

Chapter 5

The Juvenile Justice System

The juvenile justice system is a distinct subsystem within the judicial system, marked by a unique statutory and procedural framework and a discrete subject matter. In the past 15 years the juvenile justice system, both nationally and locally, has received extensive attention and has been the focus of research projects that have addressed, to various extents, the perception of bias toward minority youth. This state's juvenile justice system has recently been (and still is) the subject of a thorough analysis by the State Commission on Children and Families, which is producing an extraordinarily helpful body of information about the overrepresentation of minority youth in the system and the treatment minorities receive. The commission is now developing comprehensive strategies to address its research results.

We begin by describing the unique features of the juvenile justice system. This will be followed by a brief summary of prior reviews of Multnomah County's juvenile justice system and a recent national report from the United States Department of Justice. The chapter then summarizes the results of the study by the State Commission on Children and Families and the information gained from this task force's hearing process and survey. Finally, we present the task force's findings and recommendations.

A Brief Description of the System

The juvenile justice system consists of three primary, often interlinked, components: the juvenile department of each county, Children's Services Division (CSD), and the juvenile court of each county. When a child comes to the attention of the juvenile system, generally by way of referral from some outside agency (e.g., a police agency, school, hospital, etc.), a decision is initially made as to whether the juvenile department or CSD is going to take primary responsibility. If the issues involving the child are strictly those of abuse or neglect (a "dependency" case), CSD will almost always be the agency that initially involves itself with the child. If there are no "dependency" issues, the child is 12 years of age or older, and the child has engaged in "criminal" type activity, then the case is considered a "delinquency" case and will most likely be handled by the juvenile department. When a very young child is involved in "criminal" type behavior (e.g., firesetting), generally CSD will be the agency initially involved with the child. Many cases involve both dependency and delinquency issues (e.g., a teenager comes to the attention of the police because of criminal activity, but it is also learned that this child is living in an abusive household). Responsibility for these hybrid type cases can initially be given to either CSD or the juvenile department.

When CSD or the juvenile department becomes involved with a child, a decision must be made by the CSD caseworker or juvenile department counselor whether to handle the case informally or to file a petition with the juvenile court. That decision is based primarily on the seriousness of the situation, and on whether there have been prior referrals to CSD or the juvenile department. It is also sometimes the case that after working with a family and child for a period of time informally, a decision is made to file a petition with the juvenile court because the family and/or child are not cooperative and are not following through with recommendations.

The importance of family involvement in juvenile cases cannot be understated. When a child is brought to the attention of the juvenile justice system it is because of negative (*i.e.*, neglect or abuse) behavior of the family or negative (*i.e.*, delinquent) behavior of the child. In either case it is important to work with both the child and the family to correct the behavior. As an example, when a child who has allegedly committed a delinquent act is conditionally released to parents on “house arrest,” it is essential that the parents understand the rules of “house arrest” so that they can adequately supervise the child.

If a child or, more commonly, the child’s parents or caretakers, do not speak English, the barriers to effective communication are increased when the caseworkers or counselors do not speak the language of the family members. Communication barriers are further heightened when there is a lack of understanding of the family’s cultural background by the caseworkers or counselors, the attorneys involved in the case and the juvenile judge. There is a need for foreign language interpreters at all levels of juvenile justice system “encounters,” not just court proceedings. Additionally, those working in the juvenile system must be educated in cultural differences to adequately address and understand the needs of the child and the child’s family. In order to be successful with children, the juvenile system must be able to work successfully with their families.

Studies of Minorities in the Juvenile Justice System

1. The 1982 Multnomah County Juvenile Court Monitoring Study

As part of a project funded by the Office of Juvenile Justice and Delinquency Prevention, the Portland section of the National Council of Jewish Women conducted a citizens’ monitoring study of the Multnomah County Juvenile Court and in 1982 published its study, *Defining Justice for Children*. Respecting *delinquency* proceedings, the study concluded:

“The percentage of minorities involved in the delinquency-status offense preliminary hearings was disproportionately high. Roughly *twice* as many minority youth were in court as would have been expected [based on the number of minority youth] in Multnomah County.” *Id.* at 48 (emphasis added).

“Minority children [at the conclusion of the preliminary hearings] were more likely than white children to receive the most restrictive dispositions (continued in detention and detained for the first time).” *Id.* at 57.

“The percentage of minorities involved in the delinquency-status offense fact-finding and dispositional hearings was disproportionately high. Almost *three times* as many minorities were in court as would have been expected from the proportion of minorities in the general under-18 population in Multnomah County.” *Id.* at 67 (emphasis added).

“[In the final dispositional phase,] a disproportionately high percentage of minority children received the most restrictive [commitment to a secure facility] and second most restrictive [suspended commitment to a secure facility] dispositions.” *Id.* at 77.

In dependency proceedings, the study found no disproportionate minority representation at the preliminary hearing stage. But it did discover a disproportionately high percentage of minority children at the fact-finding and dispositional stage—roughly twice as many as would have been expected from the proportion of minorities in the general under-18 population in Multnomah County. The study recommended that all Juvenile Court personnel and all referral sources “examine their attitudes about racial and ethnic minorities and develop procedures to guard against discrimination” and “eliminate disproportionate entrance into the juvenile court.” *Id.* at 24.

2. The 1989 Metropolitan Human Relations Commission Study

The Metropolitan Human Relations Commission (MHRC) contracted with Iris M.D. Bell and B * Era Consultants to evaluate the services of the Multnomah County Juvenile Justice Division to minority youth. That study resulted in a report, *Evaluation of Multnomah County’s Juvenile Justice Division Services to Minority Youth*, Metropolitan Human Relations Commission, July 1989. It began with this statement:

“Minority youth are entering the [Multnomah] County Juvenile Justice System in disproportionate numbers, and they are also being committed to the State Training Schools and Camps in disproportionate numbers....” *Id.* at 1.

The report cited statistics that show that 42 percent of the youth committed to the State Training Schools from Multnomah County in 1988 were minorities, even though minorities comprise only 10 percent of Multnomah County’s population.

In order to increase the likelihood that minority youth are provided with services and counseling that address their cultural needs, MHRC recommended that the division continue to provide “mandatory cross-cultural training” to all staff; “seek program models that identify culture-specific methods of case management;” and take steps to

attract professionals from minority group populations (*Id.* at 43–44). More generally, the report also identified the need for (1) a comprehensive network of services for minority youth involved with the juvenile justice system, including specific services to youth who are gang-affiliated, (2) approved diversion programs and (3) alternatives to secure confinement (*Id.* at 43).

3. A National Survey: Minorities in the Juvenile Justice System

In November 1992, the Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice published a report by Carl E. Pope of the University of Wisconsin, Milwaukee, and William Feyerherm of Portland State University entitled, *Minorities in the Juvenile Justice System*. The culmination of a 15-month project, the report provided an extraordinarily valuable summary, analysis and compilation of existing research. The authors asserted that this basic debate had emerged from the literature:

“A perennial challenge facing the field of criminal justice is the extent to which ‘selection bias’ permeates decision-making within the system. The basic issue is whether certain decisions within both the adult and juvenile justice systems differentiate among certain groups or categories of persons such that some are more ‘at-risk’ than others. Selection bias may occur as a result of police deployment patterns, informal policies regarding arrest, charging, conviction and sentencing, the volume of cases being processed or on the basis of personal attributes of those coming before the system. Some argue that so-called ‘extra legal’ or ‘ascribed’ characteristics such as gender, race, education or income are as important, if not more so, in reaching such outcome decisions as offense severity, prior criminal history or other legal factors.”

Indeed, the authors noted that portrayals of “an entire generation” of African-American youth as “lost because of lack of economic participation in the society” may in fact permit the juvenile and criminal justice systems to downplay processing differences within the systems (*Id.* at 5).

The project identified, located and compiled post-1970 literature that related minority status to actions of the juvenile justice system. More than 350 articles potentially relevant to the project were initially identified and coded; however, the majority was found to be only tangentially related to the project. A subsample of 46 articles was determined to be most directly relevant to the project’s focus. Analysis of these articles led to the following findings:

- The preponderance of findings from the research literature suggests both direct and indirect race effects.
- The studies finding evidence of selection bias were generally no less sophisticated methodologically than studies finding no such evidence, nor was the data of lesser quality.

- When selection bias does exist, it can occur at any stage of the system.
- Small racial differences may accumulate and become more pronounced as minority youth are processed further into the system.
- Many studies which concluded that there was no evidence of discrimination achieved that result by utilizing control variables which may not have been race-neutral. For example, such a “legally relevant” variable as prior arrests may not be racially neutral if African-American youth are more likely to be picked up and formally processed within the system.

In its second phase, the project attempted to identify program initiatives that have attempted to deal with the question of equity or fairness in the processing of minority youth. Thirty-three responses were received from 27 states (including Oregon). No state reported any programs focusing on racial equity in juvenile processing.¹⁰

4. The State Commission’s Report

The Oregon Community Children and Youth Services Commission (which later became the State Commission on Children and Families) conducted research to determine whether and to what extent minority youth had been overrepresented in the juvenile justice system and whether and to what extent there had been a disproportionate confinement of minority youth to secure facilities. This federally funded project resulted from Oregon’s participation in the Juvenile Justice and Delinquency Protection Act of 1974, as amended in 1988. It required all states to address minority youth overrepresentation and disproportionate confinement. As a result of the 1988 amendment, the Office of Juvenile Justice and Delinquency Prevention developed a special grant program to pilot special research projects and social programs to address the problem. Oregon was selected to be one of five pilot states, along with Arizona, Florida, Iowa and North Carolina.

Phase I: Research Data

Phase I of the research project, designed to determine whether and to what extent a problem existed, was completed and *Final Research Report on Phase I* issued in May 1993. The commission gathered data in three counties—Lane, Marion and Multnomah—and also summarized available data from the rest of the state. The data confirmed the conclusions in the previous projects summarized above: across the state, as well as in Multnomah County, minority youth are disproportionately represented at all stages, an effect that increases the further one progresses through the system.

Quantitative Data

The commission collected “summary” data from such sources as law enforcement agencies, juvenile courts/departments and Children’s Services Division. In the three pilot counties, the commission also gathered data by following groups of juvenile department referrals as they moved through the system, generating what is termed “system” or client tracking system data.

A “disproportionate representation index” (DRI) was developed from analysis of the 1990 census, juvenile arrest summaries, juvenile department referral information, and CSD training school commitment and close custody ward statistics. In percentage terms, the DRI compares the proportion of specific racial or ethnic youth groups processed at particular points in the juvenile justice system to the proportion of this group in the youth population at risk. For example, if 10 percent of the 12–17-year-old population are African Americans and if African Americans account for 25 percent of the arrests for serious (FBI Index) offenses, the index would have a value of 2.5 (or 25 percent divided by 10 percent) indicating that this group is 2.5 times more likely to be represented among those arrested for serious crime. Values greater than 1.0 mean that a group is overrepresented, and a value of exactly 1.0 indicates proportionate representation.

Statewide summary data shows that African-American youth are particularly likely to be overrepresented at every decision point from arrest to juvenile department referral to final case disposition (*i.e.*, training school commitment or close custody wardship). The DRI values for African-American youth range from 2.6 to 5.9, and are greater at the back end of the system (*i.e.*, for training school commitment and close custody wards) than at the front end of the system (*i.e.*, at point of arrest or referral).

More refined analysis of the system data from Multnomah County establishes that African-American, Hispanic and Native-American youth are more likely than nonminority youth to have referrals resulting in pre-adjudication detention, hearings and post-adjudication detention as a disposition. The overrepresentation of African-American youth is most pronounced for training school commitment and for remand to adult court. For Hispanic youth, the overrepresentation is most pronounced for pre-adjudication and post-adjudication detention. These patterns also existed when controlled for seriousness of offense (*i.e.*, when looking only at felony offense arrests).

In Lane and Marion Counties, analysis showed that minority youth were overrepresented throughout the system, but in those two counties the issue is basically a front-end problem: overrepresentation begins at referral or intake and continues at about the same level as cases move through the system. In Multnomah County, the analysis showed:

- Of the 7,010 referrals examined for 1991, nonminority youth constituted 81.2 percent of the population at risk (12–17-year-old youth), but only 60.6 percent of the referrals. African-American youth were overrepresented, constituting 9.7 percent of the risk population, but 27.3 percent of those referred (DRI = 2.8); on a lesser scale, Hispanic and Native-American youth were slightly underrepresented and Asian youth slightly overrepresented among referrals.
- For nonminority youth, 13.3 percent of the cases resulted in placement in pre-adjudication detention. In contrast, for Hispanic youth the percentage was 36.1 percent (or nearly three times greater). For African Americans, 25.1 percent received pre-adjudication detention and for Native-American youth, 24.0 percent received pre-adjudication detention. Hispanic youth comprise 4.4 percent of those referred with known race/ethnicity, but 8.8 percent of all those detained. African-American youth constitute 27.8 percent of the referral population, but 39.2 percent of those detained.
- Of all youth, 33.9 percent went to a juvenile court hearing. The rate was 40.8 percent for African-American youth, compared to 30.5 percent for nonminorities. For other groups the rates fell between these extremes.
- Only 3.1 percent of all referrals resulted in training school commitment. However, only 2.0 percent of nonminority referrals resulted in commitment compared to 6.3 percent of African-American referrals.
- Post-adjudication detention as a disposition occurred in 17.7 percent of all referrals. The rate of detention was 14.3 percent for nonminority youth, but 28.1 percent for Hispanic youth, 23.4 percent for African-American youth and 22.9 percent for Native-American youth.

Analysis of the cases that involved a formal hearing process (and the filing of a petition) showed the following disproportions:

- African Americans and other minorities are more likely to reach a formal hearing process level. Upon reaching this level, they are more likely to receive institutional commitment as a disposition. The training school commitment rates are 11.6 percent for African-American youth, 8.6 percent for Native-American youth, 4.6 percent for nonminority youth, 4.4 percent for Asian youth and 2.9 percent for Hispanic youth.

- African-American, Hispanic and Native-American youth reaching the hearing stage are more likely than nonminority or Asian youth to receive detention as a disposition. The rates are 58.1 percent for Hispanic youth, 51.4 percent for Native-American youth, 38.2 percent for nonminority youth and 37.7 percent for Asian youth.

When the referrals involving felony offenses were isolated and analyzed, the following discrepancies appeared:

- Of the 2,104 felony referrals, 56.5 percent involved nonminority youth. However, of the youth receiving pre-adjudication detention, only 38.7 percent were nonminority. African-American youth accounted for 30.0 percent of the felony referrals examined, but accounted for 40.1 percent of those detained. The rates of pretrial detention are over 2.5 times higher for Hispanic youth (62.8 percent) and nearly double for African-American youth (43.7 percent) than for white youth (23.1 percent).
- Only 15 of the 2,104 felony referrals resulted in remand to adult court; 12 of these 15, or 80 percent, involved African-American youth.
- As with pre-adjudication detention, Hispanic felony offenders have the highest detention rate as a disposition (50.5 percent) compared to African Americans (27.7 percent) and nonminorities (17.8 percent).
- Among adjudicated felony offenders, the training school commitment rate is nearly three times higher for African-American youth (11.4 percent) compared to nonminority youth (4.1 percent).

Qualitative Data from the Focus Groups

In each of the pilot counties the commission also conducted “focus group” interviews with carefully-selected participants, primarily juvenile justice system professionals. Certain general themes emerged from those discussions. The participants said that culturally appropriate placements, resources and services for minority youth were lacking. Secondly, the participants identified not only a lack of family involvement, but also a lack of family-centered services, providing few options even when families actively are involved. Third, many participants identified a nearly universal need for cross-cultural competency training for all juvenile justice system agencies across the continuum. Finally, some participants, particularly in Multnomah County, identified the “gang” label as problematic; many youth service programs simply will not take “gang involved” youths and refuse to review objectively a child’s individual history and take placement risks.

Phase II: Development of Programs

Phase II currently is being conducted. The project is examining in detail how minority youth, especially African Americans, are processed in the juvenile justice system,

especially in Multnomah County, and how various factors play a role in the overrepresentation of these youth in all parts of the system, especially disproportionate confinement in detention and correctional facilities. Data analysis to date does not control for the influence of prior history and only in a limited way for the severity of offense in determining the exact extent to which minority youth are overrepresented, and it does not address in a refined way the reasons for the overrepresentation. Phase II research should provide a clearer picture, as well as explanations for the overrepresentation and disproportionate confinement. Finally, in addition to refining the data, the commission proposes to develop a planning process for addressing overrepresentation and to develop policies and program strategies to eliminate disproportionate confinement.

Task Force Hearings and Survey Results

Testimony at the task force hearings tended to focus on the adult criminal justice system, with relatively little discussion of the juvenile system. The task force, however, did hear anecdotal reports of selection bias at the arrest/referral stage, testimony about the need for cross-cultural awareness training, and demands for more culturally diverse or adequately trained experts and consultants. This testimony is summarized below as appropriate to the findings.

In addition to the main task force survey, a special Juvenile Justice System Survey was answered by 634 CSD counselors, juvenile court counselors, court-appointed special advocates, prosecutors, defense lawyers and others involved in the juvenile system. The survey findings are also summarized below.

Juvenile justice is a civil, rather than a criminal, process, and recommendations made for the civil justice system may well be applicable here, as well. For instance, 57.6 percent of all respondents to the juvenile survey, and 75 percent of those who had an opinion (those figures are 69 percent and 88 percent for minority respondents), said that juvenile court papers should be prepared in languages other than English. See Recommendation 2-2, *supra*.

Similarly, approximately 70 percent of respondents (more than 80 percent of those who had an opinion) believed that cross-cultural training in minority issues for all juvenile system personnel would promote fair treatment. See Recommendation 3-5, *supra*. A majority of respondents to the juvenile survey found insufficient minority representation among juvenile court staff (as well as CSD staff), and the recommendations set forth in Chapter 3 are equally applicable here.

Confinement of Minority Youth

Findings

It has been an axiom of popular wisdom that minority youth are simply more likely to become involved with the justice system than their nonminority counterparts. This cannot be characterized as a paranoid fantasy, nor can it be dismissed as a mere “perception.” It was confirmed more than a decade ago in the 1982 court monitoring study; it was confirmed again in 1989 by the MHRC study; it was confirmed overwhelmingly by the summary and system data analyzed in the State Commission’s *Phase I* Report. There are debates over the reasons why this overrepresentation exists, but overwhelming evidence demonstrates that it does exist.

The task force heard anecdotal reports indicating selection bias at the arrest/referral stage. In addition, responses to the task force surveys were consistent with the picture presented by the reports summarized above. Thirty percent of all respondents and more than 70 percent of minority respondents to the main task force survey believed that minority children were more likely to be found within the juvenile court’s jurisdiction. Slightly less than 25 percent of all respondents to the main survey, but 50 percent of minority respondents, believed minority children are more likely to be removed from their family in dependency proceedings. In response to the juvenile survey, 28.8 percent of all respondents (43 percent of minority respondents) said minority youth were more likely to be committed to a state training school and 25.8 percent (50 percent of minority respondents) believed that a minority youth so committed would not be released on parole as early as a nonminority. Thirty-two percent of minority respondents (14.3 percent of all respondents) believed that a minority youth is more likely to be subjected to physical mistreatment while in custody.

Eighty-seven percent of respondents to the juvenile justice system survey agreed that minority families and children distrust the legal system more than do nonminority families and children. The task force believes that such perceptions are unlikely to be changed, despite public education efforts (see Recommendation 8-3, *infra*), until the problems of overrepresentation and disproportionate confinement are addressed and remedied.

The State Commission on Children and Families is developing a comprehensive plan to reduce disproportionate representation. The task force believes, therefore, that specific programs to address disproportionate minority representation should be developed and proposed by the commission as a part of the second phase of its research and report.

Recommendation Number 5-1

The State Commission on Children and Families should continue to develop and implement a comprehensive plan to reduce minority overrepresentation and disproportionate confinement in the juvenile justice system. The plan should include proposals for:

- **Increasing the availability of viable and credible community-based alternatives for minority youth involved in the juvenile justice system.**
- **Increasing the availability and improving the quality of diversion programs for minorities who come in contact with the juvenile justice system.**
- **Exploring alternatives to secure confinement for minority youth involved in the juvenile justice system.**
- **Providing support for after-care programs designed to facilitate reintegration of minority youth from state and county facilities back to their home communities.**
- **Supporting cross-cultural diversity training and education for juvenile justice personnel and practitioners, elected officials, the general public and the at-risk populations regarding the need for policy changes and program resources to reverse the trend toward overrepresentation.**
- **Developing a systematic ongoing monitoring procedure to determine at regular intervals the percent of minority youth being processed through each stage of the juvenile justice system, in order to target more specifically the decision points at which major disparities occur.**

Estimated date for implementation to be completed: July 15, 1996.

Estimated cost of implementation: Unknown.

Interpreters in the Juvenile System

Findings

The need for skilled interpreters is as critical in the juvenile justice system as it is elsewhere. The recommendations regarding interpreters contained in Chapter 2 need not be repeated here. The task force learned that the juvenile department of at least one county is opening files on children, when it would not otherwise do so, merely because the child and/or the child's parents do not speak English. Since an interpreter apparently is not funded unless a file is opened, the sole reason for opening the file is to obtain funds from the county for an interpreter. Furthermore, the fact that counties may have limited funds for interpreters may increase the pressure on juvenile court counselors to file petitions, rather than to handle the case informally, thus shifting the financial burden of providing interpreters to the state.

The juvenile justice survey also reflected the relative unavailability of interpreters in juvenile proceedings, particularly the informal end of the process. Approximately two-thirds of all respondents to the juvenile justice survey (three-fourths of minority respondents) agreed that a lack of readily available interpreters adversely affects non-English-speaking families in the juvenile justice system. Almost one-third of all respondents (half of those who had an opinion), and more than half of minority respondents (two-thirds of those who had an opinion), believe that qualified interpreters are not available for informal conferences with juvenile or CSD counselors. The task force believes that a consistent statewide policy is required for appointment and funding of interpreters in all activities of juvenile departments.

In addition, current state law authorizes appointment of interpreters for a *party* or *witness*. In some cases a parent is not a party and generally is not a witness and, therefore, interpreters may not always be appointed for the parents. The task force believes that it is critical to the integrity of the juvenile justice system, as well as to the child, parents and care-givers, that parents and care-givers have a clear understanding of what is happening in the juvenile proceeding. There must be a clear statewide policy regarding the appointment of interpreters to assist non-English-speaking parents and care-givers.

Recommendation Number 5-2

The legislature should enact a law requiring the appointment of interpreters for non-English-speaking children, parents and care-givers in all juvenile proceedings, including informal juvenile proceedings.

Estimated date for implementation to be completed: July 1, 1995.

Estimated cost of implementation: Unknown.

The Need for Trained, Culturally-Sensitive Experts

Findings

The task force received communications that pointed to the need for expert consultants (such as psychologists) who were either minority members or had appropriate cross-cultural experience or training that would lead them to consider facts and alternatives specific to the minority culture. For example, a consultant who is a minority member or who has appropriate education or training would be more likely to evaluate the extended family network, and would be in a position to explain its importance to the appropriate juvenile justice forum. In the juvenile justice system survey, approximately one-third of all respondents (51 percent of minority respondents) reported that, more than "rarely," testifying experts lacked knowledge of the cultural background of minority children.

Recommendation Number 5-3

CSD, juvenile departments and the Commission on Children and Families should develop a list of consultants and potential expert witnesses who have appropriate experience or training to evaluate the cultural background of youth and families of various minorities, to be made available to juvenile court staff and practitioners.

Estimated date for implementation to be completed: January 1, 1995.

Estimated cost of implementation: Minimal.