



# EQUAL JUSTICE

Through awareness, education and action

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## REVIEW OF THE SENTENCING GUIDELINES COMMISSION REPORT

*Brian A. Tsuchida*

Data collected by the Washington State Sentencing Guidelines Commission (SGC) indicates that minority youth are over-represented in many stages of the juvenile justice system. The SGC defines “disproportionality” as “the degree to which the demographic composition of juvenile offenders differs from that of the general at risk population of juveniles 10 years and older.”<sup>1</sup>

The SGC’s data reveals that state-wide African American, Native American and Hispanic American youth receive a disproportionately high number of sentencing dispositions, a trend noted in data collected by the SGC in 2001 and 2003. During fiscal year 2005, Washington Courts entered dispositions in 13,127 cases. African Americans comprised 3.89% of the population but received 13.14% of the FY 2005 dispositions. Native Americans comprised 1.95% of the population but received 4.88% of the dispositions. Hispanic Americans comprised 11.18% of the population but received 14.37% of the dispositions. In contrast, Caucasians comprised 72.7% of the population but received 64.41% of the dispositions, and Asian Pacific Islanders comprised 6.17% of the population but received 2.98%.

Disproportionality in juvenile dispositions is not uniform across the state. Of the 31 counties the SGC reviewed, 19 had a sentencing ratio for all minorities greater than one, i.e., over-representation of minority dispositions. However, 12 counties had a minority sentencing ratio of one or less. The SGC noted that Whatcom, Whitman, King, Asotin and Okanogan

Counties reported the highest ratios of over-representation of minority youth dispositions, while Pacific, Stevens, Grays Harbor, Mason, and Jefferson Counties reported the lowest ratios.

In addition, SGC data revealed disparity in the

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1. See Sentencing Guidelines Commission, *Disproportionality and Disparity in Juvenile Sentencing*, Fiscal Year 2005.

*EQUAL JUSTICE*

*Equal Justice* is the official publication of the Washington State Minority and Justice Commission whose goal is elimination of racial and ethnic bias, where it exists, from our state courts. The newsletter is a communications and networking tool providing information about Commission programs, projects and issues of concern.

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**INTRODUCTION**

*Brian A. Tsuchida*

The prevalence of racial disparity within Washington's juvenile criminal justice system continues to be a troubling issue. Significant disparities at multiple levels of the juvenile justice system have been documented across the nation, and in numerous studies conducted by the Washington State Sentencing Guidelines Commission, including *Juvenile Justice and Disproportionality: Patterns of Minority Over-Representation in Washington's Juvenile Justice System* in 1997 and *Juvenile Offenders: A Study of Disproportionality and Recidivism* in 2001.

An historic pattern of racial disparity continues in Washington's juvenile justice system, as most recently documented in the Sentencing Guidelines Commission's report, *Disproportionality and Disparity in Juvenile Sentencing*, Fiscal Year 2005.

This issue of *Equal Justice* highlights issues concerning these disparities. We start with a summary of the Sentencing Guidelines Commission's 2005 juvenile sentencing report. Readers interested in the voluminous current and historical data compiled by the Commission in the full report are encouraged to visit the Guideline Commission's website: [www.sgc.wa.gov](http://www.sgc.wa.gov). The summary is followed by a discussion of trends in juvenile justice and their impact on juveniles of color by an attorney active in addressing juvenile racial disparity issues, Kimberly Ambrose, supervising attorney of the University of Washington School of Law's Children and Youth Advocacy Clinic.

Also included in this issue are reports from the Pierce and King County juvenile courts, by Judges Frank E. Cuthbertson and Judge Patricia Hall Clark, respectively, on significant initiatives in those two courts to reduce the disproportionate confinement of minority juveniles. While the challenge of eliminating bias and disparity in the juvenile court is a difficult and complex one, important steps have been taken in both recognizing and documenting the issue of disparity and in reducing disparity through innovative programs and coordinating the resources of judges, court staff, lawyers and community leaders.



*(Continued from page 1)*

actual sentences juveniles received. The SGC defines disparity as “differing treatment of offenders with the same current offense and criminal history.” The data reveals that African Americans and Asian Pacific Islander juveniles received the longest terms of county jail detention and that African Americans youths received the longest terms of home monitoring and work crew.

Finally, the SGC data showed African Americans juveniles were the most disproportionately over-represented group for both automatic and discretionary declines of juvenile court jurisdiction, approximately six and five times their population proportion, respectively. Native American juveniles were declined 2.9 and 2.75 times their population proportion, respectively, and Caucasian and Hispanic youth were declined at or below their population proportion.

While the SGC data documents disproportionality and disparity in Washington’s juvenile criminal justice system, it does not explain or analyze the causes. To view the full SGC’s *Disproportionality and Disparity in Juvenile Sentencing* Report, go to <http://www.sgc.wa.gov/>.



*Brian A. Tsuchida is a Public Defender with the Federal Public Defender’s Office and a member of the Washington State Minority and Justice Commission.*

***Celebrating the Courts in an Inclusive Society***

**DISPROPORTIONALITY  
OF  
JUVENILE OFFENDERS**

*Kimberly Ambrose*

I once asked a 15 year old African American client, Robbie, why he thought so many of the youth in detention looked like him. Robbie looked thoughtfully around the detention interview room, surrounded by African American and other non-white young inmates. He nodded knowingly and said, “Drugs.”

The year was 1998. Eight years later juvenile arrest rates have plummeted in Washington and nationally. Juvenile referrals to the prosecutor, criminal filings and convictions (adjudications) have also all been in decline. Admissions to juvenile detention facilities have decreased and the average daily population at Washington’s Juvenile Rehabilitation Administration (JRA) has significantly fallen.<sup>1</sup>

There have been other positive trends in juvenile justice policy. Since 1992, the federal Juvenile Justice and Delinquency Prevention Act has made addressing Disproportionate Minority Confinement (DMC) a priority by requiring states to address it in order to receive funding for its programs. To that end, the Governor’s Juvenile Justice Advisory Committee prioritized reducing DMC, co-sponsored a 2003 state-wide conference on DMC and awarded funds to programs in King, Pierce, Skagit, Spokane and Yakima counties specifically to address DMC. Since 1993, JRA has been required by law to annually report to the legislature progress made toward reducing DMC. In 1994, the Washington legislature directed state agencies and local jurisdictions to report annually on proportionality, effectiveness and cultural relevance of local and state rehabilitative services for juveniles. Over the past decade, several state mandated studies have been issued describing the DMC problem, examining potential causes and evaluating the effectiveness of programs in Washington to address the problem.

In addition to the federal and state efforts to reduce DMC, private resources have been generously invested in our state. The Annie E. Casey Juvenile Detention Alternatives Initiative (JDAI) currently funds projects in five Washington counties. While JDAI’s primary focus is not DMC, its goal to ensure that secure detention is used appropriately has resulted in fewer children of color being incarcerated. The Seattle based public/private partnership Reinvesting in Youth, funded in part by the Paul Allen and Gates Foundations, has set reducing disparity in the juvenile justice system as one of its goals. King County, with the State’s largest minority youth population, has worked purposefully on the DMC issue since 1999, initially with the Building Blocks for Youth Initiative that is now the Hayward Burns Institute.

**How did children of color fare in all of this good news in juvenile justice?**

Children of color continue to be arrested, referred to the prosecutor and charged at a disproportionate rate. Between 1999 and 2004, the percentage of Washington state youth arrested who were non-white remained consistent with a slight increase. African American children made up 10% of all 2004 juvenile arrests in Washington State, while they make up less than 6% of the juvenile population. In King County in 2004, African American children accounted for 38% of juvenile arrests and 9% of the youth population.

1. Statistics throughout this article come from the Governor’s Juvenile Justice Advisory Committee Annual Reports, the Juvenile Rehabilitation Administration and the King County Juvenile Court.

Although the number of juvenile offenses being referred to the prosecutor has dropped significantly in the past 10 years, the percentage of minority youth represented in those referrals has remained basically unchanged. In 2004, non-white youth made up 25% of the youth population and 36% of the juvenile offense referrals statewide. In King County, where non-white youth comprise about 31% of the population, they accounted for 46% of the referrals. The percentages are similar for charges filed.

### **The over-representation of Hispanic, African and Native American youth in juvenile sentencing is increasing.**

A December 2005 report issued by the Sentencing Guidelines Commission (SGC) reveals that disproportionality and disparity in juvenile sentencing has been getting worse. While white youth are sentenced approximately in proportion to their numbers in the general population, the over-representation of Hispanic, African and Native American youth increased steadily between 2001 and 2005. The SGC also found that African and Asian American youth are sentenced to the longest average terms in detention and at JRA.

### **African American and Native American children are more likely to be tried in adult court either through “automatic” or discretionary decline.**

One of the most striking areas of over-representation for African American youth is their likelihood of being tried in adult court. African American youth are five to six times as likely as white youth to be tried as adults for crimes committed while juveniles, whether through the direct filing of enumerated offenses for 16 and 17 year olds (“automatic decline”) or through discretionary determinations made by judges to allow individual youth to be tried and sentenced as adults.

### **The Problem of Drugs**

Robbie was probably at least partially right. In 2005, while 19% of youth at JRA were African American, 31% of youth there for drug offenses were African American. In King County, the problem is getting worse: between 2004 and 2005 African American youth went from 47% to 56% of the youth admitted to secure detention for drug offenses while the actual numbers went down for all other race categories.

### **Beyond the Numbers**

Despite the sobering statistics, there are reasons to be hopeful. Since the mid-1990’s, fewer youth overall, including fewer youth of color, are entering the juvenile

justice system and fewer are being detained. In addition, the issue of disproportionality and disparity in juvenile justice has become a priority for federal, state and local leadership. Finally, jurisdictions throughout our state are sharing information and identifying measurable strategies to address the problem.

Progress is slow because the problem is so complex. The juvenile justice system reflects other systems where disparities exist for children and families of color. In the educational system, dropout rates for African American and Hispanic youth grimly correspond with their over-representation in juvenile justice statistics. In the child welfare system, African and Native American children are significantly over-represented. Adult prisons and jails house disproportionate numbers of minorities, many of whom have children. While juvenile courts should continue to take the lead in addressing disproportionality and disparity in juvenile justice, the crisis will not end until progress is made in these other places where children of color are left behind.



*Kimberly Ambrose is a lecturer and supervising attorney for the Children and Youth Advocacy Clinic (CAYAC) at the University of Washington School of Law.*

## ***Celebrating the Courts in an Inclusive Society***

### **JUVENILE DETENTION ALTERNATIVES**

*Judge Frank E. Cuthbertson*

The Pierce County Juvenile Court (PCJC), along with a coalition of community groups and local and state government leaders, has initiated a number of reforms to reduce the disproportionately large numbers of minority youth incarcerated in the juvenile justice system. The coalition includes representatives from the Tacoma Ministerial Alliance, the Tacoma School District, the Pierce County Sheriff and local municipal police departments, grassroots activists, the Pierce County Prosecuting Attorney, researchers and instructors from the academic community, judges, other government officials, parent groups and other community based organizations.

The Disproportionate Minority Confinement (DMC) Committee has focused on the following goals:

- Developing new community based programs as alternatives to incarceration;
- Improving data collection and analysis of critical decision points in the juvenile justice system;
- Implementing changes in case processing including development of an evidence based risk

assessment instrument (RAI) to determine the need for secure detention and allowing for increased judicial discretion in imposing sanctions for juveniles with outstanding warrants;

- Educating service providers and other stakeholders on culturally appropriate interventions for juvenile offenders and their families and;
- Encouraging grassroots community involvement as part of a “restorative justice” approach to reducing recidivism and the impact of juvenile crime on victims, low-income communities, as well as the offenders themselves.

## **Disproportionate Minority Confinement Defined**

Disproportionate incarceration of minority youth has been a well-documented concern of judges and criminologists for over half a decade. See, *Race Class Gender and Justice in the United States*, Reasons, Conley and Debro (2002). In addition, the United States Justice Department, Office of Juvenile Justice and Delinquency Prevention (OJJDP) under the Bush Administration has several programs underway to limit what they describe as disproportionate minority contacts with law enforcement agencies.

A 2001 study prepared by Nella Lee, Ph.D. for the Washington State Sentencing Guidelines Commission defines disproportionality as the rate at which certain groups of youth are given dispositions in proportion to their numbers in the general population. For example, in Pierce County in 2003 while African American youth comprised approximately 8% of the 0-18 juvenile population overall, they comprised 30-40% of the juvenile detention population. Data consistently shows disproportionality becomes even more pronounced among youth sentenced to Juvenile Rehabilitation Administration (JRA).

The concern for judges, juvenile court administrators and other community leaders goes beyond the numbers however. Anecdotal and empirical evidence suggests that when minority youth are placed in secure detention they are inclined to subsequently engage in additional criminogenic behavior, establish gang affiliations and subsequently re-offend.

## **Highlights of the New Programming**

1. Community Detention Program (CDET), an alternative to incarceration in secured detention, was the first step in reducing DMC in Pierce County. The PCJC, with support of the county executive and council, closed a wing of the detention facility and used the cost savings to fund CDET. The CDET manager assures the program

appropriately serves minority youth through daily telephone and in person contacts at school and at home rather than in secure detention.

2. Evening Reporting is a community based program located in a storefront in Tacoma’s Hilltop Neighborhood. Evening reporting is another alternative to incarceration. Modeled after a program on Chicago’s Westside, the program targets probation violators and youth coming before the court on warrant status. The program requires the youth to attend school during the day and attend evening reporting from 4:00 p.m. through 9:00 p.m. The program includes dinner, academics, speakers from the community and recreation.

3. Youth Assessment and Resource Center (YARC) is primarily targeted to serve youth who are severely emotionally disturbed and/or who have been in domestic violence situations. YARC currently assists juvenile offenders facing court dispositions and at risk youth (including Becca) with family reconciliation, referrals for counseling and case management. The goal of the YARC is to accept direct referrals from law enforcement of youth arrested for low level misdemeanors, domestic violence and certain status offenses if their overall score on the PCJC risk assessment instrument (RAI) indicates secure detention is not warranted. YARC and law enforcement staff expects direct police referrals to begin this year.

4. Youth and Law Forums have been another important part of efforts to reduce DMC. The PCJC and the Pierce County Minority Bar Association have partnered to sponsor an annual community based youth activity that draws hundreds of youth from throughout Pierce County to learn about their rights, the courts, and law enforcement.

In addition, with the assistance of Governor’s Juvenile Justice Advisory Committee (GJJAC) funding, a forum focusing on youth in detention and youth on probation was held last year. The forum focusing on children with charges is part of the “Community Mapping” undertaken by the Community Juvenile Justice Coalition (CJJC) and the DMC Committee to better understand the causal factors associated with Juvenile crime.

5. Diversion/Community Accountability Boards (CABs), represent another important program for reducing the number of minority youth incarcerated in secure detention. More than 200 specially trained community volunteers sit on panels which adjudicate certain status offenses and misdemeanors for youth eligible for diversion. The CAB and Diversion program pre-dates the current Juvenile Detention Alternatives

Initiative (JDAI). This program is designed to enable low-income, working parents, often with other children, to be involved in adjudication of their child's case during more convenient evening hours.

**Conclusion**

We have taken some important first steps in reducing disproportionate minority confinement in Pierce County. The key element has been improving data collection and analysis. That has allowed us to target particular types of offenders, critical decision points in the system and particular demographics as priorities for reducing DMC. The concern is that as our court's JDAI is successful in reducing incarceration rates for youth overall, those limited number of youth remaining in detention for violent crimes, often with acute mental health problems, will become even more disproportionately African American, Hispanic and Native American.



*Judge Frank E. Cuthbertson, Pierce County Superior Court, is a member of the Pierce County Juvenile Court Executive Committee.*

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**DISPROPORTIONALITY IN JUVENILE COURT: A LOCAL RESPONSE**

*Judge Patricia Hall Clark*

Disproportionality plagues both the juvenile criminal justice and the child welfare systems. Although disproportionality in these two systems exists across the nation, very few jurisdictions have conducted studies on the local level and even fewer have implemented strategies to correct the problem and eliminate the causes. This article will describe initiatives that have been undertaken in King County to address disproportionality as it exists in juvenile offender proceedings<sup>1</sup>.

Racial and ethnic disparity remains one of the most serious problems facing the juvenile criminal justice system. From 2003-2004, the number of youth referrals to juvenile court decreased by 7%. During that period African American and Asian American youth showed a 7% reduction in referrals while referrals of white youth decreased to by nearly 13%. In King County, African American youth make up 9% of the juvenile population, ages 10-17, but represent 27% of the police referrals to juvenile criminal court.

1. In the next issue of Equal Justice, Judge Clark will describe initiatives in King County to address disproportionality as it arises in the child welfare system.

Overall, juveniles benefited from a 4% reduction in the average daily population in secure detention from 2003-2004, and African American youth showed a 4.5% reduction in the number of youth detained. However, even with the reduction African American youth still represent 38% of the secure detention population.

The King County Juvenile Court is engaged in a number of ongoing detention reform efforts. The Juvenile Detention Oversight Committee (JDOC) identified a five-step process for detention reform efforts with the goal of reducing disproportionate confinement:

- Provide the Court with recommendations for placement alternatives to secure detention at the first detention review hearing rather than several days after the arraignment hearing.
- Implement an objective tool (Detention Risk Assessment Instrument (DRAI) to guide placement recommendations.
- Develop a new alternative to secure detention which allows for quick and effective placement for pre-adjudicated youth.
- Analyze detention criteria and recommend changes that could reduce disproportionality.
- Establish on-going mechanisms for reviewing the impacts to disproportionate minority confinement, recidivism, and failure-to-appear from the DRAI, intake criteria, new alternatives to secure detention options, and other measures.

Much of the process described above has been implemented in the past two years. Alternatives to Secure Detention (ASD) recommendations were expedited to occur at the first detention review. This resulted in an increase in the total number of youth, and particularly the number of African American youth, placed in ASD programs. In 2004 the average daily population in ASD programs was 40.6 compared to 30.4 in 2003.

Full implementation of the DRAI occurred in the third quarter of 2004. A form, which is provided to the court at each detention review hearing, is an objective assessment of the risk factors associated with release of the child back into the community. The assessment also provides a basis for ongoing evaluation and monitoring of the detention process. The analysis of the elements of detention intake criteria and their relationship to recidivism and failure-to-appear (prior to sentencing) by race was completed in 2004. The preliminary analysis indicated that the criteria were positively co-related with the increased failure to appear rate and/or increased recidivism. Because disproportionate confinement is tied to unequal presentation, JDOC is working with the Police Chiefs' Association of the county to implement a study of minority presentation to detention. That study, funded by

the Police Chiefs' Association, should be completed within the next six months.

A detention reform coordinator position, funded by the Annie E. Casey Foundation and the Burns Institute, was created to oversee Disproportionate Minority Confinement (DMC) planning, monitoring, data analysis, reporting, and overall reform coordination. Annie E. Casey has funded a number of DMC projects in the state of Washington.

A detention expediter position was created to monitor, on a weekly basis, the number appearing in both secure detention and the ASD program. Evaluation of the impact of this position will occur over the coming year.

All of the detention reform efforts have resulted in a major decrease in the detention population shown by the decrease from a high in the late 90's of over 200 per day to the current average detention population of around 100. This has resulted in the closure of six detention units at a savings of \$250,000 per unit.

Our most recent data shows that roughly 30% of the children in juvenile criminal justice system are, or were, served by the child welfare system. These two systems are inextricably intertwined. Any resolution of the disproportionality issue will resonate throughout both systems. We, as a county, as a state and as a nation, must find a way to keep more of our children out of these systems. When juveniles must be involved, we should insure that they receive only the best. They are our future.



*Judge Patricia Hall Clark, King County Superior Court, is Chief Judge of the King County Juvenile Court and a participant in the Seattle/King County Reclaiming Futures Project.*

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## CHAMPION FOR JUSTICE

*Ms. Lea Zengage*

Ms. Lea Zengage, co-founder of Justice Works!, started volunteering with the Black Prisoners Caucus in 1999 at the prison in Monroe, Washington. Her experience there led her to begin an organization whose mission is to undo racism in the criminal justice system as experienced by African Americans. Justice Works! focuses its efforts on court system accountability, dismantling the profit motive for incarceration, and prisoner re-entry reform.

## SPOTLIGHT ON COMMISSION MEMBERS

*George S. Bridges, Ph.D.*

Dr. Bridges, a former Commission member, became Whitman College's 13th president in its 123-year history on Thursday, November 3, 2005. The ceremony took place at Cordiner Hall in Walla Walla, Washington.

*Sandra E. Madrid, Ph.D.*

Dean Madrid is the first Hispanic woman to be elected Board Chair of the United Way of King County for 2006-2007. She has served on the Board of Directors for nine years and held a variety of positions.

*Judge LeRoy McCullough*

Judge McCullough was presented with the Excellence in the Practice of Law award from the Loren Miller Bar Association on May 19th at the 2006 Philip L. Burton Memorial Scholarship Dinner in Seattle.

*Judge Mary I. Yu*

Judge Yu received the Judge of the Year award from the Washington chapter of the American Board of Trial Advocates on November 4, 2005. She is the first person of color and only the second woman to win this award since it was instituted in 1996.

*Judge Dennis D. Yule*

Judge Yule was honored on May 2, 2006 at the Washington State Trial Lawyers Association's Law Day & Awards Dinner in Seattle for twenty years of service as a Benton-Franklin County Superior Court judge.

## CORRECTION

Chief Judge Mary L. Pearson was incorrectly identified as Chief Judge for the Spokane Tribal Court in the *Equal Justice* newsletter Volume 9, Number 2, page 8. She is the Chief Judge for the Coeur d'Alene Tribal Court.

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