

# Minority Overrepresentation in the Criminal Justice System

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**October 2010**

Christine M. Shea Adams, PhD

Office of Research and Statistics  
Division of Criminal Justice  
Colorado Department of Public Safety  
700 Kipling Street, Suite 3000  
Denver, CO 80215  
Telephone: 303-239-4442  
Fax: 303-239-4491  
<http://dcj.state.co.us/ors>

**Office of Research and Statistics**  
Kim English, Research Director  
**Division of Criminal Justice**  
Jeanne M. Smith, Director  
**Colorado Department of Public Safety**  
Kathy Sasak, Executive Director



## Introduction

In 2008, the Colorado General Assembly passed House Bill 1119 which directed the Colorado Commission on Juvenile and Criminal Justice to address the issue of racial and ethnic disparities in the juvenile and criminal justice systems by conducting studies of the policies and practices in Colorado with the goal of reducing racial and ethnic disparity and reviewing work and resources compiled by states in the area of racial and ethnic disparity reduction. In each annual report, the Commission includes an appendix that presents information on racial disparity. This appendix reviews data relevant to racial disparity for both adults and juveniles, and includes information about other states' initiatives, and recommendations from the Sentencing Project and other entities for addressing disparities in the justice system.

## Racial Disparity

Racial disparity exists when the proportion of racial or ethnic groups within the criminal justice system is greater than the proportion of the same groups in the general population.<sup>1</sup> Addressing racial disparity and minority overrepresentation in the criminal justice system corresponds with the general desire for public safety as well as a fair justice system. The purpose of the current report is to demonstrate how the proportions of minority populations within the criminal justice system compare to the proportion of these same populations within the United States in general and within Colorado specifically.

Although illegitimate or unwarranted racial disparity in the criminal justice system is the result of dissimilar treatment of individuals in similar situations based on race,<sup>2</sup> the causes of such disparity will vary and can occur at different points in the criminal justice system. Discrepancies in treatment throughout the system may be due to overt racial bias as well as indirect influences associated with race. This report is intended to show policymakers where disproportion lies as a means of providing information for future decision-making as well as provide possible guidelines for addressing this issue.

## Racial Breakdown in the U.S. and Colorado Population

In 2009 the U.S. Census Bureau estimated that the entire U.S. population was approximately 307,006,550 (see Table 1). Of this, 79.6% were White, 18.7% were a minority race and the remaining 1.7% considered themselves to be two or more races. In comparison, Colorado was estimated to have a population of 5,024,748. Of this 89.5% were White, 8.5% were a minority race and the remaining 2.0% considered themselves to be two or more races.

**Table 1. Racial breakdown of the general U.S. and Colorado population in 2009**

Race	U.S. Population Estimates		Colorado Population Estimate	
	U.S. Population	Percentage	Colorado Population	Percentage
White	244,298,393	79.6%	4,497,149	89.5%
Black or African American	39,641,060	12.9%	221,089	4.4%
American Indian and Alaska Native	3,151,284	1.0%	60,297	1.2%
Asian	14,013,954	4.6%	135,668	2.7%
Native Hawaiian and Other Pacific Islander	578,353	0.2%	10,049	0.2%
Two or more races	5,323,506	1.7%	100,495	2.0%
Total population	307,006,550	100.0%	5,024,748	100.0%

**Source:** <http://quickfacts.census.gov/qfd/states/08000.html> (as of July 1, 2009)

**Note:** A separate listing for Hispanic is not included for Census data because the U.S. Census Bureau considers Hispanic ethnicity to mean persons of Spanish/Hispanic/Latino origin including those of Mexican, Cuban, Puerto Rican, Dominican Republic, Spanish, and Central or South American origin living in the US who may be of any race (White, Black, Asian, etc.).

<sup>1</sup> The Sentencing Project. (2008). *Reducing racial disparity in the criminal justice system: A manual for practitioners and policymakers*. Washington, DC: The Sentencing Project.

<sup>2</sup> Ibid.

## Racial Disparity in the U.S. Criminal Justice System

The PEW Center on the States reports that in 2008 2.3 million adults in the United States were incarcerated (prison or jail), or 1 in 100.<sup>3</sup> This number is even higher when all correctional supervision is included, such as probation, parole, and community corrections.<sup>4</sup> Minorities are more likely than Whites to be under some form of correctional supervision. Specifically, in 2006 of adults who were 18 years of age or older:

- 1 in 102 were incarcerated.<sup>5</sup>
  - 1 in 54 adult men were incarcerated.
    - 1 in 106 White adult men.
    - 1 in 36 Hispanic adult men.
    - 1 in 15 Black adult men.
  - 1 in 580 adult women were incarcerated.
    - 1 in 859 White women.
    - 1 in 436 Hispanic women.
    - 1 in 203 Black women.
- 1 in 31 adults are under some form of correctional supervision.<sup>6</sup>
  - 1 in 45 White adults.
  - 1 in 27 Hispanics adults.
  - 1 in 11 Blacks adults.

In addition, Blacks serve probation almost 3 times longer, parole over 5 times longer, are more likely to recidivate than Whites, and were sentenced to death 5 times as often as Whites in similar cases.<sup>7</sup>

The Bureau of Justice Statistics (BJS) examined the differences in length of maximum sentences, time served and the percent of maximum sentence served for various crime types between Whites and Black released from state prison in 2005. The average length of maximum sentence and length of time served was longer for Black offenders than White offenders for each offense category (see Table 2). For violent crimes, Black offenders received 17.7% longer maximum sentences and served 21.7% longer prison time than their White counterparts. The largest discrepancy existed for drug crimes where, although the maximum average sentence for Blacks was only 3.4% longer than Whites, the average time served and percentage of maximum sentence served by Blacks was 38.9% and 34.4% longer than Whites, respectively (data not shown).

A similar examination of Colorado prison data (see Table 3) found that overall Black offenders were received 1.0% longer prison sentenced than their White counterparts and served 5.7% longer. For violent crimes Black offenders in Colorado were given 2.6% longer sentences. However, no differences were found in average time served (data not shown).

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<sup>3</sup> As reported in: The Pew Center on the States. (2009). *One in 100: Behind bars in America 2008*. Washington, DC: The Pew Charitable Trusts. With the exception of the “one in one hundred adults” figure these numbers are all as of June 30, 2006. This one statement is a 2008 statistic.

<sup>4</sup> The Pew Center on the States. (2009). *One in 31: The long reach of American corrections*. Washington, DC: The Pew Charitable Trusts.

<sup>5</sup> The Pew Center on the States. (2009). *One in 100: Behind bars in America 2008*. Washington, DC: The Pew Charitable Trusts. With the exception of the “one in one hundred adults” figure these numbers are all as of June 30, 2006. See Table A-6 in this Pew report for a greater break down by sex, race/ethnicity and age.

<sup>6</sup> The Pew Center on the States. (2009). *One in 31: The long reach of American corrections*. Washington, DC: The Pew Charitable Trusts.

<sup>7</sup> Hartney, C., & Vuong, L. (2009). *Created equal: Racial and ethnic disparities in the US criminal justice system*. Oakland, CA: National Council on Crime and Delinquency.

**Table 2. Sentence length and prison time served by offense and race (First releases from state prison, 2005)**

Most serious offense	WHITE					BLACK				
	Maximum sentence length <sup>a</sup> (in months)		Prison time served (in months)		% of max. sentence served	Maximum sentence length <sup>a</sup> (in months)		Prison time served (in months)		% of max. sentence served
	Median <sup>b</sup>	Mean <sup>c</sup>	Median	Mean		Median <sup>b</sup>	Mean <sup>c</sup>	Median	Mean	
All offenses	36	59	15	26	44.1	48	66	18	33	50.0
Violent offenses	60	79	29	46	58.2	60	93	35	56	60.2
Drug offenses	48	59	13	18	30.5	48	61	16	25	41.0

**Source:** <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2045>; 2005, filename: ncrp0511.csv

**Note:** Data are first releases with a total sentence of more than a year for which the most serious offense, maximum sentence length, and time served is known.

<sup>a</sup> Sentence length refers to the maximum sentence that an offender may be required to serve for the most serious offense.

<sup>b</sup> Includes sentences of life without parole, life plus additional years, life, and death.

<sup>c</sup> Excludes sentences of life without parole, life plus additional years, life, and death.

**Table 3. Sentence length and prison time served by offense and race (First releases from Colorado state prison, 2005)**

Most serious offense	WHITE					BLACK				
	Maximum sentence length <sup>a</sup> (in months)		Prison time served (in months)		% of max. sentence served	Maximum sentence length <sup>a</sup> (in months)		Prison time served (in months)		% of max. sentence served
	Median <sup>b</sup>	Mean <sup>c</sup>	Median	Mean		Median <sup>b</sup>	Mean <sup>c</sup>	Median	Mean	
All offenses	36	54	27	35	64.81	36	55	29	37	67.27
Violent offenses	48	78	35	51	65.38	48	80	33	51	63.75
Drug offenses	36	46	24	28	60.87	36	44	29	32	72.73

**Source:** Special analysis by the Colorado Division of Criminal Justice using data provided by the Department of Corrections for the annual prison population report. Data are considered preliminary, and may vary from that published by DOC.

**Note:** Data are first releases with a total sentence of more than a year for which the most serious offense, maximum sentence length, and time served is known.

<sup>a</sup> Sentence length refers to the maximum sentence that an offender may be required to serve for the most serious offense.

<sup>b</sup> Excludes sentences of life without parole, life plus additional years, life, and death.

<sup>c</sup> Excludes sentences of life without parole, life plus additional years, life, and death.

## Racial Disparity in Colorado

Wells and O'Keefe (2010) examined minority overrepresentation in Colorado.<sup>8</sup> One study focused on the effect that race/ethnicity had on the likelihood of unsuccessful completion of adult probation (unsuccessful termination was defined as revocations to prison for a technical violation, new crimes, and absconding). When compared to White adults ( $n = 13,762$ ), Blacks ( $n = 1,632$ ) were 1.73 times more likely to terminate unsuccessfully, Hispanics ( $n = 2,829$ ) were 1.41 times more likely to terminate unsuccessfully, and Native Americans ( $n = 202$ ) were 2.37 times more likely to terminate unsuccessfully.<sup>9</sup>

Although the majority of Community Corrections Transition clients were released successfully (67.2%,  $n = 1,695$ ), Wells and O'Keefe found that overall 32.8% ( $n = 827$ ) were released unsuccessfully (defined as being returned to prison or

<sup>8</sup> Wells, H., & O'Keefe, M. (2010). *Minority overrepresentation in Colorado's criminal justice system: An interagency report to the Colorado Commission on Criminal and Juvenile Justice*. [http://www.doc.state.co.us/sites/default/files/opa/MOR\\_2010.pdf](http://www.doc.state.co.us/sites/default/files/opa/MOR_2010.pdf)

<sup>9</sup>  $p < .001$

having escaped). Post-hoc analyses found that race had a significant effect on this difference. Black adults (n = 493) were terminated unsuccessfully statistically more often and Whites (n = 1,342) were terminated statistically less often than if race were unrelated to the outcome.<sup>10</sup>

Wells and O'Keefe also found significant differences across race when examining type of release from parole (successful or unsuccessful). Seventy-one percent of Blacks (n = 1,432) and 72% of Native Americans (n = 193) were terminated unsuccessfully which is higher than would be statistically expected if race were not a factor. Fifty-four percent of both Whites (n = 3,457) and Hispanics (n = 2,393) were terminated unsuccessfully which is less than would be statistically expected if race were not a factor.<sup>11</sup>

Tables 4 and 5 show that depending on race and ethnicity, the percentages at every stage of the criminal justice system diverge from the population numbers, especially for Black Coloradans. Because Hispanics are often combined with Whites, it is difficult to determine an accurate percentage of Hispanics in various levels of the criminal justice system.<sup>12</sup> Although Blacks comprised only 4.4% of the state population, they are found in increasing numbers at different levels of the system: 11.8 % of all arrests, 11.8 % of all filings, 12.4% of all convictions, 19% of all DOC admissions, 22.7% of all parole technical violations, and 24.7% of all parole terminations for a new crime. Thus, their percentage of the population at each phase of the criminal justice system exceeds their proportion of the state population.

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<sup>10</sup>  $p < .01$  for each comparison.

<sup>11</sup> This comparison excludes offenders who died while on parole;  $p < .001$  for each comparison.

<sup>12</sup> The U.S. Census collects ethnicity data (Hispanic vs. non-Hispanic) separately from race.

Table 4. Colorado racial disparity in adult population: General population, arrest, filings, findings and placements, 2008/2009

	N	American Indian	Asian	Black	Hispanic	White	Other	Unknown	Total
<b>General Population</b>									
<i>Colorado Adult Population<sup>a</sup></i>	<b>4,497,149</b>	<b>1.2%</b>	<b>2.7%</b>	<b>4.4%</b>	<b>89.5%</b>	<b>2.0</b>			<b>100%</b>
<b>Arrests<sup>b</sup></b>									
Colorado Adult Arrests <sup>c</sup>	158,062	0.8%	0.9%	11.8%	86.10%			0.60%	100%
<b>Filings<sup>d</sup></b>									
Filings	39,464	0.7%	0.7%	11.8%	9.5%	75.3%	1.3%	0.6%	100.0%
<b>Findings<sup>e</sup></b>									
No Conviction	5897	0.6%	0.6%	10.9%	6.8%	77.3%	2.7%	1.0%	100.0%
Deferred	3190	0.4%	1.1%	9.1%	6.9%	80.9%	1.4%	0.3%	100.0%
Convicted	25,307	0.7%	0.7%	12.4%	10.7%	74.5%	0.8%	0.2%	100.0%
<b>Sentence<sup>f</sup></b>									
Other <sup>g</sup>	834	0.6%	1.2%	5.2%	4.1%	85.9%	1.7%	1.4%	100.0%
Probation	13,469	0.6%	1.0%	11.4%	9.5%	76.4%	1.0%	0.1%	100.0%
ISP	909	0.6%	1.1%	17.1%	9.9%	70.7%	0.7%	0.0%	100.0%
Jail	3045	1.0%	0.6%	9.0%	11.2%	76.7%	1.1%	0.5%	100.0%
Probation and Jail	3814	0.7%	0.6%	8.1%	11.9%	77.9%	0.6%	0.1%	100.0%
Community Corrections	1354	0.7%	0.2%	14.0%	7.3%	77.1%	0.4%	0.2%	100.0%
DOC	6774	0.6%	0.7%	17.5%	12.1%	68.0%	0.9%	0.3%	100.0%

**Source:** Information regarding the source of each piece of data is presented in the corresponding footnote. This table was compiled by the Division of Criminal Justice, Office of Research and Statistics.

<sup>a</sup> <http://quickfacts.census.gov/qfd/states/08000.html> (as of July 1, 2009). Note: A separate listing for Hispanic is not included for Census data because the U.S. Census Bureau considers Hispanic ethnicity to mean persons of Spanish/Hispanic/Latino origin including those of Mexican, Cuban, Puerto Rican, Dominican Republic, Spanish, and Central or South American origin living in the US who may be of any race (White, Black, Asian, etc.).

<sup>b</sup> Uniform Crime Report data provided by the Colorado Bureau of Investigation, Colorado Dept. of Public Safety. Data reflect CY 2008 arrests and are the most recent currently available.

<sup>c</sup> Hispanic ethnicity is included in the White race in Uniform Crime Report data.

<sup>d</sup> Total number of filings taken from FY 2009 Judicial Branch Annual Report. Racial/ethnic breakouts extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

<sup>e</sup> FY 2009 criminal court filing data were extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

<sup>f</sup> Initial sentences imposed in FY 2009 were extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

<sup>g</sup> "Other" sentences include things such as fines/fees/surcharges, community service, and treatment. This list is not all inclusive.

Table 5. Colorado racial disparity in adult population: Probation, DOC and parole, 2008/2009

	N	American Indian	Asian	Black	Hispanic	White	Other	Unknown	Total
<b>Probation Sentence<sup>a</sup> (cases)</b>	<b>13,469</b>	<b>0.6%</b>	<b>1.0%</b>	<b>11.4%</b>	<b>9.5%</b>	<b>76.4%</b>	<b>1.0%</b>	<b>0.1%</b>	<b>100.0%</b>
<b>Probation Terminations<sup>b</sup> (people)</b>									
Successful	23,415	0.8%	1.1%	5.5%	12.5%	79.5%	0.7%		100%
Technical Violation	2,722	1.7%	0.5%	11.3%	17.0%	68.9%	0.5%		100%
New Crime	1,762	0.9%	1.1%	11.6%	18.1%	68.0%	0.4%		100%
Absconder	4,506	2.8%	0.7%	10.7%	19.7%	65.7%	0.5%		100%
<b>DOC Sentence<sup>c</sup> (cases)</b>	<b>6774</b>	<b>0.6%</b>	<b>0.7%</b>	<b>17.5%</b>	<b>12.1%</b>	<b>68.0%</b>	<b>0.9%</b>	<b>0.3%</b>	<b>100.0%</b>
<b>Department of Corrections (people)</b>									
Admits <sup>d</sup>	10,861	3.2%	0.8%	19.0%	33.3%	43.7%			100%
Stock Population <sup>e</sup>	22,961	3.0%	0.0%	20.0%	32.0%	45.0%			100%
YOS admits <sup>f</sup>	61	0.0%	0.0%	16.0%	62.0%	21.0%			100%
COPD convictions <sup>g</sup>	19,602	2.8%	80.0%	21.6%	34.6%	40.1%			100%
<b>Parole</b>									
Parole Population <sup>h</sup>	11,439	2.0%	1.0%	16.0%	34.0%	47.0%			100%
Technical Parole Returns (no new crime) <sup>i</sup>	3773	3.8%	0.7%	22.7%	29.1%	43.8%			100%
Parole Returns with a new crime <sup>j</sup>	1132	4.0%	0.9%	24.7%	29.2%	41.3%			100%

**Source:** Information regarding the source of each piece of data is presented in the corresponding footnote. This table was compiled by the Division of Criminal Justice, Office of Research and Statistics.

**Note:** Judicial race data is often imported via other computer systems which may not distinguish between race and ethnicity (particularly “White” and “Hispanic”). As a result, the ability to accurately interpret this data is limited.

<sup>a</sup> Initial sentences imposed in FY 2009 were extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

<sup>b</sup> Office of Probation Services, Colorado State Court Administrator's Office. Includes adult terminations from regular, intensive, and private probation.

<sup>c</sup> Initial sentences imposed in FY 2009 were extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

<sup>d</sup> Data provided by the Office of Planning and Analysis, Colorado Department of Corrections and analyzed by the Office of Research and Statistics, Colorado Division of Criminal Justice. Admits includes new court commitments as well as “other” admissions such as bond returns, dual commitments, probation returns (with or without a new crime), court ordered discharge return (with or without a new crime), YOS failure (with or without a new crime), and YOS resentence.

<sup>e</sup> FY 2009 DOC annual report available at <http://www.doc.state.co.us/statistical-reports-and-bulletins>.

<sup>f</sup> Ibid.

<sup>g</sup> Office of Planning and Analysis, Colorado Department of Corrections

<sup>h</sup> FY 2009 DOC annual report available at <http://doc.state.co.us/statistical-reports-and-bulletins>.

<sup>i</sup> Data provided by the Office of Planning and Analysis, Colorado Department of Corrections and analyzed by the Office of Research and Statistics, Colorado Division of Criminal Justice.

<sup>j</sup> Ibid.

Evident in the previous two tables, there is a disproportionate number of Blacks throughout the criminal justice system in Colorado. Arguments can be made that disparity may be due to differences in unfair treatment or may be due to differences in the rates of criminal activity. The argument regarding criminal activity rates is often supported by a reference to criminal history. In a sample of court cases in Colorado between 2004 and 2006, Blacks had significantly higher criminal history scores<sup>13</sup> than Whites and Hispanics (see Table 6). Hispanics, however, had criminal history scores that were significantly lower than that of Whites and Blacks.

**Table 6. Criminal history scores by race/ethnicity (N=1707)**

Race/Ethnicity	Frequency	Mean Criminal History Score
White	1289	2.99 <sup>a</sup>
Black	217	3.30 <sup>a</sup>
Hispanic	176	2.66 <sup>a</sup>
Asian	11	2.73
American Indian	11	2.82

**Source:** Data collected by DCJ from 10 judicial districts (17 counties: Denver, Jefferson, El Paso, Weld, Mesa, Boulder, Broomfield, Douglas, Teller, Gilpin, Jackson, Adams, Arapahoe, Elbert, Lincoln, and Larimer). These judicial districts were chosen based on the top 10 judicial districts for filings in 2005. The original sample was made up of 2626 court cases from 2004, 2005, and 2006 that closed in 2006.

<sup>a</sup> Means with the same superscript differ significantly from one another ( $p < .01$ ).

### Racial Disparity in Colorado Juvenile Justice Population

The Division of Youth Corrections (DYC), within the Department of Human Services (CDHS) manages youth in detention and commitment facilities as well as juvenile parolees. Table 7 shows the racial/ethnic breakdown of the DYC populations in FY 2009. Although Black juveniles made up only 5.0 % of the general population (between the ages of 10 and 17), they represented 16.8 % of those in detention, 18.3 % of those committed, and 6.3 % of those on parole.<sup>14</sup> White juveniles are underrepresented in all groups by approximately 20%. Black youths were detained for an average of 16.8 days whereas white youths were detained for an average of 12.8 days.

<sup>13</sup> The ORS Criminal History score is an index of an offender's past adjudications, convictions, placements, and revocations (weights shown in parentheses). Developed in the mid-1980's by M. Mande, this score has been used for over 20 years. Overall, coded scores can range from 0 to 4 with 0 basically equaling no previous involvement in the criminal justice system and 4 representing an individual with a very serious criminal history. The Criminal History score is calculated as follows: Number of juvenile adjudications x (.5) + Number of juvenile placements (.75) + number of adult prior violent convictions x (1.5) + number of adult felony convictions (1.0) + number of adult probation revocations x (.75) + number of adult parole violations x (2). Scores are collapsed to form a five-point scale ranging from 0 – 4, with 0 representing the lowest and 4 representing the highest measure of criminal history.

<sup>14</sup> General population data is from CY 2008, DYC data is from FY 2009.



**Table 7. Population by race/ethnicity for youth detention, new commitments, and juvenile parole (FY 2009)**

Race	General Juvenile Population (%)	Detention Population		Commitment Population	Parole Population	
		New Admissions (%)	LOS <sup>a</sup> (Months)	New Commitments (%)	Clients Served <sup>b</sup> (%)	LOS <sup>a</sup> (Days)
White	356,837 (61.1)	4,317 (41.9)	12.8	325 (42.8)	522 (41.1)	6.6
Black	26,686 (5.0)	1,631 (15.8)	16.8	139 (18.3)	245 (19.3)	6.3
Hispanic	128,026 (24.1)	3,944 (38.3)	13.9	268 (35.3)	467 (36.8)	6.6
Native American	5,818 (1.1)	188 (1.8)	14.9	17 (2.2)	20 (1.6)	8.6
Asian	14,370 (2.7)	82 (0.8)	16.0	7 (0.9)	9 (0.7)	6.5
Other	0 (0.0)	133(1.3)	10.5	4 (0.5)	8 (0.6)	6.0
TOTAL	531,737 (100)	10,295 (100)	14.2	760 (100)	1,270 (100)	6.8

**Source:** Population estimates were provided by Colorado DOLA, Demography Section (CY 2008). Figures are the most recent currently available. All other data are from Burmeister, K. (2010). *Management reference manual*. Denver, CO: Department of Human Services, Office of Children, Youth and Family Services, Division of Youth Corrections.

<sup>a</sup> LOS, Length of stay.

<sup>b</sup> Counts are approximate based on reported percentages.

The U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention has developed a calculation method to determine the minority rate of occurrence at each decision point in the criminal justice system in comparison to the White rate of occurrence at the same decision points.<sup>15</sup> The Relative Rate Index (RRI) shows the likelihood of an event when compared to White youth. The rates for Black and Hispanic youths during a 5 year period (2005-2009) are displayed below in Tables 8 and 9, respectively. For example, Table 8 shows that in FY 2009 African American youth were 4.36 times as likely to be arrested as White youth and 2.51 times as likely to be committed to DYC. Table 9 shows that FY 2009 Hispanic youth were 2.4 times as likely to be arrested but 4.87 times a likely to be committed to DYC as White youth.

<sup>15</sup> Holder, E.H., Robinson, L.O., Slowikowski, J. (2009). *Disproportionate Minority Contact Technical Assistance Manual (4<sup>th</sup> Ed.)*. Washington, DC: U.S. Department of Justice, Office of Justice Programs.  
[http://www.ncjrs.gov/html/ojjdp/dmc\\_ta\\_manual/dmcfull.pdf](http://www.ncjrs.gov/html/ojjdp/dmc_ta_manual/dmcfull.pdf) (see Chapter 1).

**Table 8. Colorado disproportionate minority contact for African American youth, FY 2005 through FY 2009**

Decision Points	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09
<b>Arrest<sup>a,b</sup></b>	3.99*	7.06*	6.21*	4.47*	4.36*
<b>Pre Adjudicated Detention<sup>c</sup></b>	1.27*	.76*	.89*	1.29*	1.32*
<b>Misdemeanor Filing<sup>d</sup></b>	.43*	.07*	.09*	.13*	.12* <sup>e</sup>
<b>Misdemeanor Adjudication<sup>d</sup></b>	.97*	.80	.35*	1.24	.92 <sup>e</sup>
<b>Felony Filing<sup>d</sup></b>	.65*	.32*	1.07	.53*	.53
<b>Felony Adjudication<sup>d</sup></b>	1.06*	1.11	1.12	1.04*	1.03*
<b>Probation Supervision<sup>d</sup></b>	.84*	.96*	1.24*	1.14*	1.02*
<b>Probation Sentence to Detention<sup>d</sup></b>	1.8*	2.39	1.43*	1.82*	1.54*
<b>Commitment DYC<sup>e</sup></b>	2.3*	2.12*	1.97*	3.31*	2.51*

Note: \* indicates that Black youth were significantly more likely than Whites to penetrate the system at that point. For example, FY 2009 African American youth were 4.36 times as likely to be arrested as White youth and 2.51 times as likely to be committed to DYC. Numbers that are not statistically significant cannot be used to analyze or make assumptions about the Relative Rate Index (RRI) at that decision point.

<sup>a</sup> In FY 04-05, FY 05-06 and FY 06-07 the State rate for Hispanic arrest data was calculated by applying a formula based on the percentage of arrests that Hispanic youth represent in jurisdictions where we have Hispanic arrest data and where a large portion of the state's youth population and Hispanic youth population reside. FY 07-08, FY 08-09 arrest rates were calculated based on a formula of the ethnic and racial representation of the number of youth screened applied to the numbers of youth arrested.

<sup>b</sup> NIBRS (National Incident Based Reporting System) arrest data provided by the Colorado Bureau of Investigation. White/Hispanic distribution was estimated based on DYC pre-adjudication detention screens.

<sup>c</sup> Data extracted from TRAILS and provided by CDHS Division of Youth Corrections.

<sup>d</sup> Data extracted from the Integrated Colorado Online Network (ICON) via the Colorado Justice Analytics Support System (CJASS). Note these figures represent cases, not individual youth. This includes all filings in county and district courts excluding the 2nd JD data.

<sup>e</sup> Data extracted from TRAILS and provided by DYC. All new commitments are assessed for treatment and security needs in a secure facility.

**Table 9. Colorado disproportionate minority contact for Hispanic youth, FY 2005 through FY 2009**

Decision Points	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09
Arrest <sup>a,b</sup>	2.46*	2.42*	2.02*	2.36*	2.40*
Pre Adjudicated Detention <sup>c</sup>	1.11*	1.12*	1.34*	1.17*	1.11*
Misdemeanor Filing <sup>d</sup>	.15*	.09*	.16*	.16*	.09* <sup>e</sup>
Misdemeanor Adjudication <sup>d</sup>	1.4*	1.17*	1.27*	1.34*	1.09 <sup>e</sup>
Felony Filing <sup>d</sup>	.29*	.21*	.30*	.25*	.20
Felony Adjudication <sup>d</sup>	N/A	N/A	N/A	N/A	N/A
Probation Supervision <sup>d</sup>	1.05*	1.06*	1.20*	1.21*	1.17*
Probation Sentence to Detention <sup>d</sup>	1.35*	1.77*	1.29*	1.19*	1.35*
Commitment DYCE <sup>e</sup>	3.53*	1.31*	1.07*	3.52*	4.87*

Note: \* indicates that Hispanic youth were significantly more likely than Whites to penetrate the system at that point. For example, in FY 2009 Hispanic youth were 2.4 times as likely to be arrested but 4.87 times as likely to be committed to DYCE as White youth. Numbers that are not statistically significant cannot be used to analyze or make assumptions about the Relative Rate Index (RRI) at that decision point.

<sup>a</sup> In FY 04-05, FY 05-06 and FY 06-07 the State rate for Hispanic arrest data was calculated by applying a formula based on the percentage of arrests that Hispanic youth represent in jurisdictions where we have Hispanic arrest data and where a large portion of the state's youth population and Hispanic youth population reside. FY 07-08, FY 08-09 arrest rates were calculated based on a formula of the ethnic and racial representation of the number of youth screened applied to the numbers of youth arrested.

<sup>b</sup> NIBRS (National Incident Based Reporting System) arrest data provided by the Colorado Bureau of Investigation. White/Hispanic distribution was estimated based on DYCE pre-adjudication detention screens.

<sup>c</sup> Data extracted from TRAILS and provided by CDHS Division of Youth Corrections.

<sup>d</sup> Data extracted from the Integrated Colorado Online Network (ICON) via the Colorado Justice Analytics Support System (CJASS). Note these figures represent cases, not individual youth. Includes all filings in county and district courts excluding the 2nd JD data.

<sup>e</sup> Data extracted from TRAILS and provided by DYCE. All new commitments are assessed for treatment and security needs in a secure facility.

Wells and O'Keefe (2010) also analyzed data regarding juveniles on probation.<sup>16</sup> They found Black juveniles (n = 587) were 92% more likely to be terminated unsuccessfully and Hispanic juveniles (n = 976) were 40% more likely to be terminated unsuccessfully from Probation when compared to White juveniles (n = 3,190).<sup>17</sup>

The Division of Youth Corrections (DYCE) examined the recidivism rate of youth discharged in FY 2008. Recidivism was defined as having a new filing before or after being discharged from DYCE. Recidivists in each category (pre- or post-discharge) could have recidivated during either or both time periods. Therefore, pre- and post-discharge recidivism must be examined independently (see Table 10). Of the 950 juveniles discharged in FY 2008 35.8% recidivated pre-discharge and 38.8% recidivated post-discharge. Pre-discharge recidivism rates did not vary significantly between White (35.2%), Black (37.2%), and Hispanic (35.1%) youth. However, while not statistically significant, Hispanics recidivated post-discharge at a higher percentage (44.2%) than Whites and Blacks (36.2% and 35.5%, respectively). It can also be seen that

<sup>16</sup> Wells, H., & O'Keefe, M. (2010). *Minority overrepresentation in Colorado's criminal justice system: An interagency report to the Colorado Commission on Criminal and Juvenile Justice*. [http://www.doc.state.co.us/sites/default/files/opa/MOR\\_2010.pdf](http://www.doc.state.co.us/sites/default/files/opa/MOR_2010.pdf)

<sup>17</sup>  $p < .001$  for each comparison.

the percent of Black youth that recidivated pre- and post- discharge (37.2% and 35.5%, respectively) was higher than the Black portion of the general NYC population (16.0%).

**Table 10. Juvenile recidivism rates by race/ethnicity for FY 2008, pre- and post-discharge**

Ethnicity	General NYC Population % <sup>a</sup>	No Pre-Discharge Recidivism (n=610) % <sup>b</sup>	Pre-Discharge Recidivism (n=340) % <sup>b</sup>	Total (N=950) % <sup>b</sup>
<b>Overall</b>		64.2	35.8	100.0
<b>Black</b>	16.0	62.8	37.2	18.1
<b>Hispanic</b>	38.0	64.9	35.1	36.0
<b>White</b>	42.0	64.8	35.2	42.7
<b>Other</b>	4.0	56.7	43.3	3.2
<b>Total</b>	100.0	64.2	35.8	100.0

  

Ethnicity	General NYC Population % <sup>a</sup>	No Post-Discharge Recidivism (n=581) % <sup>b</sup>	Post-Discharge Recidivism (n=369) % <sup>b</sup>	Total (N=950) % <sup>b</sup>
<b>Overall</b>		61.2	38.8	100.0
<b>Black</b>	16.0	64.5	35.5	18.1
<b>Hispanic</b>	38.0	55.8	44.2	36.0
<b>White</b>	42.0	63.8	36.2	42.7
<b>Other</b>	4.0	66.7	33.3	3.2
<b>Total</b>	100.0	61.2	38.8	100.0

**Source:** <sup>a</sup>Bermeister, K/ (2010). *Managemnet reference manual*. Denver, CO: Department of Human Services, Office of Children, Youth and Family Services, Division of Youth Corrections.

<sup>b</sup>Sushinsky, J. (2010). *Recidivism evaluation of committed youth discharged in fiscal year 2007-08*. Denver, CO: Department of Human Services, Office of Children, Youth and Family Services, Division of Youth Corrections.

### Racial Diversity in Colorado Drug Courts

Drug courts are judicially supervised court dockets that handle nonviolent substance abuse cases. Drug courts operate under a specialized model in which the judiciary, prosecution, defense, probation, law enforcement, mental health, social service, and treatment communities work together to help non-violent offenders find recovery and to become productive citizens.<sup>18</sup> The first Colorado drug court was established in Denver (the 2<sup>nd</sup> judicial district) in 1994 and, since then, drug courts have expanded to 12 additional districts (19 total locations).<sup>19</sup>

In comparison to the state population (N=4,497,149), Table 11 shows the racial breakdown among a sample of court cases closed in 2006 with offenders who had drugs as their most serious filing (n = 754) as well as the racial breakdown of drug court cases across the state (n = 900). Whites made up almost 77% of the cases with drugs as the highest charge, both of which are lower than their proportion of the general population (89.5%). Blacks made up 11.4% of the cases with drugs as the highest charge and 18.7% of the drug court cases whereas they make up only 4.4% of the Colorado population.

<sup>18</sup> Huddleston, C. W., Marlowe, D. B., & Casebolt, R. L. (2008). *Painting the current picture: A national report card on drug courts and other problem solving courts in the United States* (Vol. 2, No. 1). Alexandria, VA: National Drug Court Institute.

<sup>19</sup> Shane Bahr, State Problem Solving Court Coordinator, Colorado Judicial Department, Planning and Analysis Division (personal communication, July 6, 2010).

**Table 11. Racial breakdown of cases closed in 2006 whose most serious filing was a drug crime**

Race/Ethnicity	Colorado Population Estimate % <sup>a</sup> (N=4,497,149)	% of sample with drugs as highest filing charge % <sup>b</sup> (n = 754)	% of Drug Courts Cases % <sup>c, d</sup> (n = 900)
White	89.5	76.7	64.0
Black	4.4	11.4	18.7
Hispanic	*	10.1	15.2
Asian	2.7	0.7	0.7
American Indian	1.2	0.5	0.4
Other/Two or more races	2.2	0.6	1.0 <sup>e</sup>
Total	100.0	100.0	100.0

**Source:** <sup>a</sup><http://quickfacts.census.gov/qfd/states/08000.html>

<sup>b</sup>Data collected by DCJ from 10 judicial districts (17 counties: Denver, Jefferson, El Paso, Weld, Mesa, Boulder, Broomfield, Douglas, Teller, Gilpin, Jackson, Adams, Arapahoe, Elbert, Lincoln, and Larimer). These judicial districts were chosen based on the top 10 judicial districts for filings in 2005. The original sample was made up of 2626 court cases from 2004, 2005, and 2006 that closed in 2006.

<sup>c</sup>Shane Bahr, State Problem Solving Court Coordinator, Colorado Judicial Department, Planning and Analysis Division.

<sup>d</sup>This sample contains 900 individuals who entered the adult drug court between 7/1/08 through 6/30/09. All existing drug courts are represented in this table. However, it is important to note that some courts have been operating for a much shorter time than others. In addition, counties varied by their target population such that some focused on misdemeanor cases and others focused primarily on felony cases.

<sup>e</sup>Includes missing data.

\*A separate listing for Hispanic is not included for Census data because the U.S. Census Bureau considers Hispanic ethnicity to mean persons of Spanish/Hispanic/Latino origin including those of Mexican, Cuban, Puerto Rican, Dominican Republic, Spanish, and Central or South American origin living in the US who may be of any race (White, Black, Asian, etc.).

## Other State Initiatives

Some states have mandated systematic data collection on race and ethnicity. Additionally, some states have created Commissions explicitly intended to address minority overrepresentation in the justice system (Wisconsin, Illinois) while others (Virginia) have created sentencing guidelines to help regulate sentences and training of local officials and detention staff to increase cultural competencies and awareness.<sup>20</sup> Other states have mandated minority impact statements for all proposed legislation (Iowa, Oregon). Two states (North Carolina, Kentucky) have passed Racial Justice Acts to prohibit race from influencing pursuit of the death penalty. Twenty-two states require race or ethnicity data to be collected for all traffic stops<sup>21</sup> and while not directly related to minority overrepresentation, Arizona created a Spanish-speaking DUI court to develop bilingual and culturally competent courtrooms.<sup>22</sup> The following is intended to provide a more detailed synopsis of what these states have done to address minority overrepresentation and minority data collection.

<sup>20</sup> Culture is defined as the “behavioral, intellectual, mental, physical, social and artistic expression and products of human effort and thought that describe, characterize and are peculiar to a particular group, community, class or society.” This tells people what behaviors are acceptable as well as how to behave within specific situations. Cultural competence is necessary to fully understand behaviors and to anticipate what treatments may be the most beneficial. Wanberg, K.W., & Milkman, H.B. (1998). *Criminal conduct and substance abuse treatment: Strategies for self-improvement and change (The provider’s guide)*. Thousand Oaks, CA: SAGE Publications.

<sup>21</sup> Hickman, M.J. (2005), *Traffic stop data collection policies for state police, 2004*. Washington, DC: U.S. Department of Justice, Office of Program Services.

<sup>22</sup> Ray Cruz, Maricopa County DUI Court Supervisor, Programs Division (personal communication, July 7, 2010).

**Wisconsin** created the Commission on Reducing Racial Disparities in the Wisconsin Justice System<sup>23</sup> to determine whether racial discrimination is built into each stage of the criminal justice system and to recommend strategies and solutions to reduce any found disparity.<sup>24</sup> This commission has made the following recommendations:

- All agencies are directed to track racial differences for their populations.
- The state should develop curricula for professional training regarding racial disparity.
- The Department of Corrections (DOC) should maintain and expand reentry programs to ensure valid ID or driver's licenses are provided.
- DOC should also develop a mentoring program that no longer prohibits inmates who mentor during incarceration from continuing to do so once released.
- The prison discipline system should be reviewed. A better computer system for tracking issuance and adjudication of major conduct reports should be developed.
- Review and report (continual process) on probation and parole officer discretion when giving revocations. PO's should review and consider intermediate sanctions and alternatives to revocations or incarceration. Discipline may be needed, but public interest and safety is often best addressed by sentences served in the community.
- Conduct a study to examine prosecutorial discretion, paying special attention to criminal history.
- Create a commission to oversee programs meant to reduce disparity. Members of the commission should be appointed by the governor.

**Illinois** also created a commission to study the impact of disproportionate justice on minority communities.<sup>25</sup> Specifically, this Commission was directed to examine and report on the following:

- Violation and sentencing provisions of the state vehicle codes.
- The criminal code of 1961.
- The Cannabis Control Act.
- The Illinois Controlled Substances Act.
- The Methamphetamine Control and Community Protection Act.
- The unified code of corrections.

**Iowa** requires that prior to any debate on the floor of the legislature a correctional impact statement must be written for all bills, joint resolutions, or amendments.<sup>26</sup> This statement must include a minority impact statement and should estimate immediate and long term effects whenever possible. In addition, the Department of Human Rights should develop protocol for analyzing minority impact and all grant applications submitted to state agencies and must include information on disproportionate minority impact, rationale, and evidence that minority representatives were consulted when impact was anticipated.

**Oregon** mandates a racial and ethnic impact statement be created for all legislation that may, if enacted, affect the race and ethnic composition of the criminal offender population.<sup>27</sup> This includes everyone who is convicted of a crime or adjudicated for an act that would be considered a crime if they were 18 years of age or older. If a state measure will affect the racial and ethnic composition of the criminal offender population an impartial and simple impact statement will be created by the Oregon Criminal Justice Commission to be included in the voters' pamphlet and on the ballot. A standard protocol for this impact statement will be developed by the Oregon Criminal Justice Commission, and will include an estimate of the racial/ethnic profile within the state's offender population affected by the new law. The method used and assumptions made to calculate this estimate must be stated. However, this is only required if the necessary data are available.

<sup>23</sup> The State of Wisconsin, Office of the Governor, *Executive Order #251*. (May 13, 2008). Relating to the findings of the Commission on Reducing Racial Disparities in the Wisconsin Justice System and the creation of the Racial Disparities Oversight Committee.

<sup>24</sup> Coggs, S., & Wray, N. (2008). *Governor Jim Doyle's Commission on reducing racial disparities*. Madison, WU: Office of Justice Assistance.

<sup>25</sup> Illinois General Assembly. (2009). Public Act 095-0995.

<sup>26</sup> Iowa House Democratic Research Staff, 82<sup>nd</sup> General Assembly. (2008). *HF 2393: Minority impact statements*.

<sup>27</sup> 75<sup>th</sup> Oregon Legislative Assembly. (2009). House Bill 2352.

**Virginia's** juvenile justice system has also taken action to reduce minority overrepresentation.<sup>28</sup> Although this movement is specific to the juvenile justice system in Virginia, it is reasonable that these same steps could be taken in the adult criminal justice system. These steps included:

- Creating a demographics web page intended to enable representatives from localities, grantees and other interested parties to learn about minority overrepresentation in the justice system as well as the national requirements for monitoring disproportionate minority confinement. Data is readily available for local population, intake and confinement by race.
- Training of and assistance to local officials and detention staff to ensure that they are aware of the necessity of addressing disproportionate minority confinement.
- Cultural awareness training for local police departments throughout the state. Legislation passed in 2002 required the Virginia Department of Criminal Justice Services to publish guidelines expanding the compulsory training standards for police officers to ensure awareness of cultural diversity as well as the potential for biased policing.
- Creating a race-neutral risk assessment within the Department of Juvenile Justice for use at intake. The intent of the instrument was to reduce the total number of juvenile placements in detention, including minority placements.
- Passing legislation in 2002 that amended Virginia law to ensure that juvenile probation or parole violators could only be detained in a secure detention facility for violations that would have been considered a felony or class 1 misdemeanor if committed by an adult. This precludes secure confinement of juveniles for violations when their original crime was a status crime.

In addition to these steps intended to directly address minority overrepresentation, **Virginia** judges are required to complete a sentencing worksheet for all felony cases for which there are sentencing guidelines.<sup>29</sup> This requirement was intended indirectly to help to monitor any overrepresentation that may occur. Compliance with guideline recommendations is voluntary, whereas completion of the worksheet is mandatory.<sup>30, 31</sup> All completed and signed worksheets (by the judge) are filed with the case and sent to Virginia's Criminal Sentencing Commission for review. The Commission's staff ensures that the forms are filled out correctly and all omissions or mistakes are resolved. All cases are then analyzed to determine if the sentencing guidelines were followed. These results are presented to the Commission semiannually. In 2002, Virginia implemented a statewide nonviolent risk assessment for all felony larceny, fraud and drug cases. The intent of this assessment instrument was to divert low-risk offenders who are recommended for incarceration by the sentencing guidelines to another sanction. In FY 2009 it was found that 50% of eligible offenders for whom a risk assessment was conducted (n=6,704) were recommended for an alternate sanction (primarily supervised probation).<sup>32</sup>

In 2009 **North Carolina** passed the Racial Justice Act<sup>33</sup> in an effort to prohibit seeking or imposing the death penalty because of race.<sup>34</sup> This law establishes a process by which relevant evidence can be presented to show that race was a

<sup>28</sup> Hanna, A., & Williams, A.B. (2002). *Juvenile services fact sheet: Reducing minority overrepresentation in Virginia's juvenile justice system*. Richmond, VA: Virginia Department of Criminal Justice, Juvenile Justice Services Section.

<sup>29</sup> Virginia Criminal Sentencing Commission. (2009). *2009 Annual report*. Richmond, VA: Virginia Criminal Sentencing Commission.

<sup>30</sup> Ostrom, B.J., Ostrom C.W., Hanson, R.A., & Kleiman, M. (2006). *Assessing consistency and fairness in sentencing: A comparative study in three states*. Williamsburg, VA: National Center for State Courts.

<sup>31</sup> Michigan and Minnesota have similar systems. In all three states (Michigan, Minnesota, and Virginia) judges must write an explanation for why they depart from the recommended sentence. These explanations, along with the sentencing worksheet must be included in the case file. In Virginia an appellate review is not allowed whereas Michigan and Minnesota do allow for such a review. For more information on the sentencing guidelines in these three states see Ostrom, B.J., Ostrom C.W., Hanson, R.A., & Kleiman, M. (2006). *Assessing consistency and fairness in sentencing: A comparative study in three states*. Williamsburg, VA: National Center for State Courts.

<sup>32</sup> Virginia Criminal Sentencing Commission. (2009). *2009 Annual report*. Richmond, VA: Virginia Criminal Sentencing Commission.

<sup>33</sup> North Carolina (2009). SL2009-464. See

<http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2009&BillID=S461>

significant factor when the death penalty was pursued. The burden of proof lies with the defendant who may raise this claim at pre-trial conferences or during post-conviction proceedings. If race is proven to have been a factor in the death penalty process the sentence will be vacated and changed to life without parole. **Kentucky** passed a similar law in 1998.<sup>35</sup>

The Bureau of Justice Statistics<sup>36</sup> reported that, as of October 2004, 29 of the U.S. State patrol agencies required their traffic officers to record the race or ethnicity of the drivers for officer initiated stops. However there was some difference in scenarios requiring such data collection:

- 22 states required that race/ethnicity data be collected for *all* traffic stops.
- 18 states recorded race/ethnicity when a traffic citation was issued.
- 17 states recorded race/ethnicity when an arrest occurs from the traffic stop.
- 14 states recorded race/ethnicity when the vehicle or occupant was searched.
- 13 states recorded race/ethnicity when force was used during the stop.
- 8 states recorded race/ethnicity for reactive traffic stops (e.g., response to an accident or DUI check point).

Fifteen agencies depended exclusively on the officer's observation to determine the race/ethnicity of the driver while 9 others also used information from the State Bureau of Motor Vehicle (the other 2 states used the latter method exclusively). When the 2004 BJS study was conducted the Colorado State Patrol did not collect race/ethnicity information for any officer initiation stop.

As of 2010 the Colorado State Patrol was required to collect race and ethnicity information for all traffic citations and arrests.<sup>37</sup> Local law enforcement policies vary across the state in the collection of race/ethnicity data.<sup>38</sup>

**Colorado** offers court translators (on-site and via telephone) for 50 languages. **Arizona** created a Spanish-only DUI Court in 2001.<sup>39</sup> While not intended to directly address minority overrepresentation in the Arizona criminal justice system, this effort may provide an increased awareness of cultural issues. This program was funded by a grant to the Adult Probation Department from the National Highway Traffic Safety Administration.<sup>40</sup> It has been shown that Spanish-speaking defendants respond more positively to status hearings and treatment if they are able to relate in their own language, and the Spanish DUI court does just this.<sup>41</sup> This court follows the same criteria as traditional DUI courts however everything is conducted in Spanish. The judge, the probation/parole officers, and the treatment providers all speak fluent Spanish. Translators are available for English-only individuals involved in a hearing (e.g., attorneys). The only hearing that is held in English is a custody hearing because of the need for official court records.<sup>42</sup> When this occurs a Spanish translator is provided for the defendant.

## National Initiatives

**Prosecutors** across the country have more discretion than other parties (e.g., law enforcement, judicial) when it comes to criminal cases. This is especially true because police and judicial systems have been examined and scrutinized in

<sup>34</sup> For a summary of research that has shown race to play a role in death penalty decision making see Dieter, R.C. (1998). *The death penalty in black and white: Who lives, who dies, who decides*. [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org)

<sup>35</sup> SB 171/FN/LM/CI (BR 1096) See <http://www.lrc.ky.gov/research/98RS/SB171.htm>

<sup>36</sup> Hickman, M.J. (2005), *Traffic stop data collection policies for state police, 2004*. Washington, DC: U.S. Department of Justice, Office of Program Services.

<sup>37</sup> Captain Jeff Goodwin, Colorado State Patrol (personal communication October 14, 2010).

<sup>38</sup> Chief Bill Kilpatrick, Golden Police (personal communication October 14, 2010).

<sup>39</sup> Ray Cruz, Maricopa County DUI Court Supervisor, Programs Division (personal communication July 7, 2010).

<sup>40</sup> Mundell, Honorable B. R., (n.d.). *Spanish DUI court*. Phoenix, AZ: Maricopa County Superior Court.

<sup>41</sup> Ibid.

<sup>42</sup> Because custody hearings must put on record they must be in English. Other hearings, including the status hearings are not "on the record." Here the defendant signs a contract and the next court date is noted on said contract. The clerk officially records only the date of the individual's next court date (Ray Cruz, Maricopa County DUI Court Supervisor, Programs Division, personal communication July 7, 2010).



recent years for disparity and fairness. Advocates believe that flexibility in prosecution is important because case-specific information can be taken into account. However, this discretion can also lead to disparate treatment at various points in the judicial process. Aside from the decision to prosecute and the decision as to what charges should be brought against the defendant, the district attorney has significant influence regarding whether diversion to alternate programs should be allowed, what dispositions to seek in plea bargaining, and bail and sentencing decisions available to the judge. The Prosecution and Racial Justice Program within the Vera Institute of Justice<sup>43</sup> was developed in 2005 to help specific counties (Milwaukee County, Wisconsin; Mecklenburg County, North Carolina; and San Diego County, California) monitor discretionary decisions made by district attorneys at critical points in the criminal justice system. This oversight will help attorneys determine if and when racially biased decisions are being made. If concerns arise, this system can help the counties implement corrective policies and procedures.

In addition, to assist jurisdictions in the development of initiatives to reduce juvenile Disproportionate Minority Contact (DMC) the **U.S. Office of Juvenile Justice and Delinquency Prevention** has created the DMC Reduction Best Practices Database.<sup>44</sup> This database uses prevention science to provide guidelines to help states establish intervention plans using a mixture of programs, services, and activities that are most appropriate for their situation. The primary component of this website is a searchable database intended to assist jurisdictions to find DMC initiatives that have shown at least a basic level of effectiveness in the goal of reducing DMC. Each initiative must summarize the jurisdiction's DMC problem, as well as the strategies used to address the problem, and evidence of the effect on DMC trends.

### Creating Sentencing Guidelines

Sentencing guidelines are created to specifically define offense and offender characteristics that should be considered when determining the appropriate sentence for each case.<sup>45</sup> This is typically done with a sentencing grid(s)<sup>46</sup> or worksheet(s) that is completed and scored by the judge.<sup>47</sup> In 2006, the National Center for State Courts (NCSC) published information on all 21 states that currently used sentencing guidelines.<sup>48</sup> This compilation includes information on when and why the state's Sentencing Commission was created, if the Commission was still active, who was represented on the Commission (along with how many individuals served), and where each state fell on the NCSC sentencing guideline continuum. This continuum provides a means to compare and contrast six characteristics of each state's guidelines. Specifically, states varied from the use of more discretionary sentences at one end of the continuum to more mandatory sentences at the other end.<sup>49</sup> The more discretionary states did not monitor compliance, allowed judges to diverge from the guidelines, and appellate review of guidelines was statutorily prohibited. The more mandatory states tightly controlled judicial discretion by monitoring decisions, requiring reasoning for varied decisions, and allowing extensive appellate review.

To examine the effect of such guidelines on predictability and proportionality to the point that discrimination is minimized, the NCSC examined Virginia, Michigan, and Minnesota in more detail.<sup>50</sup> The study found that, in general, guidelines make sentences more predictable, help to effectively limit sentencing disparities, and make sentencing patterns more transparent. In addition, the NCSC determined that Commissions are beneficial to the quality and success

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<sup>43</sup> McKenzie, W., Stemen, D., & Coursen, D. (2009). *Prosecution and racial justice: Using data to advance fairness in criminal prosecution*. Washington, DC: VERA Institute of Justice.

<sup>44</sup> [http://www2.dsgonline.com/mpg/dmc\\_default.aspx](http://www2.dsgonline.com/mpg/dmc_default.aspx)

<sup>45</sup> Kauder, N.B., & Ostrom, B.J. (2006). *State sentencing guidelines: Profiles and continuum*. Williamsburg, VA: National Center for State Courts.

<sup>46</sup> States vary in the number of grids they use, if any, as well as the number of cells in each grid.

<sup>47</sup> Sample worksheets are available at <http://www.vcsc.virginia.gov/worksheets.htm>.

<sup>48</sup> Kauder, N.B., & Ostrom, B.J. (2006). *State sentencing guidelines: Profiles and continuum*. Williamsburg, VA: National Center for State Courts.

<sup>49</sup> Ibid.

<sup>50</sup> Ostrom, B.J., Ostrom C.W., Hanson, R.A., & Kleiman, M. (2006). *Assessing consistency and fairness in sentencing: A comparative study in three states*. Williamsburg, VA: National Center for State Courts.

of developed guidelines because they can determine if the guidelines are used, if they follow the intended goals, and if necessary the Commission can make the necessary adjustments.<sup>51</sup>

An explicit purpose of creating such guidelines in each of the three states studied by NCSC was to minimize sentencing disparities based on the offender's race, age, gender, and region of the state.<sup>52</sup> It was found that although a small number of racial effects were statistically significant, following the guidelines created by their respective sentencing commissions made the effect of race and economic status negligible.

### Addressing Local Minority Overrepresentation

The Sentencing Project<sup>53</sup> suggests that there are four key steps a state should take to address racial disparity in the criminal justice system:

1. **It is important to acknowledge the cumulative nature of racial disparities.** Racial disparity builds on itself at each stage of the criminal justice system and is not a likely result of actions at any one stage.<sup>54</sup>
2. **Encourage communication across players at all decision points of the system.** The problem must be addressed at every stage of the system. Without an organized and systematic approach, any benefit that is gained at one stage may be offset another stage.
3. **Recognize that what works at one decision point may not work at others.** Each decision point requires a unique strategy to address the problem depending on the degree of disparity at that specific point.
4. **Work toward systemic change.** A system-wide change is impossible without educated leaders who are willing to commit the resources of their agency to measure and address racial disparity at every stage of the criminal justice system as well as the system as a whole.

In addition, The Sentencing Project along with the Virginia Juvenile Justice Services Section<sup>55</sup> suggest that, aside from determining when and why disparities occur, a plan should be created to address any disproportionate minority representation that has been found to exist at any stage of the criminal justice system or within any specific jurisdiction.<sup>56</sup>

1. Examine local and state data to determine if overrepresentation of minorities exists at each of the steps in the justice system.
2. Determine at which decision points racial and ethnic disparities occur.
3. Identify possible reasons for the occurrence of these disparities.
4. Develop a coordinated plan to address overrepresentation including stakeholders from every step in the system.
5. Implement this plan in stages.
6. Evaluate effect and progress as each stage of this plan is implemented.
7. Finalize the details of the plan based on findings from each progressive evaluation.
8. Monitor the effectiveness of these strategies and report annual evaluations and its outcomes.

One way to control for future disparities may be to create sentencing guidelines. The above mentioned NCSC reports demonstrate that states have options when creating their own sentencing guidelines such that policymakers are able to

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> The Sentencing Project. (2008). *Reducing racial disparity in the criminal justice system: A manual for practitioners and policymakers*. Washington, DC: The Sentencing Project.

<sup>54</sup> For a detailed discussion of why minority overrepresentation may exist including the impact of socioeconomic status, discrimination, minority representation within the criminal justice staff as well as legal and political factors please see Wells, H., & O'Keefe, M. (2010). *Minority overrepresentation in Colorado's criminal justice system: An interagency report to the Colorado Commission on Criminal and Juvenile Justice*. [http://www.doc.state.co.us/sites/default/files/opa/MOR\\_2010.pdf](http://www.doc.state.co.us/sites/default/files/opa/MOR_2010.pdf)

<sup>55</sup> Hanna, A., & Williams, A.B. (2002). *Juvenile services fact sheet: Reducing minority overrepresentation in Virginia's juvenile justice system*. Richmond, VA: Virginia Department of Criminal Justice, Juvenile Justice Services Section.

<sup>56</sup> Local research may show differing degrees of disparity at different stages in the system as well as between jurisdictions. It is important to acknowledge the possible need for different strategies to address these various disparities.

assess where on the continuum their state fits based on their needs and circumstances.<sup>57</sup> Multiple sentencing grids and/or worksheets can be developed to fit the level of detail and discretion desired by policymakers. Such guidelines, regardless of the level of voluntariness, will help the state to create predictable and proportional sentences which in turn will make the criminal justice system more transparent. The effect of developed guidelines could then be monitored, evaluated and modified as needed.

In addition, educating all involved parties on not only the concept of cultural competence, but also on specific information related to the cultures being experienced, will help the involved parties to acclimate to culturally specific behaviors (e.g., in the court room, when interacting with attorneys or case managers). Cultural competence will also help policy makers develop policies that will effectively work in cross-cultural situations.<sup>58</sup>

#### **A culturally competent system:**

- values diversity,
- has the capacity for cultural self-assessment,
- is conscious of the inherent dynamics that occur when cultures interact,
- has institutionalized cultural knowledge, and
- has developed adaptations to diversity.<sup>59</sup>

Experts agree that when developing such competence it is important to balance the need to preserve our own culture's value while accepting the value of other cultures. Although it is impossible to learn about all of the cultures in existence, it is important to tolerate differences that may exist between these cultures and our own. It is important to accept and utilize cultural values that have strengthened and provided sustenance to minorities while not succumbing to cultural stereotypes (e.g., "culture of poverty" is a common stereotype of African Americans; "culture of alcoholism" is common of Native Americans). Furthermore, cultural competence develops over time. It is natural for individuals to be pessimistic about change. Therefore opportunities to discuss these concerns are essential and must be built into the development process. In the end, cultural competence is multidimensional and is not dependent on any one factor. Instead, attitudes must become less ethnocentric, patronizing, and biased; policies must become more flexible and culturally impartial; and organizational structures must be committed to and support the necessary training, guidance and evaluation necessary for the growth of cultural competence.<sup>60</sup>

The Colorado Department of Corrections and the Colorado Judicial Branch currently require staff to participate in cultural competence training.<sup>61</sup> Specifically, DOC requires staff to attend a 1-hour class about discrimination and workplace harassment and a 2-hour class about cultural awareness. Judicial offers a 7-hour class on cultural competence. However, because cultural competence is an ever-evolving process that does not come to the individual, agency or system at one moment, training should be consistent, continual, and mandated for everyone.<sup>62</sup>

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<sup>57</sup> Kauder, N.B., & Ostrom, B.J. (2006). *State sentencing guidelines: Profiles and continuum*. Williamsburg, VA: National Center for State Courts; Ostrom, B.J., Ostrom C.W., Hanson, R.A., & Kleiman, M. (2006). *Assessing consistency and fairness in sentencing: A comparative study in three states*. Williamsburg, VA: National Center for State Courts.

<sup>58</sup> It is important to remember that culture is not limited to race and ethnicity but may involve factors such as gender, socioeconomic status and location (e.g., east coast vs. west coast; urban vs. rural). However, please refer to the Wanberg and Milkman handbook for cultural information specific to African Americans, Hispanics, and Native Americans regarding: demographic and socioeconomic factors; substance use problems; the criminal justice systems; and treatment issues. Wanberg, K.W., & Milkman, H.B. (1998). *Criminal conduct and substance abuse treatment: Strategies for self-improvement and change (The provider's guide)*. Thousand Oaks, CA: SAGE Publications.

<sup>59</sup> Wanberg, K.W., & Milkman, H.B. (1998). *Criminal conduct and substance abuse treatment: Strategies for self-improvement and change (The provider's guide)*. Thousand Oaks, CA: SAGE Publications.

<sup>60</sup> Ibid.

<sup>61</sup> Wells, H., & O'Keefe, M. (2010). *Minority overrepresentation in Colorado's criminal justice system: An interagency report to the Colorado Commission on Criminal and Juvenile Justice*. [http://www.doc.state.co.us/sites/default/files/opa/MOR\\_2010.pdf](http://www.doc.state.co.us/sites/default/files/opa/MOR_2010.pdf)

<sup>62</sup> Wanberg, K.W., & Milkman, H.B. (1998). *Criminal conduct and substance abuse treatment: Strategies for self-improvement and change (The provider's guide)*. Thousand Oaks, CA: SAGE Publications.

