

Chapter 9

Juvenile Justice and Gender and Race Disparities

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I. Summary

Girls make up a small percentage of youth involved in the juvenile justice system. There are, however, differences in the ways that girls and boys enter the juvenile justice system, their needs, and the resources available once they enter the system. For example, nationally, girls with juvenile justice involvement are more likely than their male peers to have experienced sexual and physical abuse, neglect, or maltreatment. In Washington, girls are more likely than boys to already have a history of involvement in the child welfare system when they come into contact with the juvenile justice system. This suggests there are many places within the juvenile justice system where more nuanced gender disparities may arise beyond looking at just the total numbers of youth by gender.

In addition, there is a significant gap in understanding whether bias or inequities may be impacting transgender and gender-nonbinary youth in their interactions with the juvenile justice system. National research does show that Lesbian, Gay, Bisexual, Transgender, Queer and Questioning (LGBTQ+) youth are over-represented in the juvenile justice system and that they experience biases and trauma once they become involved with that system. The best available national evidence suggests that the rate of lesbian, gay, and bisexual (LGB) boys in detention is roughly proportional to the rate in the general population, but LGB girls may be disproportionately represented at 3.3 times the rate of the general population. In addition, LGBTQ+ youth take paths into the system that are specific to their sexual orientation or gender identity. For example, they may experience homelessness due to family rejection or abuse centered on their LGBTQ+ identity, or they may be arrested for committing survival crimes such as stealing or trespassing. Once involved in the system, LGBTQ+ youth report feeling invisible and experiencing discrimination and harassment. Some reported what they perceived as hostile treatment by court professionals and more severe sentencing because of their LGBTQ+ identity.

Further, research has identified disparities in the juvenile justice system by race, ethnicity, socioeconomic status, disability status, and the intersection of these factors. For example, the Washington State Center for Court Research (WSCCR) and the Washington State Supreme Court Minority and Justice Commission released a special research report on girls of color admitted to

juvenile detention in Washington State. Analyzing 2019 data, they found that American Indian/Alaska Native, Hispanic/Latinx girls, and Black girls¹ were overrepresented in juvenile detention. This all shows that we need more comprehensive Washington data on youth who have contact with the juvenile justice system – data that would allow for analysis by gender and the intersection of gender with other factors.

II. Introduction to Juvenile Justice

Juvenile law is complex. Since at least the late 1960s, when the U.S. Supreme Court held that juveniles charged with criminal offenses are entitled to the Constitutional Due Process protections of notice, right to counsel, confrontation and cross-examination of witnesses, and against self-incrimination, juvenile law has been something of a hybrid.² Within an adversarial legal framework, juvenile courts serve the equal, but sometimes conflicting, goals of accountability for criminal conduct, public safety, and rehabilitation of the youth engaged in the system.³

Juvenile justice is separated from adult justice systems because of the understanding that children’s capacity for decision-making is still developing, therefore children are less accountable for their actions.⁴ In Washington State, the modern juvenile justice system stems from the Juvenile Justice Act of 1977 and is governed under chapter 13.40 RCW. In 2017, the Department of Children, Youth & Families (DCYF) was created, merging the Department of Early Learning and the Children’s Administration into one agency to enhance the continuum of care for children and families. In 2019, Juvenile Rehabilitation (JR) and the Office of Juvenile Justice were merged into DCYF, “[f]ostering the development of a more robust system of prevention and supports for pre-

¹ The 2021 Gender Justice Study uses the race and ethnicity terms used in the underlying sources when citing data in order to ensure we are presenting the data accurately and in alignment with the how the individuals self-identified. When talking more broadly about the body of literature we strive to use the most respectful terms. See Section V of the full report (“2021 Gender Justice Study Terminology, Methods, and Limitations”) for a more detailed explanation of terminology used throughout the report.

² *In re Gault*, 387 U.S. 1, 31-57, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

³ TODD DOWELL, THE JUVENILE OFFENDER SYSTEM IN WASHINGTON STATE 2019 EDITION 30 (2019).

⁴ *Id.*

teens and teens in the foster care and juvenile justice systems.”⁵ This merger was designed to further a collaborative and coordinated continuum of multidisciplinary services that addresses needs and supports the growth of stronger children, families, and communities, rather than simply responding to symptoms. This change, as well as legislative changes to juvenile justice law in recent years, represents efforts to reduce overall youth involvement in the juvenile justice system, reduce the use and length of detention, and increase access to community-based programs and treatment based on robust evidence.⁶

Since the early 2000s, Washington has seen a decrease in the number of youth arrested, a decrease in detention admissions, and a decrease in youth receiving a guilty verdict (either through plea or finding by the court)—overall, a significant decrease in the number of youth involved in the juvenile justice system.⁷ In addition, following Governor Jay Inslee’s “Stay Home, Stay Healthy” order signed on March 24, 2020 in response to the COVID-19 pandemic, admissions to juvenile detention centers statewide decreased by up to two thirds when compared to January and February of the same year. Of the youth in detention during a point-in-time count on the evening of April 13, 2020 100% were admitted for a criminal offense. These numbers stayed at this decreased level at least through June of 2020 (last available data).⁸ Research is needed, however, to understand if and how specific legislative and administrative changes impact juvenile justice outcomes over time.

III. Gender and Pathways to Juvenile Justice Involvement⁹

⁵ See WASH. DEP’T OF CHILDREN, YOUTH, AND FAMILIES, OFF. OF INNOVATION, ALIGNMENT, & ACCOUNTABILITY, ESTABLISHING THE DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES: REPORT TO THE WASHINGTON STATE LEGISLATURE 11 (2017).

⁶ LAUREN KNOTH ET AL., WASHINGTON STATE’S JUVENILE JUSTICE SYSTEM: EVOLUTION OF POLICIES, POPULATIONS AND PRACTICAL RESEARCH (2020).

⁷ *Id.*

⁸ AMANDA GILMAN, WASH. STATE CTR. FOR CT. RSCH., WASHINGTON STATE JUVENILE DETENTION: A SNAPSHOT OF THE USE OF DETENTION DURING THE COVID-19 CRISIS (2020).

⁹ The authors acknowledge that law enforcement policies and practices are an important element of juvenile justice and may contribute to disparities in system involvement. The topic is important and deserves attention but is beyond the scope of the current research question.

There are two pathways by which youth become involved in the juvenile justice system. The first is by referral for status offenses—civil actions initiated by petition and handled in juvenile court (though they are not criminal matters). The second is through delinquency proceedings. Schools are an important element of both, as youth spend much of their time in school. Factors such as gender, race, socioeconomic status, sexual orientation, disability, and others shape youth pathways to justice system involvement. While girls¹⁰ are a small percentage of youth involved in the juvenile justice system, important disparities have been identified by gender, race, ethnicity, socioeconomic status, gender identity, sexual orientation, and disability. These disparities suggest that historic marginalization and under-resourcing of Black, Indigenous, and communities of color in Washington and the rest of the nation play a role in juvenile justice involvement and outcomes.

In Washington, as in the rest of the country, boys far outnumber girls in the juvenile justice system: in 2018, girls represented 19.6% of juvenile court sentences and 27.7% of admissions to juvenile detention in the state.¹¹ Nationwide, the delinquency caseload decreased between 2005 and 2017 at a similar rate for boys and girls—by 51% and 52%, respectively.¹² The proportion of girls involved in the juvenile system (for both delinquency and non-delinquency offenses) has been increasing over the past few decades, particularly among Black girls.¹³ While girls' involvement has increased, data also show that girls are more likely than boys to be involved in the court due to nonviolent offenses. In Washington State:

...the largest percentage of female admissions across racial groups were for misdemeanors. In fact, 39.3 percent of all female admissions in 2019 were due to

¹⁰ Most data sources and reports cited here only provide two gender categories, so it is unclear if and how transgender youth are included in these counts. These data limitations also prevent us from providing an analysis for gender-nonbinary or other gender-nonconforming youth. However, a recent survey of youth in detention in California found that half a percent, or over 300 youth, identified as either gender-nonconforming or gender non-binary. Angela Irvine-Baker, Nikki Jones & Aisha Canfield, *Taking the "Girl" Out of Gender-Responsive Programming in the Juvenile Justice System*, 2 ANN. REV. CRIMINOLOGY 321, 329 (2019).

¹¹ AMANDA GILMAN & RACHAEL SANFORD, WASHINGTON STATE JUVENILE DETENTION 2018 ANNUAL REPORT (2019); DUC LUU, JUVENILE DISPOSITION SUMMARY, FISCAL YEAR 2019 (2020). Note: 2018 is the most recent year both datasets are available. The data do not explain why girls are admitted to detention at a greater rate than juvenile court sentences. Possible explanations are that initial referrals may be diverted or resolved without a sentence, and one individual may be admitted to detention on multiple occasions.

¹² SARAH HOCKENBERRY & CHARLES PUZZANCHERA, JUVENILE COURT STATISTICS, 2017 (2019).

¹³ FRANCINE SHERMAN & ANNIE BALCK, GENDER INJUSTICE: SYSTEM-LEVEL JUVENILE JUSTICE REFORMS FOR GIRLS (2015).

an alleged or adjudicated misdemeanor offense, compared to 28.9 percent of all female admissions for a felony charge, 11.5 percent for a criminal violation, and 16.0 percent for a violation related to a non-offender matter. By comparison, the foremost reason for male youth admission to detention was an alleged or adjudicated felony charge.¹⁴

Nationally, girls make up a higher proportion of status offense caseloads (43%) than delinquency caseloads (28%).¹⁵

There are some early indications in the Washington State juvenile admissions data which indicate that reductions in admissions following the start of the COVID-19 pandemic are not being distributed equally across all genders and racial or ethnic groups. When comparing the highest number of weekly admissions pre-COVID-19 (Feb. 19-25) with the lowest number of weekly admissions post-COVID-19 (May 20-26) during the first six months of 2020, boys saw a 76.9% decrease while girls saw a 53.8% decrease in admissions. In other words, post-COVID-19, a higher percentage of admissions were accounted for by girls compared to pre-COVID-19 times. These data also indicate that Black, Indigenous, and youth of color were disproportionately represented among youth in detention in Washington on April 13th, and that disproportionality was actually exacerbated during the “Stay Home, Stay Healthy” order for Black, Native American, and Latinx youth.¹⁶

¹⁴ ALIYAH ABU-HAZEEM ET AL., WASH. STATE CTR. FOR CT. RSCH., *GIRLS OF COLOR IN JUVENILE DETENTION IN WASHINGTON STATE 1* (2020).

¹⁵ HOCKENBERRY & PUZZANCHERA, *supra* note 12. There are some early indications in the Washington State juvenile admissions data which indicate that reductions in admissions following the start of the COVID-19 outbreak are not being distributed equally across all genders and racial/ethnic groups. Looking at the first six months of 2020, and comparing the week with the highest number of admission pre-COVID-19 (Feb. 19-25) to the week with the lowest number of admissions post-COVID-19 (May 20-26) indicates that boys saw a 76.9 percent decrease while girls saw a 53.8 percent decrease in admissions. In other words, post-COVID-19, a higher percentage of admissions were accounted for by girls compared to pre-COVID-19 times. These data also indicate that youth of color were disproportionately represented among youth in detention in Washington on April 13, 2020, and that disproportionality was actually exacerbated during the “Stay Home, Stay Healthy” order for Black, Native American, and Latinx youth. Personal Communication with Dr. Amanda Gilman, Washington State Center for Court Research (Nov. 4, 2020) (based on an analysis of statewide juvenile admissions data).

¹⁶ Personal Communication with Dr. Amanda Gilman, Washington State Center for Court Research (Nov. 4, 2020) (based on an analysis of statewide juvenile admissions data).

Girls enter the juvenile justice system with needs that are often distinct from boys' needs. Nationally, girls with juvenile justice involvement are more likely than their boy peers to have experienced sexual and physical abuse, neglect, or maltreatment.¹⁷ In Washington, girls are more likely than boys to already have a history of involvement in the child welfare system when they come into contact with the juvenile justice system.¹⁸ Given that the child welfare system is designed to respond to situations of neglect, abuse, or harm, children in foster care have histories of trauma and extreme hardship that would accompany them if they also become involved in the juvenile justice system. An analysis of youth involved in Washington's child welfare and juvenile justice systems from 2005 to 2017 found that youth with a history of involvement with both systems were more likely to be detained and committed; had a higher proportion of mental illness and substance use diagnoses; were more likely to have experienced homelessness; and were more likely to become teen parents, compared to youth with only juvenile justice involvement.¹⁹

Within Washington's female youth population, some girls are particularly vulnerable to contact with the juvenile justice system. Gertseva studied data on girls involved in probation during 2014 and 2015 and found the following groups of girls were over-represented in juvenile probation: Black, Indigenous, and girls of color (especially American Indian/Alaskan Native (AIAN) and Black girls); girls with a history of out-of-home placement; girls in foster or out-of-home care; and girls with a history of mental health problems.²⁰ Probation-involved girls are more likely than boys to have come from dysfunctional family situations; have a history of running away; display symptoms of Post-Traumatic-Stress Disorder (PTSD); and have a history of depression.²¹

¹⁷ LEILA CURTIS & MELANIE NADON, GENDER RESPONSIVE JUVENILE JUSTICE: A GIRLS COURT LITERATURE REVIEW UPDATE (2018), <https://ccyj.org/wp-content/uploads/2019/01/CCYJ.GirlsCourt.LitReview.6-30-18.pdf>.

¹⁸ CATHERINE PICKARD, PREVALENCE AND CHARACTERISTICS OF MULTI-SYSTEM YOUTH IN WASHINGTON STATE (2014). Juveniles involved in both the child welfare and juvenile justice system are sometimes referred to as "multi-system" youth or "dually-involved" youth. *Id.*

¹⁹ MARNA MILLER & LESLIE KNOTH, DUALY INVOLVED FEMALES IN WASHINGTON STATE: OUTCOMES, NEEDS, AND SURVEY OF APPROACHES TO SERVE THIS POPULATION (2019), https://www.wsipp.wa.gov/ReportFile/1709/Wsipp_Dually-Involved-Females-in-Washington-State-Outcomes-Needs-and-Survey-of-Approaches-to-Serve-This-Population_Report.pdf.

²⁰ ARINA GERTSEVA, GIRLS ON PROBATION: CHALLENGES AND OUTCOMES (2017).

²¹ *Id.* 64% of probation-involved girls had experienced at least one form of child maltreatment (physical abuse, sexual abuse or neglect), compared to 41% of boys. Seventy percent had a history of running away, compared to 45% of boys. More than 50% had at least one symptom of PTSD, compared to 34.2% of boys, and they were twice

Indigenous girls have unique cultural and social experiences that may not be addressed in the Washington State juvenile justice system, and they face unique challenges such as high rates of sexual assault,²² as well as sovereignty of law issues, historic racism and oppression, and the success or failure of cooperation between tribal and state or county agencies.²³

LGBTQ+ youth are over-represented in the juvenile justice system and once involved, experience biases and trauma within the system. Estimates of the proportion of LGBTQ+ youth in the U.S. juvenile justice system are imprecise, as data collection methods vary by state. The best available national evidence suggests that the rate of lesbian, gay, bisexual (LGB) boys in detention is roughly proportional to the rate in the general population, but LGB girls may be disproportionately represented at 3.3 times the rate of the general population.²⁴

Washington's Center for Children & Youth Justice conducted a study of the experiences of LGBTQ+ youth in child welfare and juvenile justice systems in 2015.²⁵ This is the first and most comprehensive study of LGBTQ+ youth and juvenile justice in the state and relied on focus groups and surveys to gather first-hand accounts of youth previously involved in the juvenile justice system. It notes that some LGBTQ+ youth have pathways to system entry that are specific to their sexual orientation or gender identity. For example, they may experience homelessness due to family rejection or abuse centered on their LGBTQ+ identity and then arrested for committing survival crimes such as stealing or trespassing. LGBTQ+ youth who respond to bullying and harassment at school by skipping school or getting in fights may be referred to the juvenile justice

as likely as boys to have a history of depression (40% and 22%, respectively). However only 17% of those with symptoms of a mental health disorder had been previously diagnosed, pointing to low rates of mental health care access and/or usage.

²² MICHAEL PLANTY ET AL., U.S. DEP'T OF JUST., BUREAU OF JUST. STAT., FEMALE VICTIMS OF SEXUAL VIOLENCE, 1994-2010 (2013), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/female-victims-sexual-violence-1994-2010>.

²³ ABIGAIL ECHO-HAWK, ADRIAN DOMINGUEZ & LAEL ECHO-HAWK, MMIWG: WE DEMAND MORE (2019).

²⁴ In 2017, Wilson et al. published their review of a nationally-representative 2012 survey concluding that 39.4% of girls and 3.2% of boys in the juvenile justice system identified as lesbian, gay or bisexual. For the purposes of this study "LGB" includes "gay, bisexual, and other non-heterosexual youth." Bianca D. M. Wilson et al., *Disproportionality and Disparities Among Sexual Minority Youth in Custody*, 46 J. YOUTH ADOLESCENCE 1547, 1547 (2017). For comparison, the most recent Health Youth survey in Washington found that 14.8% of tenth-grade students report their sexuality as gay or lesbian, bisexual, or "something else fits better." LOOKING GLASS ANALYTICS, HEALTH YOUTH SURVEY 2018: REPORT OF RESULTS 7 (2019), <https://www.askhys.net/library/2018/StateGr10.pdf>. These data were not disaggregated by gender. *Id.*

²⁵ SARAH GANZHORN, MICHAEL CURTIS & DARCY KUES, LISTENING TO THEIR VOICES: ENHANCING SUCCESSFUL OUTCOMES FOR LGBTQ YOUTH IN WASHINGTON STATE'S CHILD WELFARE AND JUVENILE JUSTICE SYSTEMS 172 (2015).

system in response. Once involved in the system, LGBTQ+ youth report experiences of invisibility, discrimination, and harassment. Some reported what they perceived as hostile treatment by court professionals and more severe sentencing because of their LGBTQ+ identity. Stigmatization of same-sex relationships may lead to LGBTQ+ youth being labeled as sex offenders. In some locations, transgender youth may be detained according to the sex assigned to them at birth rather than their gender identity. Finally, they note a lack of treatment options that are appropriate or competent to their sexual orientation or gender identity.²⁶ It should be noted that while some counties do, Washington State does not systematically gather data on sexual orientation, gender identity, or gender expression of juvenile justice-involved youth. These data are needed to understand the needs and experiences of LGBTQ+ youth in Washington.

Youth with intellectual and developmental disabilities appear to be over-represented in the juvenile justice system nationally,²⁷ and similar findings have been confirmed in Washington State:

Court-involved students, as a group, were about twice as likely as their court non-involved peers to a) have a documented disability and b) to be eligible for special education services during the year of court involvement, as well as two years prior to and including the year of court involvement. The most common disabilities found among court-involved students were specific learning disabilities, health impairments, and emotional/behavioral disabilities.²⁸

²⁶ *Id.* These findings echo findings from a national 2009 survey of juvenile justice professionals and youth who had experiences with the juvenile justice system. The authors reported that LGBTQ+ youth, particularly transgender youth, are subject to numerous biases against them that impact their experiences within the juvenile justice system. Further, harassment in school and family rejection may push LGBTQ+ youth into interactions with the juvenile justice system by way of status offenses such as truancy and running away, and these same experiences may be a factor in the disproportionate pre-trial detention of LGBTQ+ youth, as most courts consider ‘supportive home environment’ as a factor when deciding to detain youth. Finally, there is a lack of adequate services and detention facilities for LGBTQ+ youth, noted by LGBTQ+ youth themselves in focus groups and interviews. See KATAYOON MAJD, JODY MARKSAMER & CAROLYN REYES, HIDDEN INJUSTICE: LESBIAN, GAY BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS (2009).

²⁷ DEVELOPMENT SERVICES GROUP, INC, LITERATURE REVIEW: YOUTHS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES IN THE JUVENILE JUSTICE SYSTEM (2017), <https://www.ojjdp.gov/mpg/litreviews/Intellectual-Developmental-Disabilities.pdf>.

²⁸ ARINA GERTSEVA, THE ACHIEVEMENT GAP: EDUCATION OUTCOMES OF COURT-INVOLVED STUDENTS 10 (2018), <https://erdc.wa.gov/publications/justice-program-outcomes/achievement-gap-education-outcomes-court-involved-students> (examining outcomes for court-involved youth in 8th or 9th grade in the 2010-2011 school year).

As noted below, students with disabilities are more likely to be referred to law enforcement by school administrators and subject to school-based arrests than their peers without disabilities. Additionally, as noted in “Chapter 2: Communication and Language as a Gendered Barrier to Accessing the Courts,” among youth and adults, there is an overrepresentation of individuals with a wide spectrum of language disorders, which can impact their ability to understand the terms and consequences of justice involvement, release, detention, probation, and plea bargain agreements.

In summary, girls make up a small percentage of youth involved in the juvenile justice system. There are, however, differences in the ways that girls and boys enter the juvenile justice system, their needs, and the resources available once they enter the system. This suggests there are many places within the juvenile justice system where more nuanced gender disparities may arise beyond looking at just the total numbers of youth by gender. In addition, there is a significant gap in understanding of potential bias or inequities that may be impacting transgender and gender-nonbinary youth in their interactions with the juvenile justice system. In addition, research has identified disparities in the juvenile justice system by race, ethnicity, socioeconomic status, gender identity, sexual orientation, disability status, and the intersection of these factors. Overall, there is a need for more comprehensive Washington data on youth who have contact with the juvenile justice system that would allow for analysis by gender and the intersection of gender with other factors.

IV. Status Offenses

Status offenses are civil actions that are initiated by petition and handled in juvenile court. They are specific to youth because of their minor status. They include “running away, substance abuse, serious acting out problems, mental health needs, and other behaviors that endanger themselves or others.”²⁹ At-Risk Youth (ARY) or Children in Need of Services (CHINS) proceedings are initiated by a parent or guardian or other adult in the community; or a youth can file a CHINS petition on

²⁹ RCW 13.32A.010.

their own behalf if in need of food, shelter, or services and unable to obtain them. This system stems from “Becca Laws” passed in 1995 following the death Rebecca Hedman.³⁰ The Becca Laws were meant to provide additional tools to families and schools to address chronic truancy and other behavioral challenges resulting in activities that can put a young person in danger.³¹ DCYF notes that court involvement can be an intervention tool in the most extreme cases, though the risk of escalation to more serious court involvement is a concern to stakeholders across the state.³² For example, even the use of probation for status offenders could lead to more serious consequences like detention for youth who fail to comply with the requirements of their probation.³³

Statute requires school districts to initiate truancy actions if a youth has a designated number of unexcused absences, as youth under age 18 are required to attend school in Washington.³⁴ There are several tiers of responses depending on the total number of school absences, ranging from a call home to a required court appearance; the exact process and responses vary by county. Before landing in court, a truancy case in some parts of the state is referred to a local board made up of volunteers who attempt to resolve issues resulting in extensive truancy. Parents can be held responsible by the court if they contribute to the youth’s chronic truancy. Truancy filings in Washington’s juvenile courts have increased over the decades since the passage of the Becca Laws, even as the number of other juvenile court cases has decreased.³⁵ Most truant students, however, never receive a truancy petition. In the 2018-2019 school year, for example, the Washington State Office of Superintendent of Public Instruction (OSPI) reported 80,837 unique students meeting the definition of truancy (7.7% of the student population), but only 12.5% of

³⁰ Kery Murakami, *Would “Becca Bill” have saved Becca?*, SEATTLE TIMES (June 23, 1995), <https://archive.seattletimes.com/archive/?date=19950623&slug=2127830>. Rebecca had run away from home after having experienced sexual abuse and child welfare involvement. *Id.* She was commercially sexually exploited, raped and murdered at age 13. *Id.*

³¹ ELIZABETH COKER & CARL MCCURLEY, TRUANCY IN WASHINGTON STATE: FILING TRENDS, JUVENILE COURT RESPONSES, AND THE EDUCATIONAL OUTCOMES OF PETITIONED TRUANT YOUTH (2015).

³² WASH. STATE DEP’T OF CHILDREN, YOUTH & FAMILIES, FAMILIES AND YOUTH IN CRISIS (2019), www.dcyf.wa.gov.

³³ DEVELOPMENT SERVICES GROUP, INC, STATUS OFFENDERS LITERATURE REVIEW (2015), <https://ojjdp.ojp.gov/mpg/literature-review/status-offenders.pdf>.

³⁴ RCW ch. 28A.225.

³⁵ COKER & MCCURLEY, *supra* note 31.

these students had a truancy petition filed.³⁶ In the 2018-2019 school year, OSPI began tracking the outcomes of truancy petitions, including referral to a community truancy board, court involvement, alternate dispositions, and detention.³⁷

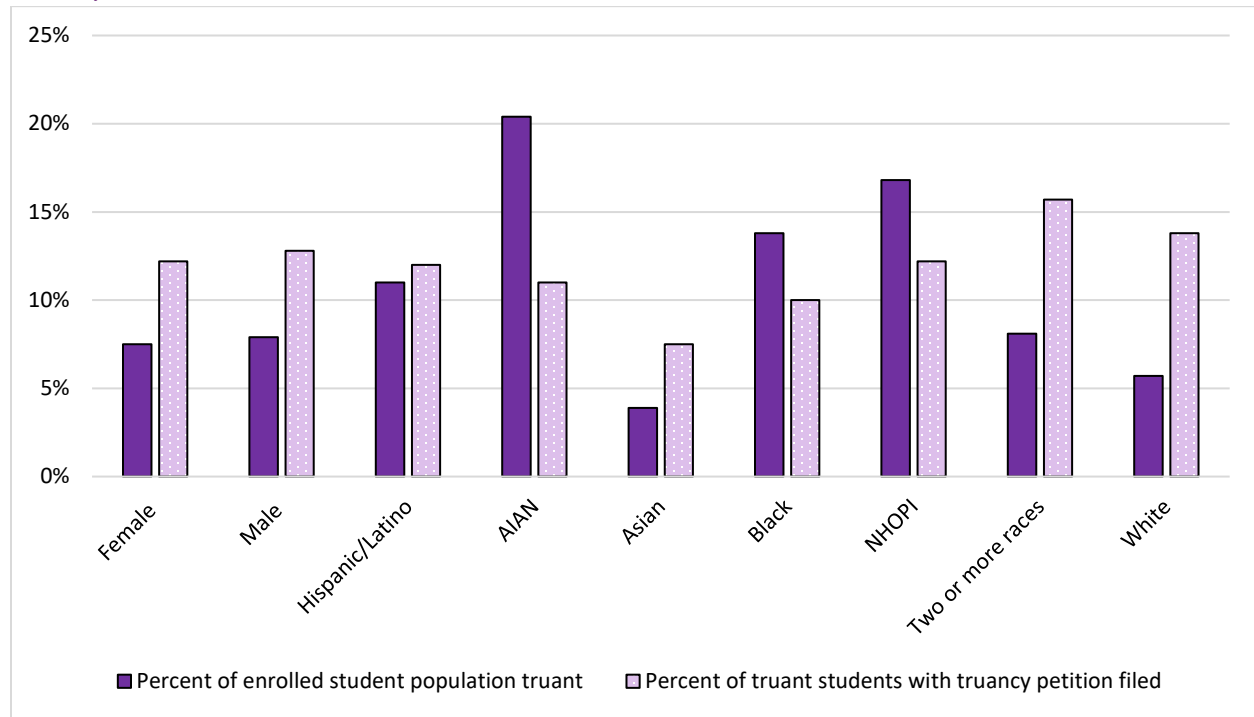
The most recent report from OSPI includes data on the number of truant students and truancy petitions filed but does not present information on longer term student outcomes. As shown in Figure 1, there does not appear to be a gender disparity in the percent of students who are truant or in the percent of truant students who have a truancy petition filed on them. The data, however, do show higher rates of truancy among AIAN, Native Hawaiian/Other Pacific Islander, Black, and Hispanic/Latino students compared to white and Asian students. In addition, AIAN, and Native Hawaiian/Other Pacific Islander truant students are less likely to have a petition filed than are white truant students. Low-income students are disproportionately likely to have truancy petitions filed, making up 81% of all petitions. While practitioners no doubt would offer anecdotal reports, to date the data do not support a conclusion that having a truancy petition filed is helpful or harmful to a student. Consequently, the long-term effects of these racial and ethnic disparities are unknown.³⁸

³⁶ KRISSEY JOHNSON, REPORT TO THE LEGISLATURE: UPDATE: TRUANCY REPORT 8 (2018), <https://www.k12.wa.us/sites/default/files/public/legisgov/2018documents/2018-12-update-truancy-report.pdf>.

³⁷ *Id.* at 5.

³⁸ *Id.*

Figure 1. Grades 1-12 Truancy Percentages, by Gender, Ethnicity, and Race, 2018



Footnotes for Figure 1.

* Gender data is presented using only the male-female binary. Consequently, no data are available to determine how students who identify as transgender or nonbinary are being coded in the dataset.

† The “Hispanic/Latino Ethnicity” category includes students also reported in any of the race categories (i.e., AIAN, Asian, Black, NHOPI, Two or more races, or white).

‡ AIAN means American Indian/Alaskan Native.

§ As with all racial categories with limited granularity, the “Asian” student population is made of diverse populations which may mask disparities experienced by some subpopulations within this group.

¶ NHOPI means Native Hawaiian/Other Pacific Islander.

Source: Adapted from information from Office of Superintendent of Public Instruction Comprehensive Education Data and Research System (CEDARS) data available from KRISSEY JOHNSON, REPORT TO THE LEGISLATURE: UPDATE: TRUANCY REPORT (2018), <https://www.k12.wa.us/sites/default/files/public/legisgov/2018documents/2018-12-update-truancy-report.pdf>.

In 2014, the sum of all status offense filings (truancy, ARY, and CHINS) in Washington was roughly equivalent to the sum of all other juvenile offense filings.³⁹ However, detention for status offenses has been decreasing,⁴⁰ and due to 2019 legislation, will be phased out entirely by 2023.⁴¹

DCYF and the Office of Homeless Youth are working to develop voluntary, community-based services for youth experiencing family crises to prevent homelessness, including Family Reconciliation Services (short term, out-of-home placements and intervention to facilitate reentry to the home) or crisis beds (short-term emergency shelters for youth unable or unwilling to return home).⁴² Many regions of the state have few community residential options to provide short-term emergency housing or longer-term specialized treatment for these youth. Anecdotally, experts familiar with this sector note that where residential options are far from the youth's home, the youth may experience significant disruption in being removed from community ties and far from school and support networks; they may also have histories of trauma that require specialized services not available in the crisis facility. Additionally, these experts note that DCYF's ability to work with counties to identify appropriate residential placements varies across the state. In locations where services and resources are lacking, youth may end up in child welfare placements or experiencing homelessness.⁴³ Youth in crisis may access three types of temporary emergency housing options funded by the state: Secure Crisis Residential Centers (SCRC), Crisis Residential Centers (CRS), and HOPE beds, with a total of 106 beds across the state.⁴⁴ While CRC and HOPE beds are run by non-profit organizations, SCRC are run by the state and require a court order for admission. They are co-located within juvenile

³⁹ COKER & MCCURLEY, *supra* note 31.

⁴⁰ GILMAN & SANFORD, *supra* note 11.

⁴¹ ENGROSSED SECOND SUBSTITUTE S.B. 5290, 66th Leg., Reg. Sess. (Wash. 2019). Effective July 1, 2019, dependent youth may not be detained for violating a court order or under a warrant issued for failure to appear. Until the prohibition against the use of detention is fully implemented (July 1, 2020 for CHINS; July 1, 2021 for truancy; July 1, 2023 for ARY), these juveniles may only be detained with written findings of clear, cogent, and convincing evidence of factors that justify detention and the absence of a less restrictive alternative, for a maximum of 72 hours, and limited to no more than two detentions in a 30-day period.

⁴² WASH. STATE DEP'T OF CHILDREN, YOUTH & FAMILIES, *supra* note 32.

⁴³ *Id.*

⁴⁴ *Id.*

detention facilities but separate from the juvenile offender population. There are two SCRCs in Washington, with a total of eight beds available.⁴⁵ There were 88 youth admitted to crisis beds in 2018, and a total of 108 admissions.⁴⁶

V. School-Based Referrals

The public-school system is another pathway by which many youth—particularly Black, Indigenous, and youth of color—are referred to the juvenile justice system nationally and in Washington State. As noted above, Washington schools may file petitions for truant youth with the courts, but they also may refer students for delinquency or disciplinary offenses. These referrals have expanded in recent years as schools adopt “zero tolerance” policies towards student behavior.⁴⁷ Given that “willfully creat[ing] a disturbance on school premises” is a misdemeanor in Washington State,⁴⁸ a wide range of student behavior can potentially end in law enforcement referral and even arrest.⁴⁹ In some schools, law enforcement officers are physically present during part or all of the school day (known in Washington as School Resource Officers [SROs]). In 2017 in Washington, 84 of the state’s 100 largest districts had SROs placed in at least some of their schools.⁵⁰ There is some evidence to suggest that in districts where SROs are only placed in some schools, they are more likely to be placed in schools where the proportion of low-income students and Black, Indigenous, and students of color is higher than the district average.⁵¹ SROs were “initially deployed in response to school shootings,” with the aim of keeping students safe.⁵² However, qualitative research with Black and Latina girls in the Northeast and South reveals that girls see the presence, actions and priorities of SROs in a different light. Schools with

⁴⁵ *Id.*

⁴⁶ GILMAN & SANFORD, *supra* note 11.

⁴⁷ ACLU OF WASH., STUDENTS NOT SUSPECTS: THE NEED TO REFORM SCHOOL POLICING IN WASHINGTON STATE (2017), <https://www.aclu-wa.org/docs/students-not-suspects-need-reform-school-policing-washington-state>.

⁴⁸ RCW 28A.635.030.

⁴⁹ ACLU OF WASH., *supra* note 47.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² MONIQUE MORRIS, REBECCA EPSTEIN & AISHATU YUSUF, BE HER RESOURCE: A TOOLKIT ABOUT SCHOOL RESOURCE OFFICERS AND GIRLS OF COLOR 7 (2018), https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2018/05/17_SRO-final-_Acc.pdf.

zero-tolerance policies and harsh disciplinary practices can disrupt learning, push youth away from school and do little to intervene in safety concerns such as sexual harassment and bullying.⁵³ While schools without SROs can also refer students to law enforcement, nationally, students attending schools with SROs have higher rates of arrest for disorderly conduct, compared to their peers in schools without SROs, “consistent with the belief that SROs contribute to criminalizing student behavior.”⁵⁴ More research is needed to understand the impact of SROs on students and juvenile justice involvement in Washington State.

Nationwide, schools account for five percent of all delinquency public order referrals, over 60% of all status offenses, and 97% of truancy petitions.⁵⁵ School referrals to law enforcement nationally show high racial disproportionality: while Black, Indigenous, and students of color make up 49% of U.S. public-school enrollment, they account for 61% of school-related arrests.⁵⁶ At 31%, Black students are the highest proportion of students subjected to school-related arrests, despite being only 16% of the enrolled student population.⁵⁷ LGBTQ+ youth, while understudied, appear to be particularly vulnerable to school-based referrals to law enforcement: a 2010 analysis of nationally-representative survey data found that LGBTQ+ youth are punished by school and criminal justice authorities at rates that are disproportionate to behavior, and that this effect is especially pronounced for LGB girls and youth of color.⁵⁸ A qualitative study of

⁵³ KIMBERLÉ CRENSHAW ET AL., *BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED AND UNDERPROTECTED* (2015), <https://primarysources.brillonline.com/browse/human-rights-documents-online/black-girls-matter-pushed-out-overpoliced-and-underprotected;hrdhrd99782015002>. Dr. Crenshaw and colleagues collected qualitative and quantitative data from public schools in Boston and New York City during the 2011-2012 school year. *See also* MONIQUE MORRIS, REBECCA EPSTEIN & AISHATU YUSUF, *BE HER RESOURCE: A TOOLKIT ABOUT SCHOOL RESOURCE OFFICERS AND GIRLS OF COLOR* (2018), https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2018/05/17_SRO-final_Acc.pdf. In this study, the authors conducted focus group sessions with girls of color from schools with SROs in Alabama, Florida and Georgia.

⁵⁴ Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUST. 280, 285 (2009).

⁵⁵ HOCKENBERRY & PUZZANCHERA, *supra* note 12. “Offenses against public order includes weapons offenses; nonviolent sex offenses; liquor law violations; disorderly conduct; obstruction of justice” and other offenses within those categories as defined by the National Juvenile Court Data Archive. *Id.* at 98. For the purposes of this study “LGB” includes LGB youth as well as those who reported same sex attraction or same sex romantic relationships but who did not identify as lesbian, gay, or bisexual.

⁵⁶ DATA SNAPSHOT: SCHOOL DISCIPLINE (2014).

⁵⁷ *Id.*

⁵⁸ K. E. W. Himmelstein & H. Bruckner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 PEDIATRICS 49 (2011).

students and school administrators nation-wide found that LGBTQ+ youth report being subjected to school discipline for expressing their sexual identity and gender identity in ways that their heterosexual peers are not.⁵⁹

There is a need for more comprehensive data collection in Washington. Though school districts are required to submit data on school-based arrests to the U.S. Department of Education's Office for Civil Rights (OCR), which compiles and publishes data, timely data for Washington State are not easily accessible and the OCR data is difficult to understand and draw conclusions from at the state level.⁶⁰ In addition, Washington State's Office of Superintendent of Public Instruction only includes suspension and expulsion under the category of 'discipline' on the State Report Card.⁶¹ The most recent OCR data for Washington State are from the 2015-2016 school year. In that year, a total of 2,404 students (663 female students—27.6%) were referred to law enforcement by Washington public schools, and 1,027 students (334 female students—32.5%) experienced 'school-related arrests.'⁶² Students with disabilities, while making up 14% of the enrolled student population that year, made up 27% of school-based arrests.⁶³ Black, Hispanic/Latinx, and AIAN female students were over-represented in referrals to law enforcement (see Figure 2), and Hispanic/Latinx and AIAN female students were overrepresented in female school-based arrests that year (see Figure 3). It is notable that only about half of school law enforcement referrals for female students end in arrest. It is unclear if that is because the referrals lack merit or if other, less punitive, responses are offered. The literature suggests that any contact with law

⁵⁹ Shannon D. Snapp et al., *Messy, Butch, and Queer: LGBTQ Youth and the School-to-Prison Pipeline*, 30 J. ADOLESCENT RSCH. 57 (2015).

⁶⁰ State-level data can be accessed by downloading Excel files with raw numbers and percentages disaggregated by gender, race, disability, and English Language Learner status.

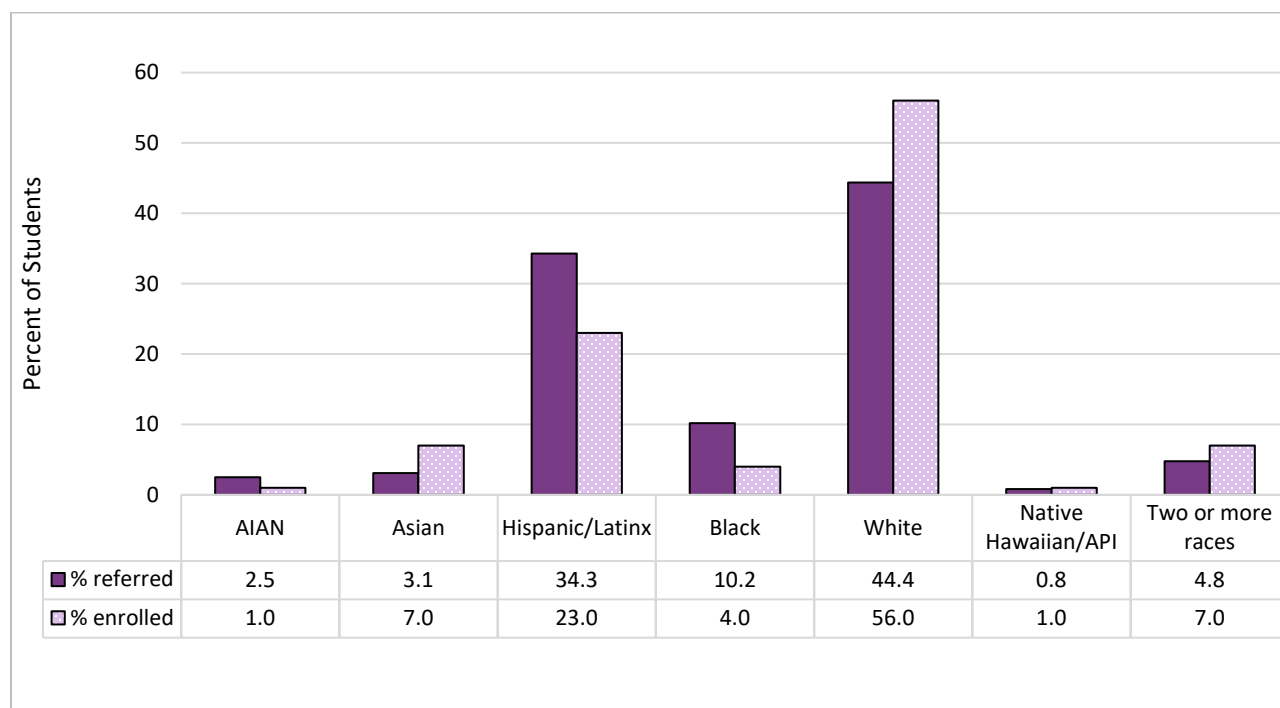
⁶¹ *Washington State Report Card*, WASH. STATE OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION (2020), <https://washingtonstatereportcard.ospi.k12.wa.us/>.

⁶² *2015-16 State and National Estimates*, OFF. OF CIVIL RIGHTS (2020), https://ocrdata.ed.gov/StateNationalEstimations/Estimations_2015_16#.

⁶³ OSPI does not disaggregate numbers of students with disabilities by gender, so it is not possible to compare female students with disabilities subject to school-based arrests to a total population of female students with disabilities in Washington.

enforcement increases the odds of future arrest for Black youth, regardless of engagement in criminal behavior.⁶⁴

Figure 2: Percent of Female Students Referred to Law Enforcement by Race and Ethnicity, Compared to Washington School Enrollment, 2015-2016



Footnotes for Figure 2.

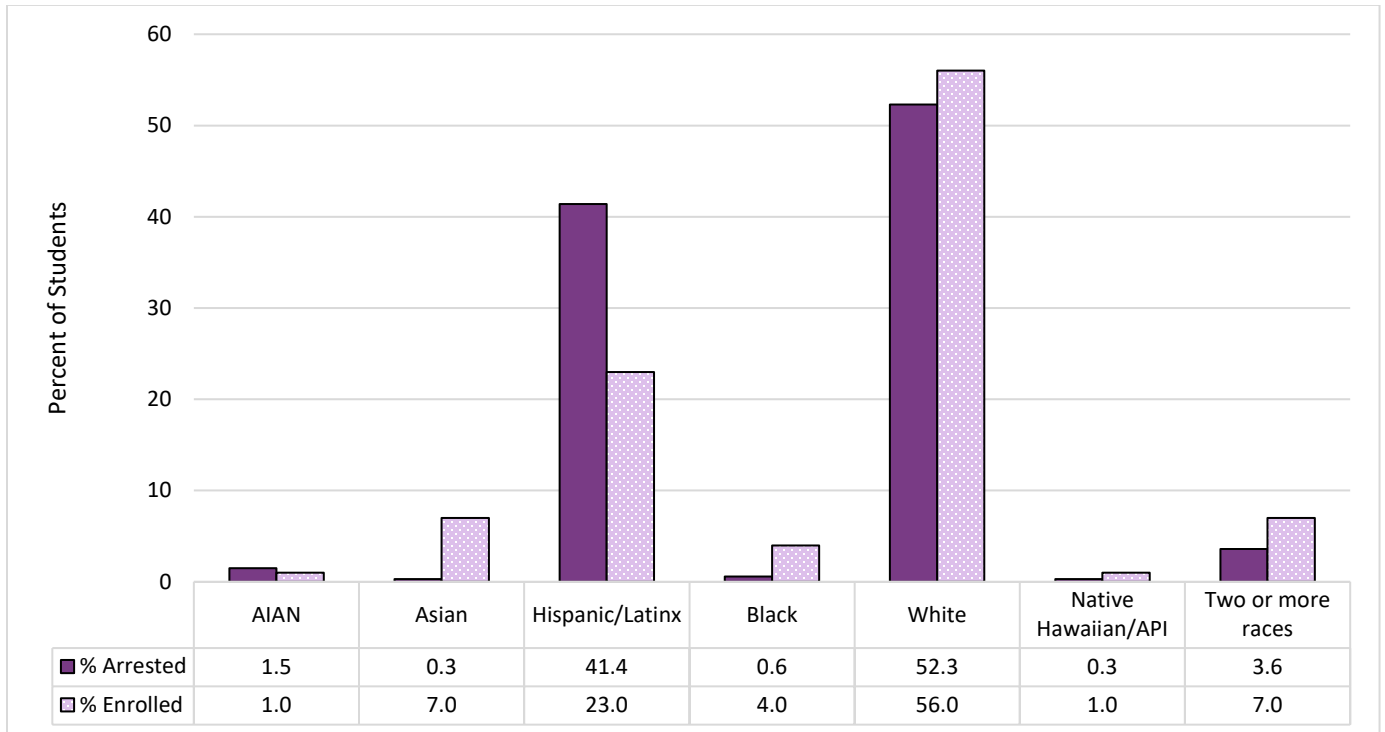
Note that school enrollment is for all students, not just female students, as OPSI does not break down enrollment data by gender plus race and ethnicity. However, the overall student

⁶⁴ A study using data from a stratified random sample of 8th grade students in the Seattle Public School District in 2001 or 2002 found that police contact in 8th grade was the strongest predictor of arrest at 10th grade. Youth with police contact at 8th grade were five times more likely to be arrested by 10th grade than their counterparts with no police contact at 8th grade, even after controlling for other environmental factors such as self-reported criminal behavior; and that Black youth are more likely to have police contact at 8th grade than their white counterparts. Robert D. Crutchfield et al., *Racial Disparities in Early Criminal Justice Involvement*, 1 RACE SOC. PROBS. 218 (2009). A separate study using the same dataset but following youth through to young adulthood found that Black youth who had contact with police at 8th grade were 11 times more likely to be arrested as young adults when compared to Black youth with no police contact, even when controlling for illegal behavior. This relationship was found to be not significant for white youth. Anne McGlynn-Wright et al., *The Usual, Racialized, Suspects: The Consequence of Police Contacts with Black and White Youth on Adult Arrest*, SOC. PROBS. (2020).

population is 48.4% female, so we assume near gender parity by race and ethnicity in the student population.

Source: Adapted from data available from OCR, U.S. Department of Education, and Washington State OSPI.

Figure 3: Percent of Female Students Arrested by Race and Ethnicity, Compared to Washington School Enrollment, 2015-2016



Footnotes for Figure 3.

Note that school enrollment is for all students, not just female students, as OSPI does not break down enrollment data by gender and race/ethnicity. However, the overall student population is 48.4 percent female, so we assume near gender parity by race/ethnicity in the student population.

Source: Adapted from data available from OCR, U.S. Department of Education, and Washington State OSPI.

These data are now outdated. There is a need for up-to-date, uniform data on school-based arrests and school-based law enforcement referrals to better understand which Washington

students are affected, and where; and to understand impacts on LGBTQ+ students. State statute requires schools and districts who choose to have SROs in place to follow consistent guidelines in SRO training, policies, and data reporting—including collecting and reporting data on all incidents regarding student referrals and their outcomes, “disaggregated by school, offense type, race, gender, age, and students who have an individualized education program [and/or 504 plan],” by the 2020-2021 school year.⁶⁵ However, this does not apply to referrals to law enforcement in schools without SROs. Note that the law does not require schools to collect data on sexual orientation of referred students.

There are alternatives for schools to engage with students exhibiting disruptive behavior without involving law enforcement. OSPI identifies restorative justice as one of a menu of “promising practices” and alternatives to exclusionary discipline.⁶⁶ Further research is needed to assess how many schools in Washington use alternative approaches to school discipline, and if these approaches have an impact on disproportionate law enforcement referrals for female students; Black, Indigenous, and students of color; LGBTQ+ students; and students with disabilities.

VI. Delinquency and Juvenile Offenders

Since 1988, the federal Juvenile Justice and Delinquency Prevention Act has required states to address disproportionate minority contact (DMC)—the higher rates of contact with the juvenile justice system that Black, Indigenous, and youth of color experience compared to their white, non-Hispanic peers.⁶⁷ DMC could result from two factors: differential offending (some groups commit more crimes than others) and differential treatment (some groups’ crimes are treated differently in the justice system than others). The evidence regarding differential offending is beyond the scope of this review.

⁶⁵ RCW 28A.320.124.

⁶⁶ JOSHUA LYNCH, BEHAVIOR: MENU OF BEST PRACTICES AND STRATEGIES (2019), <https://www.k12.wa.us/sites/default/files/public/lap/pubdocs/2019%20Behavior%20Menu%20with%20ADA%20Final-complete.pdf>.

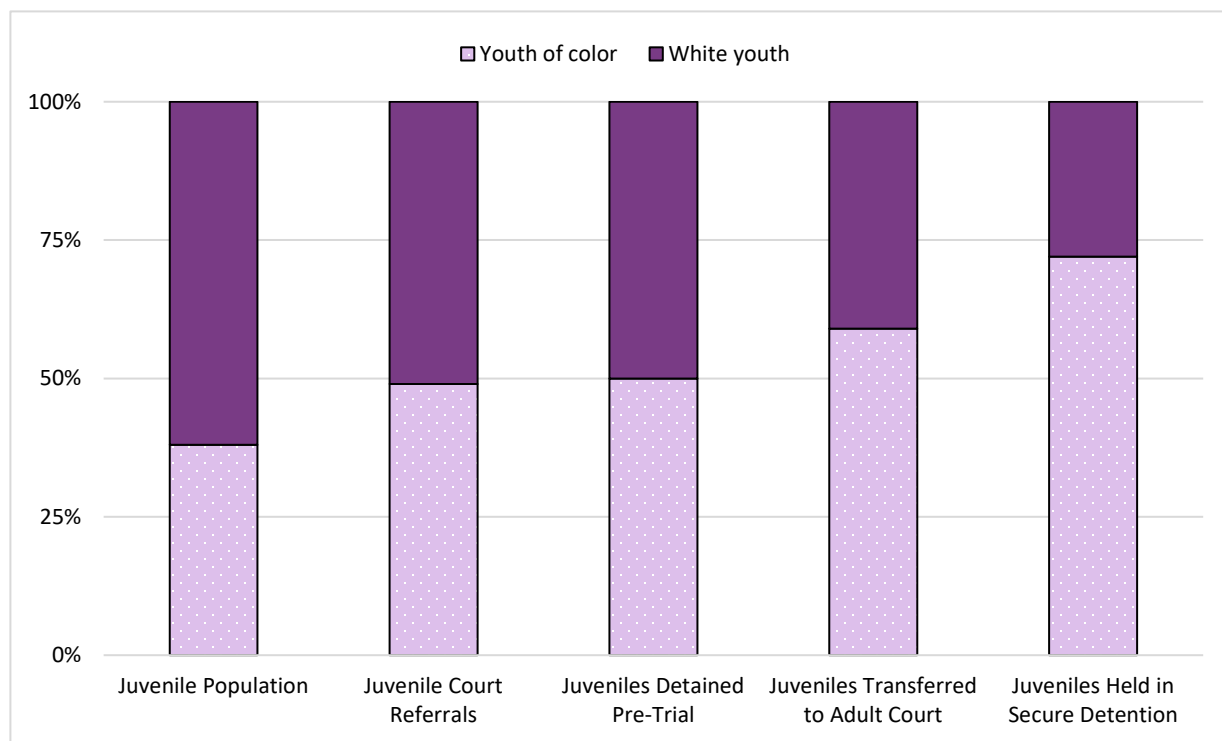
⁶⁷ Public Law 93-415, 42 USC 5601 et seq.

The exercise of discretion is one opportunity for differential treatment in the juvenile justice system. Discretion allows prosecutors and judges to make judgments about various aspects of a youth's experience based on that youth's individual factors. If certain groups of youth are systematically treated differently than others, even when taking into account factors such as environment, seriousness of the offense, age, and others, this may be a result of bias.⁶⁸ Disproportionality can be seen and measured at different decision points in the juvenile justice process, and the evidence indicates that it tends to accumulate as individuals move through the process. In 2016, Black, Indigenous, and youth of color were 38% of Washington State's juvenile population; 49% of juvenile court offense referrals; 50% of juveniles held in detention during the pre-adjudication phase; 59% of youth transferred to adult court; and 72% of youth held in secure state and local detention facilities.⁶⁹ Although the raw number of youth involved in Washington's juvenile justice system continues to decline, along the continuum of engagement the proportion of Black, Indigenous, and youth of color involved in the system increases, as shown in Figure 4.

⁶⁸ *Id.*

⁶⁹ WILLIAM FEYERHERM, COMPLIANCE WITH THE DISPROPORTIONATE MINORITY CONTACT (DMC) CORE REQUIREMENT (2018).

Figure 4: Proportion of Black, Indigenous, and Youth of Color in Washington State’s Juvenile Justice System



Footnotes for Figure 4.

Source: Adapted from information available from WILLIAM FEYERHERM, Compliance with the Disproportionate Minority Contact (DMC) Core Requirement (2018).

The past few decades have seen a variety of studies estimating the rates of DMC for different groups and at different decision points. While most research has focused solely on racial and ethnic effects, more recent studies are starting to assess the interaction between gender and race and ethnicity, as well as other factors such as gender identity, sexual orientation, and disability. Below is an overview of the juvenile justice process in Washington State and a review of the evidence regarding racial and gender disproportionality at each point in the process, across the U.S. and in Washington State, where possible. For clarity, the process is divided into two parts: pre-adjudication (from arrest and court referral up to trial) and adjudication and disposition (trial and sentencing).

A. Pre-adjudication

When a youth alleged to have committed a criminal offense is arrested or brought into contact with the juvenile justice system, they may be cited and given a court date, released to parents or legal guardians, or detained if a judge finds the youth presents a risk of harm to self or others or is unlikely to appear for their next court hearing.

Some jurisdictions in Washington State mandate the use of a risk assessment instrument to decide whether youth should be detained before trial (the Detention Risk Assessment Instrument, or DRAI).⁷⁰ Risk assessment tools are meant to reduce bias and provide an objective measurement of an individual's risk of harm or failure to appear for trial. An important factor to note is that some behaviors measured on a risk assessment tool, such as running away, may be self-protective behaviors for individuals living in traumatic or unwelcome home environments, as is more common among girls or LGBTQ+ youth in the juvenile justice system.⁷¹

In studies conducted across the U.S., while boys are more likely to be detained pre-disposition than girls, legal factors and past behavior are the biggest predictors of pre-dispositional detention.⁷² Some researchers note that disproportionality begins outside of the justice system. Ecological factors such as lack of opportunity and resources in a community have been found to correlate significantly with pre-dispositional detention because offense seriousness and number of past offenses are likely a product of lack of opportunities in a youth's neighborhood.⁷³

⁷⁰ AMANDA B GILMAN & RACHAEL SANFORD, JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI), 2019 ANNUAL REPORT (2020), <https://www.dcyf.wa.gov/sites/default/files/pdf/2019JDAIReport.pdf>. In Washington, eight counties participate in the Juvenile Detention Alternatives Initiative (JDAI), and all use the DRAI to guide detention decisions. *Id.* In 2019, females made up 25.9% of youth admitted to detention in JDAI sites, and 28.1% of youth admitted to detention in non-JDAI sites. *Id.*

⁷¹ GERTSEVA, *supra* note 20; MAJD, MARKSAMER & REYES, *supra* note 26.

⁷² Scott R. Maggard, Jennifer L. Higgins & Allison T. Chappell, *Pre-dispositional Juvenile Detention: An Analysis of Race, Gender and Intersectionality*, 36 J. CRIME & JUST. 67 (2013). The authors found that while boys were more likely to be detained pre-trial than girls, race was not a factor. *Id.*

⁷³ Nancy Rodriguez, *The Cumulative Effect of Race and Ethnicity in Juvenile Court Outcomes and Why Preadjudication Detention Matters*, 47 J. RSCH. CRIME & DELINQUENCY 391 (2010). Rodriguez created an index variable for 'structural disadvantage' of the youth's home zip code by combining factors of disadvantage including percent of the population living in poverty, unemployment rate, and percent of adults with less than a high school education. *Id.* Analysis revealed that structural disadvantage significantly predicted pre-trial detention, and the author comments on the possible relationship between lack of access to community resources and delinquent behavior. *Id.*

The decision to formally bring charges lies with the prosecuting attorney.⁷⁴ They may use discretion to not file charges, to refer the individual to diversion, or to file charges and refer the case to juvenile court. For minor offenses, prosecutors have wide discretion to refer youth to diversion rather than charging the youth. This is not the case for serious offenses such as sexual or violent offenses. Cases referred to diversion are handled in the community through local resources. If the youth does not comply with diversion sanctions, the case may be sent back to the prosecutor. For juveniles formally charged with an offense, prosecutors may choose to offer juveniles a plea bargain before adjudication.⁷⁵ Washington State has wide racial disparities in referrals to juvenile court, with Black youth four times as likely and AIAN youth three times as likely as white youth to be referred to juvenile court.⁷⁶ And while raw numbers are decreasing, racial disparities in juvenile justice referrals are increasing: the gap between Black-white and AIAN-white referrals doubled between 2012 and 2017.⁷⁷ Black youth are 40 % less likely than white youth to be offered diversion or deferred disposition and are more likely to be declined to adult court.⁷⁸ Because there are both formal and informal ways to divert youth referred to the juvenile justice system before charging and there is no consistent reporting on informal diversions, there is a lack of data regarding gender, race, and other disparities in diversion before formal system involvement.

For youth charged with the most serious felony offenses (murder, rape, and assault), juvenile court jurisdiction can be “declined,” and the case is processed in the adult criminal justice system. A decline of jurisdiction can be mandatory or discretionary: in the cases of specific violent and sexual offenses alleged to have been committed by a juvenile 16 or 17 years old, the youth is automatically declined to adult court.⁷⁹ Based on the circumstances, the prosecutor can elect to “waive” the decline, and the youth can remain under juvenile court jurisdiction. For those youth and offenses that do not come within the statutory definition for mandatory decline, the

⁷⁴ See “Chapter 13: Prosecutorial Discretion and Gendered Impacts” for more on prosecutorial discretion in adults cases.

⁷⁵ Dowell, *supra* note 2.

⁷⁶ WASHINGTON STATE PARTNERSHIP ON JUVENILE JUSTICE, ANNUAL REPORT TO THE GOVERNOR (2017).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ RCW 13.040.030.

prosecutor may seek to decline jurisdiction to the adult system on a case-by-case basis. If decline is sought, a hearing is held in juvenile court and the prosecutor must show why this youth cannot be adequately served in the juvenile system. The court determines if the youth should be retained in the juvenile system or if juvenile jurisdiction is “declined” in favor of adult prosecution.⁸⁰ If the juvenile is prosecuted as an adult, they are entitled to the attributes associated with adult court, primarily trial by jury (which is not available in juvenile court),⁸¹ but they typically are subject to lengthier prison sentences,⁸² and have less access to the treatment and rehabilitation options available to juvenile offenders.⁸³

Nationwide, the rate of white youth declined to adult criminal courts decreased between 2005 and 2017, while the rate of Black youth declined to adult criminal court increased.⁸⁴ In Washington, the overall number of youth declined to adult court has declined since 2009, from over 250 in 2009 to a total of 114 youth in 2018, 10.6% of whom were females.⁸⁵ Black and Hispanic youth declined to adult court in 2018 were represented at rates above their share of the state population, at 30.7% and 34.2%, respectively. These data were not simultaneously disaggregated by race and gender.⁸⁶

The 2018 Washington State Legislature passed a law (SSB 6160) that made significant changes to the process of discretionary decline, removing certain crimes subject to mandatory decline, such as Robbery 1, drive-by shooting, and others.⁸⁷ This law also extended to age 25 how long the most serious offenders can be kept under juvenile court jurisdiction. It is anticipated the

⁸⁰ Dowell, *supra* note 2.

⁸¹ *State v. Chavez*, 163 Wn.2d 262, 180 P.3d 1250 (2008).

⁸² ELIZABETH DRAKE, THE EFFECTIVENESS OF DECLINING JUVENILE COURT JURISDICTION OF YOUTHFUL OFFENDERS (2013), http://www.wsipp.wa.gov/ReportFile/1544/Wsipp_The-Effectiveness-of-Declining-Juvenile-Court-Jurisdiction-of-Youth_Final-Report.pdf.

⁸³ SIERRA ROTAKHINA & KELLY GILMORE, HEALTH IMPACT REVIEW OF HB 1674 (2015), <https://sboh.wa.gov/Portals/7/Doc/HealthImpactReviews/HIR-2015-06-HB1674.pdf?ver=2015-03-05-161842-000>. Department of Corrections (DOC and DSHS) staff indicated during a 2015 conversation that youth offenders under the jurisdiction of DOC “do not have access to all of the resources that are available to youth committed directly to a DSHS Juvenile Rehabilitation (JR) facility.” *Id.* at 2.

⁸⁴ HOCKENBERRY & PUZZANCHERA, *supra* note 12.

⁸⁵ GORDON MCHENRY ET AL., WASHINGTON STATE JUVENILE JUSTICE REPORT TO THE GOVERNOR & STATE LEGISLATURE (2020), <https://dcyf.wa.gov/sites/default/files/pdf/2020WA-PCJJgov.pdf>.

⁸⁶ *Id.* at 99.

⁸⁷ KNOTH ET AL., *supra* note 5.

number of juveniles prosecuted and detained as adults will decrease.⁸⁸ It is too soon to know the effect these changes in law will have on practice.

B. Adjudication and sentencing/disposition

Washington State law allows four types of disposition for youth found guilty of an offense.⁸⁹

- Under Option A, the judge can impose a sentence derived from the *standard range sanction*, a range of sentencing options resulting from the type of offense and youth's previous record. Less serious offenses are treated with local sanctions, in which the youth has community supervision and is connected with educational and/or treatment services in the community. Community service requirements and fines also may be imposed.⁹⁰ Youth who plead to or are found guilty of serious offenses may be sentenced to a range of confinement in a state facility operated by Juvenile Rehabilitation. The standard range derived by statute provides a minimum and maximum number of days for confinement.
- Option B allows the court to impose a sentence from the standard range but suspend the sentence on the promise of other sanctions, such as an evidence-based treatment program. Noncompliance with the treatment program may trigger the imposition of the original sentence.
- Option C is a chemical dependency/mental health disposition, allowing the court to sentence the youth to treatment in lieu of other sanctions.
- Option D is referred to as *manifest injustice*. If the court finds that the standard range disposition would be either too lenient or too harsh based on the specific circumstances, the court may increase or decrease the disposition as it deems appropriate. A manifest

⁸⁸ WASHINGTON STATE OFFICE OF FINANCIAL MANAGEMENT, MULTIPLE AGENCY FISCAL NOTE SUMMARY: 6160 2S SB, EXCLUSIVE ADULT JURISDICTION (2018), <https://fnspublic.ofm.wa.gov/FNSPublicSearch/GetPDF?packageID=53119>. The fiscal note for SSB 6160 found that the law will result in an increase of 48 beds for Juvenile Rehabilitation and a decrease of six beds from the Department of Corrections.

⁸⁹ RCW 13.40.0357.

⁹⁰ LUU, *supra* note 11.

injustice sentence must be supported by unique facts of the case that are not otherwise accounted for in the standard sentence range.⁹¹

Options B and C were created by the Washington State Legislature as part of the 1997 Community Juvenile Accountability Act,⁹² expanding judicial discretion beyond the use of the standard range.⁹³ Although there are now many more options to keep a young person in the community engaged in educational and therapeutic activities, it has not been documented whether this has led to changes in recidivism, gender or racial disparities, and youth access to treatment. The Washington State Institute of Public Policy (WSIPP) is beginning a study of the impact of this change; an initial report is due in 2023.⁹⁴

The evidence on disparities in juvenile disposition shows a complicated interaction between gender and race. Nationwide, Black and Hispanic youth are overrepresented among youth in detention, compared to the overall caseload.⁹⁵ Studies from regions across the U.S. have shown that Black, Indigenous, and girls of color receive harsher sentences than white girls, and that white girls are more likely to be sentenced to rehabilitation or treatment than all other groups, even when controlling for the seriousness of the offense.⁹⁶

⁹¹ Nicole I. Sussman, Terry G. Lee & Kevin A. Hallgren, *Use of Manifest Injustice in the Washington State Juvenile Rehabilitation Administration*, 47 J. AM. ACAD. PSYCHIATRY & L. 6 (2019).

⁹² RCW 13.40.500.

⁹³ KNOTH ET AL., *supra* note 5.

⁹⁴ *Id.*

⁹⁵ HOCKENBERRY & PUZZANCHERA, *supra* note 12.

⁹⁶ *See, e.g.*, Lori D. Moore & Irene Padavic, *Racial and Ethnic Disparities in Girls' Sentencing in the Juvenile Justice System*, 5 FEMINIST CRIMINOLOGY 263 (2010); Joshua C. Cochran & Daniel P. Mears, *Race, Ethnic, and Gender Divides in Juvenile Court Sanctioning and Rehabilitative Intervention*, 52 J. RSCH. CRIME & DELINQUENCY 181 (2015); Michael J. Leiber & Jennifer H. Peck, *Race, Gender, Crime Severity, and Decision Making in the Juvenile Justice System*, 61 CRIME & DELINQUENCY 771 (2015); Jaya Davis & Jon R. Sorensen, *Disproportionate Juvenile Minority Confinement: A State-Level Assessment of Racial Threat*, 11 YOUTH VIOLENCE & JUV. JUST. 296 (2013); Rodriguez, *supra* note 73. A study in Florida found that Black, Indigenous, and girls of color were punished more harshly than white girls in most circumstances. Black girls were adjudicated more harshly than white girls even when controlling for the seriousness of the offense, a prior record, and the girl's age. A different study, also in Florida, found that of all gender/race combinations studied, white girls were the most likely to be sentenced to rehabilitation or treatment (rather than detention or other probation). An additional study looking at 28 juvenile courts in the Midwest, mid-Atlantic and Northeast found that being Black and female was associated with harsher sentencing. A review of 38 states, including Washington, found that Black youth were placed in residential placement 88% more often than white youth, controlling for arrest rates. A 2016 meta-review of youth referrals to behavioral health treatment assessed 20 years of research conducted in 15 states (including Washington) and affirmed that overall, girls were more likely to be referred for services; and that 63% of the studies reviewed demonstrated at least some racial

There is no research that specifically explores potential links between juvenile sentencing disparities and bias in prosecutors, judges, and other decision-makers, as bias is difficult to measure objectively. There is, however, evidence regarding perceptions of race and gender in youth and how those perceptions may impact decision-making in sentencing. Studies with juvenile justice officials and with the general population have shown that girls of color are perceived differently than white girls. For example, compared to their white counterparts, Latina girls are seen as overly aggressive and hypersexualized; Black girls are seen as more adult, needing less protection and nurturing, and being more knowledgeable about sex; and juvenile offenders of color are seen as more blameworthy and deserving of harsher punishment.⁹⁷

The majority of juvenile offenders in Washington are sanctioned at the local level—less than 10% of youth offenders were committed to JR confinement in 2019.⁹⁸ Female youth spend less time on average in detention than male youth, and the average length of stay for female youth has been in decline: from 254 days (over 35 weeks) in 2018; 205 days (over 29 weeks) in 2019; and 168 days (24 weeks) in 2020.⁹⁹

disparities in decisions to refer youth to treatment. Rodriguez found evidence for a ‘cumulative effect’ of race and ethnicity in Arizona juvenile justice courts, noting that while Black, Latinx and AIAN youth are treated more severely than white youth overall, youth who had received pre-adjudication detention were treated more severely.⁹⁷ Lisa Pasko & Vera Lopez, *The Latina Penalty: Juvenile Correctional Attitudes Toward the Latina Juvenile Offender*, 16 J. ETHNICITY CRIM. JUST. 272 (2018); REBECCA EPSTEIN, JAMILIA BLAKE & THALIA GONZÁLEZ, *GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS’ CHILDHOOD* (2017), <https://endadulthoodbias.org/wp-content/uploads/2019/05/girlhood-interrupted.pdf>; Aneeta Rattan et al., *Race and the Fragility of the Legal Distinction Between Juveniles and Adults*, 7 PLoS ONE (2012). A small, qualitative study of correctional officers and court officials in Colorado found that assumptions about Latina girls’ behavior, culture, and attitudes impacted sentencing decisions. Latina girls were seen as being overly aggressive and hypersexualized, especially compared to their white peers. Interviewees admitted instances of recommending Latina girls to correctional facilities rather than treatment, even when their criminal record did not merit detention. In the broader population, studies of bias against Black, Indigenous, and girls of color have demonstrated perceptions that, if present in the courtroom, could influence outcomes. A nation-wide survey of adults from diverse racial, ethnic, and educational backgrounds revealed that participants saw Black girls as more adult than white girls, as needing less protection and nurturing, and as being more knowledgeable about sex. And a nationally-representative survey of white Americans found that when primed to think about Black juvenile offenders, participants were more likely to support the most severe penalty of life without parole in non-homicide cases as compared to priming for a white juvenile offender; and participants perceived youth as more similar to adults in blameworthiness when primed to think of Black juvenile offenders than white juvenile offenders.

⁹⁸ LUU, *supra* note 11.

⁹⁹ WASH. STATE DEP’T OF CHILDREN, YOUTH & FAMILIES, *JUVENILE REHABILITATION LENGTH OF STAY TRENDS (FY 18-20)* (2020), <https://dcyf.wa.gov/sites/default/files/pdf/JR-LengthStayTrends.pdf>.

Half of youth subject to local sanction were held in county detention (55.2%), which may not exceed 30 days post-disposition,¹⁰⁰ as well as sanctions such as community supervision, monitoring, and work crew.¹⁰¹ These data were not broken down by gender or race. Treatment and educational services also are routinely required as a condition of community supervision. In general, however, there is a lack of comprehensive statewide data on local sanctions for juvenile offenders.

Sussman et al. examined the use of manifest injustice in Washington State.¹⁰² They found that white youth were more likely than their Black or Multi-racial peers to have their sentences increased, and they hypothesized that geographical differences may explain this: jurisdictions with higher proportions of Black, Indigenous, and youth of color (mostly urban areas) also have greater access to diversion and treatment programs and tend to be more politically liberal.¹⁰³ The data in this study were not broken down by gender.

The Washington State Juvenile Detention Annual Report is created yearly by the Administrative Office of the Courts (AOC) to report juvenile detention rates; the most recent report available is from 2019.¹⁰⁴ Across the state, youth detention rates have been decreasing; in 2016, the youth detention rate statewide was 9.2 per 1,000, while in 2019 the rate was 7.2 per 1,000. In 2019, youth detention rates varied widely by county: in King County, the youth detention rate was 2.8 per 1,000 youth age 10-17 (the lowest in the state except for Garfield county, which had 0 detentions); while in Okanogan and Clallam counties, rates were over 20 per 1000 youth. Girls made up 27.2% of admissions to juvenile detention facilities in Washington (this is roughly equivalent to the proportion of girls among court-involved youth; see Gertseva, 2017). There was a wide range between counties: girls made up none of the four youth detained in Skamania, but 69.2% of the 39 youth detained in Pend Oreille. Just over nine percent of statewide detentions for all genders were for non-offender matters, such as status offenses, CHINS or ARY,—though

¹⁰⁰ RCW 13.40.185

¹⁰¹ LUU, *supra* note 11.

¹⁰² Sussman, Lee & Hallgren, *supra* note 91.

¹⁰³ *Id.*

¹⁰⁴ AMANDA GILMAN & RACHAEL SANFORD, WASHINGTON STATE 2019 JUVENILE DETENTION ANNUAL REPORT (2021), <http://www.courts.wa.gov/subsite/wscrr/docs/Detention%20Report%202019.pdf>.

detention for status offenses will be entirely prohibited by July 1, 2023, as noted above.¹⁰⁵ The counties with the highest proportion of detentions for status offenses were Pend Oreille, where they constituted 42.6% of detention admissions; Grey’s Harbor, at 34.3%, and Stevens, with 36.6%. Meanwhile, while the ARY petition is the most common reason for non-offender detention admission statewide, 75 of the 99 youth admitted to detention for non-offender matters in Cowlitz county were admitted for truancy. Examining racial differences, Black, Indigenous, and youth of color made up over half of Washington youth admitted to detention in 2018.¹⁰⁶ These data are not disaggregated by race and gender.

The Washington State Center for Court Research and the Washington State Supreme Court Minority and Justice Commission conducted a special research report on girls of color admitted to juvenile detention in Washington State.¹⁰⁷ Analyzing 2019 data, they found that AIAN girls, Hispanic/Latinx girls, and Black girls were overrepresented in juvenile detention (Table 1).

Table 1: Representation of Racial and Ethnic Groups in the Female Youth Population and Among Juvenile Detention Admissions in 2019

	Native	Asian/ Pacific Islander	Black	Latinx	White	Other/ Unknown
Percent of female population	2.4	9.4	4.9	18.5	56.5	8.2
Percent of female admissions	7.0	3.1	14.6	24.6	49.0	1.7
Rate per 1,000	22.9	2.6	23.3	23.3	6.8	1.7

¹⁰⁵ GILMAN & SANFORD, *supra* note 11.

¹⁰⁶ GILMAN & SANFORD, *supra* note 104.

¹⁰⁷ ABU-HAZEEM ET AL., *supra* note 14.

Footnotes for Table 1.

The authors of the source report combined some racial and ethnic groups for analysis. For example, while court administrative data notes race and ethnicity separately, the report authors combined these data, grouping Hispanic youth with a single, non-white race with their non-Hispanic racial category, and categorizing white/Hispanic youth as Hispanic/Latinx. Additionally, they combined Asian and Pacific Islander into a single group for analysis. Grouping these populations together may mask disparities experienced within groups.

Source: Adapted from information available from ALIYAH ABU-HAZEEM ET AL., *GIRLS OF COLOR IN JUVENILE DETENTION IN WASHINGTON STATE* (2020).

Overall detention rates varied by county, as did rates of Black, Indigenous, and youth of color in detention: Native girls and Black girls were overrepresented in every county (where admission numbers were high enough to report), whereas Asian/Pacific Islander girls and Latinx girls were overrepresented in some counties and underrepresented in others. For girls of all racial and ethnic groups, the most common reason for detention in 2019 was an alleged or adjudicated misdemeanor offense. Girls were less likely than boys to be admitted to detention for a felony offense. Sixteen percent of girls were detained for violation of a court order related to a status offense (again, note that these detentions are being phased out due to changes in the law).¹⁰⁸ More data are needed to assess potential disparities by race and ethnicity, sexual or gender identity, and disability within the female youth detention population, and trends in these disparities over time.

VII. Programming and Treatment for Justice-involved Youth

Washington State currently has seven evidence-based, research-based, and promising treatment program options for court-involved youth.¹⁰⁹

¹⁰⁸ *Id.*

¹⁰⁹ PAIGE WANNER, *UPDATED EVIDENCE CLASSIFICATIONS FOR SELECT STATE-FUNDED JUVENILE JUSTICE PROGRAMS IN WASHINGTON STATE: A RESOURCE GUIDE* (2020), https://www.wsipp.wa.gov/ReportFile/1720/Wsipp_Updated-Evidence-Classifications-for-Select-State-Funded-Juvenile-Justice-Programs-in-Washington-State-A-Resource-Guide_Report.pdf.

- Washington State Aggression Replacement Training (WSART) Program (promising for youth in state institutions)
- Coordination of Services (evidence-based for court-involved youth)
- Dialectical Behavioral Therapy (research-based for youth in state institutions)
- Education and Employment Training (EET) in King County (research-based, for court-involved youth)
- Functional Family Therapy (FFT) Program (evidence-based for youth post-release)
- Multi-Systemic Therapy (MST) Program (evidence-based, for court-involved and post-release youth)
- Multisystemic Therapy - Family Integrated Transitions (MST-FIT) (promising for youth in state institutions)
- Education and Employment Training (EET) Program

Youth may access treatment and other programs while detained or in the community. Experts familiar with Washington’s juvenile justice system note the lack of data needed to assess how different youth respond to each type of programming, and whether there are differences by gender, race, ethnicity, socioeconomic status, disability, or other factor.

A. Programming and treatment for detained youth

Girls and young women in detention have unique needs, given the high rates of trauma, abuse and behavioral health needs they experience. Gender-responsive and culturally relevant services are needed for residents, especially now that youth potentially can be detained until age 25. Educational, treatment, and social needs vary greatly between a girl of 14 and a young woman of 24. In Washington State, because of the general decrease in institutionalization, DCYF now operates just one institution to house girls committed through the justice system, Echo Glen, a co-ed facility in Snoqualmie; and one community group home, Ridgeview, in Yakima. At Echo Glen, counselors work to develop individualized programs for youth, including general mental

health services and specialized treatment if needed.¹¹⁰ Ridgeview uses a “gender-responsive” treatment program that emphasizes relationship-building, cultural competence, building on existing skills, and trauma-informed care.¹¹¹ These principals are aligned with gender-responsive treatment, discussed in more detail below.

In an internal evaluation of its integrated treatment model for all detained youth, DCYF noted barriers to treatment program success including undertrained staff, inefficient organization, and inconsistent quality monitoring.¹¹² The evaluation notes that while the treatment system has assessments meant to evaluate youth risk and need for treatment, currently assessments are either not being used to classify youth by treatment needs or are using eligibility criteria that are inappropriate to the treatment. Instead, “treatment activities are driven largely by [living unit] placement, which appears to be driven by procedures that do not include [assessment].” As a consequence, “youth in need of SUD [substance use disorder] treatment get the level of treatment offered at the institution to which they were remanded, regardless of their level of need/severity.” And due to staffing issues, at the time the report was written “no girls in a JR (juvenile rehabilitation) institution receive SUD treatment...”¹¹³ It is unclear what the outcomes might be for youth receiving services that are not matched to their level of need, or how many girls may have needed SUD treatment and not received it.

Any programming for youth in detention should work to help youth prepare for life back in the community; however, data from 2017 showed that 23% of youth leaving the criminal justice system experienced homelessness within 12 months of release.¹¹⁴ SB 6560, passed in 2018, required DCYF and the Office of Homeless Youth to “to develop a plan that ensures no young person will be discharged into homelessness from a system of care.”¹¹⁵ In a report, the Office of Homeless Youth noted a lack of transition planning; youth leaving systems without important

¹¹⁰ WASH. STATE DEP’T OF CHILDREN, YOUTH AND FAMILIES, ECHO GLEN PROGRAM HANDBOOK 11 (2020).

¹¹¹ WASH. STATE DEP’T OF CHILDREN, YOUTH AND FAMILIES, RIDGEVIEW COMMUNITY FACILITY PROGRAM HANDBOOK 32 (2020).

¹¹² ANDREW FOX & SARAH VEELE, JUVENILE REHABILITATION INTEGRATED TREATMENT MODEL: LEGISLATIVE REPORT 5 (2020).

¹¹³ *Id.* at 1, 7, 8.

¹¹⁴ JIM MAYFIELD ET AL., HOUSING STATUS OF YOUTH EXISTING FOSTER CARE, BEHAVIORAL HEALTH AND CRIMINAL JUSTICE SYSTEMS (2017), <https://www.dshs.wa.gov/sites/default/files/rda/reports/research-11-240.pdf>.

¹¹⁵ LISA BROWN, IMPROVING STABILITY FOR YOUTH EXISTING SYSTEMS OF CARE (2020), <https://www.commerce.wa.gov/wp-content/uploads/2020/02/Youth-Exiting-Systems-of-Care.pdf>.

adult skills; and a need for diverse and broad partnerships to meet the diversity of needs of youth exiting juvenile justice and child welfare systems.¹¹⁶ Since then, DCYF has hired housing navigators; partnered with homeless case management agencies; developed an individualized needs assessment for youth; and launched pilots to fund transition living programs and other potential solutions to youth exiting detention.¹¹⁷ Updated data are needed to show if these interventions have impacted the number of youth exiting detention into homelessness.

B. Programming and treatment in the community

Similar challenges exist when providing access to services, programs, and treatment for court-involved youth in the community, and when coordinating re-entry issues upon release.¹¹⁸ As Washington State experts note, youth who enter the system in their mid-teens may not have had the opportunity to mature and develop stability and independence compared to their non-incarcerated peers. Relevant education and job training, parenting and childcare needs, and safe, stable housing needs may be very different for a young teenage girl and a young woman in her 20s. Access to community-based services can be additionally challenging for girls who are pregnant or parenting. The demands of being involved in the juvenile justice system are stressful for any youth. Add to that the anxiety of being pregnant or raising a child with few resources and the stress level rises exponentially. There are alternative schools for teen mothers, but they are offered in specialized settings that require the youth to take a lot of initiative to continue with their education.¹¹⁹ Transportation to and from appropriate services can be an issue for youth, as the availability of affordable housing drives families farther from urban centers. It is doubly

¹¹⁶ LISA BROWN, IMPROVING STABILITY FOR YOUTH EXISTING SYSTEMS OF CARE (2020), <https://www.commerce.wa.gov/wp-content/uploads/2020/02/Youth-Exiting-Systems-of-Care.pdf>.

¹¹⁷ WASH. STATE DEP'T OF CHILDREN, YOUTH AND FAMILIES, *Improving stability for youth exiting care* (2021), https://www.dcyf.wa.gov/sites/default/files/pubs/GC_0018.pdf.

¹¹⁸ There are important differences in the needs of youth and programming logistics for community intervention (probation) and re-entry programming. This distinction merits a more detailed examination but is beyond our ability to address here.

¹¹⁹ For example, the Graduation, Reality And Dual-role Skills (GRADS) programs are specialized programs for pregnant teens and young parents. These programs offer childcare on-site. As of November 2020, 23 of the 295 school districts in Washington State offer GRADS programs, showing that youth in many districts do not have access to this resource. WASH. STATE DEP'T OF CHILDREN, YOUTH AND FAMILIES, GRADUATION, REALITY AND DUAL-ROLE SKILLS (GRADS), <https://www.k12.wa.us/student-success/learning-alternatives/graduation-reality-and-dual-role-skills-grads>.

challenging if the young person must arrange for childcare or bring along a child. Consequently, if a community-based service provider is not conveniently located and does not have childcare available while services are being offered, these practical constraints can prevent the young woman from engaging in the service.

A survey of county courts reported a wide range of available evidence-based treatment programming options across the state, and numerous court-reported barriers to achieving equity in access to these programs for youth.¹²⁰ Relevant barriers included language barriers and lack of access to interpreters, especially for family-based interventions; a need for greater engagement with tribes; high time commitment needs of groups; transportation needs and geographic access; and low engagement with families, especially AIAN, Black, and Hispanic/Latinx families (particularly in programs like Family Functional Therapy, which require family involvement). Additionally, courts surveyed noted that unconscious bias throughout the system may be impacting policies or decisions made, and that program staff demographics don't match the demographics of the youth they serve. Unfortunately, the data were not reported by race, ethnicity, and gender.

Even when youth are able to access programming, there are gender and race disparities in outcomes. Among youth eligible for participation in an evidence-based treatment program in Washington, girls are less likely to start treatment and are more likely to drop out.¹²¹ This is especially true of older girls, AIAN girls, girls in foster care or group homes, girls experiencing poverty, and girls with a history of child maltreatment.¹²² This suggests that these programs are not successfully addressing the specific needs of these girls.

Washington State has a variety of treatment options, and an emphasis on evidence-based treatment. Access to these programs, however, varies across the state. It is unknown how access to programs may influence discretion—if a prosecutor or judge encounters a youth in need of programming but the program is not available in their area, does that influence their decision to

¹²⁰ WASH. STATE DEP'T OF CHILDREN, YOUTH AND FAMILIES, REPORT TO THE LEGISLATURE: RACIAL AND ETHNIC DISPARITIES IN JUVENILE COURT EVIDENCE-BASED PROGRAMS (2019), <https://www.dcyf.wa.gov/sites/default/files/pdf/reports/RacialEthnicDisparities-JuvenileCourt2019.pdf>.

¹²¹ GERTSEVA, *supra* note 20.

¹²² *Id.*

charge or not charge the youth or how the youth is sentenced? Additionally, the literature supports the idea that some girls and LGBTQ+ youth may benefit from treatment programs that are responsive to their particular needs. Availability of community-based treatment programs that incorporate gender-responsive approaches or that are specific to the needs of LGBTQ+ youth is uneven across the state. This may be relevant to the low number of girls and LGBTQ+ youth initiating and completing treatment.

C. Gender-responsive treatment

Gender-responsive treatment is an umbrella term for programming that takes into account the gender differences in pathways to juvenile justice, and the different strengths and needs of youth involved in juvenile justice.¹²³ Gender-specific services were a specific requirement of the 1992 reauthorization of the national Juvenile Justice and Delinquency Prevention Act, requiring states to assess availability of gender-specific services and make plans to provide those services.¹²⁴ Ideally, gender-informed programs should use traditional evidence-based practices while also considering the needs that are most relevant by gender.¹²⁵ Some states have implemented reforms to their juvenile justice systems to be more responsive to gender, prompted by findings in local data that juvenile justice-involved girls typically differ from their male peers in having higher rates of mental health needs, higher rates of family conflict including trauma and abuse, and have usually been charged with less serious offenses.¹²⁶ Gender-responsive treatment has most often been defined as programming that takes into account the needs of girls and women; this suggests that the unique needs of transgender and gender nonbinary youth may not be a focal part of the movement toward gender-responsiveness.¹²⁷

¹²³ Sarah Cusworth Walker, Ann Muno & Cheryl Sullivan-Colglazier, *Principles in Practice: A Multistate Study of Gender-Responsive Reforms in the Juvenile Justice System*, 61 CRIME & DELINQUENCY 742 (2015); Irvine-Baker, Jones & Canfield, *supra* note 10.

¹²⁴ Wendy S. Heipt, *Girls' Court: A Gender Responsive Juvenile Court Alternative*, 13 SEATTLE J. FOR SOC. JUST. 54 (2015).

¹²⁵ Renée Gobeil, Kelley Blanchette & Lynn Stewart, *A Meta-Analytic Review of Correctional Interventions for Women Offenders Gender-Neutral Versus Gender-Informed Approaches*, 43 CRIM. JUST. & BEHAV. 301 (2016).

¹²⁶ GERTSEVA, *supra* note 20; Gobeil, Blanchette & Stewart, *supra* note 125; Walker, Muno & Sullivan-Colglazier, *supra* note 123.

¹²⁷ Irvine-Baker, Jones & Canfield, *supra* note 10.

A 2015 national review of gender-responsiveness in juvenile justice categorized example reforms and programs into the following areas:¹²⁸

- Assessment and screening: using individualized assessment tools to screen for trauma, abuse, and trafficking to refer girls to programs that best fit their needs.
- Engagement: making programs as accessible as possible to encourage girls and their families to participate.
- Relational approach: centering healthy relationships in staff training, curriculum development, and intervention design.
- Safety: using diversion whenever possible and designing facilities to reduce risk of assault.
- Skills-based, strengths-based approach: involving girls in treatment planning and goal setting.
- Reentry and community connection: focusing on strengthening girls' relationships with family members and involving family in therapy programs (like Washington State's Family Functional Training).

They also note the importance of services for youth who are pregnant and parenting.¹²⁹ Most of the research on gender-informed programming has been conducted with the adult female population, and finds that on average, women have reduced recidivism rates following participation in gender-informed programming when compared to those in standard probation.¹³⁰ See "Chapter 12: Availability of Gender Responsive Programming and Use of Trauma Informed Care in Washington State Department of Corrections for more on gender-responsiveness for adults." While limited, the evidence on female youth is promising,¹³¹ but

¹²⁸ Walker, Muno & Sullivan-Colglazier, *supra* note 123.

¹²⁹ *Id.*

¹³⁰ Gobeil, Blanchette & Stewart, *supra* note 125. A meta-analytic review in 2016 looked at 37 studies on correctional programming for adult woman to assess the effectiveness of 'gender-informed' programming across the U.S. Most of the programs studied used a trauma-informed approach and ensured a focus on behavioral health needs. The meta-analysis found strong evidence that women had improved rates of success (non-recidivism) after participating in gender-informed programming, compared those in standard probation.

¹³¹ Valerie R. Anderson et al., *Gender-Responsive Intervention for Female Juvenile Offenders: A Quasi-Experimental Outcome Evaluation*, 14 FEMINIST CRIMINOLOGY 24 (2019). This quasi-experimental study used propensity matching to

highlights the need to differentiate between youth who may have “gender-sensitive risk factors,” and who may respond better to gender-informed programming, compared to girls without those specific risk factors.¹³²

There are few programs that cater to LGBTQ+ youth in Washington State, including residential programs and counseling services.¹³³ However, gender-responsive programming and treatment for girls is increasing in Washington State. As noted, above, Ridgeview Community Home employs a gender-responsive approach to treatment. Additionally, a new program called Girls Only Active Learning (GOAL) was created as an alternative to Aggression Replacement Therapy and has been piloted with females referred from five juvenile courts across Washington State, with positive outcomes and acceptance by participants.¹³⁴

D. Girls’ Court

Over the past two decades, several jurisdictions around the country have experimented with creating alternative juvenile justice tracks for girls, often called “girls’ courts.” A notable example is found in Honolulu, where a pilot girls’ court began in 2004. Girls’ court does not actually replace the juvenile justice process; rather, it begins after sentencing, and is a gender-responsive, therapeutic process to oversee girls on probation. A 2011 evaluation of Honolulu Girls’ Court found that it reduced overall recidivism, especially for runaway offenses, perhaps indicating its effectiveness in addressing trauma-response behaviors in girls.¹³⁵

examine outcomes between girls in group homes and girls on probation in a Midwest juvenile court from 2005-2012 (n=986) and found that the girls who participated in a gender-responsive group home were less likely to recidivate at two years compared to the girls who had served probation (28.4% compared to 42%).

¹³² Jacob C. Day, Margaret A. Zahn & Lisa P. Tichavsky, *What Works for Whom? The Effects of Gender Responsive Programming on Girls and Boys in Secure Detention*, 52 J. RSCH. CRIME & DELINQUENCY 93 (2015). This small study in Connecticut found that girls’ response to gender-informed programming depended on their existing needs and risk. Girls with “gender-sensitive risk factors,” such as history of trauma, mental and behavioral health disorders, responded well to gender-informed programming. However, girls without those risk factors have better outcomes in traditional evidence-based programs, indicating the potential pitfalls of generalizing across all girls.

¹³³ GANZHORN, CURTIS & KUES, *supra* note 25.

¹³⁴ Sarah C. Walker et al., *A Tailored Cognitive Behavioral Program for Juvenile Justice-Referred Females at Risk of Substance Use and Delinquency: A Pilot Quasi-Experimental Trial*, 14 PLOS ONE (2019). The 57 youth who participated in GOAL demonstrated “reduced self-reported delinquent behavior” at six months. *Id.* The researchers are currently waiting for 12-month court outcome data and also planning to implement a larger study to try to replicate the initial findings.

¹³⁵ Janet T. Davidson, Lisa Pasko & Meda Chesney-Lind, *“She’s Way Too Good to Lose”: An Evaluation of Honolulu’s Girls Court*, 21 WOMEN & CRIM. JUST. 308 (2011).

The Kitsap Juvenile Court began piloting Washington State's first girls' court in 2019. Originally designed for post-adjudicated girls considered moderate to high-risk to reoffend, the program will be soon expanded to include pre-adjudicated girls. Program goals include reducing recidivism, improving school performance, strengthening communication skills, developing individual self-worth, and building positive relationships and support systems. To achieve these goals, the program provides non-court interventions by linking the girls to community resources, social service agencies, and mentors. This extensive community outreach component of the program enables girls to be served in their local communities instead of relying on services available within the juvenile justice system. The program model incorporates theoretically informed gender-responsive elements from feminist pathways theory (e.g., addressing trauma, abuse, and neglect) and relational/cultural theory (e.g., focusing on the centrality of relationships, inclusion of girls' voices, and sense of connection to others).¹³⁶ Treatment practices and program activities are anchored in core elements of gender-responsive approaches: 1) relation-based; 2) strength-based; 3) trauma-informed; 4) culturally competent; and 5) holistic. All of these elements of gender-responsive approach are known to create supportive spaces in which participants can build the foundations for health, social, and education success.¹³⁷

The three-year pilot is currently being evaluated by the Washington State Center for Court Research. Some preliminary results of this evaluation show that girls' court program participants share many of the same challenges with girls entering the juvenile justice system statewide. Among eighteen first-year program participants, 66% had a history of running away from home, 33% were victims of neglect, 33% had a history of dependency, and 28% had a history of out-of-home placement. The majority of program participants (89%) experienced family conflict/domestic violence. For example, looking specifically at the problem of family conflict, more than half (55%) of first-year participants experienced verbal intimidation, yelling, and heated arguments in the family, while 28% experienced domestic violence. Half (50%) of program participants witnessed violence, 39% were victims of physical abuse, and 44% were victims of

¹³⁶ Valerie R. Anderson et al., *Gender-Responsive Intervention for Female Juvenile Offenders: A Quasi-Experimental Outcome Evaluation*, 14 FEMINIST CRIMINOLOGY 24 (2019).

¹³⁷ *Gender-Responsive Strategies for Women Offenders*, U.S. DEP'T OF JUST., NAT'L INST. OF CORRECTIONS, <https://nicic.gov/series/gender-responsive-strategies-women-offenders>.

sexual abuse. Of eight first-year program participants who were sexually abused, 63% (n=5) were abused by a family member. The preliminary results from the evaluation suggest that 65% of girls participating in the program showed improvement in skills building and 57% showed improvement in attitudes and behaviors related to emotional stability and cognitive reasoning by the end of probation. More data will be available when evaluation is finished.¹³⁸

VIII. Recent Policy Changes Impacting Discretion in Juvenile Justice

A. State policy

Three policy changes impacting discretionary decisions are worth examining to assess their impact on gender, racial, and ethnic disparities:

- The 1997 law adding Options B and C described above to the juvenile sentencing structure greatly increased options for dispositions. Its impact is being studied by WSIPP with a report due in 2023. However, many policy assessments only look at race/ethnicity and gender separately, an approach that masks the important ways that various aspects of a person's identity can interact in situations of bias and inequity.
- In 2018, the Washington State Legislature changed the structure of judicial decline, reducing the crimes subject to mandatory decline. In theory, this should reduce the number of juvenile cases declined to adult criminal justice jurisdiction. It is unknown whether this also will change the proportion of girls and Black, Indigenous, and youth of color whose cases are declined to adult criminal justice jurisdiction.
- In 2018, the Washington State Legislature passed ESSB 6550, which increased the discretion of prosecutors by allowing them to offer diversion to juveniles accused of a wider range of offenses.¹³⁹ It is unclear if and how rates of diversion have changed since

¹³⁸ Personal communication with Dr. Arina Gertseva, Washington State Center for Court Research (June 1, 2021).

¹³⁹ Josh Gordon, *Washington Passes Bill Diverting Youth from Justice System*, NAT'L JUV. JUST. NETWORK (Mar. 27, 2018), <https://www.njjn.org/article/washington-passes-bill-diverting-youth-from-justice-system>.

the passage of this bill, and whether rates of diversion vary by county, by youth demographic, or by availability of community diversion programs.

- In 2019, the Washington State Legislature passed a law to phase out the use of detention for juveniles a court has found to be dependent due to abuse or neglect in the home, and youth who have pending ARY, CHINS, and truancy petitions. As of July 1, 2023, these youth will not be detained in Washington. It remains to be seen the impact this change will have on the makeup of the detained female population and entry to the offender juvenile justice system.
- In 2021, the Washington State Supreme Court adopted JuCr 7.16, which prohibits issuance of warrants for juvenile offenders for violation of conditions of supervision or failure to appear unless there is a finding that the individual circumstances pose a serious risk to public safety. The rule is controversial, in part because there is no agreement as to whether “serious risk to public safety” encompasses a serious risk to the safety of the youth or is intended to apply only to the risk the youth presents to others. A majority of courts endorse the former reading so judges have a tool to protect a juvenile offender from personal harm, but those who advocate that all detention of juveniles is harmful endorse the latter interpretation.

IX. Conclusion

In Washington State, existing statistics show that Black, Indigenous, and youth of color of all genders face wide disparities in court outcomes. When looking at the intersection of race, ethnicity, and gender, Indigenous girls and Black girls are disproportionately involved in the system and experience more severe outcomes. LGBTQ+ youth are likely overrepresented in the system as well, where they face challenges specific to their sexual orientation and gender identity. As raw numbers of youth formally involved in the justice system decrease, racial disproportionality appears to be increasing in the juvenile justice system. From a gender justice frame, how status offenses are handled is important, as girls (especially Black, Indigenous, and girls of color) are overrepresented in the status offense population.

Since the state Juvenile Justice Act of 1977, prosecuting attorneys have wielded the bulk of discretion when dealing with juvenile offenders. Washington’s juvenile justice system is designed to constrain judicial discretion by requiring standard dispositions based on static factors such as offense charged and criminal history. With a series of decisions in the past decade, however, the Washington Supreme Court has made clear that judges are not bound by statutory dispositions when compelling factors associated with youth affect culpability and sentencing in a specific case.¹⁴⁰ It is too early to tell the effect this emerging precedent will have on the disposition of offenders. Gender-based data on filing decisions, disposition recommendations, and dispositions across the state would be valuable to determine how discretionary decisions affect youth and gender equity in Washington’s juvenile justice system.

There are several areas where incomplete data collection or analysis (such as not separately tracking data by both gender and race) prevents us from seeing highly relevant distinctions among the youth served. Agencies must collect accurate race, ethnicity, disability, gender, and sexual orientation data to understand the experiences of these youth. More explicit demographic information, as well as system entry, charge, and disposition, will help us identify whether decisions impacting youth are affected by bias and gender stereotypes. Equipped with this information, we may better devise solutions to comprehensively address systematic inequities.

X. Recommendations

- To reduce disparities in arrest, detention, and resolution of juvenile cases, and to reduce the number of girls detained for status and misdemeanor offenses, stakeholders should:
 - Identify and develop, throughout the state, community-based resources that address the needs of youth involved in the juvenile justice system for status offenses so they may be safely served in the community.

¹⁴⁰ See, e.g., *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017); *State v. O’Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015).

- Identify and develop, throughout the state, culturally-competent community mentoring programs upon which schools, law enforcement, prosecutors, and courts can draw instead of referring low-risk criminal behavior for prosecution.
- To assess and develop gender-responsive and culturally-competent resources for status and juvenile offenders that respond to individualized needs derived from individualized assessment, stakeholders should:
 - Follow the status of the Kitsap County girls' court, including WSCCR's current evaluation, and consider new recommendations based on this data.
 - Maintain an inventory of gender- and LGBTQ+-specific programming and services offered at Echo Glen Children's Center and Ridgeview Group Home and track their progress. Based on tracking of these programs (and any others), identify gaps in gender-responsive programming and build programs to address the gaps.
 - Maintain an inventory of the gender- and LGBTQ+-specific programming and services offered through Washington's juvenile courts. Track program effectiveness, identify program gaps and deficiencies, develop solutions to deficiencies, and fund effective program development.
- WSCCR and juvenile justice stakeholders should develop standards to collect and report demographic data by entities operating in all phases of the juvenile justice system (initial referral, diversion/prosecution, detention, adjudication, disposition, use of manifest injustice/decline, and outcome). Data should include self-identified sexual orientation, gender identity, gender expression, race, and ethnicity; age; developmental challenges; and status as a parent.
- WSCCR should maintain and publish uniform data on the rate of youth arrests in each Washington county by subpopulations, including gender, race, ethnicity, age, and referral charge.
- WSCCR should expand the annual juvenile detention report to examine county detention admissions by gender, race, ethnicity, age, admission reason, and length of stay.
- WSCCR and juvenile justice stakeholders should develop uniform standards to collect and report demographic data for school-based referrals. Data should include self-identified

sexual orientation, gender identity, gender expression, race, and ethnicity; age; developmental challenges; and status as a parent. Use this data to (1) identify student populations and geographic locations with the greatest need, (2) develop restorative programs tailored to specific needs at the local level, and (3) reduce criminal referrals.