on national practices and services that reduce overrepresentation;

a review of West Virginia's juvenile justice information systems to determine whether sufficient necessary data are gathered to identify DMC and overrepresentation trends;

an examination of detention-screening criteria and identification of potential improvements to lead to decisions that reduce DMC while ensuring public safety and the integrity of the court process;

a review of existing programs and services in West Virginia funded to reduce DMC; and

guidance for the research to be completed under the direction of Dr. Stephen M. Haas, who was then an Associate Professor at Marshall University.

In April, 2003, consultants from the DSG conducted site visits comprising stakeholder interviews and a review of the Task Force work plans. The site visits' primary purpose was to gain a comprehensive perspective of DMC trends and issues in West Virginia for mapping the direction of Task Force efforts. Recommendations from the report

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<sup>35</sup> Ms. Angela Saunders currently serves as the Director of Court Services for the Supreme Court of Appeals of West Virginia's Administrative Office.

prepared by DSG are included herein at Chapter 5.

## **Task Force Town Meetings**

Two of the Task Force goals comprised soliciting feedback from West Virginians about how they perceive racial disparity in the juvenile justice system, and developing ideas on addressing the problem. To begin accomplishing these goals, the Task Force hosted nine town meetings to garner relevant information statewide, from both the public and juvenile justice professionals. The town meetings were held in the following cities:

- Beckley, Raleigh County
- Charleston, Kanawha County
- Fairmont, Marion County
- Franklin, Pendleton County
- Huntington, Cabell County
- Martinsburg, Berkeley County
- Parkersburg, Wood County
- Welch, McDowell County
- Wheeling, Ohio County

Ms. Tammy Collins, a Prevention Specialist with the West Virginia Prevention Resource Center, prepared a Qualitative Analysis Report<sup>36</sup> on the feedback gathered from the Town Meetings. Ms. Collins obtained data for her report by attending related Task Force meetings, by attending a town meeting, and by reviewing transcripts and notes from the town meetings, which were collected in electronic format and coded using qualitative data analysis software to identify recurring themes. Ms. Collins then reviewed literature related to the identified themes.

Further, through public service announcements and advertisements, the public was encouraged to submit additional comments via written evaluation forms, e-mails and letters.

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<sup>36</sup> Collins, Tammy. Town Meeting Qualitative Analysis Report for the West Virginia Supreme Court of Appeals Task Force to Study Perceived Racial Disparity in the Juvenile Justice System (July 2004). Attached hereto as Appendix 6.

# **CHAPTER 4:**

## **EXISTING PROGRAMS**

This chapter describes some West Virginia programs that may help reduce DMC. This list of programs was developed primarily from the Task Force members' own affiliations with related organizations or agencies.

### **Judicial Programs**

Some of the Court's efforts that may serve to address DMC include the creation of the following: the Public Trust and Confidence in the Judiciary Committee; the Committee on Equality; the Task Force for Self-Represented Litigants (soon to be re-instituted as an appointed Access to Justice Commission); the Commission on Mental Hygiene Reform; and the Court Improvement Program Oversight Board.

The Court also sponsors the following annual educational special events: the LAWS project (Legal Advancement for West Virginia Students), that gives students the opportunity to participate in and learn about Supreme Court cases; the Robes to Schools outreach project, in which Justices, Circuit Court Judges, and Family Court Judges and Magistrates read aloud to students at schools. Additionally, the Court provides training for court personnel and others on ethics, bias-free behavior, neutral language, cultural competency, and diversity issues.

### **Court Diversion Programs**

The Youth Court Diversion Program is co-sponsored by the OJJDP, the Office of Justice Programs, the U.S. Department of Justice, and the National Highway Traffic Safety Administration of the U.S. Department of Transportation. Youth Courts are operated by the American Probation and Parole Association. Potential Youth Court participants are referred from probation departments to have their cases heard by their peers. To be eligible for participation, an applicant must be a first-time offender of a nonviolent act.

There are more than nine hundred programs currently operating Youth Courts in the United States. West Virginia has three Teen Courts in Marion, Mercer, and Monongalia Counties, respectively. Primary goals of a Youth Court are as follows: responding to delinquency and substance abuse; holding offenders accountable; capitalizing on peer influence among youth; and helping youth develop competencies.

### **Marion County Teen Court**

In Marion County, Teen Court is held on Tuesdays and Thursdays each month. Teen Court Coordinator, Ms. Belinda Schwartz, reported that cases heard on Thursdays consist exclusively of tobacco cases -- in which students have been smoking cigarettes during school hours. Marion County Teen Court convenes between the hours of 5:00

p.m. and 7:00 p.m., and usually two cases are heard when court is in session. In the 2003 term, there were 23 referrals in the system. The Marion County Teen Court is currently operated by approximately 31 volunteers, and has heard 38 cases so far in 2007.

### **Mercer County Teen Court**

Started in September, 2002, the Mercer County Teen Court hears cases on three Thursdays out of each month from 6:00 p.m. to 8:00 p.m. On the remaining Thursday of each month, the Teen Court holds inservice training. Respondents pay a court fee of \$25.00, and each offender processed through Mercer County Teen Court must agree to serve as a juror upon completion of program. From September, 2006 through May, 2007, the program dealt with 67 cases referred by probation, twelve of which were pending at the time of this writing, since the Mercer County Teen Court schedule corresponds with the public school calendar.

### **Monongalia County Teen Court**

The Teen Court in Monongalia County has been in existence since 1997. According to Teen Court Coordinator, Mr. C.W. Mullins, the Monongalia County Teen Court averages between 85 and ninety cases per year, based on a ten-month program. There are six to eight hearings a month, heard on Wednesday evenings between 5:15 p.m. and 7:30 p.m. The cases heard include first-offense charges, and participants stay in the program for approximately three months.

### **Juvenile Drug Court Diversion Programs**

Both the Cabell County and Wayne County Juvenile Drug Court Diversion Programs comprise the cooperative efforts of the juvenile justice, child welfare, law enforcement, and education systems. The programs seek to divert non-violent offenders with substance abuse problems from juvenile court into an intensive, individualized treatment process. This process includes outpatient drug and alcohol treatment, probation case management and compliance monitoring, and mandatory family involvement. The length of time a participant remains in each phase is determined by his or her individual progress. The programs focus on intervention, graduated sanctions, supervision, and treatment rather than punishment.

Since the Cabell County program inception in September of 1999, during the following five years, only twelve of the 84 program graduates returned to Cabell County juvenile court, for a 14.3% recidivism rate. Of those twelve, only three returned with a drug or alcohol-related charge, for a drug-related recidivism rate of 3.6%. The Wayne County program began its operation with an opening ceremony on September 18, 2007.

## **Juvenile Mediation Program**

A program titled "Juvenile Mediation -- It Takes a Community: an Early Intervention Community-Based Restorative Justice Philosophy," was established in 1997 by the Honorable Martin J. Gaughan, First Judicial Circuit Judge, and by Mr. James Lee, Chief Probation Officer. The program serves Hancock, Brooke, Ohio, Marshall, Wetzel, and Tyler counties and deals with alleged juvenile status offenders aged six to seventeen years and their families and/or guardians.

Juvenile Mediation collaborates with community agencies to provide mental health services, life skills, and substance abuse treatment and education. The program also seeks to eliminate out-of-state placement by providing in-home treatment for juveniles and their families. Each county's probation officer is responsible for determining the need for informal intercession.

The program requires community participation, and citizen volunteers are carefully screened and trained by the program staff. A minimum of eight hours of training is conducted on topics ranging from juvenile justice and criminal law, to communication skills, victimization, and mental health.

## **Executive Branch Programs**

### **Governor's Committee On Crime, Delinquency And Correction - Juvenile Justice Subcommittee**

In 1978, the West Virginia Legislature designated the Governor's Committee on Crime, Delinquency and Correction and created an accompanying state planning agency in order to take advantage of programs enacted in both the federal Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 *et seq.* (1984)) and the JJDP of 1974 (42 U.S.C. 5601 (1992). *W.Va. Code* 15-9-1 (1968)).

The Committee created the aforementioned State Advisory Group (SAG), from which there is appointed a representative to the nationwide Coalition for Juvenile Justice. The SAGs help states by developing and implementing juvenile justice plans that are submitted to the OJJDP every three years. In West Virginia, the DCJS staffs the Governor's Committee on Crime, Delinquency and Corrections as well as the SAG.

### **Juvenile Justice Grants**

The OJJDP provides funding to the states through formula, block, and discretionary grants. Each grant requires that applicants meet specific criteria; and after a grant is awarded, the program is monitored for compliance with state and federal law. Additionally, through a competitive peer-review process, the OJJDP awards discretionary grants directly to states, local government units, and private organizations to administer selected programs. West Virginia is eligible for formula and block grant funding for juvenile accountability and delinquency prevention.

Some of the specific grant programs that have been awarded in West Virginia are as follows:

- Enforcing Underage Drinking Laws, which supports and enhances efforts by state and local jurisdictions to prohibit the sale of alcohol to minors and the purchase and consumption of alcoholic beverages by minors.
- Supporting state and local delinquency prevention and intervention efforts and juvenile justice system improvements.
- Helping develop programs that promote greater accountability among offenders and in the juvenile justice system.

### **Division of Criminal Justice Services Programs**

The West Virginia Juvenile Law and Procedure report was used to create a three-hour class titled "Juvenile Justice 101 in West Virginia." The class was designed for laypersons to understand West Virginia's juvenile justice system and was developed in response to the Task Force's town meetings. Participants included parent groups from the Mountain State Parents Can Organization, juvenile detention staff for the DCJS, a DCJS employee, select members of the West Virginia legislature, and Prevention Resource Officers throughout the state.

### **Probation Assessment Tool for Pre-sentencing Reports**

West Virginia youth in the juvenile justice system are subject to recommendations from probation officers regarding placement and services, which are made absent universal standards. Although different groups assess the recommendations, their assessments are not standardized. For example, an assessment used in one part of the field may never be used or even viewed in another part. West Virginia lacks collaboration, coordination and standardization that could help ensure appropriate and fair pre-sentencing assessment of West Virginia juveniles.

With funding support provided by a JJDP A Challenge grant, West Virginia's DCJS developed a universal assessment tool for use by all probation officers when preparing pre-sentencing recommendations to judges. Judges should consider the unbiased tool for determining appropriate services and dispositions for West Virginia youth. The tool identifies critical factors for consideration when preparing recommendations for each case.

A pre-sentencing tool development committee consists of the following: the Supreme Court of Appeals of West Virginia, the Division of Probation Services, the DCJS, the Department of Education, the DHHR, and the DJS. The committee identified critical risk factors and developed an electronic version of the pre-sentencing tool. Initial training was provided for a select group of probation officers, and the pilot portion of

the project is underway. According to Ms. Angela Saunders, as of January, 2007, the tool was “up and running, online with the JJDB . . . [and] being analyzed by [Ms.] Tammy Collins” who should have a report on its effectiveness available soon.

### **West Virginia DMC Projects and Counties Served**

#### **Hope Community Development Center: Kanawha**

JJDPA grant money provides continued funding for this alternative program for status offenders to improve self-esteem, confidence, independence, and hopefulness. This collaborative effort among the judicial system, families, communities, and status offenders enables youth to make reparation and restitution and to realize a new direction in life.

#### **KISRA / Harambee and Roosevelt Learning Centers: Kanawha**

The JJDPA also funded an after-school program at the Harambee Learning Center in Dunbar, West Virginia. KISRA focuses on school-related risk factors affecting youth and provides tutoring and mentoring services for students who attend Dunbar area schools and South Charleston High School.

This successful program is being duplicated in the Roosevelt Learning Center on Charleston’s east end. The center is a safe and drug-free haven that focuses on protecting youth, reducing risk factors, and encouraging resilience in children attending Kanawha County schools.

#### **Team Agape: Boone, Kanawha, Lincoln, Putnam**

Other JJDPA funded initiatives include Team Agape services for at-risk youth in Kanawha, Putnam, Lincoln, and Boone Counties. Team Agape is a Christian, faith-based 501(C)(3) organization that deals with juvenile and family crisis prevention and intervention. The team’s mission states, “Teamwork and godly love help build and strengthen families, homes and communities.”

The team defuses and stabilizes juvenile and family crises, with such tactics as intervening in instances of domestic violence, assisting with educational needs, providing recreational activities and counseling, managing cases, developing in-home practices, reestablishing community, mentoring, procuring jobs, and providing links to other resources in the community. Although this program is established on Christian principles and morals, it is not a Christian teaching or recruiting organization; rather, it serves all juveniles and families in need.

Team Agape is unique because its staff immediately conducts crisis-intervention assessments, and develops and implements plans to provide for identified needs. The team staff serves as coordinators for the juvenile, his or her family and treatment centers, the court system, educational systems, and the community.

### **City of Huntington: Cabell**

Grant funding allows part-time staff to coordinate the Fun Time Saturday Program at the A.D. Lewis Community Center in Huntington, West Virginia. The program provides diversionary arts and recreational activities for at-risk juveniles who live in the Fairfield areas of Huntington. The center provides a variety of programs targeted to benefit minority youth, paid for by the community.

### **YWCA Sojourner's: Kanawha, Clay, Boone**

Grant funding provides supportive, educational, and preventative activities regarding substance abuse for residents of the YWCA Sojourner's Shelter for Homeless Women and Families.

### **MUSTER Projects: Raleigh**

The Muster Project was, for many years, a DCJS-funded program, but it has moved toward self-funding. With some remaining JJDPA funds, the project has as its purpose providing services to the minority youth population. What follows are descriptions of some of the programs and services comprised by the Muster Project.

The *All-Stars Program* uses a science-based curriculum to challenge middle-school-aged youth to consider risky behaviors -- such as alcohol, tobacco, and other drug use; early sexual activity; and violence -- in new ways. The program's interactive approach, solid research base, and active parent component make *All-Stars* one of the most widely-used and fundable prevention curriculums in the nation.

*Respect and Protect* is a school-violence prevention program that uses mentors to teach students healthful, effective coping methods for pressures experienced at home and at school. Through individual and group counseling as well as with student assistance the program helps youth understand family dynamics and roles, develop communication skills, identify feelings and defense mechanisms, enhance self-esteem, develop anger management and conflict resolution skills, understand grief and loss, and build basic social skills.

*Positive Adolescent Choice Training (PACT)* is a cultural-based program which helps adolescents reduce the risk of perpetrating or experiencing violence. PACT uses a cognitive-behavioral group training method that equips its participants with specific social and anger management skills to use in interpersonal conflict situations.

*Status Offender Accountability Programs* are multifaceted diversion programs for minority juvenile offenders. The programs divert youth from the court system to participating

with a network comprising law enforcement, school systems, local churches, and families.

*Youth Education in Shoplifting* provides twelve hours of instruction on the negative effects of shoplifting to first-time juvenile shoplifters and offers information and support to parents. The program also holds the juvenile accountable for his or her actions and allows for restitution and open discussion regarding the consequences of his or her actions.

## **Division of Juvenile Services Activities**

The Community Resource Department (CRD) of the DJS works with residents of the West Virginia Industrial Home for Youth (WVIHY) and the Davis Center. A Community Resource Coordinator (CRC) works with residents returning to their communities and with those who cannot return directly to the community. While residents are in DJS custody, their assigned CRCs conduct monthly progress reviews and attend Individual Treatment and Multidisciplinary Team (MDT) Meetings.

An Aftercare Process is instituted with each resident's intake at WVIHY. Each resident is assigned a CRC from the beginning, based on county of residence. Two months before a resident is scheduled for release, his or her CRC attends an MDT meeting, and all concerned parties are invited to attend. The team makes recommendations for the resident's Aftercare Plan that will be submitted to the court for approval.

The CRD is committed to collaborating with families and community providers for meeting re-entry needs of released youth and their families. Other CRD goals include helping adjudicated youth develop positive attitudes and behaviors. The CRD assists communities by providing necessary resources and services and by preserving community safety.

## **Legislative Initiatives**

In the spring of 2002, the West Virginia Legislature's Joint Committee on Government and Finance appointed Select Committee B on Minority Issues to conduct a study in furtherance of House Concurrent Resolution (HCR) No. 76. HCR No. 76 identified disparity in a number of state social systems that has resulted in a decline in the quality of life of West Virginia's minority residents, affecting African-American West Virginians in particular. The resolution requested a study on West Virginia's high minority unemployment rate and other socioeconomic problems, after finding racial disparity in the delivery of health and social services, in employment and economic opportunities, in educational achievement and in the criminal and juvenile justice systems.

The Committee – co-chaired by former Senator Larry L. Rowe and Delegate Carrie Webster – endeavored to report to the full Legislature any findings, conclusions, and recommendations from the study, and to propose appropriate legislation.

Select Committee B conducted the study and made recommendations to address the problems identified in HCR No. 76. The Committee generated a report presenting its findings and recommendations along with supporting materials.<sup>37</sup> Ultimately, the Committee decided to divide the report into four general topics, as follows: Education, Criminal and Juvenile Justice, Health Care and Social Services, and Employment and Economic Development. Further, the Select Committee offered an opportunity for public hearings on June 8, 2003, and on August 4, 2003. Other Committee meetings were devoted to individual topics selected for study, and the group solicited input from a variety of public and private sources.

In February 2004, the West Virginia Legislature adopted HCR No. 25, requesting that the three branches of state government cooperate and encourage state, county and municipal government leaders to identify and address racial disparity. The Task Force consultants recommend that the Court also support legislation intended to address system disparity.

#### **West Virginia Code § 17G-1-1 *et seq.*: Racial Profiling Data Collection Act**

The Racial Profiling Data Collection Act requires state law enforcement officers to collect data about each traffic stop performed. The data to be collected are race, age, gender, whether a citation was issued, and whether a search was conducted. The goal of the law is to create a record of the manner in which all citizens are treated during traffic stops and to determine if minorities are treated differently. It will also identify potential police misconduct. It should be noted that the expiration date of the statute is June 30, 2009. (W.Va. Code § 17G-1-1 to 17G-2-3 (2008).

#### **West Virginia Code § 15-2-7: Cadet selection board; qualifications for and appointment to membership in division; civilian employees**

W.Va. Code § 15-2-7 [2004] requires state police to present an annual report to the Legislature regarding effective recruiting of females and minorities to fill job vacancies within the State Police. On January 10, 2007, Senate Bill 41 was filed to amend this Code section to provide a one-time, across-the-board \$1,200 per year increase in pay for civilian employees of the State Police.

#### **West Virginia Senate Bill 272 (2004): Law Enforcement and Community Relations Appeal Board**

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<sup>37</sup> West Virginia Legislature, Joint Committee on Government and Finance. Report of the Proceedings of Select Committee B on Minority Issues, 2003 Legislative Interim Study. (Charleston, WV: 2004).

West Virginia Senate Bill 272 (2004) did not reach the floor of the Senate and was not resubmitted in 2005. The bill was intended to create a State Police Review Board for complaints presented by the general public against state law enforcement officers. Had the bill been enacted into legislation, any person who claimed to have been the victim of excessive force, misconduct or other unlawful act caused by a state police officer could have submitted a complaint to the office of professional standards division of the state police or at any state police detachment. The action taken would have been appealed to this newly created board. The board was to make recommendations to the superintendent of the West Virginia State Police, leaving the final decision to the superintendent.

## **A Law Enforcement Effort**

### **Support Effort Assisting Teens (SWEAT) - Wheeling**

SWEAT is a program that matches volunteer mentors from the Sheriff's Office with inner-city youth (primarily minority) between the ages of thirteen and sixteen. The Sheriff's Department promotes the program through the media to develop a "customer base" of community members who provide service opportunities -- such as yard work - for the youth and their deputy mentors, on a regular basis. The program is funded through donations from the homeowners who receive the services, and the income is divided among the participating youth.

First, the mentor accompanies the teenager to a local bank and introduces him or her to a bank official to open a bank account. The participants discuss the importance of saving a portion of SWEAT income. The program's two-fold objectives are realized when youth participants learn that hard work can result in financial gain and that a deputy sheriff can be an ally and a community resource. This program involves family members and the community, with local merchants offering donations of equipment used in the process.

The SWEAT program helps youth establish a work ethic and breaks down barriers between minority youth, the community, and law enforcement officers. Relationships built with law enforcement officers may also foster an interest for the youth in law enforcement as a career.

## **West Virginia Human Rights Commission and the West Virginia Hate Crimes Task Force**

Since 1961, the organizational mission of the West Virginia Human Rights Commission, a division of WVDHHR, has been the elimination of discrimination based upon sex, race, color, ancestry, national origin, age, disability, religion, and familial status.<sup>38</sup> The West Virginia Hate Crimes Task Force, organized under the auspices of the West Virginia

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<sup>38</sup> West Virginia Human Rights Commission. Homepage. Ivin B. Lee, Executive Director. 3 August 2007. 10 August 2007. <<http://www.wvf.state.wv.us/wvhrc/>>.

Human Rights Commission, is a group comprising representatives from federal, state and local law enforcement departments, human rights agencies and civil rights organizations. The Hate Crimes Task Force mission is to prevent and address all forms of biased-motivated crimes by responding to incidents, interacting with individuals involved and providing educational opportunities. The Hate Crimes Task Force's function is to make the State of West Virginia a safer and more tolerant place to live and work.

### **Minority Students Strategies Council**

In January, 2004, the Governor's Minority Students Strategies Council issued a report addressing "the impact of low achievement on West Virginia's African-American families and communities."<sup>39</sup> The report asserted that "low student achievement is associated with increased delinquent behavior, higher drug use and pregnancy rates, and higher unemployment and adult incarceration rates."<sup>40</sup> Quoting the May 2003 "Juvenile Corrections Forecast" the report continued, "Although the majority (76.5%) of commitments were white males, the percent of black males committed to corrections was six times greater than the percent of black males in the general West Virginia juvenile population."<sup>41</sup>

The report quoted an article from *The Charleston Gazette* summarizing and explicating results from the 2000 U.S. Census Bureau report.

[M]ore than one-third of the people behind bars in the Mountain State are black, though blacks make up only about 3 percent of the general population. In 10 years, the black portion of people behind bars has jumped more than 10 percent . . . [and] [t]he rate is even higher among black women, who make up nearly 44 percent of the state's incarcerated females. Overall, 18 percent of the people behind bars in West Virginia are women . . . One out of every 16 black people in the Mountain State is behind bars. One out of every 10 black men is incarcerated. Comparatively, one out of every 255 white people is behind bars.<sup>42</sup>

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<sup>39</sup> West Virginia Office of the Secretary of Education and the Arts. "Governor's Minority Students Strategies Council: Minority Students' Achievement in West Virginia" Kusimo, Patricia S., Patricia Petty-Wilson and Troy Body. (Charleston, WV: 2004).

<[http://www.allwvstudents.org/minority\\_students\\_achievement.pdf](http://www.allwvstudents.org/minority_students_achievement.pdf)>.

<sup>40</sup> West Virginia Office of the Secretary of Education and the Arts.

<[http://www.allwvstudents.org/minority\\_students\\_achievement.pdf](http://www.allwvstudents.org/minority_students_achievement.pdf)> p. 17.

<sup>41</sup> West Virginia Office of the Secretary of Education and the Arts.

<[http://www.allwvstudents.org/minority\\_students\\_achievement.pdf](http://www.allwvstudents.org/minority_students_achievement.pdf)> p. 17 *quoting* West Virginia Division of Criminal Justice Services Criminal Justice Statistical Analysis Center and The George Washington University Institute on Crime, Justice and Corrections. Juvenile Corrections Forecast 2002-2013. Hutzel, Laura, Theresa Lester, and Wendy Naro. (West Virginia: 2003).

<sup>42</sup> Bott, Rachelle. "Incarceration Rate Much Higher for Blacks than Whites Census 2000 'West Virginia Counts.'" The Charleston Gazette. 18 July 2001. 1A.

According to the Council's report,

As the academic achievement of African-American youth continues to lag behind their non African-American peers, the incarceration rates for African-Americans, both juvenile and adult, continue to increase . . . The unemployment rate for African-American teenagers in West Virginia is at least 50% compared to an overall teenage unemployment rate of 24.6, 25.2, and 27.3 in 1995 through 1997, respectively<sup>43</sup> . . . To reverse these trends and improve the situation, West Virginia's educational system must meet the educational needs of its African-American youth more effectively. If education does not work for African-American youth in West Virginia, then they have no hope, and the current trends are likely to accelerate and worsen.<sup>44</sup>

## MAACK

Maximizing the Achievement of African-American Children in Kanawha (MAACK)<sup>45</sup> was a pilot project created when the Kanawha County school system noted that while Kanawha County comprised the highest percentage of African-American students in the state (10%), that in 2001, only 34% of these students achieved a basic skills standardized test score that fell above the fiftieth percentile. To address this achievement gap, the Kanawha County School Board enlisted the help of the Appalachia Education Laboratory, Inc. (AEL). AEL, now known as Edvantia, was then one of twenty nonprofit organizations formed under Title IV of the federal Elementary and Secondary Education Act, having the purpose of linking educational research and school personnel.<sup>46</sup>

The AEL started MAACK in 2001, as a two-pronged initiative involving a school pilot project and a community initiative project. The Kanawha County School Board chose four schools to participate in the pilot program, at which facilitators from AEL introduced "culturally responsive instruction" to teachers who were to implement the instruction in their classrooms. The three MAACK objectives were to

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<sup>43</sup> West Virginia Office of the Secretary of Education and the Arts. "Governor's Minority Students Strategies Council: Minority Students' Achievement in West Virginia" Kusimo, Patricia S., Patricia Petty-Wilson and Troy Body. (Charleston, WV: 2004) *quoting* Merrifield, Edward, Retired Director of the Research, Information and Analysis Division of the BEP, letter to Ms. Debra Hart, former Director of the West Virginia EEO. 2 April 1999.

<sup>44</sup> West Virginia Office of the Secretary of Education and the Arts. "Governor's Minority Students Strategies Council: Minority Students' Achievement in West Virginia" Kusimo, Patricia S., Patricia Petty-Wilson and Troy Body. (Charleston, WV: 2004). p. 18.

<sup>45</sup> Except where otherwise noted in this subsection, the information on MAACK came from AEL, Inc. "Measuring Treatment Integrity: Testing a Multiple-Component, Multiple-Method Intervention Implementation Evaluation Model." (Charleston, WV: 2004). Evaluation, 2004, the 18<sup>th</sup> Annual Conference of the American Evaluation Association. (Atlanta, GA, November 3 - 6, 2004).

<sup>46</sup> History of Edvantia. 20 August 2007.

<<http://www.edvantia.org/about/index.cfm?&t=about&c=history>>.

1. Improve academic performance of all students, particularly African-American students, many of whom were of low socio-economic status, receiving free or reduced lunch.
2. Improve academic environment/school climate for all students, particularly for African-American students; and
3. Build the capacity and commitment of pilot schools personnel to learn and improve their professional practices.

The facilitators worked with the schools for two years and conducted a formal study of its results in 2004. Through journal entries kept by participants and interviews with principals and educators, AEL analyzed the results of MAACK and published their findings. The nature of the feedback from participants was mixed, although most reports were positive.

According to a previous draft of this report, the community initiative component of MAACK included the following activities:

- Organizing forums during which community members could meet with school board candidates and ask questions;
- Holding dialogues with school district superintendents and other officials to learn about district practices and to allow district officials to hear community views;
- Lobbying the state legislature to establish professional development schools in up to ten counties;
- Training parents of children receiving special education services for participation in shaping their children's school plans;
- Working with media to report information about the achievement gap;
- Working with parents and with school improvement councils to increase effective parent involvement; and
- Tutoring students in mathematics to prepare them for more rigorous courses.

### **“Work it Off”: a Prosecutorial Diversion Program**

Greenbrier County Prosecutor Kevin Hanson was instrumental in creating the “Work it Off” program to provide an out-of-court option for dealing with certain minor juvenile offenses (such as underage drinking, smoking, shoplifting, petit larceny, certain traffic offenses, and slight batteries perpetrated in school fights). First, a juvenile charged with an offense that falls within the program's parameters receives a letter from the

prosecutor's office informing the juvenile of his or her program eligibility. The letter explains that participants may choose from among several different community programs, including the sheriff's department, the courthouse, the recycling center, the local domestic violence center, or, in some instances, the local landfill.

Further, the letter indicates that failure to respond will result in a juvenile petition being brought and full prosecution going forward. Most juveniles respond favorably. They work between eight to forty hours, depending on the offenses and number of charges. Parents and legal representatives must agree to allow participation. So far, participating youth have painted, mowed yards, cleaned, repaired items, washed police cruisers, and performed other services. Most participants were grateful for the chance to substitute community service for having a criminal record. In instances of successful program completion where the juvenile's participation is certified by an agency supervisor, a petition will not be filed in circuit court.

# CHAPTER 5:

## TASK FORCE FINDINGS, RECOMMENDATIONS, AND CONCLUSIONS

### Overview of West Virginia Juvenile Data Analysis Findings

Dr. Michael Lindsey, when presenting at a July, 2005, public policy forum on young men of color, suggested that a “question often raised . . . asks, ‘Doesn’t this overrepresentation exist only because minority youth commit more crimes?’”<sup>47</sup>

The answer -- from the analysis of West Virginia’s juvenile records – is no. White youth commit more crimes. Minority youth commit more *serious* crimes. Regardless, considering the seriousness of the offense, prior record, age and gender, minorities are treated more harshly at three out of four stages of the juvenile justice process analyzed in the report prepared by Dr. Stephen M. Haas. Race is still important in deciding outcomes, and it affects decision-making at multiple stages of the process.

Some national and state figures indicate that disparity starts with arrests and recommendations for court action, and escalates throughout the court system.<sup>48</sup> Similar to national findings, Dr. Haas’s report found that disparity does not accumulate successively. Instead, Dr. Haas noted that minorities were treated more harshly at the earlier stages, while an adjustment was made at the adjudication stage. A greater proportion of non-white youths’ cases were dismissed at the adjudication stage.<sup>49</sup>

Additionally, among juveniles who reach the formal disposition stage, minorities were more than twice as likely to be sentenced to DJS custody than white juveniles. Further analysis may be required regarding earlier stages in the juvenile justice process, compared to the adjudication stage. Problems arise if dismissals result from disparity in the earlier process, although charges may meet the probable cause standard but are ultimately too difficult to prove.

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<sup>47</sup> Lindsey, Dr. Michael. The Impact of Waivers to Adult Court, Alternative Sentencing, and Alternatives to Incarceration on Young Men of Color. (Bellums Commission and the Joint Center Health Policy Institute, 2005).

<sup>48</sup> Haas, Stephen M., Ph.D. “Racial Disparity and the Juvenile Justice Process: A Multi-State Analysis for the State of West Virginia.” (Huntington, WV: State Justice Institute, 2004) 32, *citing* Pope, C.E., R. Lovell, and H.M. Hsia. Disproportionate Minority Confinement: A Review of the Research Literature from 1989 through 2001. (Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 2002). Attached hereto as Appendix 7.

<sup>49</sup> Haas 28.

Also, dismissals may result from effective plea negotiations. In West Virginia, if a case remains in juvenile court, there is no advantage for the state to seek multiple convictions, as jurisdiction ends at a future date regardless of the sentence. The limited use of enhancement for future transfers is not normally enough of an incentive for prosecutors to seek multiple convictions. For these and other reasons, further analysis is needed.

Despite the “adjustment” element, it would be better for youth to avoid involvement in the juvenile justice system from the onset. Psychological, physical, and financial burdens can accompany a juvenile’s experience from having been processed through the system. The longer the juvenile is involved in the justice system, the more potential there is for compounding negative effects.

## **Findings and Recommendations from the Juvenile Records Analysis (JRA)**

The following recommendations are directed to the Court, unless another agency or organization is separately designated. Except where otherwise noted, the findings in this section are taken from the Haas Report and were made following the extensive research and work of the Task Force. Please note that after various drafts of this report, this section has been reordered and renumbered for sequential consistency and for elimination of duplication and redundancy.

### **JRA Finding 1**

Minority youth were overrepresented by approximately 2.0% - 3.0% in relation to their proportion in the general population at the point of intake.<sup>50</sup>

### **JRA Finding 2**

Non-white youths are more than twice as likely than whites to be detained prior to adjudication<sup>51</sup>.

### **JRA Finding 3**

At the formal disposition stage, non-white youths were *more* likely to be sentenced to a secure corrections facility. Non-white youths were nearly twice as likely as white youths to be sentenced to DJS custody or transferred to adult court.<sup>52</sup>

## **Recommendations for JRA Findings 1 - 3**

- Review existing assessment tools currently in use in West Virginia’s juvenile justice system to determine conformity to legal standards.

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<sup>50</sup> Haas 20.

<sup>51</sup> Haas 21.

<sup>52</sup> Haas 22.

- Use a statewide uniform risk assessment detention-screening instrument at the magistrate level to help guard against racial bias and assure consistency across jurisdictions when processing youth.

#### **JRA Finding 4**

Non-white youths (in the juvenile justice system) were significantly more likely to come from single parent homes and more likely to receive a disposition to alternative educational settings.<sup>53</sup>

#### **JRA Finding 5**

Non-white youths were significantly more likely to be younger at the time of the offense and intake into the juvenile justice system.<sup>54</sup>

#### **JRA Finding 6**

Non-white youths referred to juvenile probation had higher incidences of prior arrests, were more likely to have a prior adjudication for delinquency, and were more likely to have previously served time on probation.<sup>55</sup>

#### **JRA Finding 7**

Regardless of race, the frequency and severity of a youth's prior record and the severity of a youth's current offense were significant predictors of disposition outcomes at each stage of the juvenile justice process.<sup>56</sup>

#### **Recommendations for JRA Findings 4 - 7**

- Develop diversion resources specifically targeted to single-parent families.
- Create a process for referring at-risk children from the alternative educational settings to appropriate agencies and programs.
- Identify alternative programs or persons for law enforcement to contact if the parents or guardians of a youth in custody or arrested cannot be located, or cannot or will not accept responsibility for the juvenile.
- Analyze crime reports to identify factors contributing to disparate decisions by law enforcement personnel to arrest, refer and detain minority youth.

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<sup>53</sup> Haas 20.

<sup>54</sup> Haas 21.

<sup>55</sup> Haas 83.

<sup>56</sup> Haas 21.

Increase “early” prevention programs. Studies show the earlier a family is given support and education, even with infants, the less likely a child will become involved in the juvenile justice system.<sup>57</sup>

### **JRA Finding 8**

Minority youths tended to be referred to juvenile probation for more serious delinquent offenses compared to white youths. While non-white youths were *less* likely to be referred to juvenile probation for a status offense, they were *more* likely to be referred for violent or felony offenses. Note, however, that a lack of uniformity among jurisdictional approaches to handling status offenders renders this data incomplete.

### **Recommendation for JRA Finding 8**

Collect and analyze additional data at each stage in the juvenile justice system

### **JRA Finding 9**

Age and gender were significant predictors for many outcomes at multiple stages. Older males were typically treated more harshly at each stage of the process.<sup>58</sup>

### **JRA Finding 10**

Non-white youths were more likely to receive harsher dispositions at the informal disposition, pre-dispositional detention, and formal disposition stages.<sup>59</sup>

### **JRA Finding 11**

At the informal disposition stage, non-white youths were significantly more likely to have their cases closed or to have their complaints withdrawn rather than being offered probation. With status offenses, non-white youths were more likely than whites to receive an informal disposition; however, where charged with a misdemeanor or felony offense, white youths were more likely to have their cases either withdrawn or referred to community agencies for disposition.<sup>60</sup>

**Comment:** The informal disposition decision point is a very important stage for determining the contact a youth will ultimately experience with the juvenile justice system. The JRA finding related to informal supervision through probation should be further explored. If disparity could be reduced here, it may reduce disparity at later

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<sup>57</sup> Diefendorf, Martha and Susan Goode. “The Long Term Economic Benefits of High Quality Early Childhood Intervention Programs.” University of North Carolina, Chapel Hill, 2004. National Early Childhood Technical Assistance Center <[www.nectac.org/~pdfs/pubs/econbene.pdf](http://www.nectac.org/~pdfs/pubs/econbene.pdf)>. (2004).

<sup>58</sup> Haas 21.

<sup>59</sup> Haas 21.

<sup>60</sup> Haas 21.

stages. Once referred, if the cases are not immediately closed or charges withdrawn, then non-white youths are less likely to receive probation.

### **Recommendation for JRA Findings 10 – 11**

Examine why and how often minority youths are referred to informal supervision.

### **JRA Finding 12**

Non-white youths were significantly more likely to have their cases simply dismissed at the adjudication stage. Non-white youths were 45.9% *less* likely to be adjudicated not a status offender or delinquent, 49.1% *less* likely to be successfully adjudicated as a status offender, and 43.6% *less* likely to be successfully adjudicated as a delinquent compared to having their cases dismissed.<sup>61</sup>

### **Recommendation for JRA Finding 12**

Collect and analyze additional data at each stage in the juvenile justice system.

### **JRA Finding 13**

Regardless of race, youths detained prior to adjudication were over *eight times* more likely to be referred to DHHR or placed in DHHR custody; over *four times* more likely to be sentenced to probation; and over *fourteen times* more likely to be placed in DJS custody or transferred to adult court.<sup>62</sup>

**Comment:** Because of this finding, the recommendation addressing assessment tools related to JRA Findings 1 through 3 has heightened importance.

### **JRA Finding 14**

Since non-white youths are more than twice as likely to be detained prior to adjudication, we can conclude that race is likely to have a significant indirect effect on case outcomes at the adjudication and formal disposition stages.<sup>63</sup>

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<sup>61</sup> Haas 21.

<sup>62</sup> Haas 22.

<sup>63</sup> Haas 22.

## **Recommendations from the Development Services Group (DSG) site visits**

What follows are recommendations for the Court gleaned from the Development Services Group (DSG) report following their site visits.<sup>64</sup>

### **DSG Recommendation 1 -Regarding Data Collection**

The DCJS should ensure that the study of processing and confinement practices captures all police contacts through Uniform Crime Reports or police logs.

### **DSG Recommendation 2 - Regarding Data Collection**

Data collection should capture referrals of status offenders to DHHR that did not result in petition filings.

### **DSG Recommendation 3 -Regarding Data Collection and Analysis**

Existing detention screening criteria used in the state should be examined, along with national standards for detention screening. Results should then be analyzed to determine the best screening tool for West Virginia. Depending on the results of these analyses, decisions (based upon West Virginia's criteria) may fairly process juvenile offenders into secure detention, or they may require revision to ensure fair and equitable outcomes that limit secure admissions to serious and chronic offenders who either pose a danger to public safety or who fail to appear for court hearings.

### **DSG Recommended Framework for Task Force Continuation**

DSG recommendations 4 - 9 consist of the Group's recommended framework for guiding the Task Force's continuing efforts. If the Court chooses to adopt this framework, the study will require additional funding and resources since the scope and level of work is more expansive than was anticipated.

### **DSG Recommendation 4 - Prepare a DMC Literature Overview**

An overview of the literature is very important because it will help circumvent defensive reactions to study findings by exposing DMC as a national problem -- not just a "West Virginia problem." An overview would document self-report findings for those who believe that DMC is solely the result of more serious offenses by minority juveniles.

### **DSG Recommendation 5 - Determine the Extent of Overrepresentation.**

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<sup>64</sup> Fedeli, Joseph. Final Report: Assisting the Task Force to Study Racial Disparity in the Juvenile Justice System in Developing a Plan of Action to Target DMC Reduction, Formula Grants Training and Technical Assistance Contract. (Bethesda, Md., DSG, 2003) 4 - 7. Attached hereto as Appendix 8.

This determination is critical, as it would expose the extent to which minorities are overrepresented at different decision points in the system. These findings will document the need for the other research phases. This would be the most labor-intensive and expensive component of the project; however, it should show where disparities actually exist and where apparent disparities are otherwise neutral. The assessment would involve interviews with juvenile justice practitioners about how they make decisions involving secure detention and correctional confinement and is critical for identifying those areas requiring changes to reduce DMC. Note that the Task Force made this determination as to the extent of overrepresentation in 2004.

### **DSG Recommendation 6 - Examine Juvenile Offenders' and Community Perceptions**

Such an examination would provide useful insights into how minority juveniles are treated that might not be revealed through the quantitative research (*e.g.*, police gate-keeping, correctional staff handling, etc.).

### **DSG Recommendation 7 - Conduct Practitioner Forums**

Practitioner forums would enable researchers to (1) share study findings with juvenile justice system practitioners, (2) gain insights into those factors that practitioners believe are contributing to any observed disparities, and (3) identify practitioner suggestions for addressing DMC. Forums also facilitate practitioner “buy-in” through participation in addressing DMC. Sharing research findings through such forums is essential.

### **DSG Recommendation 8 - Collaborate with Other State Agencies**

Additionally, the DSG recommended that the Task Force approach education and child welfare agencies about conducting their own studies of DMC (as the State of Colorado has done). Leading state agencies to develop an interest in the issue could help build a significant force supporting fair and equal justice.

### **DSG Recommendation 9 - Adjust Task Force Membership**

The Task Force should add members including community citizens as well as education and child welfare personnel, and substance abuse service representatives.

The Task Force agrees that for any jurisdiction to be successful, all key partners that work with youth must be involved, and their concerns must not be territorial. A discussion of racism cannot be successful if it causes frustration or a derailing of enthusiasm for the work. The participants must also share resources.

## **Summary of the Juvenile Court Stakeholders Survey Results**

The report prepared by Dr. Stephen Haas explained that despite a number of studies focusing on the issue of racial disparity that have found there to be differences in the treatment of white and non-white youth, that fewer studies have examined the *mechanisms* by which racial differences become important in influencing juvenile justice decisions. According to Dr. Haas, who cited support for his assertions in the attached report, evidence suggests the perceptions of court officials may contribute to differences

in processing between white and non-white cases. Paraphrasing Dr. Haas, juvenile court stakeholders' individual perceptions of cultural differences between white and non-white youths may influence their professional judgments, and an examination of these varying perceptions and the underlying reasons for their existence may determine how, if at all, they affect the outcomes of juvenile cases.

Dr. Haas reported that

*The 2003 Survey of Juvenile Court Stakeholders* was designed to measure juvenile stakeholders' perceptions regarding differential treatment of minorities and to record the personal observations and experiences of court officials. The purpose was to better understand [sic] stakeholders' perceptions of case-processing differences between white and non-white youths . . . and to determine criteria stakeholders deemed influential to case outcomes.<sup>65</sup>

Part of the Task Force's analysis included examining "offender and offense characteristics and the extent to which stakeholders considered them to be most important for influencing the outcomes of cases referred to the juvenile justice system."<sup>66</sup>

A total of 768 surveys were mailed to juvenile justice stakeholders in West Virginia, including one hundred judges, 158 magistrates, 178 probation officers, 129 public defenders, and 203 prosecutors. A total of 468 surveys were returned, for a response rate of 60.9%. Of the 468 returned surveys, thirty-six were returned with no responses. Unless otherwise noted, the following findings from the survey are drawn from the Haas report.

## **Major Findings from Juvenile Court Stakeholder Survey and Related Recommendations**

### **Survey Finding 1**

Approximately one-quarter of all probation officers, prosecutors, and judges reported that they perceived the presence of racial disparity in the juvenile justice system. Of these stakeholders, probation officers were least likely to perceive the presence of racial disparity.

**Comment:** This finding indicates that many stakeholders do not perceive the presence of racial disparity in the juvenile justice system. While this finding may indicate a need for training, it may also indicate a need for further analysis to quantify DMC accurately.

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65 Haas 22 – 23.

66 Haas 23.

## **Survey Finding 2**

More than ten percent of prosecutors (11.2%) and judges (11.8%) indicated that minority youths were referred to court more frequently than white youths for the same offense at least “sometimes.” This was compared to only 5.2% of probation officers.

## **Survey Finding 3**

Thirty percent of all probation officers (29.5%), prosecutors (32.2%), and judges (30.0%) indicated that informal dispositions were more common for white offenders. Fewer than fifteen percent of prosecutors (13.3%) and judges (13.2%) reported that informal dispositions were more common for white offenders at least “sometimes.”

More than four percent (4.2%) of all probation officers indicated that informal dispositions were “usually” or “always” more common for white offenders.

## **Survey Finding 4**

Compared to other court stakeholders, public defenders were more likely to perceive the presence of racial disparity. More than fifty percent (54.7%) of public defenders reported that white youths get sentenced more leniently than non-white youths for the same offense. Nearly sixty percent (58.9%) stated that minority youths were referred or petitioned to court more often than white youths, and *more* than sixty percent (61.6%) reported that informal dispositions were more common for white offenders.

## **Survey Finding 5**

More than 10.0% of all juvenile justice stakeholders had directly observed racial bias on the part of probation officers, public defenders, prosecutors, and judges. Between 11.0% and 14.0% of all survey respondents reported witnessing racial or ethnic bias influencing official decisions made by juvenile justice officials.

## **Survey Finding 6**

Levels of perceived racial disparity varied by type of stakeholder, education level, race, and region or county of employment. Mean levels for the perception of racial disparity were significantly higher for public defenders, those with doctorate degrees, and non-white stakeholders.

## **Survey Finding 7**

Stakeholders who were employed in urban counties located in the southern federal judicial district were significantly more likely to perceive the presence of racial disparity in the juvenile justice system.

## Recommendations for Survey Findings 1 - 7

- Develop criminal justice and court information systems that include a means for documenting bias and discrimination in all areas of the system. At a minimum, information on gender and racial/ethnic background should be available. Note that these issues are currently being addressed, focusing on the existing Juvenile Justice Database (JJDB) and the forthcoming Uniform Judicial Application (UJA).
- Provide training and host dialogues involving those who have contact with youth at every level of the juvenile justice system to broaden understanding of the issues surrounding minority over-representation.
- Provide cultural competency and diversity training for all court personnel and youth service providers, especially those in areas with higher minority populations. Integrate diversity training into the educational programs of all judicial officers and court personnel. The issue of bias and discrimination should be addressed in all relevant courses as appropriate.

**Comment:** Training has been provided for various court employees over the last three years. As previously noted, in the fall of 2005, Dr. Michael Lindsey facilitated a *Train-the-Trainers* program funded by a grant from the State Justice Institute.

## Survey Finding 8

More than twelve percent (12.6%) of stakeholders felt that race was an important factor for influencing decisions at the intake stage. Ten percent of survey respondents indicated race might influence official decisions at the predispositional detention stage. These results were closely followed by the formal disposition stage (8.6%), the informal disposition stage (7.6%), and the adjudication stage (6.7%).

## Recommendations for Survey Finding 8

- Collect and analyze additional relevant data at each stage in the juvenile justice system.
- Conduct an annual analysis of data and report on the degree to which improvements have been made in over-representation of minority youth in West Virginia's juvenile justice system.<sup>67</sup>

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<sup>67</sup> Sharlip, C. Charleston Public Safety Council Youth Task Force and Community Development Outreach Ministries. Minority Youth And Juvenile Justice In West Virginia. (Charleston, WV, 2001).

## **Survey Finding 9**

The point of intake was deemed to be the stage “most susceptible” to racial bias, as 27.1% of juvenile justice stakeholders *perceived* that the intake stage was most susceptible to the influence of race.

## **Survey Finding 10**

The use of a weapon, the extent of injury to the victim, and adequacy of parental supervision were regarded as being the most important offender and offense characteristics for influencing case outcomes at both the predispositional detention and the formal disposition stages.

## **Survey Finding 11**

The least important offender and offense characteristics thought to influence case outcomes included gender, scores on need assessments, time spent in detention, and the value of property stolen or damaged.

The Recommendations for Survey Findings 9 - 11 are identical to those for JRA Findings 1, 10 and 12, above.

## **Town Meeting Qualitative Analysis Report**

The Town Meeting Qualitative Analysis Report summarizes various viewpoints gathered from eight town meetings held throughout West Virginia during the fall and winter of 2003.<sup>68</sup> The summary portion of the report lists nine broad themes that reoccurred when town meeting participants proffered solutions to reducing and eliminating DMC, as follows:

- Develop a complaint system;
- Develop an objective assessment system;
- Develop a data collection system;
- Improve judicial policies and procedures;
- Improve access to services;
- Increase training requirements;
- Increase accountability;
- Add minorities to the juvenile justice workforce; and
- Encourage community involvement.

What follows are the explicated recommendations from the town meetings and proposed solutions for their enactment. Unless otherwise noted, the recommendations and strategies are drawn from the Town Meeting Qualitative Analysis Report.

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<sup>68</sup> As previously noted, the Town Meeting Qualitative Analysis Report is attached hereto as Appendix 6.

## **Town Meeting Recommendation 1 -- Develop a Complaint System**

The lack of a complaint system for documenting allegations of disparate treatment came up at more than one town meeting. Some juvenile respondents' family members who felt they had been treated unfairly recommended a court system complaint process; a joint legislative investigative committee; and a citizens' committee to review statistics and cases. Town meeting participants also recommended executing protocols to ensure uniformity of practices throughout the state.

### **Strategies for Developing a Complaint System**

- Appoint a liaison or DMC coordinator to “facilitate and formalize” communications between the court system and various state agencies and private groups for the accumulation and sharing of data; for program development; for identifying sources of grant money; and for sharing resources. Note that Ms. Angela Saunders, the Director of the Court Services Division of the Administrative Office of the Court, is collaboratively planning with the DCJS to employ an entirely grant-funded DMC coordinator.
- Employ an Oversight Coordinator (Ombudsman) to identify systemic problems in the investigation, treatment, and resolution of cases involving juvenile delinquency; recommend administrative or legislative changes necessary to address these problems; provide technical assistance to local or regional MDTs in coordination with DHHR staff; refer specific cases to an attorney for an independent decision as to whether to appoint a *guardian ad litem*; perform random compliance audits on the use of MDTs and case plan filing; and ensure compliance with deadlines, statutes and procedural rules in juvenile delinquency cases.
- Educate parents and youth about the judicial process, including their rights and responsibilities.
- Provide Juvenile Law 101: West Virginia Juvenile Law and Procedure to relevant personnel and law enforcement, students and other interested public.
- Publish a meaningful, clear, unified process for public and employee complaints.

## **Town Meeting Recommendation 2 -- Develop an Objective Assessment System**

An objective assessment process was suggested to help eliminate disparity.

## **Recommended Strategies for Developing an Objective Assessment System**

- Develop valid, reliable tools for making placement decisions among alternative programs, ensuring that evidence-based programs with varying levels of restrictiveness and different types of services are available.

Note: According to Alternatives to Secure Detention and Confinement of Juvenile Offenders, Juvenile Justice Practice Series Bulletin (September 2005), secure detention and confinement should be a last resort used only for serious, violent, and chronic offenders and for those who repeatedly fail to appear for scheduled court hearings.

- Use a statewide, uniform risk-assessment detention-screening instrument at the magistrate level to help guard against racial bias and assure consistency across jurisdictions when processing youth.
- Assess whether existing diversion, prevention and intervention programs are applied consistently to minority youth.

## **Town Meeting Recommendation 3 -- Develop a Data Collection System**

Another common theme arising in the various town meetings was the lack of complete and reliable statistics providing information on the extent and nature of disparity.

## **Recommended Strategies for Developing a Data Collection System**

- Collect data at the earliest point of juvenile system contact, including situational context and demographic information.
- Communicate with the Department of Education and child welfare agencies regarding their own studies of DMC.
- Assess system processes to determine where disparities exist and any situations or system points where apparent disparities are neutral due to other factors. This should involve interviews with juvenile justice practitioners about how they make decisions involving secure detention and correctional confinement.
- Perform additional research to inform the court as to the causes and extent of racial disparity in the system at various decision points.

- Analyze juvenile offenders' and community perceptions regarding how minority juveniles are treated as opposed to using exclusively quantitative research methods.
- Participate in practitioner forums to enable researchers to complete the following objectives: 1) share study findings with juvenile justice system practitioners; 2) gain insights into factors that practitioners believe are contributing to any observed disparities; and 3) identify practitioner suggestions for addressing DMC.
- Monitor all implementation of recommendations.
- Continue analysis on data gathered.

#### **Town Meeting Recommendation 4 -- Improve Judicial Policies and Procedures**

Another system-related theme that emerged during town meetings was the need for improved judicial policies and procedures. Participants recommended opening juvenile proceedings; encouraging judges to write their own orders; improving court system protocols and implementing them uniformly throughout the state; changing federal sentencing guidelines; and improving the quality of public defender services.

**Comment:** West Virginia juvenile law is complex; and the state court system is the product of a long history of research, study, and interpretation. Any single change would have a ripple effect throughout the system. Current law protects juveniles and provides enhanced rights to citizens under the age of eighteen. Some Task Force members do not believe it is in the best interest of the juvenile to open juvenile proceedings; to encourage judges to write their own orders; or to recommend that the quality of public defender services needs improvement. This does not mean that our law is perfect as is; rather, it means that any changes should happen as a result of evidence-based research that has a proven correlation to DMC reduction. However, the Task Force was charged to study "perceived" racial disparity in the juvenile justice system, so public perceptions must be addressed.

#### **Recommended Strategies for Improving Judicial Policies and Procedures**

- Create a Juvenile Justice Bench Book to provide uniform guidelines, rules and standards that include assessment tools and mechanisms to help guard against racial bias and inconsistency across jurisdictions when processing youth.
- Train court personnel on the information in the Juvenile Justice Bench Book.
- Identify for elimination or modification the laws and policies of the courts and juvenile probation that impose an adverse, disparate impact on minorities that is either unnecessary or unjustified.

- Network with other judicial groups addressing DMC.

### **Town Meeting Recommendation 5: Improve Access to Services**

The town meeting notes provided suggestions for improved and additional prevention and intervention services. Specific service categories that were suggested included early prevention, mentoring, opportunities for positive recreation, school bonding, earning spending money, placement alternatives, and character education in schools.

#### **Recommended Strategies for Improving Access to Services**

- Expand existing alternatives for juvenile offenders to ensure that evidence-based programs with varying levels of restrictiveness and different types of services are available.
- Analyze geographic data regarding program availability to determine if a lack of programs in certain areas causes higher percentages of minority juveniles to enter the system earlier.
- Provide a continuum of youth services in every geographic area, including prevention, diversion, intervention, treatment, sanctions, and aftercare programs. To effectuate this strategy, availability of services in all circuits should be analyzed to identify underserved areas. The Youth Funding Study, supported by the West Virginia Prevention Resource Center, DCJS Grant, has the requisite available data for accomplishing this and could be used for examining specific circuits.
- Provide accessible youth rehabilitation programs.

### **Town Meeting Recommendation 6 -- Increase Educational Opportunities**

Town meeting participants suggested increasing the training requirements for judicial officers, educators, law enforcement officers, juveniles, and their families.

#### **Recommended Strategies for Increasing Educational Opportunities**

- Provide cultural competence and diversity training to court personnel and youth service providers, especially those who serve areas with a high minority population. Integrate issues on bias, discrimination, and diversity into every educational program for judicial officers and court personnel.
- Train judges on monitoring and reducing DMC in the juvenile justice system. Training materials are available from the National Council of Juvenile and Family Court Judges.

- Educate the public in juvenile law and procedure so that citizens understand the role of courts and their rights and responsibilities in the court system.
- Collaborate with the Department of Education to help close the achievement gap for minority students.
- Create a DMC website link for providing relevant data and information on the Court's web presence.
- Inform the public and media on the issue of DMC trends in statistical and annual reports.
- Provide information through reports, educational materials, and media forums to explain the difference between public perceptions and facts based on research regarding juvenile justice.

### **Town Meeting Recommendation 7 -- Increase Accountability**

Themes related to accountability arising during the town meetings included increasing *parental* accountability to encourage responsiveness to pre-delinquent activities, improving parenting skills, increasing accountability of the education system regarding disparity issues, and eliminating disadvantageous disparity in all public service systems.

#### **Recommended Strategies for Increasing Accountability**

- Conduct an annual analysis of data, and report on the degree to which improvements have been made in DMC in West Virginia's juvenile justice system.
- Create alternative programs or points of contact for law enforcement if parents or guardians of a youth in custody cannot be located, or cannot or will not accept responsibility for the juvenile.
- Require parental restitution for crimes perpetrated by juveniles.

### **Town Meeting Recommendation 8 -- Add Minorities to the Juvenile Justice Workforce**

The lack of minorities in the juvenile justice and social services fields was mentioned at every town meeting. Some recommendations to increase the number of minorities in the workforce included improving pay, benefits, and working conditions, and improving recruiting practices.

## **Recommended Strategies for Adding Minorities to the Juvenile Justice Workforce**

- Increase the number of minorities in the judiciary and in key decision-making positions within the juvenile justice system to reflect the population of juveniles being served.
- Participate in events intended to target minorities in the workforce; for example, send Court representatives to career fairs, and advertise jobs on diversity websites and in magazines.
- Explore scholarship provision avenues specifically targeting minority students in the fields of criminal justice, law, and law enforcement. Collaborate with professional associations and historically black colleges, and coordinate publicity campaigns.

## **Town Meeting Recommendation 9 -- Encourage Community Involvement**

Community members agreed that they needed to demonstrate a more active interest in making the community a better place for everyone. Specifically, local faith-based and nonprofit organizations were mentioned as having effective youth programs; and town meeting participants said that with proper encouragement and resources, these could expand and improve to serve more children.

## **Recommendations for Encouraging Community Involvement**

- Develop and implement a collaborative plan for law enforcement agencies, schools, behavioral health care providers, social service providers, and religious and community organizations, to create partnership programs for addressing DMC, paying particular attention to the system's early stages.
- Ask other stakeholders such as youth and town meeting participants to attend meetings and/or host focus groups.
- Publish a guide for families to explain the juvenile justice system such as Navigating the Juvenile Justice System: A Handbook for Juveniles and their Families, Texas, Second Edition, January, 2004.
- Include in the Court's annual report any relevant juvenile justice issues and various training provided by the Court during the year.

## **Select Committee B Recommendations**

The following recommendations for program development were compiled (with the assistance of the Reverend Matthew Watts and the DCJS) for a 2004 report prepared on the activities of Select Committee B on Minority Issues appointed by the West Virginia Legislature's Joint Committee on Government and Finance.

The committee recommended developing programs for the following:

Education on building character, leadership development, career choices, tutoring, mentoring and abstinence taught in schools;

Education on the dynamics of the free enterprise system and instruction on how to start a business;

Sentencing alternatives for non-violent juvenile offenders;

Transition and re-entry for juvenile offenders;

Community activities on recidivism reduction; and

Education and training for those who have contact with youth at every level of the juvenile justice system, including law enforcement, probation, juvenile referees, judges, prosecutors, attorneys, detention and correctional officers, agency staff, caseworkers, social service providers, and members of the community.

Further, Select Committee B recommended providing funding for the following:

The "front end" of juvenile problems (prevention and intervention); and

Programs and sentencing options that can be more effective in diverting all youth from additional processing through and contact with the juvenile justice system.

### **Task Force Recommendations Conclusion**

The following conclusions are excerpted from the Haas Report.

[The research methods employed by the Task Force] provided . . . information regarding the nature and extent of racial disparity in the West Virginia juvenile justice system. The analysis of official juvenile records helped us identify the stages of the juvenile process in which race plays a significant role in influencing case outcomes. [The Task

Force was] able to compare successive decision points in the juvenile process and [to] assess the magnitude of the race effect from stage to stage . . . [The Task Force was] also able to assess the relative importance of legal variables such as the frequency and severity of a youth's prior record and the seriousness of the current offense on predicting case outcomes.

Far fewer studies have focused on the individual perceptions and experiences of professionals who work in the system. As a result, less is known about how stakeholders' . . . perceptions of youth affect case processing decisions, or which offender and case characteristics are deemed to be most important for swaying the judgments of court officials. [The Task Force's] analysis of the survey results offered a glimpse into the individual perceptions and experiences of court officials. Accordingly, this research provided a measure of the extent to which racial bias or disparity was perceived to be present in the system . . . Lastly, our examination of both official juvenile records and survey responses allowed us to assess the congruence between what is *actually* occurring in the processing of juvenile cases to what is *perceived* to be taking place by stakeholders. [Emphasis added].

. . . With that said, our results did show significant differences between white and nonwhite youths upon referral to juvenile intake . . . We believe future research should seek to better understand [sic] the differences in levels of risk [sic] and the types of needs that distinguish white and nonwhite youths referred to the system and how these differences influence the judgments of key stakeholders.

At the same time, we noted that nonwhite youths were referred to juvenile intake at a higher rate than white youths. Moreover, once these youths were referred to juvenile probation, they were also less likely to receive an informal disposition and more likely to be detained prior to adjudication. These findings, coupled with the evidence that nonwhite youths were more likely to have their cases dismissed at the adjudication stage, suggests [sic] that early processing decisions may be failing to identify appropriate cases for diversion, particularly when they involve minority youths. Thus, these results imply that greater attention to the decision-making processes at the early stages of the

system may be warranted. In particular, future efforts may find it useful to focus on the decision-making criteria and processes involved in determining which cases are appropriate for being handled in an informal manner.

Furthermore, despite finding the presence of racial disparity in the system, we believe it is equally important to point out where the system appears to be operating as we might expect . . . some evidence . . . suggests the juvenile process in West Virginia may have a built-in system of “checks and balances.” At the adjudication stage, our results revealed that an “adjustment” was taking place that served to offset some of the negative effects of racial bias in the system. Simply put, a greater proportion of non-white youths were getting their cases dismissed once they reach the adjudication stage. As noted previously, our present examination was not able to explain why non-white youths were more likely to have their cases dismissed rather than undergo a formal adjudication process. Since the reasons for this adjustment are not clear, future research should seek to better understand [sic] the factors that influence decision-making at the adjudication stage.<sup>69</sup>

### **Task Force Interim Report Conclusion: the Nation and the State Move Forward**

On January 17, 2005, West Virginia’s thirty-fourth governor, Joe Manchin, III, said during his inaugural address,

Research done by the America’s Promise program shows there are five promises that we should make to every child if we want them to grow into competent, caring adults. And those five promises are as follows: 1) Every child should have a caring adult in their lives; 2) Every child should have a safe place; 3) Every child should have a healthy start; 4) Every child should be taught a marketable skill; and, last but not least, 5) Every child should learn to be a caring adult and be given an opportunity to serve their communities.

I want my administration to be remembered for fighting hard every day to keep those five promises to our children because if we commit ourselves to keeping those five promises, everything else will fall into place.

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<sup>69</sup> Haas 194 – 198.

The sentiment expressed above provided a clear focus for the governor's administration. By taking these words to heart, the Supreme Court of Appeals of West Virginia, through its administrative authority, leadership, and active support, can assist in taking care of youths during their involvement with the judicial system.

Full implementation of the Task Force's recommendations will require participation by the governor, the legislature, the State Bar, the judiciary and other court personnel, county commissions, prosecutors, public defenders, sheriffs, and various committees, organizations, and governmental agencies.

The Task Force has purposefully avoided prioritizing the recommendations for several reasons. It was clear -- from the information gathered during data collection and from that provided during town meetings -- that each issue was urgent from the perspective of some stakeholder in the system. Some of the recommendations will involve substantial costs to implement; however, they may result in long-term savings. Available funding will determine in part the implementation schedule.

In its most recent Annual Report of the Federal Advisory Committee, the Coalition for Juvenile Justice reported, "Young people who receive inadequate education, who exhibit poor literacy skills or who are truant, disproportionately wind up in the juvenile justice system."<sup>70</sup> Further, in its position statement on Unequal Treatment of Minority Youth in the Juvenile Justice System, the Coalition explained that

Youth of color receive harsher sanctions than their white counterparts at every stage of the juvenile court system, from the point of surveillance (including racial profiling) to disposition/trial, sentencing and incarceration. Youth of color comprise more than two-thirds of the juveniles held in confinement, but less than one-third of the U.S. youth population.

African American youth are six times more likely to be locked up for person offenses and nine times more likely to be locked up for violent offenses as compared with white youth charged with the same types of offenses. Latino youth represent approximately 12% of the U.S. population, yet 15% of the youth population sentenced to adult prisons. Such inequalities are startling, prevalent and well-documented.

CJJ urges policy makers to craft solutions that motivate police, officers of the court and correctional providers to

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<sup>70</sup> Office of Juvenile Justice and Delinquency Prevention, Coalition for Juvenile Justice, Federal Advisory Committee. CJJ 2001 Annual Report: An Overview. (Washington, DC, 2001) 2.

ensure unbiased and rehabilitative treatment of all youth who come into contact with the justice system.<sup>71</sup>

Because it is recognized as an ongoing national crisis, the OJJDP employs continuous efforts to address DMC. From October 25 – 27, 2007, in Denver, Colorado, the OJJDP hosted an annual DMC conference, “Reducing Disproportionate Minority Contact in Juvenile Justice by Making the Right Connections.” The conference included a best practices mini-institute; training on the development and use of risk assessment tools – the development and use of which was a recommendation made to this Court by more than one source – and training in cultural competency.

New tools from the OJJDP include a DMC Best Practices Database and a National DMC Data Book. The office is seeking nominations of DMC-reducing strategies that have been proven effective for inclusion in the database. Further, the OJJDP provides a Model Programs Guide, available online, designed to help practitioners and community representatives implement prevention and intervention programs to help youth.

The revised JJDP § 223(a)(22) still requires states to measure DMC, but the statute contains a different method of measurement, in that the “Disproportionate Representation Index” has been replaced by the new “Relative Rate Index” method. In plain terms, the only difference is that reporting under the Relative Rate Index demonstrates a specific minority’s ratio in the confined youth population as compared to the total number of that minority’s presence in that particular geographic locality’s population. In other words, rather than a ratio measurement of a specific minority’s presence in confinement, the analyst reports a per capita rate measurement, with the ratio being the difference between the minority’s presence in confinement as compared to that minority’s presence in the overall population.<sup>72</sup> The new reporting method provides the OJJDP with a more accurate picture of the disproportional rate of confinement of specific minorities in any given population.

In 2005, the OJJDP published a guide titled Seven Steps to Develop and Evaluate Strategies to Reduce Disproportionate Minority Contact, recommending the following framework:

- Define the Problem,
- Implement Evidence-Based Programming,
- Develop Program Logic,
- Identify Measures,
- Collect and Analyze Data,

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<sup>71</sup> Office of Juvenile Justice and Delinquency Prevention, Coalition for Juvenile Justice. “Unequal Treatment of Minority Youth in the Juvenile Justice System.” Position Paper. (Washington, DC: 2007). <[http://www.juvjustice.org/position\\_3.html](http://www.juvjustice.org/position_3.html)>.

<sup>72</sup> Feyerheim, Dr. William and Dr. Jeffrey Butts, “Proposed Methods for Measuring Disproportionate Minority Contact (DMC) as Required by the Juvenile Justice and Delinquency Prevention Act § 223(a)(22), Revised 2002.” Office of Juvenile Justice and Delinquency Prevention: Office of Justice Programs, U.S. Department of Justice.

- Report Findings, and
- Reassess Program Logic.<sup>73</sup>

The guidebook concludes that a determination of the existence of, extent of and contributing factors to DMC are imperative before undertaking any reduction strategy, and advises that its recommended steps “can help states and jurisdictions work with stakeholders to produce meaningful DMC studies and evaluations. Ultimately, the use of evidence-based strategies linked to the source of overrepresentation can be expected to result in reductions in the rate of minorities coming into contact with the juvenile justice system.”

In May, 2007, the Honorable Judy A. Hartsfield, a presiding judge over the Family Court Juvenile Division in Detroit, Michigan, presented “Overrepresentation of Children of Color in the Child Welfare System” at the nineteenth annual National Consortium on Racial and Ethnic Fairness in the Courts in Brooklyn, New York. Judge Hartsfield concluded that to fix the overrepresentation problem, we must “build on what we already know,” target funding, provide better access to community-based services, and “increase training on culturally proficient policies and practices.” The presentation identified DMC as a national problem, and gave a nutshell overview of the recommendations explicated within this report to the Supreme Court of Appeals of West Virginia. The Task Force has demonstrated its commitment to participating in the work ahead required to reduce DMC in West Virginia and commends the Court, as administrator of the West Virginia judicial system, for its support of this important work. The Special Projects Counsel for the Administrative Office of the West Virginia Supreme Court of Appeals also attended the National Consortium in May, 2008, and intends for the division’s new full-time DMC Coordinator to attend the Consortium in May, 2009, in Pittsburgh, Pennsylvania.

The Task Force urges implementation of strategies, programs and evaluation tools that will reduce both actual and perceived racial disparity in West Virginia. Time and funding may limit the number of recommendations the Court may adopt. However, by its careful consideration of this Task Force’s recommendations, the Court continues to recognize its obligation to provide equal access to the justice system and compel observance of Section 3(B)5 of the West Virginia Code of Judicial Conduct, which provides as follows:

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual

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<sup>73</sup> Nellis, Ashley M., M.S. Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Evaluation Center, Justice Research and Statistics Association. Seven Steps to Develop and Evaluate Strategies to Reduce Disproportionate Minority Contact. (Washington, DC: OJJDP, 2005) 3, 37.

orientation, or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.