

Reducing Racial Disproportionality & Advancing Racial Equity in the Washington State Juvenile Legal System

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Children, Youth and Families

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Executive Summary

Youth of color are disproportionately represented at each stage of Washington State’s juvenile legal system. This problem has worsened over the past decade despite successful efforts to reduce the total number of youth involved in the juvenile legal system. Youth of color — especially Black, Latine, and Indigenous youth — continue to be arrested, referred for prosecution, transferred to adult court, denied diversion, convicted, and incarcerated at higher rates than white youth. The Department of Children, Youth, and Families (DCYF) — which houses early learning, child welfare, and juvenile rehabilitation services — identified eliminating racial disproportionalities and advancing racial equity as one of its strategic priorities. DCYF contracted with our team through the Student Consulting Lab at the Evans School of Public Policy & Governance to address the following questions:

1. Which statutes in the Revised Code of Washington (RCW) contribute to racially disproportionate representation of youth and young adults in the Washington State juvenile legal system?
2. What changes or additions to the RCW may reduce racial disproportionality in the Washington State juvenile legal system and advance DCYF's strategic priority of racial equity?

Our team grounded our research with an initial review of existing literature on racism in the juvenile legal system, reviewed relevant state statutes in the Revised Code of Washington, interviewed stakeholders and experts, performed a thematic analysis of interview data, conducted secondary literature and statute reviews based on our analysis, and provided recommendations for policy changes based upon our findings. Our findings revealed a consistent, powerful theme: Addressing racial disproportionality in the juvenile legal system requires multi-system approaches and serious consideration of upstream factors. **Racial disproportionalities present in the juvenile legal system — and particularly in Juvenile Rehabilitation (JR) — are a product of layers of compounding racism and disadvantage that occur both in earlier junctures within the juvenile legal system and in preceding institutions including schools, communities, and child welfare.**

Key Findings and Recommendations

Within our research, two overarching themes surfaced: Multi-system collaboration and investment in communities of color. Addressing these two needs has great potential to mitigate the effects of compounding systemic racism by reducing risk for contact with the court system and by providing alternatives and community-based responses to replace deeper entrenchment in the court system after a young person is arrested. Our findings and recommendations are organized into four sections:

Upstream/Preventative: Police contact, school discipline, and systemic racism in child welfare are drivers of racially disproportionate contact with the legal system. There is a need for community investments and increase in protective factors.

Post-Arrest: There are racial disparities in referrals for prosecution, transfers to adult court, sentencing, and diversion. Prosecutorial discretion in the adjudication process is an important factor.

During Incarceration in JR: Youth in JR need access to quality education and tailored services as the population shifts to include more 18-24 year-olds. Sanctions for violations risk compounding racial disparities in JR.

After JR/Re-Entry: Current record sealing practices and required youth sex offender registration are major barriers to successful re-entry.

Recommendations: We recommend actions that address penalties for minor school-related infractions, the handling of truancy proceedings, police presence in schools, the foster care-to-prison pipeline, and the prevention of and response to trauma and adverse childhood experiences.

Recommendations: We recommend actions to reduce the transfer of youth to adult court, broaden the age range of juvenile court, increase access to diversion, and modify sentencing guidelines to make diversion the default response.

Recommendations: We recommend actions to minimize the time that youth spend in JR, adapt services to the shifting age demographics of the JR population, and limit the use of prosecution as a sanction for violations in JR.

Recommendations: We recommend actions to improve juvenile record sealing and reduce the burden of sex offender registration on youth who have been released from JR.

Chapter 1: Introduction

This chapter introduces our research questions and approach. To contextualize our work, we provide an overview of racial disparities in the Washington State juvenile legal system and recent major legislation impacting the juvenile legal system. We also describe the role of the Department of Children, Youth, and Families (DCYF) within the juvenile legal system and introduce its strategic priority of racial equity as context. We discuss the distinction between reducing racial disproportionality and advancing racial equity and acknowledge that disproportionality in the juvenile legal system is a symptom of systemic racism.

We also use this chapter to introduce an idea that runs throughout this report: Juvenile Rehabilitation (JR) is at the extreme end of the juvenile legal system, and the racial disproportionalities present there are a product of layers of compounding racism and disadvantage that occur earlier in the juvenile legal system and even further upstream. Ultimately, reducing racial disproportionality in the juvenile legal system requires action to mitigate the layered effects of systemic racism embedded upstream in addition to interventions aimed at youth who are already court-involved.

At the end of this chapter, we include an overview of several key terms used throughout this report and how we define them.

Background

The Task Force on Race and the Criminal Justice System released its first official report on racial disproportionalities in the juvenile legal system to the Washington State Supreme Court in 2012, drawing attention to the fact that youth of color are disproportionately arrested, referred to juvenile court, transferred to adult court, prosecuted, detained, and sentenced to confinement compared to white youth.¹ Nearly 10 years later, the Juvenile Justice Subcommittee of the same Task Force reported **that little had changed and, in fact, disproportionalities had worsened.**²

In 2017, Governor Jay Inslee signed legislation that established the Washington State Department of Children, Youth, and Families (DCYF), housing early learning, child welfare,

¹ Chang, Robert. “2012 Report on WA Juvenile Justice and Racial Disproportionality,” 2012. https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1117&context=korematsu_center.

² “Report and Recommendations to Address Race in Washington’s Juvenile Legal System: 2021 Report to the Washington Supreme Court.” Seattle University School of Law, 2021. https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1118&context=korematsu_center.

and juvenile rehabilitation services in the same agency to improve service delivery and outcomes. DCYF identified eliminating racial disproportionalities and advancing racial equity as one of its strategic priorities for 2021-2026. In support of this priority, DCYF's Government Affairs team contracted with our team through the Student Consulting Lab at the Evans School of Public Policy & Governance. Our task was to address the following research questions:

1. Which statutes in the Revised Code of Washington (RCW) contribute to racially disproportionate representation of youth and young adults in the Washington State juvenile legal system?
2. What changes or additions to the RCW may reduce racial disproportionality in the Washington State juvenile legal system and advance DCYF's strategic priority of racial equity?

Approach

To address these questions, we grounded our research with an initial review of relevant statutes in the Revised Code of Washington, assessing where current statute may perpetuate racial inequities in the juvenile justice system. We primarily reviewed RCW 13.40, the Juvenile Justice Act of 1977, and RCW 72.05, Children and Youth Services. We then conducted a review of existing literature on race in the juvenile legal system both nationally and within Washington State to establish a baseline familiarity with trends, issues, and reform efforts. Next, we conducted interviews with stakeholders including juvenile legal aid attorneys, a juvenile public defender, a juvenile prosecutor, a former juvenile court judge, a law professor who specializes in juvenile law, current and past legislators, leaders from organizations serving youth and young adults with juvenile court contact, and DCYF leaders. We conducted a thematic analysis of interview data to identify the most commonly discussed issues associated with racial disparities in the juvenile legal system. Finally, we used the themes that surfaced through our interviews to conduct secondary literature and statute reviews, where we gathered supporting evidence and identified specific areas of law and policy for recommended changes.

Overview of the Juvenile Legal System in Washington

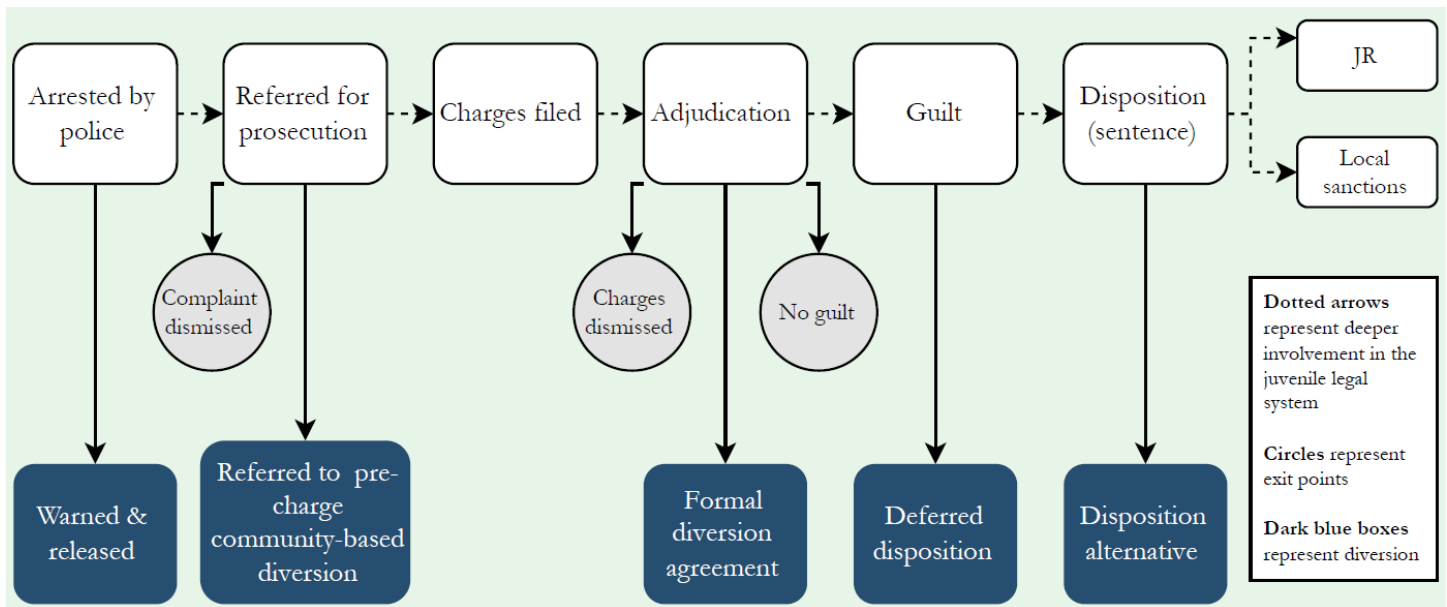
Washington State’s juvenile legal system is intended to prioritize rehabilitation and alternatives to incarceration. The Office of Juvenile Justice states that, “Should [youth] come into contact with the juvenile justice system, we want the experience to be rare, fair and beneficial to them.”³

After a minor is arrested by police, their case may be referred by police to the local prosecutor or released with a warning. If referred for prosecution, the local prosecutor decides whether to charge the young person with a crime or to refer the young person to a community-based pre-charge diversion program. In certain circumstances, minor youth may be transferred from juvenile court to adult court. In Washington’s decentralized model, juvenile court is administered at the county level by 33 independent local juvenile courts. Youth adjudicated by a juvenile court may have their charges dismissed, enter into a formal diversion agreement, be found not guilty, or be found guilty. Youth found guilty may be sentenced to confinement in JR (administered by DCYF), local sanctions, or receive a disposition alternative.⁴ *Figure 1* below depicts the progressive stages of the juvenile legal system from arrest on the left to a disposition to JR on the right, as well as exit points and diversion opportunities.

³ “Office of Juvenile Justice,” Department of Children, Youth & Families.
<https://www.dcyf.wa.gov/practice/practice-improvement/ojj>.

⁴ “Locally sanctioned youth can receive a variety of types of sanctions including confinement, probation, fines, community service or other sanctions carried out by the local probation department.” “Washington State’s Juvenile Justice System: Evolution of Policies, Populations, and Practical Research.” Washington State Institute for Public Policy, January 2020. https://www.wsipp.wa.gov/ReportFile/1719/Wsipp_Washington-State-s-Juvenile-Justice-System-Evolution-of-Policies-Populations-and-Practical-Research_Report.pdf; “When the [juvenile] court may suspend the disposition on condition that the youth comply with one or more local sanctions and any educational or treatment requirements.” *Ibid.*, 4.

Figure 1: Key Stages of the Washington State Juvenile Legal System⁵



Like in the adult system, racial disparities are present and become increasingly pronounced at every phase and decision point within the juvenile legal system in Washington.⁶ Youth of color are more likely than their white peers to have contact with police, be arrested, be referred for prosecution (and transferred to adult court), are more likely to be sentenced to incarceration, and receive harsher sentences.⁷ They are also less likely to receive alternatives including referral to community-based diversion, formal diversion agreements, and disposition alternatives.⁸ As a result, youth of color are overwhelmingly overrepresented in JR, the DCYF institution responsible for the care and rehabilitation of young people in confinement. Incarceration in JR is the final and most restrictive stage of the juvenile legal system and is only used if none of the pathways to diversion are utilized.

⁵ Based on WSIPP’s “Key Stages in Washington State’s Juvenile Justice System” diagram. Ibid., 4.

⁶ Race and the Criminal Justice System, Task Force 2.0. “Race and Washington’s Criminal Justice System: 2021 Report to the Washington Supreme Court.” *Fred T. Korematsu Center for Law and Equality*, 2021. https://digitalcommons.law.seattleu.edu/korematsu_center/116.

⁷ “Report and Recommendations to Address Race in Washington’s Juvenile Legal System: 2021 Report to the Washington Supreme Court,” 12-14.

⁸ Love, Tony P., and Edward W. Morris. “Opportunities Diverted: Intake Diversion and Institutionalized Racial Disadvantage in the Juvenile Justice System.” *Race and Social Problems* 11, no. 1 (March 1, 2019): 33–44. <https://doi.org/10.1007/s12552-018-9248-y>.

Racial Disparity in the Washington State Juvenile Legal System

While youth arrest and detention rates have fallen steadily in Washington since the late 1990s, racial disparities at nearly every stage of the juvenile legal system persist and, in some cases, have widened.⁹ *Table 1* depicts the rates at which Black, Hispanic, Asian, and American Indian youth are impacted at different stages of the juvenile legal system relative to the rates of white youth. Notably, Black youth are arrested at approximately three times the rate of white youth and are transferred to adult court at approximately twice the rate of white youth. Asian youth are more than three times more likely to be transferred to adult court than white youth.

Table 1: Washington State Relative Rate Index¹⁰

	Black	Hispanic	Asian	American Indian
Juvenile Arrests	2.94	1.12		1.74
Refer to Juvenile Court		1.26	1.30	1.59
Cases Diverted	0.73	0.91		0.80
Cases Involving Secure Detention		1.11		1.26
Cases Petitioned	1.17	1.08		1.30
Cases Resulting in Delinquent Findings		1.10		1.20
Cases Resulting in Confinement in Secure Juvenile Correctional Facilities	1.70		1.57	
Cases Transferred to Adult Court	1.96		3.34	

Source: Compliance with the Disproportionate Minority Contact (DMC) Core Requirement

Recent Juvenile Justice Legislation

Recent major changes to juvenile justice in Washington State include limiting the treatment of young offenders as adults, extending juvenile court and JR to include young adults up to age 25, eliminating the use of detention in response to status offenses, requiring consideration of youthfulness in the sentencing of young people, reducing time spent in JR, improving the quality of institutional education, improving the record sealing process, and

⁹ “Washington State’s Juvenile Justice System: Evolution of Policies, Populations, and Practical Research.”

¹⁰ This table is copied from a PCJJ report on Disproportionate Minority Contact. Blank cells are where values were not statistically significant ($p < 0.05$) and values are only shown where non-white youth are at a disadvantage. Feyerherm, William. “Compliance with the Disproportionate Minority Contact (DMC) Core Requirement.” Washington State Partnership Council on Juvenile Justice, 2018.

<https://dcyf.wa.gov/sites/default/files/pdf/2018DMCPlan.pdf>.

eliminating the use of detention for non-criminal offenses. Among other purposes, these reforms target the mechanisms and decision points that are key contributors to racial disparities.

Department of Children, Youth, and Families

Purpose, Mission, and Vision

DCYF is a cabinet-level agency whose mission is to “protect children and strengthen families so they flourish.” Its vision is that “all Washington’s children and youth grow up safe and healthy—thriving physically, emotionally, and educationally, nurtured by family and community.”¹¹ DCYF oversees Child Welfare, Child Care/Early Learning, and Juvenile Rehabilitation.

Strategic Priority: Equity

DCYF 2021-2026 Strategic Priorities identify eliminating racial disproportionalities and advancing racial equity as an agency priority. In doing so, DCYF also recognized its role and responsibility, stating, “DCYF is one component of a complex system that contributes to disparities and disproportionalities. DCYF will identify areas where the agency has the power, influence, and responsibility to enact disruptive and transformative changes.”¹²

“DCYF is one component of a complex system that contributes to disparities and disproportionalities.”

DCYF 2021-26 Strategic Priorities

Racial Equity

Reducing Racial Disproportionality versus Advancing Racial Equity

In our analysis we assume that reducing racial disproportionality is not synonymous with advancing racial equity. Washington could achieve racial proportionality in the juvenile legal system by arresting and incarcerating more white youth, but that approach is clearly not an acceptable solution. Rather, we focus on the goal of advancing racial equity to reduce

¹¹ Washington State Department of Children, Youth & Families. “About Us.” Accessed February 19, 2022. <https://www.dcyf.wa.gov>.

¹² “The Department of Children, Youth, and Families - Strategic Priorities 2021-2026.” Washington State Department of Children, Youth & Families. https://www.dcyf.wa.gov/sites/default/files/pubs/COMM_0058%20DCYF_Strategic_Priorities_2021-2026.pdf.

racial disproportionality while simultaneously continuing to reduce the incarceration of young people overall. In the context of this report, **we use the term “advancing racial equity” to mean ensuring that youth of color experience the same benefits as their white peers** with respect to the shift away from policing, prosecution, and incarceration and towards prevention, diversion, and community-based non-restrictive solutions. The widening racial disparities in the juvenile legal system indicate that efforts to reduce youth incarceration — community investments for prevention, expanding diversion options, reducing transfers to adult court, etc. — have benefitted white youth more than youth of color. With this in mind, we approached this report with an emphasis on protecting and prioritizing youth of color within the broader effort of reducing youth incarceration.

Advancing racial equity means ensuring that youth of color experience the same benefits as their white peers with respect to the shift away from policing, prosecution, and incarceration and towards prevention, diversion, and community-based non-restrictive solutions.

Racial Disproportionality as a Symptom of Systemic Racism

Positioned at the most extreme end of the juvenile legal system, JR is at the end of a funnel through which layers of trauma, barriers to resources, denial of alternatives, disadvantage, and institutional bias have compounded to result in disproportionate incarceration of youth of color. This report attempts to explain and address those disproportionalities through law and policy — particularly that within DCYF’s sphere of influence. We also recognize that racial disproportionalities are a symptom of historic and ongoing systemic racism. Chipping away at the racial disparities present in arrest, prosecution, transfer to adult court, and sentencing will not resolve the root causes of racial inequity. Legacies of slavery and the genocide of Indigenous people underly past and present exclusion of people of color people from opportunities for wealth, education, and health, are the true forces behind the disparities we examine here.¹³

Key Definitions

We conclude this section with an overview of the key terms that warrant a careful definition and reappear throughout this report.

¹³ Flynn, Andrea, Dorian Tod Warren, Felicia J. Wong, and Susan Holmberg. *The Hidden Rules of Race: Barriers to an Inclusive Economy*. Cambridge University Press, 2017.

Youth and Young Adults: This term refers to people ages 8 through 24. The lower end of this range is based upon the minimum age at which juvenile courts have jurisdiction, and the upper end is based upon SB 6160 (2018) (which extended juvenile court jurisdiction to age 25) and HB 1646 (2019) (which extended JR confinement to people up to age 25). We also refer to this group as “youth” or “young people.” We use “young adults” when referring to people ages 18 through 24. We use “minors” to refer to people under 18.

Youth of Color: We use this term to refer to youth and young adults who are Black, Latine, and/or Indigenous because these are the racial groups most dramatically and consistently overrepresented in the juvenile legal system. They are also the groups for whom relevant data and reporting is most available.

Our focus on this group excludes Asian and Pacific Islander youth and others that are not reflected in the US Census race categories. This is largely a reflection of the unavailability of data on these groups and the inconsistency with which they are categorized; it is not a suggestion that their experiences within the juvenile legal system are not racialized.

Lastly, while we rely upon these categories, we also acknowledge the issues associated with attempting to define race, articulated by the Juvenile Justice Subcommittee of the Task Force on Washington’s Criminal Justice System:¹⁴

Racial distinctions are largely social constructs based upon perception and history. Not only are these distinctions socially constructed, they are also in constant flux, and under perpetual siege by those who dispute the arbitrary lines that they draw.

Disproportionality: Over- or under-representation of a demographic group compared to its percentage in the total population.¹⁵ In this report, we discuss disproportionalities relative to the general youth population.

Disparity: Unequal outcomes for one group compared with outcomes for another group.¹⁶ In this report, we most often discuss disparities between different racial groups among young people.

¹⁴ “Race and the Criminal Justice System, Task Force 2.0”

¹⁵ Cummings, Kevin, Christopher Graham, Sarah Veele, and Vickie Ybarra. “Using Data in DCYF to Advance Racial Equity.” Washington State Department of Children, Youth & Families - Office of Innovation, Alignment, and Accountability, 2021.

<https://www.dcyf.wa.gov/sites/default/files/pdf/reports/OIAAEquityData2021.pdf>.

¹⁶ Ibid., 14.

Systemic Racism: The self-sustaining perpetuation of inequality through the systems and institutions of society built for the benefit of white people and at the expense of people of color. Systemic racism in the United States is rooted in the legacies of slavery and the genocide of Indigenous people; it is maintained and reproduced through systems and institutions including capitalism, education, criminal justice, healthcare, banking, and child welfare.

Latine: We use the term “Latine” to refer to people who trace their ancestry to Latin America, Spain, or Portugal. We may use the terms “Latino,” “Latinx,” and “Hispanic” when referring directly to research that uses those terms.

Adultification: The misperception of children and youth of color — particularly Black girls — as older or more mature than their white peers. As a result of adultification, youth of color are more likely to be held to an adult-like standard of culpability and have their youthful misbehavior met with punishment rather than leniency or nurturing.¹⁷

¹⁷ Center on Poverty and Inequality. “Adultification Bias.” Georgetown Law, n.d. <https://genderjusticeandopportunity.georgetown.edu/adultification-bias/>

Chapter 2: Literature Review

Racial Disparities in the Washington State Juvenile Legal System

Washington State’s juvenile legal system produces racially disproportionate representation of youth of color at each step. Washington’s Supreme Court, executives, and legislators have been aware of racial disparities in the juvenile legal system since at least the 2012 release of the first official report on racial disproportionality in juvenile justice.¹⁸ This problem has worsened in the past decade. **Youth of color are disproportionately arrested, referred to court, transferred to adult court, denied diversion, prosecuted, convicted, and incarcerated at higher rates than white youth.**¹⁹ Despite recent downward trends statewide in the number of juvenile arrests and use of juvenile detention, racial disproportionalities have become increasingly pronounced.

Despite recent downward trends statewide in the number of juvenile arrests and use of juvenile detention, racial disproportionalities have become increasingly pronounced.

Factors Contributing to Racial Disparities

Racial disproportionalities in Washington’s juvenile legal system are a product of systemic racism in the United States. Because this report focuses on the legal system, this section provides a brief overview of the role racism has played in the creation and enforcement of law and how its influence has manifested in the context of modern criminal legal systems.

Racism and Law

Racial discrimination in the United States is historically rooted in law and policy; the genocide and displacement of Indigenous people, slavery, segregation, Jim Crow, and redlining all systemically marginalized people of color for centuries. This history has had

¹⁸ Chang, Robert. “2012 Report on WA Juvenile Justice and Racial Disproportionality,” 2012. https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1117&context=korematsu_center.

¹⁹ Feyerherm; “Race and the Criminal Justice System, Task Force 2.0”

lasting effects: scholars have established the relationship between past slave concentration in the South and contemporary inequalities in poverty rates.²⁰

Most law is now race neutral on its face. Despite this, racial disparities persist through systems, institutions, and interpersonal biases reproducing past inequalities. The War on Drugs is a powerful modern example of race neutral policy language with a highly racialized impact. As a reaction to rising crime in the 1960s and 1970s, the War on Drugs handed down harsher penalties with racially disparate impacts. Sentencing rules that mandated harsher penalties for crack cocaine than for powder cocaine disproportionately impacted Black Americans. Two decades after these rules were enacted, Black Americans served about the same amount of time in prison for nonviolent drug offenses as whites did for violent offenses.²¹

Race in the Adult Criminal Legal System

Scholars argue that mass incarceration is the “most important policy sustaining racial inequality in the post-civil rights era.”²² Black, Latine, and Indigenous people are overrepresented in the justice system broadly. This has impacts not just on those incarcerated, but collaterally as well. As more people of color are incarcerated, their families and communities struggle without their presence as children, spouses, and partners lose social and financial support.²³ The hyper-criminalization of people of color is self-reinforcing: It feeds harmful social constructions of people of color as dangerous, criminal, or undeserving, influencing policies that treat communities of color with control and sanctioning rather than investment and care.²⁴

²⁰ O’Connell, Heather A. “The Impact of Slavery on Racial Inequality in Poverty in the Contemporary U.S. South.” *Social Forces* 90, no. 3 (2012): 713–34.

²¹ Flynn et al.

²² Munger, Frank W., and Carroll Seron. “Race, Law, and Inequality, 50 Years After the Civil Rights Era.” *Annual Review of Law and Social Science* 13, no. 1 (2017): 331–50. <https://doi.org/10.1146/annurev-lawsocsci-110316-113452>; Alexander, Michelle, and Cornel West. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. Revised edition. New York: New Press, 2012.

²³ Wakefield, Sara, and Christopher Uggen. “Incarceration and Stratification.” *Annual Review of Sociology* 36, no. 1 (2010): 387–406. <https://doi.org/10.1146/annurev.soc.012809.102551>; Wakefield, Sara, and Christopher Wildeman. *Children of the Prison Boom: Mass Incarceration and the Future of American Inequality*, 2014. <https://doi.org/10.1093/acprof:oso/9780199989225.001.0001>.

²⁴ Schneider, Anne L., Helen Ingram, and Peter DeLeon. “Democratic policy design: Social construction of target populations.” *Theories of the policy process* 3 (2014): 105-149.

Race in the Juvenile Legal System

Youth of color are overrepresented at every decision point in the juvenile legal system. Research finds that Black children and youth are more likely to be perceived by society (including authoritative adult figures like police and prosecutors) to be older than they actually are, more culpable for misbehavior, and less innocent than white youth. In every age group beginning at age 10, research has found Black children are perceived to be less innocent than other children.²⁵

Youth of color are also more likely to live in over-policed neighborhoods and face higher rates of arrest.²⁶ Following an arrest, youth of color are less likely to receive a diversion option, and are more likely to be charged in adult court, resulting in longer sentences for the same offenses as their white peers.²⁷ Following prosecution, youth of color experience disparate rates of commitment to a juvenile facility and longer sentences.²⁸

School-to-Prison Pipeline

The school-to-prison pipeline is an established phenomenon in which school-aged children and teenagers are funneled from public schools into juvenile and adult justice systems. This pipeline has largely been driven by zero tolerance policies and an increased police presence in schools.²⁹ Young people of color are overrepresented in this pipeline. Research finds that society (including teachers and school administrators) perceives children of color as less “childlike” and more aggressive, threatening, or responsible for their actions than their white

²⁵ Goff, Phillip Atiba, Matthew Christian Jackson, Brooke Allison Lewis Di Leone, Carmen Marie Culotta, and Natalie Ann DiTomasso. “The Essence of Innocence: Consequences of Dehumanizing Black Children.” *Journal of Personality and Social Psychology* 106, no. 4 (2014): 526–45. <https://doi.org/10.1037/a0035663>.

²⁶ Weitzer, Ronald. “Racialized Policing: Residents’ Perceptions in Three Neighborhoods.” *Law & Society Review* 34, no. 1 (2000): 129. <https://doi.org/10.2307/3115118>; OJJDP Statistical Briefing Book. “Juvenile Arrest Rates by Offense and Race, 2019,” November 16, 2020. https://www.ojjdp.gov/ojstatbb/special_topics/qa11501.asp?qaDate=2019.

²⁷ Chang, “Juvenile Justice and Racial Disproportionality: A Presentation to the Washington State Supreme Court.”; Evans, Heather D., and Steven Herbert. “Juveniles Sentenced as Adults in Washington State, 2009-2019.” University of Washington, June 14, 2021. https://www.opd.wa.gov/documents/00866-2021_AOCreport.pdf.

²⁸ “Report and Recommendations to Address Race in Washington’s Juvenile Legal System: 2021 Report to the Washington Supreme Court.” Seattle University School of Law, 2021. https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1118&context=korematsu_center.

²⁹ Heitzeg, Nancy A. “Education Or Incarceration: Zero Tolerance Policies And The School To Prison Pipeline,” 2009. <https://files.eric.ed.gov/fulltext/EJ870076.pdf>.

peers, contributing to higher rates of suspension and expulsion among students of color.³⁰ An American Civil Liberties Union (ACLU) report on police in California schools found “law enforcement agencies disproportionately stopped Black students on school campuses. Black students comprised 26% of stops of students by these agencies but were only 7.6% of the population of the schools where the stops were made.”³¹

According to the ACLU, many of the children targeted by the school-to-prison pipeline:

...have learning disabilities or histories of poverty, abuse, or neglect, and would benefit from additional educational and counseling services. Instead, they are isolated, punished, and pushed out. ‘Zero-tolerance’ policies criminalize minor infractions of school rules, while cops in schools lead to students being criminalized for behavior that should be handled inside the school. Students of color are especially vulnerable to push-out trends and the discriminatory application of discipline.³²

Foster Care-to-Prison Pipeline

Similarly, the foster care-to-prison pipeline funnels youth in foster care into the juvenile and adult justice systems at racially disproportionate rates. The Juvenile Law Center reports one quarter of foster care alumni become involved with the criminal legal system within two years of leaving care and over 90% of youth with five or more foster placements will enter the justice system.³³

Systemic racism in the child welfare system compounds these effects for youth of color who are placed in foster care. In Washington State, Indigenous youth are four times as likely as white youth to be removed and placed outside of their homes, and Black youth are three times as likely.³⁴ Once in foster care, Black children and youth remain in foster care for longer than their white peers, who are reunited with their families, placed with relatives, or

³⁰ Goff et al.; Skiba, Russell J., Robert H. Horner, Choong-Geun Chung, M. Karega Rausch, Seth L. May, and Tary Tobin. “Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline.” *School Psychology Review* 40, no. 1 (March 1, 2011): 85–107.

<https://doi.org/10.1080/02796015.2011.12087730>.

³¹ Amir Whitaker, Jessica Cobb, Victor Leung, and Linnea Nelson. “No Police in Schools: A Vision for Safe and Supportive Schools in CA.” *American Civil Liberties Union*, August 2021, 56.

³² American Civil Liberties Union. “School-to-Prison Pipeline.” Accessed February 18, 2022.

<https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/school-prison-pipeline>.

³³ “What Is The Foster Care-to-Prison Pipeline?” Juvenile Law Center, May 26, 2018. <https://jlc.org/news/what-foster-care-prison-pipeline..>

³⁴ “Report and Recommendations to Address Race in Washington’s Juvenile Legal System: 2021 Report to the Washington Supreme Court.”

have another guardianship established more quickly.³⁵ The current foster care system disproportionately impacts youth of color, contributing to their overrepresentation in the juvenile legal system.

Juvenile Record Sealing

When made available to the public, the record of a young person’s contact with the juvenile system reduces their ability to stabilize from the moment they are released well into adulthood. The American Bar Association writes:

Too often youth who have been court involved, even for minor cases which have been dismissed, learn that their brush with the law has put their family’s public housing, their career and educational opportunities (including maintaining their enrollment in their secondary schools), and their future encounters with law enforcement, at risk.³⁶

Barriers to housing, reduced career and educational opportunities, and complications when dealing with law enforcement all increase the likelihood that a young person will re-enter the system. Incomplete record sealing affects young people of all races, but youth of color are more likely to have a record in the juvenile system and to encounter law enforcement after their release.³⁷

Sex Offender Registration

In most states, young people adjudicated or convicted of sex offenses are required to register on a statewide sex offender registry. Placement on these registries includes requirements to notify community members, not live or work within a certain distance from locations where children congregate, and notify county law enforcement agencies any time their

³⁵“Racial Disproportionality in Washington State’s Child Welfare System.” Olympia, Washington: Washington State Institute for Public Policy, June 2008. https://www.wsipp.wa.gov/ReportFile/1018/Wsipp_Racial-Disproportionality-in-Washington-States-Child-Welfare-System_Full-Report.pdf.

³⁶American Bar Association’s Criminal Justice Section. “Think Before You Plea.” [<http://www.beforeyouplea.com>] <https://perma.cc/5796-LY8C>.

³⁷Barrett, David E., and Antonis Katsiyannis. “Juvenile Delinquency Recidivism: Are Black and White Youth Vulnerable to the Same Risk Factors?” *Behavioral Disorders* 40, no. 3 (May 1, 2015): 184–95. <https://doi.org/10.17988/0198-7429-40.3.184>.; Unruh, Deanne K., Jeff M. Gau, and Miriam G. Waintrup. “An Exploration of Factors Reducing Recidivism Rates of Formerly Incarcerated Youth with Disabilities Participating in a Re-Entry Intervention.” *Journal of Child and Family Studies* 18, no. 3 (September 16, 2008): 284. <https://doi.org/10.1007/s10826-008-9228-8>.

employment or residence changes.³⁸ In Washington State, the Washington Association of Sheriffs and Police Chiefs is required by law to maintain a publicly-accessible statewide registered sex offender website that employers, housing authorities, educational institutions, and other organizations frequently check in their application processes to deny applicants.³⁹

The assumed benefit of requiring sex offense registration is preventing new sex offenses through additional restrictions, scrutiny, and monitoring. While some studies have supported this assumption, far more have provided evidence registries do not reduce re-offense.⁴⁰ Additionally, studies have consistently found that registration requirements “negatively affect employment, housing, and social relations” for people required to register and their families, which pose barriers to successful re-entry, making recidivism more likely.⁴¹

Like other facets of the criminal legal system, sex offender registration requirements disproportionately impact people of color.⁴² An analysis of national data from 2012 to 2014 found that “In every state except Michigan, African Americans have a higher rate of

³⁸ Registration of sex offenders and kidnapping offenders, RCW § 9A.44.130. Accessed April 21, 2022. <https://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.130>.

³⁹ “Washington Association of Sheriffs & Police Chiefs,” n.d. https://sheriffalerts.com/cap_main.php?office=54528.

⁴⁰ Duwe, Grant, and William Donnay. “The Impact of Megan’s Law on Sex Offender Recidivism: The Minnesota Experience.” *Criminology* 46, no. 2 (2008): 411–46. <https://doi.org/10.1111/j.1745-9125.2008.00114.x>; “Sex Offender Sentencing in Washington State: Has Community Notification Reduced Recidivism?” Olympia, Washington: Washington State Institute for Public Policy, December 2005.

<http://www.wsipp.wa.gov/ReportFile/919>; Zevitz, Richard G. “Sex Offender Community Notification: Its Role in Recidivism and Offender Reintegration.” *Criminal Justice Studies* 19, no. 2 (June 1, 2006): 193–208.

<https://doi.org/10.1080/14786010600764567>; Vásquez, Bob Edward, Sean Maddan, and Jeffery T. Walker. “The Influence of Sex Offender Registration and Notification Laws in the United States: A Time-Series Analysis.” *Crime & Delinquency* 54, no. 2 (April 1, 2008): 175–92. <https://doi.org/10.1177/0011128707311641>; Lobanov-Rostovsky, Chris. “Adult Sex Offender Management.” SOMAPI Research Brief. U.S. Department of Justice, July 2015. <https://smart.ojp.gov/somapi/chapter-8-sex-offender-management-strategies>; Agan, Amanda Y. “Sex Offender Registries: Fear without Function?” *The Journal of Law & Economics* 54, no. 1 (2011): 207–39. <https://doi.org/10.1086/658483>.

⁴¹ Levenson, Jill, and Richard Tewksbury. “Collateral Damage: Family Members of Registered Sex Offenders.” *American Journal of Criminal Justice* 34, no. 1–2 (June 2009): 54–68. <https://doi.org/10.1007/s12103-008-9055-x>; Mercado, Cynthia Calkins, Shea Alvarez, and Jill Levenson. “The Impact of Specialized Sex Offender Legislation on Community Reentry.” *Sexual Abuse* 20, no. 2 (June 1, 2008): 188–205. <https://doi.org/10.1177/1079063208317540>.

⁴² Ackerman, Alissa R., Andrew J. Harris, Jill S. Levenson, and Kristen Zgoba. “Who Are the People in Your Neighborhood? A Descriptive Analysis of Individuals on Public Sex Offender Registries.” *International Journal of Law and Psychiatry*, *Beyond Myth: Designing Better Sexual Violence Prevention*, 34, no. 3 (May 1, 2011): 149–59. <https://doi.org/10.1016/j.ijlp.2011.04.001>.

inclusion on sex offender registries.”⁴³ The established harms of required registration combined with the reality that people of color are more likely to be required to register suggests that people of color suffer disproportionate negative impacts from mandatory registration.

Washington State Juvenile Justice Data

In 2012, the Task Force on Race and the Criminal Justice System wrote its first report to the Washington State Supreme Court about racial disproportionality in the juvenile justice system. The report acknowledged disproportionate representation of youth based on race and ethnicity in Washington’s juvenile justice system and made recommendations on how to address this issue. Using data from 2009, the report highlighted the following in Washington’s juvenile legal system:⁴⁴

- Black youth are nearly twice as likely as white youth to be arrested.
- Black and American Indian/ Native Alaskan youth are more than twice as likely to be referred for prosecution than white youth.
- White youth are more likely to receive a diversion relative to Black, Indigenous and Latine youth.

Recent decreases in juvenile arrest and detention rates have primarily benefitted white youth.

The 2021 follow-up report from the task force found that juvenile arrest and detention rates have decreased since the 2012 report, but that these reductions in juvenile arrest and detention have primarily benefitted white youth in Washington.⁴⁵ The racial disproportionality in Washington’s juvenile legal system has worsened since the 2012 report despite it being a well-established problem. Youth of color continue to experience disproportionate police contact, arrest rates, referrals to juvenile court, transfers to adult court, prosecution, and incarceration compared to their white peers.

⁴³ Ackerman, Alissa, and Meghan Sacks. “Disproportionate Minority Presence on U.S. Sex Offender Registries.” *Justice Policy Journal* 16, no. 2 (Fall 2018): 20.

http://www.cjcj.org/uploads/cjcj/documents/disproportionate_minority_presence_on_u.s._sex_offender_registries_ackerman_sacks.pdf.

⁴⁴ Chang, “Juvenile Justice and Racial Disproportionality: A Presentation to the Washington State Supreme Court.”

⁴⁵ “Report and Recommendations to Address Race in Washington’s Juvenile Legal System: 2021 Report to the Washington Supreme Court.”

Arrest, Detention, and Juvenile Court Referral

In its 2021 report, the Task Force on Race and the Criminal Justice System emphasized the higher rate of arrest and referral youth of color faced compared to white youth in Washington. Black youth in Washington are nearly three times more likely to be arrested and nearly four times more likely to be referred to juvenile court for prosecution than their white peers.⁴⁶ The report cites a study that found Black youth were seven times more likely to be arrested than white youth in King County.⁴⁷ Further, the report highlights statewide data showing Latinx youth are 1.12 times more likely to be arrested and 1.5 times more likely to be referred to juvenile court to be prosecuted. Indigenous youth are 1.74 times more likely to be arrested and 2.5 times more likely to be referred to juvenile court.⁴⁸ The racial disproportionalities in arrest and referral to juvenile court have worsened over the decade since the initial release of the 2012 report, with some rates more than doubling in this time frame.

Youth of color are also disproportionately represented in detention admissions. In 2020, youth of color made up 50% of juvenile detention admissions.⁴⁹ Specifically, 49.1% of detention admissions were white youth, 27.2% were Latine, 13.5% were Black, 5.5% were Indigenous, and 3.2% were Asian/Pacific Islander.⁵⁰ However, counties vary significantly in youth detention admissions by race. For example, Black youth represent 42.1% of detention admissions in King County and only 5.8% in Yakima County. Meanwhile, Latine youth represent 58.5% of detention admissions in Yakima County and only 21.1% in King County.⁵¹ These differences can only be partially explained by differences in overall county demographics — those example figures still reflect an overrepresentation of Black and Latine youth in both King and Yakima County detention.⁵² Admission rates also vary widely,

⁴⁶ Ibid., 27.

⁴⁷ Ibid., 27.

⁴⁸ Ibid., 27.

⁴⁹ Gilman, Amanda. Sanford, Rachael. “Washington State 2020 Juvenile Detention Annual Report,” *Washington State Center for Court Research*, Administrative Office for the Courts. (2021).

<https://www.courts.wa.gov/subsite/wscctr/docs/Detention%20Report%202020.pdf>

⁵⁰ Ibid., 10.

⁵¹ Ibid., 11.

⁵² In King County, 7.0% of the total population is Black or African American, and 9.9% is Hispanic or Latino. In Yakima County, 1.6% of the total population is Black or African American, and 50.2% is Hispanic or Latino. United States Census Bureau. “QuickFacts: Yakima County, WA; King County, WA,” July 1, 2021.

<https://www.census.gov/quickfacts/fact/table/yakimacountywashington,kingcountywashington/PST045221>

ranging from as low as 2.1 per 1,000 youth in King and Jefferson Counties to 18.9 in Okanogan County.⁵³

Transfers to Adult Court

The process of transferring youth offenders from the juvenile legal system into the adult legal system is known as “decline.” Youth may be transferred to adult court through either discretionary decline (an option available in certain circumstances to prosecutors, respondents, and judges) or automatic decline (referred to as “auto-decline,” where certain cases are automatically transferred to adult court).⁵⁴ Through the discretionary decline process, Latine youth are transferred to adult court at 4.5 times the rate of white youth, Black youth are transferred to adult court at 11.4 times the rate of white youth, and Asian/Pacific Islander youth transferred at 1.2 times the rate of white youth.⁵⁵

Auto-decline, which takes effect in specific circumstances based on age, offense type, and offense history,⁵⁶ produces even greater disparities for youth of color, especially for Black youth. Cases involving Asian youth are auto-declined at 1.4 times the rate of white youth, Latine youth at 4.9 times the rate, Indigenous youth at 5.2 times the rate, and Black youth at 25.8 times the rate of white youth.⁵⁷

Diversion

Diversion programs in Washington exist as alternatives to formal charging or incarceration. The 2020 Partnership Council on Juvenile Justice Report to the Governor and State Legislature highlighted the disparities in recommending diversion programs for youth of color compared to white youth. Among adjudicated young people, Black youth receive diversions at 55% the rate white youth do. Adjudicated Hispanic and American

⁵³ Ibid., 10.

⁵⁴ Elsberry, Cindy. “Practice Advisory,” *Washington Defenders Association*. (2019). https://www.opd.wa.gov/documents/00737-2019_WDAPracticeAdvisory.pdf

⁵⁵ “Race and the Criminal Justice System, Task Force 2.0”

⁵⁶ Youth cases are automatically transferred to adult court if they are 16 or 17 at the time of the offense and the offense is a serious violent offense under RCW 9.94A.030 or the offense is a violent offense under RCW 9.94A.030 the young person has certain prior offenses in their history. Ibid., A - 5.

⁵⁷ Ibid., 28.

Indian/Alaska Native youth receive diversions 87% and 69% as frequently as their white peers, respectively.⁵⁸ Appendix C includes the calculation used to arrive at these figures.

Adjudication and Incarceration

Similar to preceding stages of the juvenile legal system, adjudication rates are higher for youth of color. Recent data show that Latine youth are adjudicated at a rate 1.8 times higher than white youth, Black youth at a rate 4.8 times higher, and Indigenous at a rate 2.6 times higher.⁵⁹ The adultification of and bias against youth of color also presents itself in admissions to JR: Black youth are admitted to JR at over 2 times the rate of white youth.⁶⁰

⁵⁸ Department of Children, Youth, and Families. “Washington State Juvenile Justice Report to the Governor and State Legislature,” *Washington State Partnership Council on Juvenile Justice*. (2020).

<https://www.dcyf.wa.gov/sites/default/files/pdf/2020WA-PCJJgov.pdf>

⁵⁹ “Race and the Criminal Justice System, Task Force 2.0”

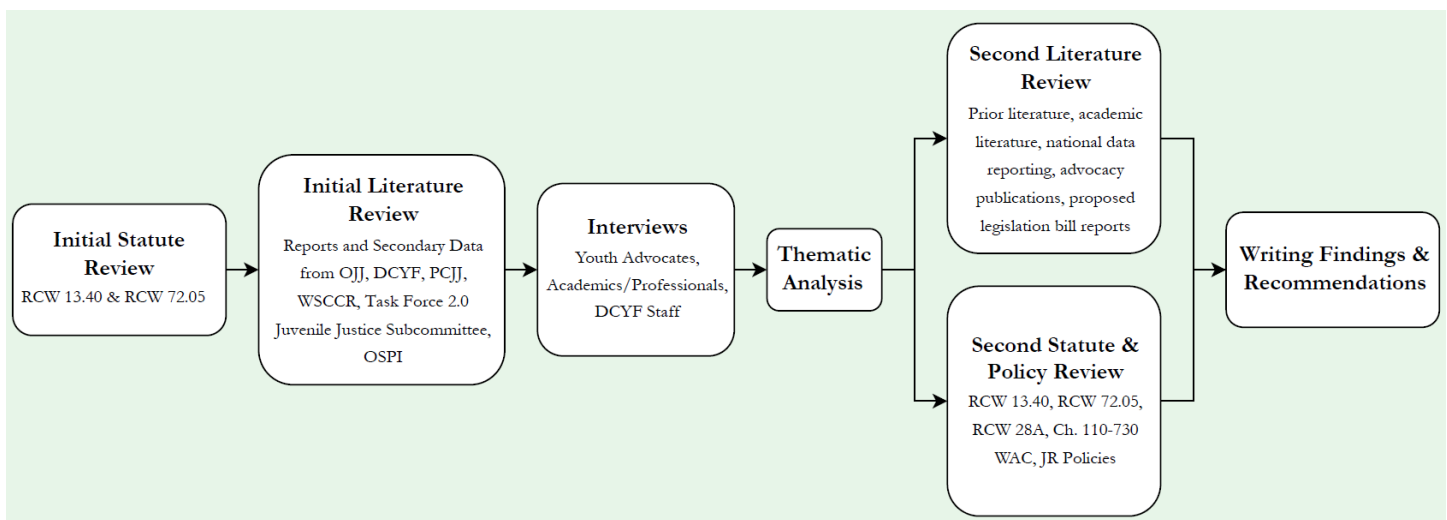
⁶⁰ “*Using Data in DCYF to Advance Racial Equity*.”

Chapter 3: Research Methods

Introduction

In this chapter, we provide an overview of our research process, including how we used different sources of information in the phases of our research, depicted below in *Figure 2*. We began by conducting an initial review of relevant statutes in the RCW to familiarize ourselves with existing law. Next, we conducted a literature review of reports recommended to us by DCYF and others that we encountered in searching for recent information on racial disparities in the Washington State juvenile legal system. Next, we conducted a total of 13 interviews with youth advocates, professionals/academics, and DCYF staff. We then performed a thematic analysis of interview data to identify salient themes across interviews. We used interview data themes and findings to guide a second phase of reviewing literature, statute, and policy to provide a foundation for our recommendations.

Figure 2: Research Process Flow Chart



Statute and Policy Review

First Phase

Our first phase of statute analysis was a prospective review of RCW 13.40: Juvenile Justice Act of 1977 and RCW 72.05: Children and Youth Services to familiarize ourselves with relevant law and to begin to identify any statutes that may contribute to disproportionality within juvenile justice and rehabilitation.

Second Phase

Later in our research process, after identifying themes through our literature review and interview analysis, we conducted a second review of statutes and policies relevant to our themes and research questions. We revisited the above RCWs as well as parts of RCW 28A: Common School Provisions; Washington Administrative Code (WAC) Chapter 110-730: Placement of Juvenile Offenders Committed to the JRA; and DCYF Juvenile Rehabilitation Policies.

Literature Review

We used publicly available reports and administrative datasets to understand trends and disparities in how youth and young adults come in contact with the juvenile legal system, paying particular attention to drivers of racial disparities in JR. This list includes a selection of key sources from our literature review, reflecting the resources we found to be especially relevant and informative and those that we returned to throughout our research process. Key sources included:

Report and Recommendations to Address Race in Washington’s Juvenile Legal System:⁶¹ This 2021 Report by the Juvenile Justice Subcommittee of the Race and the Criminal Justice System Task Force provides a detailed history of systemic racism in the juvenile legal system, discusses ongoing harm and racial disparities, and makes recommendations for reform. The historical review of racism in the juvenile legal system and discussion of the role of school discipline, mental health, the child welfare system, and homelessness outlined in this report provided rich context for our understanding of the current racial disparities in the juvenile legal system. This report also informed our understanding of the most harmful laws and policies within those systems. Many of the youth advocates and academics/professionals that we interviewed were collaborators on this report and repeated its recommendations. Several of our recommendations are inspired by this report.

Juvenile Justice Dashboard — Offense Types:⁶² This secondary dataset compiled by the Education Research and Data Center (ERDC) of the Washington State Office of Financial Management includes data on justice system involvement by race and general offense type

⁶¹ “Report and Recommendations to Address Race in Washington’s Juvenile Legal System: 2021 Report to the Washington Supreme Court.”

⁶² Education Research & Data Center, “Juvenile Justice Dashboard,” Washington State Office of Financial Management, <https://erdc.wa.gov/data-dashboards/juvenile-justice-dashboard>

from 2013 to 2020. It also provides educational attainment outcomes for “justice involved students” compared to students who do not have court involvement over the same time period. This data informed our understanding of the recent history of racial disparities in juvenile court involvement and the relationship between court involvement and educational attainment, supporting our understanding of the compounding effects of juvenile court involvement.

2020 Juvenile Detention Annual Report:⁶³ This report by the Washington State Center for Court Research covers the use of detention in Washington in 2020, including where youth were placed in detention, number of detention admissions, detention rates by different demographic characteristics, length of stay in detention, reasons for detention, use of detention for non-offender matters, and Secure Crisis Residential Center admissions. This report was particularly informative to our understanding of how the use of detention varies across counties by detention rate, race, and offense type.

Juvenile Justice Report to the Governor & State Legislature:⁶⁴ This report by the Partnership Council on Juvenile Justice (PCJJ) uses 2018 juvenile justice data to report trends in arrest and filing rates, variation in county practices, status offenses, racial/ethnic disparities, and recidivism rates. Its key findings are that while Washington is seeing a reduction in juvenile case filings and an increase in the use of diversion, youth of color continue to experience disproportionate referrals to court and longer periods of detention. This report grounded our knowledge of juvenile justice trends in Washington and provided quantitative data that we used to corroborate our interview findings. We also considered this report’s recommendations for reducing racial disparities in the juvenile legal system in developing our own recommendations.

Using Data in DCYF to Advance Racial Equity:⁶⁵ This report by the DCYF Office of Innovation, Alignment, and Accountability provides a rich description of how DCYF defines, collects, reports, and analyzes race/ethnicity data. It also reports on racial and ethnic disproportionalities and disparities among children, youth, and families served by DCYF. This report informed our understanding of how youth demographics have shifted over time and across counties in Washington and provided useful data to illustrate disproportionalities in the child welfare system, referrals to juvenile court, and JR admissions.

⁶³ “Washington State 2020 Juvenile Detention Annual Report”

⁶⁴ “Washington State Juvenile Justice Report to the Governor and State Legislature.”

⁶⁵ “*Using Data in DCYF to Advance Racial Equity.*”

Interviews

Our initial statute and literature reviews informed our decisions about interview sampling and purpose. This section describes the three categories of interviews that we conducted, how we reached interview subjects, what information we sought to gain through interviews, our process for conducting interviews, and how we analyzed interview data. We grouped our interviews into three categories, described in more detail below:

- Academics and Professionals
- Youth Advocates
- DCYF Staff

Sampling Approach and Interview Strategy

We conducted a total of 13 semi-structured 30-minute interviews. We created three different variations of an interview protocol tailored to each of the three categories of interviews, building scripts of questions and topics ahead of the interviews.⁶⁶ See *Appendix A* for our interview protocol. Each interview was conducted by a designated lead and had a minimum of two team members present. While each interview lead used questions from the protocol, we also maintained a conversational tone by asking follow-up questions to encourage subjects to elaborate or share more information.

Academics and Professionals (n=6)

Sampling: To identify academics and professionals who focus on the juvenile legal system, we considered authors of the Juvenile Justice Subcommittee Report of the Task Force Report and Recommendations to Address Race in Washington’s Juvenile Legal System Report (Juvenile Justice Subcommittee Report), primary sponsors on recent major juvenile justice legislation, and advice from our joint professional networks. From there, we used snowball sampling to reach a total of six interviewees including two former state legislators, one current state legislator, a law professor specializing in juvenile law, a former Washington State Supreme Court judge, and a juvenile prosecutor.

Interview Focus: Through our interviews with academics and professionals we sought to understand the past and present policy landscape of juvenile legal system reforms and efforts

⁶⁶ DiCicco-Bloom, Barbara, and Benjamin F Crabtree. “The Qualitative Research Interview.” *Medical Education* 40, no. 4 (2006): 314–21. <https://doi.org/10.1111/j.1365-2929.2006.02418.x>.

to advance race equity. This data provided insight into the areas of law targeted by recent reform efforts.

Youth Advocates (n=5)

Sampling: We began our sample of youth advocates by interviewing a few authors of the Juvenile Justice Subcommittee Report. We used snowball sampling to reach additional youth advocates for a total of five individuals including representatives from a juvenile legal aid nonprofit, a civil rights and policy organization, a community-based diversion program, an organization serving juvenile court-involved youth, and juvenile public defense.

Our team decided not to pursue interviews with incarcerated young people because we are not equipped with the appropriate trauma-informed training to obtain informed consent from and ethically interview a population that is highly vulnerable to exploitation in research. Instead, we made an effort to capture the perspectives and priorities of court-involved youth through interviews with the above youth advocates. We discuss limitations associated with this decision in Chapter 4.

Interview Focus: In our interviews with youth advocates, we sought to identify key factors responsible for driving racial disparities in the juvenile legal system and the landscape of policy options to ameliorate those disparities.

DCYF Staff (n=2)

Sampling: We interviewed a convenience sample of two members of DCYF leadership with whom we were connected through this project. We prioritized DCYF staff involved in Juvenile Rehabilitation and Government Affairs. In Chapter 4, we discuss limitations in our findings and recommendations related to connecting with other DCYF staff.

Interview Focus: Through our interviews with DCYF staff, we sought to understand how DCYF leaders view the role of DCYF in relation to the juvenile legal system and what they consider priorities for reducing racial disparities and advancing racial equity.

Data Analysis

We conducted a thematic analysis of interview content using an adaptation of Braun and Clarke's six-phase method: familiarizing ourselves with the data, generating initial codes, searching for themes, reviewing themes, defining themes, and then producing the final

analysis of themes as they related to our research questions,⁶⁷ described below in *Figure 3*. Our final codebook and a chart depicting how we grouped codes into themes are included in *Appendix B*.

Figure 3: Thematic Coding and Analysis Process

1. *Familiarizing Ourselves with Data:* Our team began by selecting an initial sample of two interviews. We then assigned two different team members to each of the two interview transcripts. Each analyst then independently reviewed their assigned interview, drafted initial codes, and summarized any general themes they identified. The two pairs then met separately to identify and agree upon initial codes.
2. *Generating Initial Codes:* After individual reviews by the two pairs of analysts, the full team met to discuss their codes and organize initial codes into possible themes. The team then constructed a preliminary codebook to standardize the identification and classification of concepts and themes across all interviews.
3. *Searching for Themes:* After creating the standardized codebook, we assigned each interview a primary and secondary analyst. To mitigate possible bias in our analysis, we alternated between the roles of the primary and secondary reviewers. First, primary analysts used the codebook to review and assign codes in their assigned interview transcripts. Then, secondary analysts reviewed the transcripts to ensure that no themes were missed or misidentified. New codes or themes found by the analysts in a transcript (but not in the codebook) were noted for potential addition to the codebook.
4. *Reviewing Themes:* As a team, we then decided whether to add any potential codes or themes identified in Step 3 to our codebook. After finalizing the codebook, we reviewed the full set of codes and themes, their occurrences across all interviews, and the relationships between codes to identify key concepts from our interviews.
5. *Defining Themes:* We categorized the resulting themes and concepts under the relevant research questions and stages of the juvenile legal system to determine their place in our findings.
6. *Document Thematic Analysis:* Finally, we documented our findings and how they informed our research in this report. We present our findings in Chapter 4.

⁶⁷ Braun, Virginia, and Victoria Clarke. "Using Thematic Analysis in Psychology." *Qualitative Research in Psychology* 3, no. 2 (January 2006): 77–101. <https://doi.org/10.1191/1478088706qp063oa>.

Chapter 4: Findings and Analysis

Introduction

Our interview data and literature review reveal a consistent, powerful theme: Addressing racial disproportionality requires multi-system approaches and serious consideration of upstream factors. Each step of the juvenile legal system introduces new systemic biases and racial disparities in outcomes, compounding the effects of systemic racism and making it more difficult to prevent the final composition of incarcerated youth from being racialized. To this point, a common theme to emerge throughout our interviews was a belief that strategies for preventing and reducing racially disproportionate representation in JR are more effective when made farther upstream.

Addressing racial disproportionality requires multi-system approaches and serious consideration of upstream factors.

Our findings also surfaced two themes that are relevant to and appear in all four of the sections below: Multi-system collaboration and investment in communities of color. These two approaches have great potential to mitigate the effects of compounding systemic racism by reducing risk for contact with the court system and by providing alternatives and community-based responses to replace deeper entrenchment in the court system after a young person is arrested.

Our findings are organized into four sections as follows:

- 1. Upstream/Preventative** describes the period of a young person's life before they have contact with police or juvenile court. Findings in this section identify venues for disproportionate contact with police for youth of color — such as through school discipline and the child welfare system — and identify the need for increased protective and preventative factors.
- 2. Post-Arrest** refers to the period after a young person has been arrested and before adjudication. Findings in this section describe racial disparities in transfers to adult court, sentencing, and diversion. Here we also discuss the role of the prosecutor in the adjudication process.

3. **During Incarceration in JR** refers to the period from when a young person is admitted to JR until their release. This section focuses on services and programming available to youth in JR and policies surrounding minimum stays in JR and sanctioning violations.
4. **After JR/Re-Entry** describes the period after a young person is released from JR and returns to the community. Findings in this section focus on major barriers to successful re-entry.

Upstream/Preventative

The Upstream or Preventative time period is the period before youth ever interact with the juvenile legal system. Systemic poverty and the historical and contemporary effects of racism create cumulative disadvantage for youth of color, their families, and their communities.

“We should have systems and structures that respond with questions of ‘What do you need? How can we support you?’ And the response should assume that you need to belong here – to a community, to a family, to a school.”

Interviewee

Our findings indicate that **supporting youth of color before they ever come in contact with the juvenile legal system is imperative to advancing racial equity.**

Efforts to address drivers of racial disproportionality are more impactful the further “upstream” one looks. Protective factors in schools, the child welfare system, and community are most effective at preventing youth from coming in contact with the juvenile legal system in the first place.

Schools

A theme that surfaced in nearly every interview was the disproportionate criminalization of youth of color occurring through schools and school discipline. Particularly of note were 1) the use of police in schools, 2) school discipline policies and practices, and 3) general school support.

Police in Schools

Two recent laws have limited the use of School Resource Officers (SROs) in Washington State. SROs are commissioned law enforcement officers assigned by their local police department or sheriff’s office to work within schools. SROs have the authority to make

arrests.⁶⁸ HB 1216 (2019) created requirements and statutory definitions for SRO Programs, codified as RCW 28A.320.124.⁶⁹ HB 1214 (2021) placed more requirements on school safety and security services including training requirements in an effort to address the disproportionate contact that Black youth have with police and the predictive factor that has in future arrest rates.⁷⁰ Evidence from the US Department of Education 2015-2016 Civil Rights Data Collection shows that Black and Indigenous youth are more likely to be arrested and referred to law enforcement through schools.⁷¹ The ACLU of Washington found that schools with higher populations of Black and Latinx students “are more likely to have embedded school police.”⁷² While efforts to make school safety and security services less harmful to youth of color have been advanced, the question remains if police in schools can ever achieve a racially equitable outcome.

School Discipline

Of significant concern regarding school discipline is the negative impacts that school exclusion has on students of color. Washington data from the 2019-20 school year showed that Black/African American, American Indian/Alaskan Native, and Hispanic/Latino students were more likely to experience exclusion, at rates 2.6 times, 2.5 times, and 2 times greater than white students, respectively.⁷³ **The act of removing students from schools increases their risk of dropping out of school and facing worse educational outcomes overall. This burden continues to be placed primarily on students of color.**⁷⁴

⁶⁸ RCW 28A.320.124 includes in the definition of SROs that, “School resource officers should focus on keeping students out of the criminal justice system when possible and should not be used to attempt to impose criminal sanctions in matters that are more appropriately handled within the educational system.”

<https://app.leg.wa.gov/rcw/default.aspx?cite=28A.320.124>

⁶⁹ “School Safety and Security Staff | OSPI.” Accessed April 22, 2022. <https://www.k12.wa.us/student-success/health-safety/school-safety-center/school-safety-and-security-staff>.

⁷⁰ Washington State Legislature. *Providing K-12 public school safety and security services by classified staff or contractors*. HB 1214. 67th Legislature. 2021 regular sess. Accessed April 22, 2022.

<https://app.leg.wa.gov/bills/summary?BillNumber=1214&Year=2021>.

⁷¹ American Civil Liberties Union. “Cops and No Counselors.” Accessed April 19, 2022.

<https://www.aclu.org/report/cops-and-no-counselors>.

⁷² ACLU of Washington. “Students Not Suspects: The Need to Reform School Policing in Washington State,” April 18, 2017. <https://www.aclu-wa.org/docs/students-not-suspects-need-reform-school-policing-washington-state>.

⁷³ “Report Card - Washington State Report Card.”

<https://washingtonstaterreportcard.ospi.k12.wa.us/ReportCard/ViewSchoolOrDistrict/103300>.

⁷⁴ “Report and Recommendations to Address Race in Washington’s Juvenile Legal System: 2021 Report to the Washington Supreme Court,” 29.

School Support

Students of color experience unequal educational outcomes.⁷⁵ African American and Hispanic students are more likely to attend schools where a majority of their peers are low-income, students of color often do not receive appropriate or adequate access to special education, and schools with higher proportions of Black and Latine students are more likely to have underpaid teachers.⁷⁶ Our interviews also identified a lack of support in schools such as the shortage and under-resourcing of mental health professionals in schools.

Child Welfare System

Also underlying disproportionate racial representation in the juvenile justice system is disproportionate contact with the child welfare system. The connection between the child welfare system and contact with the juvenile legal system was present as a theme in nearly all of our interviews. Children and families of color — specifically Black and Indigenous families — are significantly more likely to be referred to child welfare services, have children removed from the home, and for children to remain outside the home for greater than two years.⁷⁷ These outcomes reflect racial bias in the child welfare system, the racist legacy of child welfare in the U.S., the impacts of systemic racism, and underinvestment in communities of color.⁷⁸

Racial Disparities in Foster Care

In 2021, DCYF’s Office of Innovation, Alignment, and Accountability reported the overrepresentation of Black, American Indian/Alaskan Native, and Multiracial children

⁷⁵ Garro, Adrienne, Keri Giordano, Aaron Gubi, and Kendahl Shortway. “A Consultation Approach to Target Exclusionary Discipline of Students of Color in Early Childhood Education.” *Contemporary School Psychology* 25, no. 1 (March 1, 2021): 124–35. <https://doi.org/10.1007/s40688-019-00258-9>.

⁷⁶ Brownstein, Janie Boschma, Ronald. “Students of Color Are Much More Likely to Attend Schools Where Most of Their Peers Are Poor.” *The Atlantic*, February 29, 2016.

<https://www.theatlantic.com/education/archive/2016/02/concentration-poverty-american-schools/471414/>;

Morgan, Hani. “Misunderstood and Mistreated: Students of Color in Special Education.” *Voices of Reform* 3, no. 2 (December 29, 2020): 71–81. <https://doi.org/10.32623/3.10005>;

U.S. Department of Education Office for Civil Rights. “Civil Rights Data Collection Data Snapshot: Teacher Equity,” March 21, 2014. https://cdn.uncf.org/wp-content/uploads/PDFs/CRDC-Teacher-Equity-Snapshot.pdf?_ga=2.257733003.1098438687.1650475129-128654122.1650475129.

⁷⁷ Graham, Christopher. “2019 Washington State Child Welfare Racial Disparity Indices Report.” Washington State Department of Children, Youth & Families - Office of Innovation, Alignment, and Accountability., 2020. <https://www.dcyf.wa.gov/sites/default/files/pdf/reports/CWRacialDisparityIndices2019.pdf>.

⁷⁸ “The Department of Children, Youth, and Families - Strategic Priorities 2021-2026.”

relative to the proportion of children living below 200% of the poverty line across all populations served by DCYF, including Child Welfare and Juvenile Rehabilitation.⁷⁹ Data from several interviews surfaced factors contributing to these outcomes including the effects of intergenerational trauma, systemic racism, poverty, under-resourcing communities of color, and racial bias within child welfare.

DCYF data from 2019 shows racial disparities negatively impacting families of color in every stage of the child welfare system including intake, entering placement, placement with relatives, children moved twice or more within 12 months of placement, children in care for more than two years, and family reunification.⁸⁰ Legal experts, youth advocates, legislators, and members of DCYF leadership we interviewed spoke about the lack of community and family support for children and youth in foster care and the tremendous impact on outcomes for children and families.

“In the name of protecting children from bodily harm... we’re too quick to move to termination of parental rights, and this is particularly profound within communities of color.”

Interviewee

Foster Care-to-Prison Pipeline

Ninety percent of foster children with five or more placements will come into contact with the juvenile justice system during their time in the child welfare system.⁸¹ In 2018, DCYF reported that 40% of children incarcerated in juvenile rehabilitation facilities were in foster care and 80% were subjects of abuse or neglect investigations.⁸² A common theme in our interview data was that the foster care system feeds into the juvenile legal system. This widely acknowledged relationship is impacted by complex, systemic factors including poverty, trauma, unmet mental and behavioral health needs, and disconnection from foundational family and community support.⁸³ As noted above, children and youth of color

⁷⁹ Cummings et al.

⁸⁰ Graham, Christopher. “2019 Washington State Child Welfare Racial Disparity Indices Report.” Washington State Department of Children, Youth & Families - Office of Innovation, Alignment, and Accountability., 2020. <https://www.dcyf.wa.gov/sites/default/files/pdf/reports/CWRacialDisparityIndices2019.pdf>.

⁸¹ Yamat, Ashly. “The Foster-Care-Prison Pipeline.” *Justice Policy Journal* 17, no. 2 (Fall 2020). http://www.cjcj.org/uploads/cjcj/documents/the_foster_care_to_prison_pipeline.pdf.

⁸² Abramo, Allegra. “Washington ‘State-Raised’ Inmates From Foster Care Urge Better Youth Support.” Juvenile Justice Information Exchange, December 10, 2019. <https://jjie.org/2019/12/10/washington-state-raised-inmates-from-foster-care-urge-better-youth-support/>.

⁸³ Yamat, Ashly. “The Foster-Care-Prison Pipeline.” *Justice Policy Journal* 17, no. 2 (Fall 2020). http://www.cjcj.org/uploads/cjcj/documents/the_foster_care_to_prison_pipeline.pdf.

in contact with the child welfare system are more likely to be removed from their family of origin, not be placed in kinship care, and remain in foster placements longer than two years, all of which contribute to increased risk of contact with JR.⁸⁴ Kinship care provides children with a sense of stability and security — children placed with family members experience fewer placement disruptions and school changes than children in foster care. However, a survey of kinship caregivers in Washington found that the most commonly unmet needs they experienced in their role were financial needs.⁸⁵

Among interviews where subjects spoke about the foster care-to-prison pipeline, a clear theme was that the trauma, instability, lack of support, and disconnectedness from family and community caused by involvement in the child welfare system lead to and worsen outcomes such as contact with the juvenile legal system, homelessness, mental and behavioral challenges, and delayed educational attainment, among others. Interview data recognized the complexity of addressing these outcomes and highlighted the importance of early intervention, cross-system collaboration, and providing supports to families, children, and youth in the child welfare system to disrupt the pipeline and keep families together.

Community Investments & Protective Factors

While not within the direct control of DCYF’s work, protective factors, risk factors, and community investments were discussed ubiquitously both in interviews and in our literature review. Another common interview theme was the connection between access to mental health services, housing stability, economic stability, trauma, adverse childhood experiences (ACEs), and contact with the juvenile legal system. Studies indicate that 97% of justice system-involved youth have at least one ACE.⁸⁶ ACEs are defined by the CDC as:

...potentially traumatic events that occur in childhood (0-17 years). For example: experiencing violence, abuse, or neglect, witnessing violence in the home or community, having a family member attempt or die by suicide. Also included are aspects of the child’s environment that can undermine their sense of safety, stability, and bonding, such as growing up in a

⁸⁴ Graham, “2019 Washington State Child Welfare Racial Disparity Indices Report.”

⁸⁵ Day, Angelique, Alanna Feltner, Sierra Wollen, and Lori Vanderwill. “Kinship Care in Washington State.” Washington State Department of Children, Youth & Families, September 2020. https://manuals.dshs.wa.gov/sites/default/files/AL TSA/hcs/documents/kinship/Report%20one-%20Kinship%20Care%20in%20Washington%20State_.pdf.

⁸⁶ Baglivio, Michael, Nathan Epps, Kimberly Swartz, Mona Sayedul Huq, Amy Sheer, and Nancy Hardt. “The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders.” OJJDP, Spring 2014. https://www.prisonpolicy.org/scans/Prevalence_of_ACE.pdf.

household with: substance use problems, mental health problems, instability due to parental separation or household members being in jail or prison.⁸⁷

ACEs are more prevalent in communities of color and economically disadvantaged communities contributing to economic hardship, negative effects on health and wellbeing, lack of opportunities, lower educational attainment, and toxic stress.⁸⁸ These impacts are compounded by the ongoing and historical impacts of systemic racism and poverty.⁸⁹ Nearly all interviewees discussed the need to address the clear relationship between trauma/ACEs and contact with JR.

“If we're going to refuse to pay reparations and actually change the material conditions that people are living in... we will constantly be needing to triage our unwillingness to make a substantial investment that will truly be transformative.”

Interviewee

Though protective and risk factors provide valuable information on the cyclical patterns leading youth to Juvenile Rehabilitation, research and legislative efforts targeting these factors are sparse.⁹⁰ In a 2015 qualitative study, incarcerated youth who were asked about protective and risk factors outlined how chaotic and unsafe home and community environments contributed to pathways of high-risk behavior and criminality leading to contact with the criminal legal system. Solutions to disrupt these patterns and mitigate the risk of future contact with

the criminal legal system fall into two categories- prevention and mitigation of immediate and long-term harms.

Preventative interventions include strengthening resources within communities and families such as: parenting classes, high quality child care, early childhood home based visitation, before and after school activities, and mentorship programs.⁹¹ Home visiting models such as the Nurse-Family Partnership Program (NFP) are associated with 48% reduction in rates of

⁸⁷ Centers for Disease Control and Prevention. “Fast Facts: Preventing Adverse Childhood Experiences,” April 6, 2022. <https://www.cdc.gov/violenceprevention/aces/fastfact.html>.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Barnert, Elizabeth S., Raymond Perry, Veronica F. Azzi, Rashmi Shetgiri, Gery Ryan, Rebecca Dudovitz, Bonnie Zima, and Paul J. Chung. “Incarcerated Youths’ Perspectives on Protective Factors and Risk Factors for Juvenile Offending: A Qualitative Analysis.” *American Journal of Public Health* 105, no. 7 (July 2015): 1365–71. <https://doi.org/10.2105/AJPH.2014.302228>.

⁹¹ Centers for Disease Control and Prevention. “Fast Facts: Preventing Adverse Childhood Experiences,” April 6, 2022. <https://www.cdc.gov/violenceprevention/aces/fastfact.html>.

child abuse and neglect.⁹² Children in the program have better behavioral, academic, and social outcomes and lower rates of substance use, arrests, and convictions.⁹³ Evidence suggests that mentoring and after-school programs in school and community settings can reduce risk for youth involvement in crime and violence, improve school performance, and establish positive relationships with peers and adults.⁹⁴

Interventions to mitigate immediate and future harm give children and families in which ACEs have already occurred timely access to screening and referral services for treatment services and supports. Victim-centered services, enhanced primary care, individual treatment and family-centered substance use disorder treatment all lessen the impacts of trauma on children, youth, and families and prevent future involvement in violence, behavioral problems, and promote healthy environments.⁹⁵ Timely intervention for children experiencing maltreatment and families in need of stabilization necessitates a robust and well-staffed process for child protection reporting, intake, evaluation, response, and referral to services. Ensuring that families in need of resources are able to access them quickly and efficiently early on is key to preventing further harm to children, further destabilization of the family, and thus reduces the potential need for removing children from their homes of origin.

Post-Arrest

This section refers to the period following the arrest of a young person and through adjudication. Within this period, our interview analysis identified themes surrounding whether youth are addressed in the juvenile versus adult system, diversion opportunities, sentencing, and the role of the prosecutor.

Juvenile versus Adult System

The theme of treating youth as adults surfaced in each one of our 13 interviews. This has also been the subject of recent legislation: HB 1646 (2019) extended eligibility for placement in JR to age 25, SB 6160 (2018) narrowed the application of auto-decline, and SB 5488 (2019) affirmed that sentencing courts may depart from sentencing standards in order to consider the youthfulness of a minor offender in adult court. While these policy changes reflect the

⁹² Center for Disease Control and Prevention, “Preventing Adverse Childhood Experiences,” 2019 <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

general principle that youth are different than adults, there remain circumstances where youth are addressed in adult court rather than juvenile court through the decline process.

Both discretionary and automatic decline disproportionately impact youth of color. Based on 2009-2019 data, youth of color are more likely to be sentenced as adults. Notably, Black youth are 11.4 times more likely than white youth to face discretionary decline, and 25.8 times more likely to face auto-decline. Differences in offense type do not account for the racial disparities in discretionary decline.⁹⁶

“Everything we know about adolescents and adolescent brain development indicates that prosecuting young people in the adult system is just the wrong way to go... if we care about rehabilitation, it’s not where children should be.”

Interviewee

Diversion

Diversion is the process by which juveniles are diverted out of the court system either before being charged or instead of adjudication and into alternative programs. Washington has codified in RCW 13.40.70 that prosecutors must divert the cases of juveniles who have committed an infraction, misdemeanor, or gross misdemeanor and do not have any prior offenses.⁹⁷

A report released by the Washington State Center for Court Research found recidivism rates of youth who receive a diversion are significantly lower than rates of youth who are committed and held in a JR facility. The highest rates of re-offending (49.6%) were among those released from a JR facility.⁹⁸ Youth who were diverted out of the system saw the lowest rates of recidivism (21.7%).⁹⁹

The benefits of diversion are not equally shared by all Washington youth. The 2020 Partnership Council on Juvenile Justice Report to the Governor and State Legislature highlights the disparities in recommending diversion programs for youth of color compared

⁹⁶ Evans and Herbert, “Juveniles Sentenced as Adults in Washington State, 2009-2019.”

⁹⁷ RCW 13.40.070: Complaints-screening-filing information-diversion-modification of community supervision-notice to parent or guardian-probation counselor acting for prosecutor-referral to community-based, restorative justice, mediation, or reconciliation programs. (Effective until January 1, 2024.), <https://app.leg.wa.gov/rcw/default.aspx?cite=13.40.070>, (6) (7) (8).

⁹⁸ “Juvenile Recidivism in Washington State: A 2014 Court Cohort and a 2015 Juvenile Rehabilitation Release Cohort,” Washington State Center for Court Research. (2016).

<https://www.courts.wa.gov/subsite/wscctr/docs/2014%20Juvenile%20Recidivism%20in%20Washington%20State.pdf>

⁹⁹ For example, Lewis County had 20 JR admissions and King County had 100 JR admissions, representing rates of 2.63 per 1,000 youth in Lewis County and 0.51 in King County. Ibid., 3.

to white youth. **Among adjudicated young people, Black, Latine, and American Indian/Alaska Native youth receive diversions at 55%, 87%, and 69% of the rate of their white peers, respectively.**¹⁰⁰

The racialized nature of access to diversion programs was a theme across several interviews. The adultification of youth of color and implicit biases in discretionary decisions to recommend diversion contribute to these disparities. Evidence of this unequally applied discretion is especially apparent when examining practices across counties in Washington, with rural counties showing higher rates of admissions to JR than urban counties.¹⁰¹ Within this theme, interview data also highlighted the need for increased funding for community-based diversion programs throughout the state with an increased focus on rural counties in Washington so that detention is not their primary option.

Other states have made efforts to expand the use of diversion. South Dakota increased the role of diversion programs in its juvenile legal system with reforms passed in 2015. In particular, South Dakota S.B. 73 creates “a presumption of probation for all but establish [sic] criteria” in juvenile proceedings.¹⁰² In other words, the default response to young people charged with crimes in South Dakota is now probation or a diversionary program unless their case matches established criteria for incarceration. This change in default, combined with limits on probation length, led to a 63% reduction in young people under state custody or supervision over the following three years.¹⁰³

Sentencing

Racial disparities in sentencing are another contributor to the overrepresentation of youth of color in JR. Black youth in the Washington State juvenile legal system experience the highest rates of JR admissions and receive longer sentences, remaining in JR confinement for longer than their peers.¹⁰⁴ The average length of stay in JR is 379 days for Black youth vs. 311 days for white youth.¹⁰⁵ Another theme from our interviews was changes to the juvenile sentencing grid, including opportunities for reducing youth incarceration overall and

¹⁰⁰ “Washington State Juvenile Justice Report to the Governor & State Legislature.”

¹⁰¹ Ibid., 86.

¹⁰² South Dakota Department of Corrections. “Juvenile Justice Reinvestment Initiative.” Accessed February 18, 2022. <https://doc.sd.gov/about/JuvenileJusticeReinvestmentInitiative%20.aspx>.

¹⁰³ Dana Shoenberg. “How State Reform Efforts Are Transforming Juvenile Justice.” The Pew Charitable Trusts, November 26, 2019. <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/11/26/how-state-reform-efforts-are-transforming-juvenile-justice>.

¹⁰⁴ Cummings et al.

¹⁰⁵ “Washington State Juvenile Justice Report to the Governor & State Legislature.”

prioritizing racial equity in the process. Sentencing ranges and enhancements such as the firearm and gang enhancements introduce opportunities for implicit bias and harsher sentencing of youth of color.

In late 2021, California passed Assembly Bill No. 333, which restricted the use of gang enhancements in sentencing. These enhancements significantly increase sentences and are primarily applied to young people of color: “99% of those given a gang enhancement in Los Angeles County are people of color.”¹⁰⁶ The bill requires gang enhancements be litigated *after* a defendant has been declared guilty of the original crime and removes “looting, felony vandalism, and specified personal identity fraud violations from the crimes that define a pattern of criminal gang activity.”¹⁰⁷ Given the disproportionality of application in these enhancements, reducing their use will likely have a significant impact on the prosecution of young people of color.

Prosecution

A major overarching theme of the post-arrest stage was the role of prosecutors. The power and discretion of the prosecutor in deciding the fate of young people who are arrested introduces a significant opportunity for racial bias to impact how youth move through the juvenile legal system. Our interviews and literature review suggest that prosecutorial discretion plays an important role in perpetuating racial disproportionalities in Washington’s juvenile legal system. The disparities in decline, diversion, and sentencing discussed above provide evidence that the exercise of prosecutorial discretion enables harsher treatment for youth of color and contributes to racial disproportionalities in the juvenile legal system. While data on prosecutorial bias in Washington’s juvenile system is limited, data on disparities in the adult system suggest similar bias likely exists in the juvenile system as well. Research on the adult criminal legal system in King County supports this idea, finding that when holding all other relevant legal factors constant, prosecutors in King County were less likely to offer diversion to Black defendants than white defendants.¹⁰⁸

¹⁰⁶ KTLA. “California Eases Gang Enhanced Sentence Rules under Bill Signed by Newsom.” October 9, 2021. <https://ktla.com/news/california/california-eases-gang-enhanced-sentence-rules-under-bill-signed-by-newsom/>.

¹⁰⁷ Kamlager, Sydney. AB-333 Participation in a Criminal Street Gang: Enhanced Sentence, Pub. L. No. AB 333, 699 (2021). https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB333.

¹⁰⁸ Crutchfield, R. D., Weis, J. G., Engen, R. L., & Gaaney, R. R. “Racial and ethnic disparities in the prosecution of felony cases in King County,” Olympia, WA: Washington State Minority and Justice Commission. (1995). <https://www.courts.wa.gov/committee/pdf/November%201995%20Report.pdf>

In Juvenile Rehabilitation

This period refers to the time after adjudication and admission to JR until the young person is released. In this phase, we find a need for trauma-informed behavioral healthcare and age-appropriate services for JR youth and highlight the importance of minimizing the restrictive nature of confinement for youth.

Services Within Juvenile Rehabilitation

In many of our interviews – and prominently in interviews with DCYF staff – the services available to youth in JR confinement were an important theme. Trauma, unmet mental health needs, and cognitive/developmental disorders are highly prevalent among youth in JR, necessitating significant care and service access.¹⁰⁹ Further, interview data highlighted the

“[JR is] seeing youth and young people coming in with infinitely more complex and compounding mental and behavioral health needs.”

Interviewee

importance of delivering reliable, developmentally appropriate, quality education to all youth in JR. HB 1295, which was signed into law in 2021, sought to address this need through approaches such as requiring annual training for institutional education providers on navigating the unique needs of students in JR and establishing requirements DCYF to ensure that youth in JR have access to a meaningful education.

Another growing area of need is for services tailored to the young adults in JR confinement. Currently, 73% of the JR population is between the ages of 18 and 24.¹¹⁰ As a result of HB 1646 (2019), the young adult population of JR is expected to grow, and this older population presents unique needs. Youth advocates that we interviewed described seeing an increase in family law needs from young adults in JR, such as accessing parental rights, and handling divorce, child support, and marriage. DCYF staff also described a need to provide services and education that prepare the population of JR youth who will transfer to a Department of Corrections (DOC) facility at age 25.

¹⁰⁹ “Behavioral Health Services in Juvenile Rehabilitation,” DCYF, November 24, 2021.

https://www.dcyf.wa.gov/sites/default/files/pubs/JR_0040.pdf

¹¹⁰ “Washington Juvenile Justice System,” DCYF, September 22, 2021,

<https://www.dcyf.wa.gov/sites/default/files/pdf/gov/docs/CTS-JR-Presentation9.22.21.pdf>

Least Restrictive Options

Our research and interviews identified the harms associated with the detention of youth as another important theme. Incarceration of youth for any length of time is traumatic and detrimental, compounding the existing trauma common among youth in JR.¹¹¹ Nationally, 93% of youth in detention have lived through adverse childhood experiences and 75% have been traumatically victimized.¹¹² 85% of youth in JR have one or more behavioral health needs.¹¹³ The trauma, unmet mental health needs, and cognitive/developmental delays prevalent among youth in JR are exacerbated through incarceration.¹¹⁴

85% of youth in JR have one or more behavioral health needs

Current policies set minimum periods of time before youth are eligible for release or transfer to less restrictive JR facilities. Under WAC 110-730-0050, youth in JR must spend at least 30 days confined in a secure residential facility before they can transfer to a minimum-security community facility.¹¹⁵ Under JR Policy 6.50, youth committed to JR must spend a minimum of 45 days in confinement prior to release to accommodate re-entry planning.¹¹⁶

In JR, youth who commit violations are subject to punishments including referral to prosecution, room confinement, restitution, or altering of release dates, among others. Several of the violations for which a young person in JR may be referred for prosecution include non-violent acts such as refusing urinalysis, refusing a search, or property destruction. If applied in similar patterns as school discipline or policing, referring JR youth for prosecution compounds racial disparities. Punishments like room confinement and release delays exacerbate and prolong the harms associated with incarceration, causing additional trauma. Room confinement may be used as an immediate response to violence against JR staff or others, but research on isolation in adult prisons finds that when it is used as a punishment, it is an ineffective with respect to preventing prison violence.¹¹⁷ Without

¹¹¹ Behavioral Health Services in Juvenile Rehabilitation.”

¹¹² “Race and the Criminal Justice System, Task Force 2.0”

¹¹³ Department of Children, Youth, and Families, “Current Residential Population,” September 22, 2021, <https://www.dcyf.wa.gov/sites/default/files/pdf/gov/docs/CTS-JR-Presentation9.22.21.pdf>

¹¹⁴ “Behavioral Health Services in Juvenile Rehabilitation”

¹¹⁵ Institutional Minimum, WAC 110-730-0050. <https://app.leg.wa.gov/WAC/default.aspx?cite=110-730-0050>

¹¹⁶ Setting Juvenile Release Dates, JR Policy 6.50. <https://www.dcyf.wa.gov/sites/default/files/pdf/jr-policies/Policy6.50.pdf>

¹¹⁷ One study found that the opening of Supermax facilities in three states (Illinois, Arizona, and Minnesota) had no obvious effect on prisoner-on-prisoner or prisoner-on-staff assaults. Meanwhile, the Colorado DOC has reduced the number of people in restrictive housing by over 85% in the past decade, and the state now reports

publicly available data on how violations and punishment are issued within JR, we cannot know whether and to what extent racial disparities exist and what may be driving them.

After Juvenile Rehabilitation/Re-Entry

Successful re-entry requires stable access to housing, education, community ties, healthcare, and mental health support when youth are released from a JR facility. As discussed above, the lack of social services and under-investment in communities of color threaten that stability for youth released from JR. In addition, two obstacles within the juvenile legal system prevent youth from finding stability after they have exited from JR: 1) incomplete record sealing, and 2) sex offender registration requirements.

Incomplete Juvenile Record Sealing

Currently, Washington State requires that all juvenile court records (with exceptions for serious, sex, and drug offenses) be sealed after a youth offender turns 18 and has satisfied any required probation, confinement, or legal financial obligations (LFOs).¹¹⁸ One major exception to this rule is that the Washington State Patrol is required to share its records with other law enforcement agencies.¹¹⁹ This exception affects youth and adults with juvenile records seeking opportunities in the public sector, law enforcement, the military, and any other sectors with access to law enforcement records. 2021 HB 2034 sought to reduce the dissemination of sealed or destroyed juvenile records and prohibit the use of sealed juvenile records in state government hiring decisions, but it did not pass.¹²⁰ Data related to the

that prisoner-on-staff assaults are the lowest they have been since 2006. Chad S. Briggs, Jody L. Sundt, and Thomas C. Castellano, “The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence,” *Criminology* 41, issue 4 (2003): 1342; Office of Planning and Analysis, SB 11-176 ANNUAL REPORT ADMINISTRATIVE SEGREGATION FOR COLORADO INMATES (Colorado Department of Corrections, January 1, 2021). <https://spl.cde.state.co.us/artemis/crserials/cr126internet/cr1262020internet.pdf>; Alison Shames, Jessica Wilcox, Ram Subramanian, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* (Vera Institute, 2015), https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf

¹¹⁸ Sealing hearings—Sealing of records, RCW § 13.50.260. <https://apps.leg.wa.gov/rcw/default.aspx?cite=13.50.260>.

¹¹⁹ Ibid.; Washington Courts. “Sealing and Destroying Court Records, Vacating Convictions, and Deleting Criminal History Records in Washington State,” October 2019.

<https://www.courts.wa.gov/newsinfo/content/GuideToCrimHistoryRecords.pdf>; Kuderer, Patty, Jeannie Darneille, Lisa Wellman, Sam Hunt, Bob Hasegawa, Rebecca Saldaña, and Claire Wilson. Concerning juvenile record sealing, Pub. L. No. SB 5182. <https://app.leg.wa.gov/bills/summary?Year=2019&BillNumber=5182>.

¹²⁰ 2021 HB 2034 would have allowed people whose juvenile records were sealed or destroyed to sue any public or private entity that disseminated their records for damages caused by the release of the records, including

racialized impact of unsealed records due to this exception are not available; however, youth of color are likely disproportionately impacted because of their elevated risk of harsher treatment within the juvenile legal system.¹²¹ **The current status of record sealing in Washington makes it difficult for affected youth to lead stable lives after their contact with the juvenile legal system, leading to an increased likelihood of recidivism.**¹²²

Juvenile Sex Offender Registration

In Washington State, youth found guilty of a sex offense are required to register on the state sex offender registry and experience substantial burden as a result.¹²³ Required juvenile sex offender registration disproportionately affects youth of color. A 2021 joint presentation by the King County Department of Public Defense and the Washington State Office of Public Defense to the Washington Sex Offender Policy Board reported substantial racial disproportionality in statewide sex offender registrations:

Black and American Indian people are over-represented in the population of registered juvenile sex offenders: 10% are Black, though they make up 3.7% of the state population; 4% are American Indian, while they represent 2.85% of the state population. This disproportionality only worsens racial inequalities in Washington.¹²⁴

Our interviews and literature review suggest that youth sex offender registration fails to reduce sexual reoffending. It is, however, “associated with peer relationship problems, lower sense of safety, increased risk of suicide attempts and increased risk of sexual assault victimization,” costs in the millions of dollars to administer annually, and provides no public safety benefits.¹²⁵ Research suggests that registration may even increase the likelihood of youth being charged with another sexual offense either due to destabilization caused by

mental pain and suffering of the subject of the records. It also would have prohibited state government agencies from considering information from a sealed juvenile record in its hiring determinations.

¹²¹ “Report and Recommendations to Address Race in Washington’s Juvenile Legal System: 2021 Report to the Washington Supreme Court.”

¹²² Coleman, Andrea R. “Expunging Juvenile Records: Misconceptions, Collateral Consequences, and Emerging Practices,” n.d., 12. <https://ojjdp.ojp.gov/publications/expunging-juvenile-records.pdf>

¹²³ Registration of sex offenders and kidnapping offenders, RCW § 9A.44.130. <https://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.130>.

¹²⁴ Hurley, Katie, and George Yeannakis. “Moving towards a Developmentally Appropriate Response to Youth Problem Sexual Behavior.” Presented at the Presentation to Sex Offender Policy Board, April 15, 2021. https://sgc.wa.gov/sites/default/files/public/SOPB/meetings/2021/presentation_HurleyandYeannakis_20210415.pdf.

¹²⁵ Ibid.; Letourneau, Elizabeth J, Jeffery Sandler, Donna Vandiver, Ryan Shields, and Reshmi Nair. “Juvenile Registration and Notification Policy Effects: A Multistate Evaluation Project.” National Criminal Justice Reference Service, January 2018.

the severe cost imposed on offenders or a potential for bias in charging registered versus non-registered youth.¹²⁶

Research finds that treatment for youth with sex offenses is effective at reducing both sexual and nonsexual recidivism.¹²⁷ Currently, only youth who plea to or are found guilty of registration offenses are eligible for those effective treatments. However, the negative consequences associated with registration incentivize youth with sex offense charges to negotiate plea deals for nonregistration offenses, even though doing so makes them ineligible for treatment.¹²⁸

“It doesn’t reduce recidivism, it doesn’t reduce first time offending, but what it does do is associated with some of the worst possible harms we can imagine for young people... increased risk of attempting to die by suicide, sexual victimization... issues with family, peers, and housing.”

Interviewee

Limitations

We believe that this report would have benefited from two additional approaches that we were unable to implement ourselves: quantitative data analysis using individual-level data and participatory research design involving youth with experience in the juvenile legal system. We also identify that interviews with frontline JR staff would have enriched our findings. Below we describe those limitations and propose how future research would benefit from overcoming them.

¹²⁶ Letourneau, Elizabeth J., Dipankar Bandyopadhyay, Debajyoti Sinha, and Kevin S. Armstrong. “The Influence of Sex Offender Registration on Juvenile Sexual Recidivism.” *Criminal Justice Policy Review* 20, no. 2 (June 1, 2009): 136–53. <https://doi.org/10.1177/0887403408327917>.

¹²⁷ Przybylski, Roger, Christopher Lobanov-Rotnofsky, Kevin Baldwin, Susan Faupel, Tom Leversee, Phil Rich, Michael Seto, and Jane Wiseman. “Sex Offender Management Assessment and Planning Initiative.” U.S. Department of Justice: Office of Justice Programs, March 2017.

¹²⁸ Letourneau, Elizabeth J., Dipankar Bandyopadhyay, Debajyoti Sinha, and Kevin S. Armstrong. “The Influence of Sex Offender Registration on Juvenile Sexual Recidivism.” *Criminal Justice Policy Review* 20, no. 2 (June 1, 2009): 136–53. <https://doi.org/10.1177/0887403408327917>; Letourneau, Elizabeth, Kevin Armstrong, and Dipankar Bandyopadhyay. “Sex Offender Registration and Notification Policy Increases Juvenile Plea Bargains.” *Sexual Abuse: A Journal of Research and Treatment* 25 (August 22, 2012). <https://doi.org/10.1177/1079063212455667>.

Individual-Level Data Access

We relied upon publicly available reports and data because time constraints did not allow us to seek access to case-level data from DCYF or JR, which required approval from the Washington State Institutional Review Board. This limitation prevented us from exploring quantitative research questions that we believe would have benefited this research, such as:

- Which offenses are most associated with decline to adult court?
- Are certain offenses more likely to result in racial disparities at sentencing?
- Which counties produce the greatest racial disparities in sentencing (controlling for offense, history, and other relevant factors)?
- Does examining how identities such as gender, sexual orientation, and disability status intersect with race potentially reveal even wider disparities?

While these questions were outside the scope of this report, DCYF has a meaningful opportunity to make data available for statistical analyses of individual-level data to explore these questions in the future.

Decision not to Interview Incarcerated Youth

After careful consideration and consultation with others experienced in interviewing incarcerated youth, we determined that we do not have the appropriate training to ethically interview incarcerated young people. Although we interviewed youth advocates who frequently interact with young people involved in the juvenile legal system, we believe the lack of direct input from those youth (specifically youth of color) to be a limitation of this research. Future research should seek out and elevate the voices of youth with experience in the juvenile legal system and JR and be guided by their insights— at least through interviews and ideally using participatory research.¹²⁹

¹²⁹ Youth with experience in the legal system and JR should be brought in thoughtfully as co-creators of knowledge. Appropriate involvement of youth voice not only benefits the research and its outcomes, but can also actively improve the lives of youth who are court-involved, further developing their skills in inquiry and evaluation and encouraging their sociopolitical development (“YPAR Hub | YPAR Hub.” Accessed May 13, 2022. <http://yparhub.berkeley.edu/>). Resources exist that both outline the benefits of youth participatory action research and provide guidelines for the practice of youth participatory evaluation and research (Edirmanasinghe, Natalie. “Youth Participatory Action Research (YPAR) as a Means to College and Career Readiness.” The Education Trust (blog), November 15, 2021. <https://edtrust.org/the-equity-line/youth-participatory-action-research-y-par-as-a-means-to-college-and-career-readiness/>; Wilder Foundation. “Youth Participatory Evaluation: Practice Guide,” April 25, 2019. <https://www.wilder.org/wilder-research/research-library/youth-participatory-evaluation-practice-guide>). However, as incarcerated youth are a particularly

Limited DCYF Staff Interviews

The period during which we conducted interviews (March 8th through April 11th, 2022) immediately followed the legislative session, which ended on March 10th. This timing meant that we were approaching DCYF leadership staff for interviews during an especially dynamic time of the year. As a result, our ability to use snowball sampling to reach frontline JR and other DCYF staff were delayed. Our efforts to schedule time with more than two DCYF staff were not successful. Future research would benefit from incorporating the perspectives of DCYF staff— particularly those working within JR institutions. Their expertise would provide valuable insight into areas of need within JR.

vulnerable group, further training and development for researchers outside of a simple literature review is necessary to appropriately engage and incorporate these young peoples' voices.

Chapter 5: Recommendations

Introduction

In this chapter, we map the findings described in Chapter 4 onto possible avenues for reducing racial disproportionality and advancing racial equity in the juvenile legal system. Some recommendations in this chapter target specific RCWs, WACs, or JR Policies; while others are general recommendations that DCYF should use its resources and influence to support ongoing efforts. We present the latter as general “support” recommendations because they either are not yet established within the RCW or because they are broad sentiments that would impact multiple areas of law and policy.

Upstream and multi-system interventions offer the greatest effectiveness towards addressing racial disproportionalities but require bold policy work. The below recommendations address areas of policy that vary in the degree to which DCYF has influence over them. For example, we offer several recommendations impacting schools because schools are often where youth of color first come in contact with police. While DCYF does not have direct power to change policy surrounding police in schools, it can testify in support of legislation or even collaborate with OSPI to submit Agency Request Legislation to remove or restrict the placement of police in schools.

DCYF is well-positioned to champion racial equity in this space by making strategic decisions about where to direct its resources and influence to ameliorate disparities.

As the primary state agency responsible for supporting youth, DCYF is well-positioned to champion racial equity in this space by making strategic decisions about where to direct its resources and influence to ameliorate disparities. Many recommendations here represent efforts that advocates have been advancing for years. These options span a variety of time frames — some are realistic to target in the next legislative session while others will require much more time for collaboration, development, and establishing trust. We believe that, in the long run, policy windows will open for DCYF to provide crucial support and leadership on transformative policy, and that preparing early will be key to its success.

Many of the findings identified in Chapter 4 and the corresponding recommendations in this chapter align with priorities identified by the Governor's Poverty Reduction Work Group (PRWG). In its 2019 report on Problems & Policy Solutions Related to the Criminal Justice System, the PRWG recommends shifting resources away from prison funding and

towards communities historically targeted by the criminal legal system, eliminating financial barriers and LFOs that disproportionately impact low-income people, reducing the over-policing of low-income communities, expanding alternatives to incarceration, maintaining family closeness for incarcerated people, improving care and opportunities for incarcerated people, and mitigating the impacts of a criminal record.¹³⁰ While the PRWG report focuses on the adult criminal legal system, many of its proposed policy solutions are in alignment with what is described below.

Upstream/Preventative

Schools

The recommendations in this section target penalties associated with minor infractions for normal youthful behavior, attempt to separate truancy proceedings from juvenile court, and reduce the presence of police in schools. Financial penalties compound the harm of systemic racism, as youth of color are more likely to be cited for such behavior and their families are more likely to be poor,¹³¹ making monetary sanctions especially burdensome.

Action Type	Targeted Policy/Policy Area	Action	Key Collaborators/ Stakeholders
Repeal	RCW 28A.635.010	Eliminate misdemeanor and penalty of \$10-\$100 for abusing or insulting teachers. ¹³²	

¹³⁰ Steering Committee to the Poverty Reduction Work Group. “Problems & Policy Solutions Related to the Criminal Justice System.” *Washington State Governor’s Office*, August 14, 2019. <https://www.governor.wa.gov/sites/default/files/STEER%20CMTE%20Criminal%20Justice%20Problems%20and%20Solutions%20FINAL.%20-%20Meeting%2019.DOCX>.

¹³¹ Bhutta, Neil, Andrew C. Chang, Lisa J. Dettling, and Joanne W. Hsu with assistance from Julia Hewitt. “Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances,” September 28, 2020. <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>.

¹³² Based on a recommendation from the Juvenile Justice Subcommittee report, “Report and Recommendations to Address Race in Washington’s Juvenile Legal System: 2021 Report to the Washington Supreme Court,” 2021.

Repeal	RCW 28A.635.030	Eliminate misdemeanor and financial penalty of up to \$50 for creating a disturbance on school premises during school hours or school activities. ¹³³	
Repeal	RCW 28A.635.040	Eliminate misdemeanor and penalty of \$100 - \$500 for disclosing examination questions. ¹³⁴	
Amend	RCW 28A.225.035	Eliminate the involvement of juvenile court in truancy proceedings so that truancy matters are addressed directly by community engagement boards.	Truancy community engagement boards
Amend	RCW 28A.320.124	Reduce SRO presence and role with schools to the end of eliminating police in schools.	School districts, OSPI, Washington Association of Sheriffs & Police Chiefs
Support	School funding	Support efforts to increase investments in schools and early education that prioritize historically underfunded schools and student communities. Support increasing funding for in-school mental health supports including counselors and psychologists.	OSPI

¹³³ Ibid.

¹³⁴ Ibid.

Child Welfare System

These recommendations target racial disproportionality in the juvenile legal system associated with the foster care-to-prison pipeline.

Action Type	Targeted Policy/Policy Area	Action	Key Collaborators/ Stakeholders
Support	Kinship placements	Continue to support increasing resources and administrative support for kinship caregivers through the Kinship Caregivers Support Program (KCSP) and Kinship Caregiver Engagement Unit (KCEU) Reduce barriers to foster care licensing for kinship caregivers.	DSHS Aging and Long-Term Support Administration, Economic Services Administration, Kinship Care Oversight Committee
Support	Caregiver support	Support increasing state resources dedicated to supporting impoverished caregivers, families, and communities.	
Support	Intake and service referrals	Implement an online reporting process for mandatory reporters to reduce barriers for reporting child maltreatment. ¹³⁵	

¹³⁵ Based on a recommendation from the Office of the Family and Children’s Ombuds 2019 report to DCYF, OFCO 2019, https://ofco.wa.gov/sites/default/files/2020-01/2019_OFCO_Annual_Report_1-15-2020.pdf

Community Investments & Protective Factors

Contact with the juvenile legal system is inextricably linked with trauma and adverse childhood experiences (ACEs) that disproportionately impact communities of color. These recommendations target prevention of trauma and ACEs, robust responses to children and families with ACEs, and supporting youth currently in the juvenile legal system.

Action Type	Targeted Policy/Policy Area	Action	Key Collaborators/ Stakeholders
Support	After school programming & mentorship	Connect youth with trusted adults and prevent risky behaviors and youth violence through after school and mentorship programming, concentrating programs in schools with high rates of child poverty.	OSPI, Washington Department of Health
Support	Early childhood home visitations	Support expanding family home visiting funding, resources, and programming, particularly in counties with higher rates of child poverty.	Local home visiting partners including Nurse-Family Partnership, ParentChild+, and others

Post-Arrest

Juvenile versus Adult System

This set of recommendations seeks to reduce or eliminate the transfer of youth to adult court and to adjust the age range for juvenile court jurisdiction. Both auto-decline and discretionary decline disproportionately impact youth of color, contributing to sentencing disparities and causing significant barriers to successful re-entry by burdening youth with adult criminal records. Adjusting the age range for juvenile court jurisdiction to 14 to 20 reflects other recent policy shifts that acknowledge research surrounding adolescent brain-development and decision-making capacity.

Action Type	Targeted Policy/Policy Area	Action	Key Collaborators/ Stakeholders
Amend	RCW 13.04.030	Eliminate all decline, granting exclusive juvenile court jurisdiction in all cases where the offender is under 18. Intermediate steps may include eliminating auto-decline and narrowing the offenses for which discretionary decline is possible.	County prosecutors, public defenders, Superior Courts
Amend	RCW 13.40.600	Raise the minimum age for juvenile court jurisdiction to 14 and maximum age to 20. ¹³⁶	County prosecutors, public defenders, Superior Courts
Support	Age floor for diversion	Support establishing an age floor for decline so that no youth under age 14 may be transferred to adult court under any circumstance.	County prosecutors, public defenders, Superior Courts

¹³⁶ Based on a recommendation from the ABA. Frazier-Camara, April, Kevin Scruggs, and Linda Britton. "Report to the House of Delegates." American Bar Association, August 9, 2021.

<https://www.americanbar.org/content/dam/aba/directories/policy/annual-2021/505-annual-2021.pdf>

Diversion

Increasing statewide access to diversion connects young people with social services and community supports they require to thrive, preventing future contact with either the juvenile or adult legal systems.

Action Type	Targeted Policy/Policy Area	Action	Key Collaborators/ Stakeholders
Amend	RCW 13.40.070	Increase number of mandatory diversions and expand availability for diversion beyond the first offense. Expand offenses for which diversions are mandatory to include felonies.	Prosecutors, public defenders, Superior Courts, community-based diversion organizations
Amend	RCW 13.40.080	Expand the eligibility for diversion through age 25.	Prosecutors, public defenders, Superior Courts, community-based diversion organizations
Amend	RCW 13.40.511	Expand the allowable age range for funding eligibility from a maximum of 18 up to a maximum of 25 to increase funding for potential community-based programs.	Block Grant Oversight Committee
Support	Community-based diversion	Support efforts to reallocate funds currently used to prosecute incarcerate youth to expand community-based diversion options, especially in rural counties. ¹³⁷	Community-based diversion organizations, rural county governments

¹³⁷ Based on a recommendation from the Juvenile Justice Subcommittee report, “Race and the Criminal Justice System, Task Force 2.0”

Support	Diversion as the standard response	Support efforts to implement statewide intake/release criteria for youth admitted into JR, making incarceration allowable only if proven necessary, prioritizing diversion as the primary response. ¹³⁸	County prosecutors, public defenders, Superior Courts
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Sentencing

Continue to reduce the number of statewide dispositions to JR and length of stay in JR by making adjustments to the juvenile sentencing grid.

Action Type	Targeted Policy/Policy Area	Action	Key Collaborators/Stakeholders
Amend	RCW 13.40.0357	Revise juvenile sentencing grid to list fewer or 0 weeks as the low end of ranges to allow for earlier release dates to be set by DCYF.	Sentencing Guidelines Commission, Superior Courts
Amend	RCW 13.40.0357	Eliminate disposition to JR as within the standard range on more or all offense categories. Instead require that judges find and demonstrate why an individual young person must be incarcerated in JR. ¹³⁹	Sentencing Guidelines Commission, Superior Courts

¹³⁸ Ibid., 24.

¹³⁹ Ibid., 50.

In Juvenile Rehabilitation

Services Within Juvenile Rehabilitation

The below recommendations focus on improving the treatment and care of youth in JR, the majority of whom (70%) are youth of color.¹⁴⁰ As the JR population continues to decline and with the closure of Naselle Youth Camp scheduled for 2023, DCYF should concentrate JR resources on improving and expanding the services and programming available to youth who remain incarcerated in JR and responding to shifting age demographics of the JR population.

Action Type	Targeted Policy/Policy Area	Action	Key Collaborators/Stakeholders
Amend	RCW 28A.190.080	Increase the amount and frequency of professional development available to and required of institutional education providers.	OSPI
New policy	Older JR population	Support the development of new WACs or JR Policy to address the unique needs and circumstances of 18-24 year-olds in JR. Support the development and implementation of services and programming targeted to the interests and needs of JR youth ages 18-24.	Youth with experience as young adults in JR
Support	Impacted youth perspective	Center the perspectives of youth of color who have experience in JR in the identification and development of services and programming.	Youth of color with experience in JR

¹⁴⁰ “Washington Juvenile Justice System,” DCYF, September 22, 2021, <https://www.dcyf.wa.gov/sites/default/files/pdf/gov/docs/CTS-JR-Presentation9.22.21.pdf>

Least Restrictive Options

These recommendations focus on limiting the use of prosecution in response to violations within JR and maximizing the use of the least restrictive options for youth committed to JR.

Action Type	Targeted Policy/Policy Area	Action	Key Collaborators/ Stakeholders
Amend	WAC 110-730-0070	Limit referral for prosecution to be allowed for only the most serious, violent, or dangerous violations.	JR Staff
Amend	JR Policy 6.50	Adjust the reentry planning process to accommodate a release date earlier than the current minimum of 45 days in JR.	JR Staff
Amend	WAC 110-730-0050	Reduce or eliminate the minimum amount of time that a young person must spend in a secure facility before transferring to a community facility from 30 days to 0 days.	JR Staff
New policy	Discipline data tracking	Track and make publicly available data on discipline within JR including sanctions by institution, violation, and race.	JR Staff

After Juvenile Rehabilitation/Re-Entry

The following recommendations center around issues young people face after releasing from JR. They target juvenile record sealing and sex offender registration requirements as major barriers imposed by the juvenile legal system on young people re-entering society.

Action Type	Targeted Policy/Policy Area	Action	Key Collaborators/ Stakeholders
Amend	RCW 13.50.260	Prohibit the Washington State Patrol from providing access to sealed juvenile records.	Washington State Patrol
Amend	RCW 9A.44.130	Remove the requirement that youth and adults who committed a sex offense before age 25 register on the state sex offender registry. Make this change retroactive and automatically remove those who qualify for removal.	Sex Offender Policy Board

Summary & Conclusion

To arrive at these recommendations, we studied existing literature on racism in the Washington State juvenile legal system; reviewed relevant statutes in the Revised Code of Washington; and conducted 13 interviews with people representing youth advocates, academics, professionals, and DCYF staff. Our analysis produced findings that we organized into four phases: Preventative, Post-Arrest, In JR, and After JR. Our findings revealed overarching themes of the need for community investments and multi-system approaches to meaningfully address racial disparities in the juvenile legal system.

We presented recommendations that offer a range of tools. Some are preventative while others represent interventions; some are narrowly targeted while others are sweeping and transformative; some can be addressed entirely within DCYF while others require multi-system collaboration. These recommendations also provide both near-term approaches to mitigate the burden and trauma imposed on youth of color by the juvenile legal system and longer-term policy shifts that target the underinvestment and marginalization of communities of color.

Our research finds that there is a need for all of these approaches in the effort to reduce racial disproportionalities and advance racial equity in the juvenile legal system. DCYF's Strategic Plan demonstrates that it is up to this task – it values maintaining cross-agency partnerships, identifies that its role in prevention includes ensuring that communities are able to support youth, and commits to liberatory and healing-centered approaches. Pursuing the recommendations laid out in this report would advance DCYF in its work towards becoming an organization that actively promotes policy that reduces racial disproportionality and advances racial equity.

Appendices

Appendix A: Interview Protocol

Interview Protocol

Hello and thank you for being willing to speak with us today. We will start out by introducing ourselves and our project and then ask you to introduce yourself after we begin recording.

We are MPA candidates at the Evans School, and we are working on a project for DCYF to identify legislative opportunities to advance race equity in efforts to reduce juvenile incarceration.

As we mentioned by email, we would like to record this interview and auto-generate a transcript so that we can review your answers in our analysis. At a later date, we may ask your permission to quote you in our report. Otherwise, your comments will remain anonymous. At the conclusion of our project in June, we will delete the recordings and transcripts from this conversation. Are you okay with this?

Do you have any initial questions for us before we begin recording?

Questions for all interviewees:

- Could you please introduce yourself and tell us about your role and what led you here?
- How does your work interact with the juvenile justice system?
- Washington State is making progress reducing youth incarceration, but racial disparities among who we incarcerate have gotten worse. What do you make of that?
- What efforts do you consider best suited to address racial disparities in juvenile legal in Washington State?
- What do you see as the next steps or highest priorities for juvenile legal system reform in Washington?
- Is there anything you think we are overlooking or should focus more on as we write our report?
- Is there anyone else you would recommend we reach out to talk to?¹⁴¹

¹⁴¹ This question was the basis of our snowball sampling.

Questions for youth advocates:

- What do you see as the most common upstream factors that lead to youth involvement with juvenile court?
- What do you see as the most common first point of contact that youth have with the juvenile legal system?
 - What changes in law, policy, or practice could reduce these contacts?

Questions for professionals/academics:

- What do you consider to be some of the major decision points or pivotal changes in juvenile justice during your career?
- What are your organization's near and long-term legislative priorities in juvenile legal reform?
- Outside of the Revised Code of Washington, are there any policies, practices, or systems that you consider critical to understanding the causes of racial disparities in juvenile court involvement?

Questions for DCYF staff:

- What do you see as the most common upstream factors that lead to youth involvement with the juvenile legal system?
 - Are there changes within the reach of DCYF that could target those upstream factors?
 - What about outside the reach/scope of DCYF?
- What do you see as top legislative and policy priorities for juvenile legal reform, particularly as it relates to race equity?

Appendix B: Codebook and Theme Organization

Below is the complete list of codes we used in our thematic analysis of interview transcripts. The left-hand column includes the code, and the right hand column includes a brief description of what we tracked within each code. Following the codebook is a diagram depicting how we organized codes into themes.

Codebook

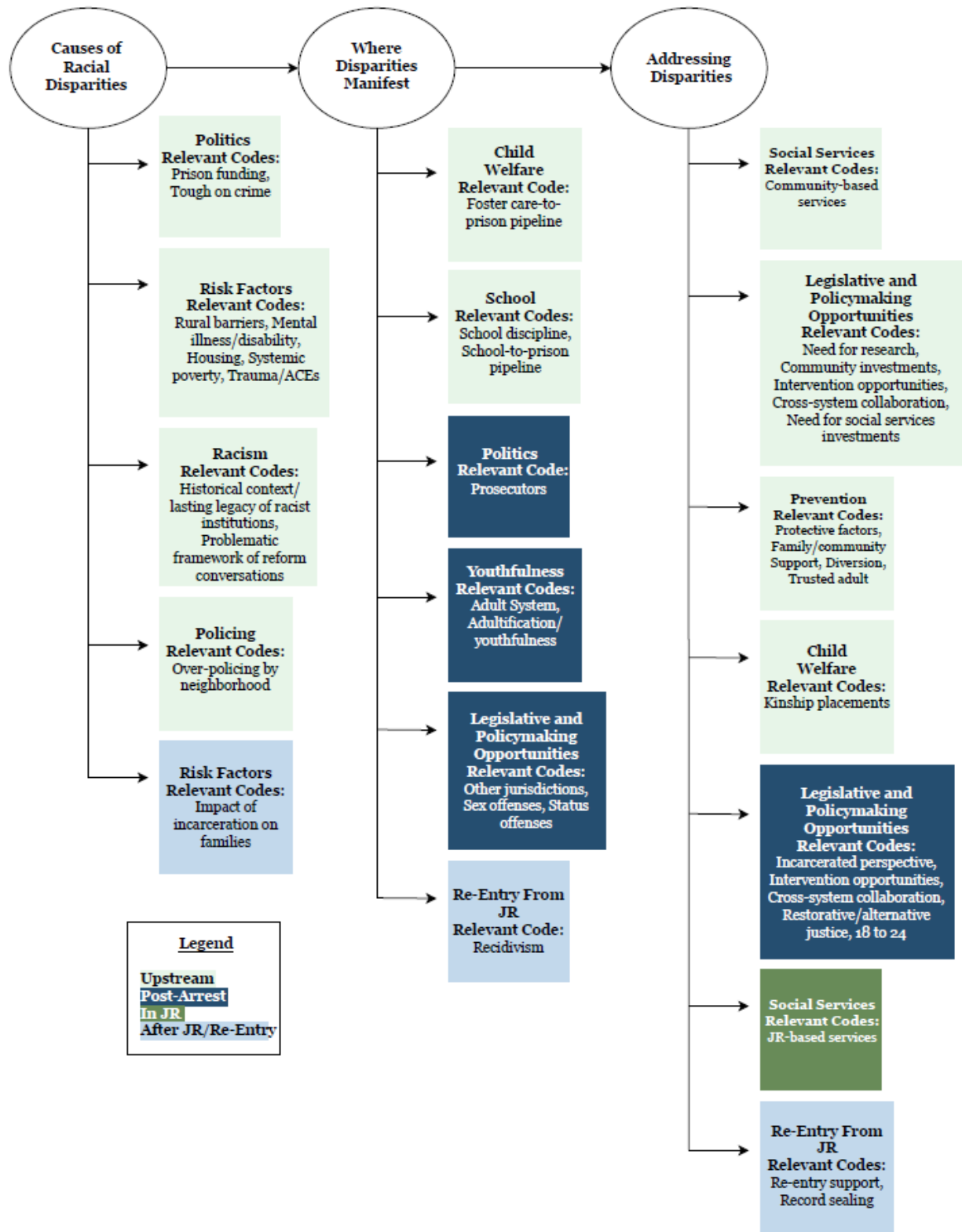
Code	Concept
Politics	Overarching theme of political atmosphere around the juvenile legal system and the current landscape of policy work being advocated for/against
Prison funding	Discussion around funding for adult and juvenile correctional facilities
Tough on crime	Attitude of prioritizing severe punitive laws and harsh enforcement of laws with a focus on punishment over rehabilitation
Conditions of confinement	The conditions youth are exposed to when in the JR facilities
Direct quote	Notably powerful/poignant quote from an interviewee, used for our internal tracking of quotes that we considered highlighting in this report
Prosecutors	Any reference to the role of prosecutors within the juvenile legal system
Re-entry from JR	The process by which young people re-enter their communities after being incarcerated in JR
Re-entry supports	Programs and services associated with ensuring a successful return to the community from JR such as housing, employment, education, and other supports
Recidivism	Mention of recidivism or youth released from JR who commit new offenses
Record sealing	Mention of record sealing
Legislative and policy making opportunities	Used to flag discussion of specific policy opportunities
Need for research	Mention of a need for further research to be conducted on a topic
Oversight	Mention of oversight of components of the juvenile legal system or community-based services

Community investments	Discussion of investments in communities and community-based services
Incarcerated perspective	Mention of the perspective of incarcerated people/youth
Intervention opportunities	Opportunities for intervention to prevent or mitigate contact with the legal system
Cross-system collaboration	Collaboration across multiple systems/institutions/agencies
Need for social services investments	General discussion of the need for increased investments in social services
Other jurisdictions	Examples from jurisdictions outside of Washington
Restorative/alternative justice	Mention of forms of justice that center rehabilitation, restoration, and keeping youth in community rather than retribution
Sex offenses	Discussion of sex offenses committed by youth or sex offender registration
Status offenses	Discussion of status offenses
Policing	Larger theme describing the role of policing in Washington’s juvenile legal system
Over-policing by neighborhood	Discussion of the over-policing of neighborhoods, primarily communities of color, and how this contributes to racial disproportionalities
Child welfare/foster care	Discussion of the child welfare system
Foster care to prison pipeline	Discussion of the relationship between foster care and future incarceration
Kinship placements	Discussion of dependent youth placed with family members
Prevention	An overarching theme of the ways to prevent youth contact with the juvenile legal system
Protective factors	Discussion of factors that reduce the impact of risk factors relating to youth involvement with the legal system
Family/community support	Support and care offered by a youth’s family and/or communities
Diversion	The process of youth being diverted out of formal adjudication proceedings that result in a conviction and sentence and into programs that are designed to meet unmet needs of those involved

Trusted Adult	Discussion of adult that demonstrates active care and support for youth that can positively influence their life
Racism	Discussion of the overarching theme of how racism (individual bias or systemically) is present in how Washington's juvenile legal system functions and the racial disproportionate outcomes it produces
Historical context/lasting legacy of racist institutions	Mention of the lasting effects the history of our nation's founding and the racist beginnings our institutions have, being built upon violence and exclusion
Problematic/racist framework of reform conversations	Discussion of issues with the framing of reform efforts, referring to the criminal legal system being within a framework that still perpetuates racism and disparate outcomes
Risk factors for contact with the juvenile justice system	A theme describing risk factors for youth involvement with the juvenile system
Rural barriers	Discussion of the unique barriers rural Washington counties face when trying to reduce racial disproportionalities
Impact of incarceration on family/community	The negative impacts of incarceration on families and communities of those currently incarcerated
Mental illness/disability	Discussion of how mental illness and disabilities within in Washington's juvenile legal system, including the intersection with race and how they are criminalized
Housing	Discussion of the relationship between housing stability involvement in the legal system
Systemic Poverty	Discussion of poverty and institutions that reproduce and perpetuate economic exclusion, particularly of communities of color and as it relates to involvement in the legal system
Trauma/ACEs	Traumatic and adverse childhood/adolescent experiences
School	The relationship schools have with Washington's juvenile legal system
Alternative school/learning	Alternative to traditional schooling, including special education, online learning, etc.
School discipline	Discussion of school discipline and its relationship to contact with the juvenile system
School-to-prison pipeline	Discussion of the school-to-prison pipeline or school-based factors that prime youth for contact with the court system

Social services	An identified theme describing any public services before, during, after, and in prevention of JR confinement.
JR-based Services	Services available to youth when confined in JR detention facilities
Community-based Services	Services available to youth in their communities that provide support and care for unmet needs or guidance that are outside the legal system
Youthfulness	The difference between adolescents and adults (e.g., brain development) and relating to the treatment of youth as youth vs adults, the differences in the adult/juvenile systems, etc.
18 to 24	The expansion of JR eligibility to youth aged 18 to 24 and/or discussion of the unique characteristics or needs of this group
Adult System	Mention of the adult system: Department of Corrections versus Juvenile Rehabilitation and/or concerning decline of youth to adult court
Adultification/Youthfulness	The misperception of youth of color as more adult or mature and, as a consequence, more culpable

Theme Organization Diagram



Appendix C: Relative Rate Index (RRI) of Diversion Among Adjudicated Youth

Relative Rate Indices (RRI) are a representation of disproportionality that measures the relative rate at which an event occurs to (or for) one group when compared to another. In this case, Exhibit 10 from this 2020 DCYF report shows RRIs for youth of different races when compared to white youth.¹⁴² For example, **the adjudication RRI of 4.0 for Black youth means that Black youth were adjudicated at a rate of 4x the rate of white youth.** This is calculated using the following formula:

$$\text{Adjudication RRI} = \frac{\% \text{ Adjudicated Black youth}}{\% \text{ Adjudicated white youth}} \text{ where}$$

$$\% \text{ Adjudicated Black youth} = \frac{\# \text{ Adjudicated Black youth}}{\text{Black youth population}}$$

In Exhibit 10, the Diversion RRI of 2.2 for Black youth means that among *all cases* Black youth are 2.2 times more likely to receive a diversion than white youth. Because diversions are irrelevant to cases that were not referred or petitioned, we suggest the more helpful metric to be the likelihood of receiving a diversion given a youth had already been adjudicated. We calculate a **Diversions per Adjudication RRI** using the following definitions:

$$\text{Diversions per Adjudication} = \frac{\# \text{ Diverted youth}}{\# \text{ Adjudicated youth}}$$

$$\begin{aligned} \text{Diversions per Adjudication RRI} &= \frac{\text{Diversions per Adjudication for Black youth}}{\text{Diversions per Adjudication for white youth}} \\ &= \left(\frac{\# \text{ Diverted Black youth}}{\# \text{ Adjudicated Black youth}} \right) \div \left(\frac{\# \text{ Diverted white youth}}{\# \text{ Adjudicated white youth}} \right) \end{aligned}$$

¹⁴² Department of Children, Youth, and Families. “Washington State Juvenile Justice Report to the Governor and State Legislature,” *Washington State Partnership Council on Juvenile Justice*. (2020).

<https://www.dcyf.wa.gov/sites/default/files/pdf/2020WA-PCJJgov.pdf>

Given that the Diversion RRI and Adjudication RRI are defined as follows:

$$\text{Diversion RRI} = \frac{\% \text{ Diverted Black youth}}{\% \text{ Diverted white youth}} = \left(\frac{\# \text{ Diverted Black youth}}{\text{Black youth population}} \right) \div \left(\frac{\# \text{ Diverted white youth}}{\text{white youth population}} \right)$$

$$\text{Adjudication RRI} = \frac{\% \text{ Adj Black youth}}{\% \text{ Adj white youth}} = \left(\frac{\# \text{ Adjudicated Black youth}}{\text{Black youth population}} \right) \div \left(\frac{\# \text{ Adjudicated white youth}}{\text{white youth population}} \right)$$

Dividing the Diversion RRI by the Adjudication RRI **ultimately yields the Diversions per Adjudication RRI.**