Juvenile Justice: Equity Considerations

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Youth of color are disproportionately represented in Oregon’s Juvenile Justice System at all points of contact – from referral to juvenile departments by law enforcement, to placement in secure Oregon Youth Authority (OYA) facilities, resulting in increased likelihood of these youth dropping out of school, becoming homeless, unemployed and imprisoned. The Youth Development Council is a federally-mandated State Advisory Group overseeing the issues of juvenile justice and delinquency prevention and mandated to monitor and mitigate disproportionate representation of minority youth in Oregon’s Juvenile Justice System.

The purpose of the Juvenile Justice System under Oregon Revised Statute (ORS) 419C.001 is to protect the public and reduce juvenile delinquency, and to provide fair and impartial procedures for the initiation, adjudication and disposition of allegations of delinquent conduct.

**Juvenile Justice-Involved Youth in Oregon**

Oregon’s Juvenile Justice Information System data include a series of annual statewide and county-specific reports produced for recidivism, referrals, dispositions, detention and length of stay, restitution, community service, and programs and services. According to Juvenile Justice Information System (JJIS) reports, youth referrals to the juvenile departments have been steadily declining since 2000, with a particularly noticeable decline in criminal referrals (Juvenile Justice Information System Reports, 2000 - 2015).
Racial and Ethnic Disparities in Oregon’s Juvenile Justice System

Despite the steady decline in referrals for all youth, data from 2015 Juvenile Justice Information System (JJIS) reports indicate that Black or African American youth were referred to juvenile court at a rate 2.64 times higher than white youth, using the Relative Rate Index (RRI).\(^1\) Native American youth were referred to juvenile court at a rate 1.71 times higher than white youth. Native American youth were placed in secure detention at a rate 1.90 times higher than white youth. African American youth were placed in secure correctional facilities at a rate 2.70 times higher than white youth, Latino youth at a rate of 1.64 times higher, and Native American at a rate 2.58 times higher than white youth. African American youth were transferred to adult court at a rate 4.51 times higher than white youth, and Latino youth were transferred at a rate of 2.54 times higher.

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\(^1\) Relative Rate Index (RRI) method involves comparing the relative volume (rate) of activity at major decision points of the juvenile justice system for minority youth with the volume of that activity for white (majority) youth.
Identifying Disproportionalities

The 2015 RRI statewide data analysis conducted by Dr. William Feyerherm in June 2016 identified the five decision points that show some level of statistically significant disparities and that have a large enough degree of disparity to be of concern. These are the: 1) disparities in the initial referral to juvenile court for African American youth and Native American youth, 2) disparities in the rate of detention for Native American youth,
3) Use of a formal petition of delinquency in cases involving Native American youth, 4) placement in secure correctional facilities for cases involving African American and Native American youth as well as ‘all minorities’ and 5) handling of juvenile cases in adult court for African American and Hispanic youth, as well as ‘all minorities’ (Feyerherm, 2016).

Selecting Priority Areas
In summary of all four criteria (significance, magnitude, volume and comparison), Oregon RRI values for referrals of both African American and Native American youth are the areas that rise to priority levels using all of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) criteria. This does not mean that the other decision points and groups are unimportant, but it defines these particular combinations of decision stage and minority grouping as the highest priority for examination and action.

Trends
For each of those priority areas, Feyerherm examined the patterns of rates and RRI values over the past several years, reflected in the following charts. In each chart, the rate of activity for both white and minority group youth is charted against the scale on the left hand vertical axis. The RRI value is charted on the scale on the right hand vertical axis. This shows what types of changes in the underlying rates of contact lead to the changes in the RRI value over time.

First, Dr. Feyerherm examined referral rates for African American youth. The rate of referrals for both white and African American youth has been declining, particularly since a high point in 2006 and 2007.

Since 2012, both rates show healthy declines, and the RRI has been declining slowly. That gap in referral rates seems to persist, leading to questions such as whether there are differences in referral rates between communities (and local law enforcement agencies) within the state, whether prevention resources are appropriately distributed and accessed, and whether alternatives other than arrest and referral are evenly available and accessed. Beyond that, Feyerherm assessed whether the offense profile for referrals of white and African American youth is similar and the extent to which known risk and protective factors may differ between the groups. In other words, a more detailed assessment or the referral differences is likely warranted.
A similar pattern and conclusion applies to referral rates for Native American youth. As the referral rate for white youth showed a continuous decline from 2006 through 2015, the referral rates for Native youth rose slightly in 2010, 2012, and 2014. The effect of those slight increases was to increase the disparity in referral rates experienced by Native youth, so that even though the referral rate for Native youth is quite a bit lower in 2015 than in 2003 or 2004, the disparity relative to referral rates for white youth is greater. In addition to the number of possible explanatory factors noted above for looking at the disparities in African American referral rates, one issue which should be considered is whether those communities in which the largest numbers of Native youth reside are also showing trends of referrals for white youth that mirror the Statewide trends for white youth, or whether these communities have maintained somewhat higher referral rates for all youth (Feyerherm, 2016).
Racial and Ethnic Disparities are Contributing to the School to Prison Pipeline
Disproportionately applied school disciplinary sanctions are a significant contributor to the “school to prison pipeline” for racial and ethnic minorities. The American Civil Liberties Union (ACLU) defines the school-to-prison pipeline as “policies and practices that push our nation’s schoolchildren, especially our most at-risk children, out of classrooms and into the juvenile and criminal justice systems. This pipeline reflects the prioritization of incarceration over education.” The ACLU identified the following as factors in the pipeline: 1) inadequate school resources; 2) zero tolerance policies; 3) increased reliance on law enforcement to maintain discipline; 4) disciplinary alternative schools; and 5) court involvement and juvenile detention.

The Oregon Department of Education (ODE) discipline data show discipline disparities that must be addressed and eliminated on school district, school and individual student levels.

During the 2014-2015 school year, out-of-school suspensions were disproportionally applied to Black, Native American, Hispanic and Multi-Racial students. The disparities are especially noticeable for Special Education students of color.
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In the last three years, the Oregon Legislature passed a series of bills reforming school discipline in public schools across the state. The Oregon School Discipline Advisory Committee (SDAC) was formed to advise, consult, support, and make recommendations to the Oregon Department of Education (ODE) and education partners on policies and practices that promote and maintain the inclusion and engagement of each and every student in a healthy learning environment. The purpose is to eliminate exclusionary discipline practices in education and replace them with inclusive, culturally-responsive approaches that foster and ensure social-emotional learning, educational equity, and successful outcomes for each and every student.

Girls and the Juvenile Justice System
In 2015, girls accounted for 29% of all criminal offenses and for 52.7% of dependency status offenses. Nearly 26% of all detention placements were girls, and 20% of all placements in secure juvenile correctional facilities were girls (Juvenile Justice Information System, 2015).

According to Office of Juvenile Justice and Delinquency Prevention (OJJDP) data, nearly 30% of juveniles arrested nationwide were girls and their share of arrests, detainment and court cases has steadily increased over the past two decades. Girls of color and girls living in poverty are more likely to become victims of violence, including suffering physical and
sexual abuse. These young girls and youth are typically nonviolent and pose little or no risk to public safety (Juvenile Justice Information System, 2015).

Many girls experience violence, trauma, poverty, and racial, ethnic and gender bias that can lead to their involvement in the juvenile justice system. The needs of girls must be addressed in a developmentally appropriate manner. This means recognizing a young woman’s diverse pathways into and across systems, and reducing her involvement so only those who pose a serious threat to public safety enter the juvenile justice system. Then, for the few girls and young women who do enter the system, it means reducing reliance on secure placement and increasing gender-appropriate and culturally responsive, trauma-informed, and developmentally-appropriate approaches (OJJDP, n.d.a).

According to Oregon’s Juvenile Justice Information System 2015 data, girls committed one third of all criminal offenses and were referred to the juvenile justice system for more than half of all dependency status offenses.

![Graph showing the proportion of males and females for all criminal and dependency status offenses in 2015.](image)

**Crossover Youth: Youth known by Juvenile Justice and Child Welfare Systems**

Crossover youth are young people who are known to both the child welfare and juvenile justice systems. Research indicates that compared with other youth in Oregon’s juvenile justice system, crossover youth (those who are or have also been in the child welfare system) are more likely to be nonwhite (either African American or Native American), despite the fact that the majority of the population under 18 in Oregon is white. The proportion of females is higher than in other juvenile justice groups; the age of first contact is markedly younger, the number of referrals is higher, the proportion with serious
criminal allegations is higher and the proportion with intensive dispositions involving restrictions on their liberty is higher. In short, these youth—all of whom have been victims of child maltreatment—are also at much greater risk of multiple involvements with the juvenile justice system (Feyerherm & Johnson, 2012).

Five jurisdictions in Oregon—Multnomah, Marion, Lane, Washington and Jackson counties—are currently implementing the Crossover Youth Practice Model (CYPM), a groundbreaking program developed by the Center for Juvenile Justice Reform at Georgetown University Public Policy Institute and supported by Casey Family Programs. Over 80 counties nationwide are participating in the initiative. Oregon’s efforts are supported by the funds the Youth Development Council receives from the OJJDP. Implementation of the project requires collaboration and information-sharing among juvenile justice, child welfare and courts in the pilot jurisdictions. The focus of the CYPM is on children and youth known to the child welfare and juvenile justice systems and provides multi-disciplinary teams with a common vision and the tools needed to take on the challenge of supporting youth and their families. The desired outcomes of the project are:

- A reduction in the number of youth placed in out-of-home care
- A reduction in the use of congregate care
- A reduction in the disproportionate representation of children of color
- A reduction in the number of youth becoming dually-adjudicated

The 2010-2011 analysis of the data received from all sites participating in the CYPM showed the following:

- Compared to the general population, females are proportionally represented in the child welfare population but underrepresented in juvenile justice populations (50% in the general population, 52% in the Child Welfare Baseline Data, and 21% in the Juvenile Justice Baseline Data). However, the representation of females is higher in all the dually-involved populations compared to juvenile justice, ranging from 37% to 47%.
- African-Americans are overrepresented in both child welfare and juvenile justice populations compared to the general population (46% and 38% compared to 17%...
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- All dually-involved youth, regardless of group, were more likely to be arrested for a misdemeanor offense.
- The majority of youth in all dually-involved youth groups had a prior criminal history at the time of their arrest (Bilchik, Herz, Fontaine, 2013).

Using data from the Oregon Health Authority (OHA) and the Department of Human Services (DHS), the Oregon Youth Authority (OYA) explored the historical social service program access patterns of youth prior to their first commitment to either OYA probation or close custody. This “feeder system” analysis focused on the following research questions: 1) what proportion of youth accessed one or more social service programs prior to their first OYA commitment; 2) when did their first contact with a given program occur relative to their commitment date; and 3) does program utilization prior to OYA commitment differ by certain youth characteristics?

The sample included 10,017 youth who began their first commitment to either OYA probation or close custody between January 2000 and July 2013. Data were examined related to each youth’s individual access and/or contact with Medical Assistance, Alcohol and Drug Treatment Services, Mental Health Treatment Services, Self-Sufficiency, Foster Care, and Child Protective Services.

Findings indicate that 90% of youth who were committed to OYA probation or close custody for the first time between 2000 and 2013 accessed one or more service program areas prior to commitment. The vast majority of these youth accessed and/or had contact with two or more different programs prior to involvement with OYA.

Child Welfare: Child Protective Services

Findings indicate that 21% of sampled youth (n=2,085) were victims of one or more substantiated occurrences of child maltreatment filed with Child Protective Services prior to their first OYA commitment. The majority of these youth were victims of threat of harm and/or neglect; however, many were victims of physical and/or sexual abuse as well. The average time between a youth’s first contact with Child Protective Services and commitment to OYA probation or close custody was approximately 6 years. The average age of youth at first involvement with Child Protective Services was slightly under 10 years. More than half of youth who were in contact with Child
Protective Services prior to their involvement with OYA were first listed as a victim of maltreatment when they were 10 years of age or younger.

**Child Welfare: Foster Care**

Data indicate that 19% of sampled youth (n=1,950) experienced one or more out-of-home foster care episodes prior to their first commitment to either OYA probation or close custody. Youth who were placed in foster care prior to their involvement with OYA were first removed from home about 5 years before their first OYA commitment date. On average, youth who were placed in foster care were 10 years old at the time of their first removal from home. Nearly 40% of these youth were removed for the first time when they were under the age of 10, and 54% were first removed between the ages of 11 and 15 years. Seven percent were removed for the first time at the age of 16 or older (Braun, 2014).

**Mental Health and Juvenile Justice**

Nationally, it is estimated that 70% of youth in the juvenile justice system meet the criteria for at least one mental health disorder. In Oregon, statewide statistics about how many youth come into the juvenile justice system with a mental health disorder are not available. Currently, there is no legal requirement that juvenile departments screen youth for mental health disorders when they are referred to the juvenile justice system. There are differing practices in how mental health issues are identified and dealt with according to the policies and resources in each Oregon county. The only comprehensive statewide statistics available are for the minority of juvenile justice youth who end up committed to the Oregon Youth Authority.

In recent years, Oregon judges and juvenile directors have experienced an increasing incidence of cases involving children with severe mental health needs and complex trauma histories who cannot be placed appropriately. A lack of psychiatric services, residential beds and crisis placements has led to youth being held in less than ideal settings such as detention or in hospitals. These settings are ill-equipped to help youth with significant needs, many of whom have suffered abuse, neglect, and trauma. These settings can exacerbate underlying trauma, are expensive, and are not conducive to producing positive outcomes.
Concerned that the system was not adequately serving these youth, Chief Justice Thomas Balmer convened the Oregon State Court Juvenile Justice Mental Health Task Force to study the problem and recommend solutions. The task force found, with limited exceptions, that mental health services provided to at-risk and delinquent youth with mental health issues are frequently not adequate and not well coordinated when youth move between systems. Anecdotal evidence suggests that culturally-appropriate community-based mental health and psychiatric services are in short supply statewide. Complicating matters, no single system or entity is accountable for children, leaving some who don’t fit neatly within the funding silos of allotted programs without the services they need to be successful. In addition, information about children as they move from system to system is not regularly shared for purposes of planning and treatment, resulting in a lack of continuity of care.

The majority of youth in crisis with mental or behavioral health needs who are referred to the juvenile justice system are not systemically screened for mental health issues upon entry into the system, nor are crisis and residential treatment beds readily available. As a result, current detention centers and state secure facilities for incarcerated youth are experiencing higher rates of mentally ill youth within their confines, yet are not designed for youth with serious mental health issues. Institutionalized processes for screening and diverting youth when the primary underlying issue is based on mental health or trauma to more appropriate evidence based trauma informed interventions would provide youth with greater opportunities for healing and rehabilitation (Juvenile Justice and Mental Health Task Force Report, 2016).

The OYA Feeder study data indicate that approximately 58% of sampled youth (n=5,773) accessed one or more programs via Mental Health Treatment Services at least once prior to first commitment to OYA probation or close custody. The majority of these youth first accessed Mental Health Treatment Services via Child/Adolescent Basic Outpatient treatment. Youth who accessed Mental Health Treatment Services did so an average of only 3 years (SD=3 years) before their first commitment to OYA probation or close custody. Youth who accessed Mental Health Treatment Services were slightly older on average at the time of their first enrollment (M=12 years; SD=3 years) compared to the average age of first contact with Medical Assistance and Self-Sufficiency. Nearly two
thirds (59%) of youth who accessed Mental Health Treatment Services prior to their involvement with OYA were between the ages of 11 and 15 at the time.

Approximately 40% of sampled youth (n=3,963) participated in one or more programs within Alcohol and Drug Treatment Services at least one time prior to their first OYA commitment. Nearly all of these youth first accessed alcohol and drug treatment services via participation in either outpatient drug treatment or outpatient alcohol treatment.

Youth who accessed alcohol and drug treatment services did so for the first time only one year prior to their first OYA commitment (SD=1 year), and around the age of 15 years old (SD=2 years). Sixty-eight percent first became involved with alcohol and drug treatment services between the ages of 11 and 15, and 31% began their involvement when they were 16 or older (Braun, 2014).

Lesbian, Gay, Bisexual, Transgender, Queer or Questioning (LGBTQ) Youth and the Juvenile Justice System

LGBTQ youth face many of the same everyday challenges related to growing up as their heterosexual peers (such as getting good grades, deciding which college to attend, or posting on various social media sites). But they also face additional obstacles related to their sexual orientation and gender identity, which heterosexual youth may not experience. Adolescence is a time of heightened risk-taking behavior and, as indicated above, there are several unique risk factors that LGBTQ youth are more likely to experience, thus increasing the odds they will come into contact with the juvenile justice system.

Available research has estimated that LGBT youth represent 5% to 7% of the nation’s overall youth population, but they compose 13% to 15% of those currently in the juvenile justice system (Development Services Group, Inc., 2014). Many LGBT youth in the juvenile justice system were arrested for committing non-violent survival crimes such as prostitution and shoplifting, and were likely living on the streets at the time of the offense. (ibid).

Several studies have suggested that LGBTQ youth are disproportionately represented in the juvenile justice system. For example, Himmelstein and Brückner (2011) found that youth who self-identified as LGB were significantly more likely to be stopped by police than youth who identified as heterosexual. A 2010 study by Irvine found that LGB and gender-nonconforming youths were twice as likely to have been previously held in
secure detention for truancy, warrants, probation violations, running away, and prostitution compared with their heterosexual and gender-normative peers. However, there were no differences when comparing the prevalence of detention for serious charges such as violent offenses, weapon charges, property offenses, and alcohol or drug offenses. Rather, the results seemed to suggest that LGB and nonconforming youths were detained for nonviolent offenses that could be linked to occurrences of out-of-home placements and homelessness (Irvine 2010).

LGBT students experience disproportionate exclusionary school discipline compared to their heterosexual peers. School exclusion through suspension and expulsion is associated with decreases in academic achievement and increased risk of negative or antisocial behavior over time. Suspension and expulsion have also been found to be associated with higher rates of truancy over time and an increased risk for failure to graduate or school dropout. Students who are suspended or expelled face an increased risk of contact with the juvenile justice system (Arredondo, M., Gray, C., Russell, S., Skiba, R., & Snapp, S., 2016).

**Evidence Based and Emerging Practices in Juvenile Rehabilitation and Delinquency Prevention**

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) maintains a Model Program Guide to help practitioners in the selection of the most relevant evidence-based interventions for a particular group of youth exhibiting specific delinquent behavior.

**Positive Youth Development (PYD)** - Positive youth development is an intentional, pro-social approach that engages youth within their communities, schools, organizations, peer groups, and families in a manner that is productive and constructive. It recognizes, utilizes, and enhances youths' strengths and promotes positive outcomes for young people by providing opportunities, fostering positive relationships, and furnishing the support needed to build on their leadership strengths.

**Trauma-Informed Care** - According to the Substance Abuse and Mental Health Services Administration’s (SAMHSA’s) concept of a trauma-informed approach, “A program,
organization, or system that is trauma-informed realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; responds by fully integrating knowledge about trauma into policies, procedures, and practices; and seeks to actively resist re-traumatization." A trauma-informed approach can be implemented in any type of service setting or organization, and is distinct from trauma-specific interventions or treatments that are designed specifically to address the consequences of trauma and to facilitate healing.

**Culturally Relevant Services** - Native Americans, African Americans, and other racial/ethnic groups have traditionally experienced historical, cultural, and intergenerational trauma, including racism, warfare, and other assaults such as banning traditional languages and healing practices.

**Tribal Best Practices** – An effort documenting cultural and traditional Native American teachings that are effective in prevention and treatment in the behavioral health field, substituting these practices for state-mandated evidence-based practices that were not tested on Native populations, particularly those living on tribal reservations, and thus were not the most effective tools in meeting the unique needs of this population.

**Developmentally Appropriate Services** - A developmental approach aims to consolidate the progress that has been made in both science and policymaking, and establishes a strong platform for a 21st-century juvenile justice system. It takes an in-depth look at evidence on adolescent development and on effective responses to adolescent offending (National Research Council, 2012).

**Return on Investment**

According to Oregon Youth Authority information, the cost to house a youth in close custody at a Youth Correctional Facility is over $200 a day, the cost per bed at the Oregon Department of Corrections is about $80 a day, and the cost per bed at the Oregon State Hospital is almost $700 a day. Intervening early will reduce costs and increase the likelihood of risk reduction.
**Recommendations**

The Youth Development Council recommends making targeted community investments in culturally-specific and gender-specific best practices in the main areas of concern. This will in turn prevent deeper involvement with the system and improve outcomes for the most vulnerable youth in Oregon.

All child-serving systems should agree to a common set of principles by which young people and families are treated, engaged and encouraged to participate.
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