Minority Confinement in the Juvenile Justice System

Legal, Social, and Racial Factors

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According to The Coalition for Juvenile Justice (1996), empirical evidence of the disproportionate arrest and confinement of African American males emerged as early as the 1960s. By the 1970s disproportionate minority confinement (DMC) among African American youth was a troubling and identifiable issue. Despite the empirical age of DMC, it continues to be prevalent in the U.S. juvenile justice system. In 1999, minority youth represented 65% of juveniles in public facilities and 55% in private facilities although they accounted for only 34% of youths in the general population (OJJDP, 2004). Additionally, according to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the minority proportion of the total population of juvenile offenders in residential placement was higher than 75% in six states and the District of Columbia. Furthermore, in half of the states, the proportion of minority to nonminority White custody rate exceeded 3:1, and in four states the ratio of minority to nonminority rates exceeded 8:1 (OJJDP, 2004).

To further investigate these statistics, this article provides a brief review of the literature on the legal, social, and racial factors that affect and describe minority confinement in the juvenile justice system. This review provides particular emphasis on implications for minority youth who are not provided access to necessary services and strategies that support meaningful rehabilitation. It also makes recommendations to both teachers and gatekeepers in the criminal justice system that will ensure a degree of equity in juvenile justice processing.

To identify appropriate literature, the authors searched electronic resources through the University of Maryland library research system called Research Port. This portal offers links to several databases for fields such as business, law, education, psychology, and sociology. ERIC via EBSCOhost, the CRL catalog, and Masterfile Premier via EBSCOhost were the primary utilities used in the search. Colleagues conducting research on minority confinement in the juvenile justice system were contacted and asked for early summaries of their work. Criteria for inclusion in this analysis were that an article had to use a quantitative or qualitative research design or provide program evaluation data and be published or in press for a peer-reviewed journal. Finally, the authors reviewed numerous articles, books, and reports that presented perspectives on the juvenile justice system as it relates to legal, social, and racial factors.

Through this exhaustive search, we found that the consequences of the previously mentioned statistics are considerable and should not be dismissed. The overrepresentation of minority youth within the juvenile justice system is parallel to the overrepresentation of minority youth within special education programs—particularly programs for students with emotional and behavioral disorders (E/BD). Data on students classified as E/BD indicate that African Americans are represented at rates 1.6
times as great as their White counterparts (Donovan & Cross, 2002). In addition to the overrepresentation of the label, placements for minority students with E/BD have been more restrictive with 67% of students with serious emotional disturbance (SED) in inner-city districts placed in full-time, restrictive settings. Subsequent reports to Congress have continued to detail the restrictive nature of all disability services for African American students. This overrepresentation of minority students begins with more behavior referrals (Skiba, Peterson, & Williams, 1997; Townsend, 2000) and more special education referrals (Donovan & Cross, 2002; Losen & Orfield, 2002), leading to an overrepresentation of these youth in the juvenile justice system.

In theory, the juvenile justice system, as with special education classes for students with E/BD, was established to provide rehabilitation and treatment for individuals who are unable to successfully interact with their social environment (Redding, 1999). The punitive nature of confinement was intended as a last resort. Although the concepts of diagnosis and treatment characterize the intent of the system (Herz, 2001), institutional confinement of youth and/or transfer of youth to the criminal justice system are indicative of a current belief that these youth—primarily African American and other minorities—lack suitability for treatment and rehabilitation (OJJDP, 1999; Herz).

The realities of punitive treatment were described in the findings of a follow-up study including formerly incarcerated delinquent youths. Lewis, Yeager, Lovely, Stein, and Coham-Portorreal (1994) found that of the 97 former juvenile delinquents, 91 had adult criminal records, 6 were deceased, 7 had completed high school, 8 had married, 35 had fathered children, and only 1 indicated sustained employment. Increasingly, those that were deemed unsuitable for treatment were minority youth (OJJDP, 1999).

**The Juvenile Justice Process**

Differential treatment of minority youth in the juvenile justice system is not limited to decisions of confinement or release. The juvenile justice process is a multifaceted structure of cumulative responses and revolving doors. The farther and more frequently youth move through this process, the greater the likelihood that they will face punitive outcomes. The steps involved in juvenile justice processing can be described as follows (OJJDP, 1999; Pope & Feyerherm, 1995):

1. **Arrest**: Officers in the field decide whether to arrest youth and begin the juvenile justice process, divert them to another remediation program, or release the offenders.

2. **Intake**: Juvenile justice officials decide whether to formally process the case, deal with the case informally, divert the offender to another program, or dismiss the case.

3. **Processing**: Officials decide whether to detain the offenders or return them to the community during the processing phase. Also, juvenile justice officials (e.g., juvenile prosecutor’s office) make the determination whether to take formal action, only take informal action, or remand the case to the appropriate criminal court.

4. **Adjudication/Detention**: Officials then decide to resolve the case by issuing probation, remanding the youth to custody, or requiring alternative or additional programming.

During each step of the process, juvenile justice officials (e.g., law enforcement field officers, intake officers, probation officers, prosecuting attorneys, and judges) assert the decision-making power of their respective offices, which can be influenced by subjective factors (e.g., race) in order to determine the outcome of the case for each individual youth offender (Macallair & Males, 2004; Pope & Feyerherm, 1991). This subjective nature of the juvenile justice decision-making process, juxtaposed with current data on differential outcomes for minority youth, demonstrates the need to examine the influence of racial bias in any serious dialogue on the causes of DMC.

Despite strong circumstantial evidence indicating the likelihood of racial bias in differential outcomes, other theories have been advanced to explain DMC. The OJJDP (2004) reported that the average arrest rate for violent crime between 1980 and 1998 was 5.7 times higher for African American youth, who represent only 15% of the juvenile population, than for White youth (OJJDP, 1999). These statistics are reinforced by theories that link the historical consequences of slavery, Jim Crow, second-class citizenship, urbanization, and poverty with the presence of pervasive crime and violence in the African American community (West, 1993; Wilson, 1997).

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Theories asserting that negative systemic and psychological practices of the majority have contributed to the degradation of the African American community are augmented by current literature that reveals continued racial discrimination in U.S. public schools. Minority students, particularly African Americans, have less access to advanced placement classes, are more likely to be suspended or expelled, are more likely to drop out, and are less likely to graduate high school than their White peers (Gordon, Plana, & Kelleher, 2000).

In addition, African American students are more likely than White students to be labeled as emotionally disturbed or mentally retarded (Losen & Orfield, 2002). Students with disabilities typically hold lower grade point averages and have higher dropout rates than their nondisabled peers. Furthermore, the overall educational, employment, and criminal adjudication outcomes for students with disabilities are generally
When examined together, disproportionate rates of suspension, expulsion, dropout, and disability among African American youth are particularly disturbing. Researchers have speculated that disproportionate representation of African American youth at each step of the justice process may be the result of legal, rather than discriminatory, factors. It is posited that disproportionate representation within the juvenile justice process may be explained by the seriousness and frequency of crimes committed by minority youth as well as their often extensive criminal records (OJJDP, 1999). Although this reasoning may seem logical, it is not reflected in empirical literature on overrepresentation in many jurisdictions. Wordes, Bynum, and Corley (1994) examined juvenile offender processing data to determine the extent to which race influenced decision making independent of legal factors and found that typically, police officers' decisions to detain juveniles were tied to legal factors such as the possession of a weapon, prior offenses, or involvement in a drug offense. Race, however, was also significantly related to police officers' decisions to detain youth, independent of legal factors ($p < .001$).
and ethnic Hawaiian juvenile offenders and a “general leniency of the court in favor of White youth” (p. 71). In addition, the discussion of the results concurred with other empirical findings of sizeable differences at the early decision making points of the juvenile justice system (Leiber & Stairs, 1999; Wordes et al., 1994).

With regard to juvenile offender transfer to the criminal court system, decisions to transfer should consider (a) previous or chronic juvenile court history and (b) whether the offender has committed a crime of such a serious nature that the juvenile is not considered to be a candidate for rehabilitative treatment within the juvenile justice court (OJJDP, 1999). Minority youth are adjudicated for the majority of personal offenses (83%), and it is personal offenses that are most likely to result in juvenile transfer. It is not surprising then that minority youth are disproportionately represented among cases of juvenile transfer (OJJDP, 1999).

An examination of the adult transfer records in Los Angeles, however, indicated that violent minority juvenile offenders are transferred at a rate more than twice that of violent White youth (Macallair & Males, 2004). Moreover, controlling for arrest rate, minority youth in Los Angeles are overrepresented in adult courts, more likely to be convicted, and more likely to receive harsher sentences than are White youth.

In summary, minority youth may be arrested in numbers that are disproportionate to the number of delinquent acts they commit. Empirical studies repeatedly indicate that whether fairly or unfairly arrested, the representation of African American youth increases disproportionately through the formal and punitive decision-making stages of the juvenile justice and criminal justice processes. Conversely, the representation of White juvenile offenders diminishes as they filter through the justice system: They are frequently diverted to less punitive programs. As a result, White youth tend to have greater access to more innovative options, including special education, mental health treatment services, mentoring, and other rehabilitative services. These placement decisions indicate a clear pattern of denying more therapeutic and evidence-based programs to those youth who have historically been denied the most effective interventions. In addition, these decisions are inconsistent in application and biased in their belief that minority youth are not suitable for rehabilitation.

Impact of Negative Social and Community Factors on Intake, Processing, and Adjudication/Detention Decisions

Research suggests that what appears to be racial bias may, in fact, be class bias on the part of juvenile justice professionals (Wordes et al., 1994). Minority youth are disproportionately impoverished (OJJDP, 2002), live in single-parent homes at more than twice the rate of White youth, and live with neither parent at three times the rate of White youth (OJJDP, 2002). In addition, minority youth continue to fail in public school systems across the nation (Gordon et al., 2000). These data, in combination with invariable studies describing the dearth of positive social networks and resources in poor African American communities, sustain the perception that disadvantaged minority youth are a lost cause (Wilson, 1997).

Although most research indicates that socioeconomic and family risk factors exist, they do not negate the effects of race on DMC. A regression analysis of court intake data from five counties in one state revealed that socioeconomic, family, school, and personal difficulties were associated with detention at intake (Wordes et al., 1994). When these characteristics were constant, African American youth continued to be more likely than their White counterparts to be detained. In a study that controlled for severity of crime as well as family and school status; outcomes for African American juvenile offenders were generally determined by race, whereas outcomes for their White counterparts were most often associated with family status and gender (Leiber & Mack, 2003). Leiber and Stairs (1999) sought to determine if decision-making differences would be found between jurisdictions with differing socioeconomic makeup and conflicting beliefs in racial differences. Results indicated that, as expected, the jurisdictions with greater economic inequality and belief in racial differences imposed more severe punishments on African American juvenile offenders. The authors also reported that contrary to their expectations, African Americans were also more likely than Whites to be referred for further juvenile processing in jurisdictions with less economic inequality and less belief in racial differences.

These studies each identified a similar trend in decision making. Although social factors remained significant, their importance did not negate race as an independently contributing factor in juvenile justice system decision making. The research also suggested that decision making on the part of juvenile justice officials might be closely linked to their perceptions about the suitability of African American juvenile treatment for rehabilitation.

Perceptions of Suitability for Treatment

As noted earlier, the juvenile justice system was developed specifically to provide treatment and rehabilitation (Redding, 1999). It can be argued, therefore, that further progression into this system and/or transfer to the criminal justice system is indicative of a belief among system officials that the alleged offender is a less appropriate candidate for treatment. Informal processing and diversion is predicated on the belief that the youth is suitable for treatment and could benefit from rehabilitation. If this argument is taken further, it should follow that when legal and social factors are held constant, juveniles arrested for delinquent acts would receive diversionary or informal processing in equal proportion to their respective ethnic group’s presence within the overall juvenile delinquent population.

Empirical reports indicate, however, that African Americans are less likely to receive diversionary programming. In an examination of mental health placement choices, African American youth were significantly less likely to be placed in mental health facilities than their White counterparts with similar
offenses (Herz, 2001). Leiber and Mack (2003) found that African American youth of similar family backgrounds, educational status, criminal backgrounds, and charged with similar crimes were 3% less likely to be referred for informal/diversionary programming than were White youth. Likelihood of diversionary punishment for White youth was influenced at each step by family status and gender (Leiber & Mack, 2003). In a multijurisdictional study of juvenile courts in Iowa, African Americans were significantly ($p = .01$) less likely to receive diversionary programming than Whites in all jurisdictions of the state (Leiber & Stairs, 1999).

Results of these studies support the theory that some juvenile justice officials make decisions based on a belief that African American families are dysfunctional and unable to control or parent their children effectively. African American males are often thought to be aggressive, violent, dangerous, and lacking the discipline necessary to refrain from criminal behavior (Leiber & Mack, 2003). These attitudes are also reinforced in the media, who often inspire fear about African American youth. The public then responds by electing judges and prosecutors who favor more harsh interventions and consequences.

The cumulative effects of these perceptions on juvenile justice system decision making were illustrated in a study of attribution assignment of the criminal behaviors of juvenile delinquents. Hellriegel and Yates (1999) examined 233 probation officer reports to determine differences in officers’ perceptions of attribution (e.g., negative internal vs. external and positive internal vs. external) by race. The authors reported that officials consistently attributed the crimes of African American juvenile offenders to negative internal attributes, whereas the crimes of White youth were attributed to negative external attributes. Officers also presumed that African American youth were more likely to become repeat offenders than were White youth. Officer reports were more likely to include negative internal attribution information and less likely to attribute crimes to negative external factors if the youths were African American (Hellriegel & Yates). Assignment of each of these attributions was found to be statistically significant by the race of the youth, independent of the seriousness of the offense and the youth’s criminal background.

The results of this study indicate that African American youth are more frequently seen as responsible for their crimes, more likely to become repeat offenders, and more deserving of responsibility. Conversely, White youth were more frequently viewed as victims of environmental factors, less likely to become repeat offenders, and more deserving of some degree of leniency in punishments imposed.

**Implications for Practice and Teacher Education**

Teachers and teacher educators of at-risk minority youth can play a significant role in ameliorating the trends that lead to youths’ involvement with the criminal justice system. Research on the impact of critical pedagogy among educators who work with these students shows that developing an instructional framework that includes sustained attention to social and political stratifications leads to greater social consciousness and opportunities for appropriate learning of social justice (Kampol, 1999; Shor, 1997). The implication is that when educators are trained to see themselves as mediators of students’ social and political consciousness, they become uniquely positioned to help students impede partiality and bigotry through awareness and corresponding action. Another implication for practice includes attention to strategies that cultivate sustained inquiry and active learning among at-risk populations (Shor). The Alliance for Excellent Education’s (2004) national report on instruction and programs for at-risk adolescents paid primary attention to literacy instruction as a means to equip students with the wherewithal to critically analyze their social situation and the cognitive aptitude to navigate texts and rhetoric that might oppress them. The report notes that good programs for challenged students (a) are flexible enough to allow for students’ different learning styles, backgrounds, abilities, and interests; (b) are age appropriate; (c) address the issue of motivation as it applies to learning; (d) encourage students to read for knowledge both individually and cooperatively; (e) stress comprehension of multiple texts; and (f) make assessments a regular, ongoing, authentic extension of instruction. In concert, these strategies and foci serve to ready teachers and teacher educators with the abilities required to address the needs of at-risk minority students who may have already encountered the penal system.

**Summary and Conclusions**

The findings in the current literature reported in this review do not negate the theories that propose that high rates of crime among African American youth are the result of historical, systemic, socioeconomic, educational, familial, and cultural factors prevalent in the African American community. However, the findings are not sufficient to conclude that the delinquent behaviors that may occur as a consequence of these factors explain the disproportionate confinement of minority youth. Instead, the findings indicate that disproportionate minority confinement occurs even when social and legal factors are held constant.
The inference from these findings is that minority juvenile offenders are regarded as less suitable for rehabilitative treatment than their White counterparts because of race. Attitudes by gatekeepers within the juvenile system toward minority youth continue to prevent minority youth from accessing those services and strategies that would enable them to have meaningful rehabilitation. Consequently, the likelihood that minority youth will become repeat offenders and become involved in more serious crime is increased, and African American youth become less hopeful that they can turn their lives around. The cycle of delinquency and crime rises, influencing policymaking, reinforcing debilitating stereotypes, and, sadly, not changing behavior for the better.

**Recommendations**

Make attempts to remedy overrepresentation by minorities within the juvenile justice system by engaging in more equitable disciplinary, referral, and placement practices while students are still in school. A reduction in segregated settings for students with EBD and minorities and less of a discrepancy in disciplinary practices in educational experiences may result in less criminal offenses from minority youth.

- Train teachers and administrators at the school level to be more culturally sensitive and less biased in their decision making.
- Develop methods for assessing DMC within the juvenile justice system. Individual assessments may allow jurisdictions to identify officials whose decision-making tendencies contribute to DMC. Provide diversity training or other supportive measures to these officials.
- Train gatekeepers and decision makers within the criminal justice system to be more culturally sensitive and less biased in their decision making.
- Establish more stringent guidelines for officials to follow when determining which juvenile offenders are remanded to incarceration and which offenders are diverted to less confining programs.
- Ensure that rehabilitation is made available to all youth—regardless of whether they are remanded to or exited from the juvenile justice system.

**References**


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