

STEMMING THE RISING TIDE

Racial & Ethnic
Disparities in Youth
Incarceration &
Strategies for Change



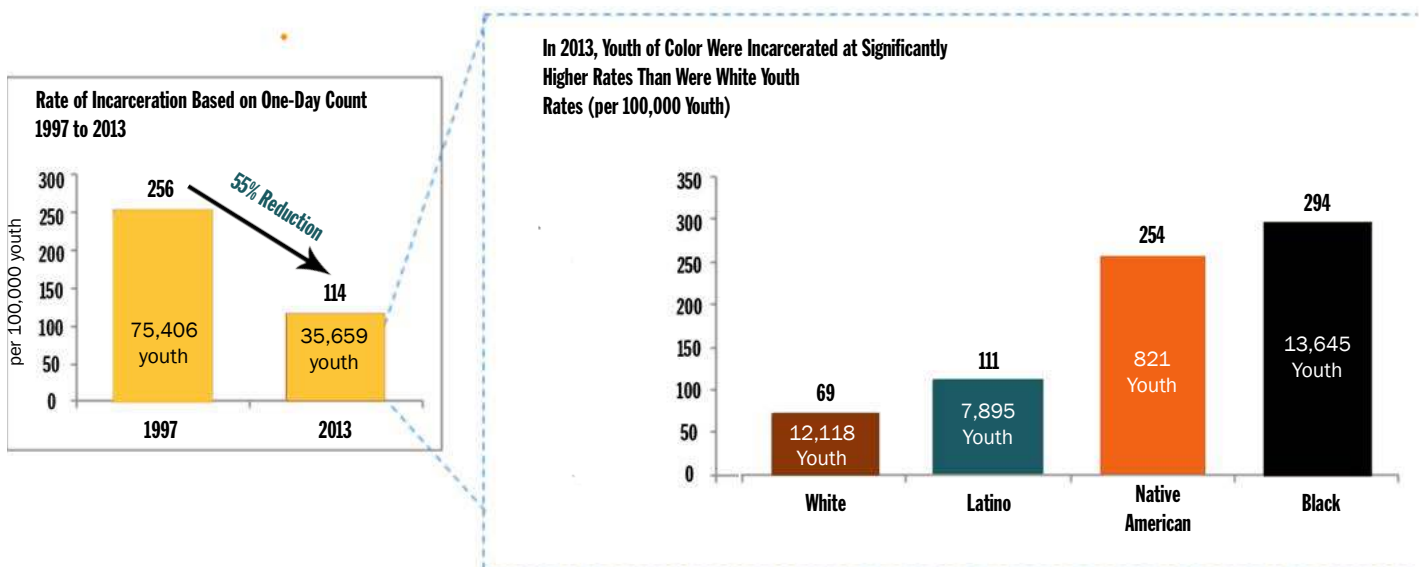
1 The Context of Incarceration for Youth of Color

Youth of color must walk a razor-thin line between what is considered normal adolescent behavior and those behaviors that are deemed illegal. Racially inequitable policies that were imbedded into the earliest incarnations of our justice systems have influenced which youth are valued, which are neglected and which are more likely to be deemed criminals.¹ More than 100 years since the youth justice system was founded in this country, vast disparities in system involvement between youth of color and White youth persist.

The long-term consequences of youthful misbehavior for youth of color are numerous and oftentimes, extreme. Most young people are allowed to grow out of these behaviors without getting entangled in the justice system. However, youth of color are more likely to be arrested, prosecuted, sentenced, and incarcerated for these behaviors than are their White peers, as shown in the figure below. In 2013, Black youth were more than four times as likely as White youth to be incarcerated, Native American youth were more than three times as likely, and Latino youth were almost twice as likely.

Today, youth justice leaders, policymakers, and advocates are celebrating a promising trend in the de-incarceration of young people in the United States². Rates of incarceration³ for youth decreased by 55 percent from 1997 to 2013¹.

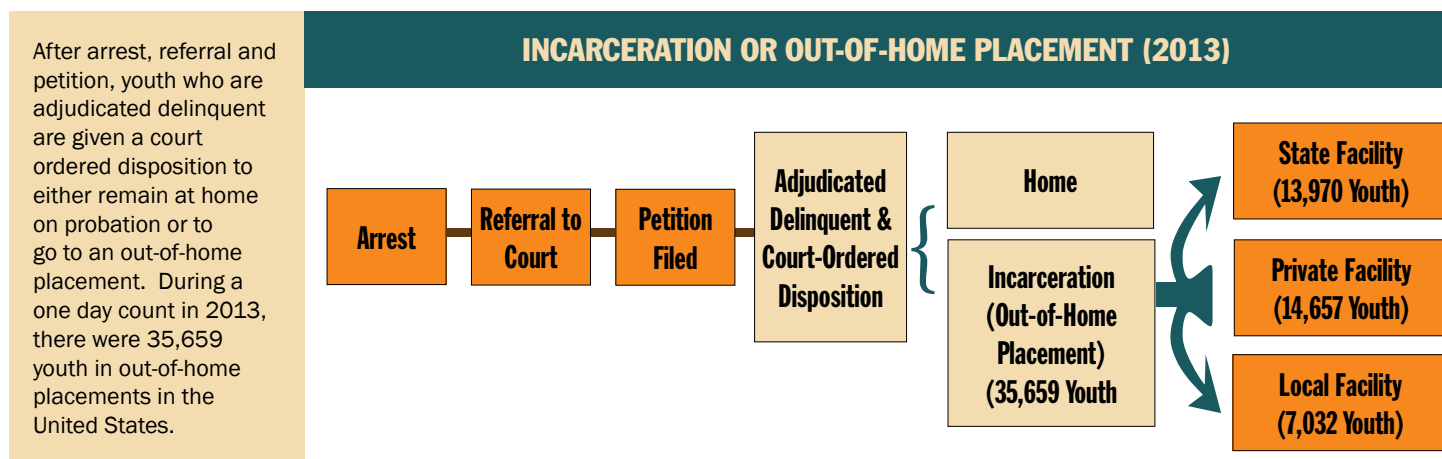
Fueled by strained budgets, overcrowded facilities, lawsuits, and research demonstrating the harmful effects of incarceration on both children and public safety, many states implemented policy reforms that reduced the use of youth prisons. The result is a significant reduction in the rate at which children are incarcerated. These reforms were effective in decreasing the overall population of incarcerated youth, but not in reducing racial and ethnic disparities.



¹ This history is described briefly in the W. Haywood Burns 2015 report, "Repairing the Breach: A Brief History of Youth of Color in the Justice System." Available Online: http://www.burnsinstitute.org/wp-content/uploads/2015/09/Repairing-the-Breach_BI.pdf.

² Data are based on a one day census of youth in residential placement facilities captured by the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

³ For the purpose of this report, we use "incarceration" and "out-of-home placement" interchangeably to describe facility use for a young person who is committed to a residential placement facility as the result of a court-ordered disposition.

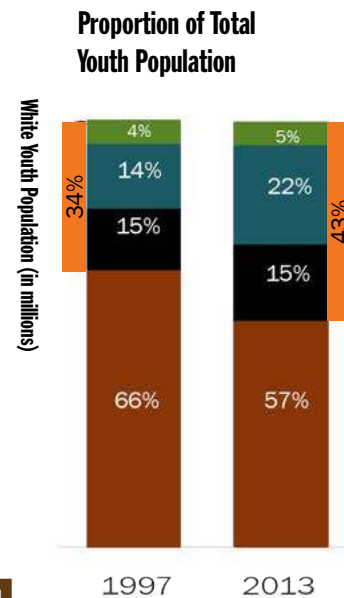
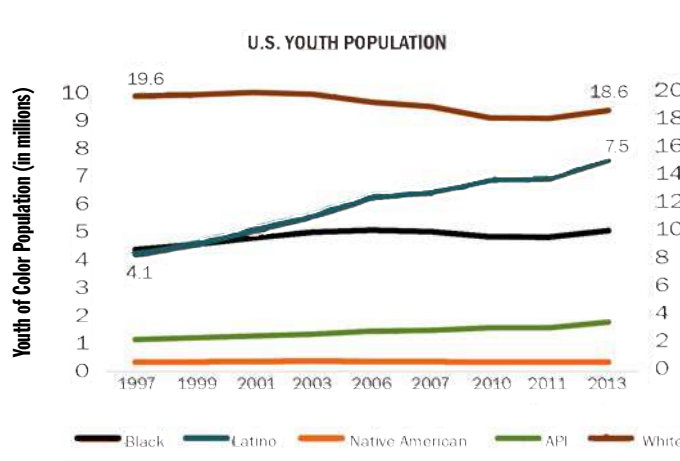


Incarcerated youth can be sent to various types of facilities. Based on available data, one way of classifying these facilities is by examining whether they are state, local, or private facilities. While most legislative change to reduce incarceration focused on state facilities, the critiques of state facilities are relevant to local and private residential facilities as well. All types of out-of-home placement remove youth from their families, community, and support networks. This displacement – regardless of facility type– has a direct, negative effect on youths’ life outcomes.

Removing a young person from his or her family, community and support networks is traumatic and interrupts normal positive development. Recent research indicates that the vast majority of children who are in trouble with the law will grow out of their misbehavior if they are allowed to transition normally into adulthood.ⁱⁱ A growing body of research also reveals that community-based support systems are more successful in setting children on the right path and in reducing recidivism—at a fraction of the cost of incarceration.ⁱⁱⁱ

Through an analysis of national data, this report explores the consequences of recent policy changes regarding out-of-home placement for youth of color. The report uses national data to examine shifts in placement types, lengths of stay, and offense categories. We conclude with recommendations to improve post-dispositional outcomes and reduce the use of incarceration for youth of color.

As the demographics of our country continue to shift, policymakers and system decision-makers must develop a deeper understanding of and partnership with the youth and communities they serve. While youth of color made up only 34 percent of the total youth population in 1997, in 2013, youth of color comprised 43 percent of the total youth population. The Latino youth population had the most significant increase in population, over 80% since 1997.



| U.S. Youth Population | White | Black | Latino | Native American | API | Total |
|-----------------------|------------|-----------|-----------|-----------------|-----------|------------|
| 1997 | 19,588,854 | 4,328,757 | 4,125,990 | 329,906 | 1,134,944 | 29,508,451 |
| 2013 | 18,556,808 | 5,011,864 | 7,506,019 | 334,504 | 1,758,086 | 33,167,281 |
| # Change 1997–2013 | -1,599,889 | 451,590 | 2,716,201 | 4,704 | 425,842 | 3,658,830 |
| % Change 1997–2013 | -5.3% | 15.8% | 81.9% | 1.4% | 54.9% | 12.4% |

Racial and Ethnic Categories Used in this Report and Notes about Data Collection Practice

It is important to note a number of points about the racial and ethnic groups used by our original data sources* and in this report.

First, each of these racial and ethnic categories is comprised of culturally and historically distinct sub-populations. For example, Asian and Pacific Islander youth in the U.S. include at least 48 distinct ethnic groups. Unfortunately, data collection and reporting practices are often insufficient to capture variations in these youth populations and the system involvement of these distinct groups.

Individual Asian and Pacific Islander groups within the U.S. have different histories. Chinese, Korean, Hmong, Vietnamese, Japanese and Samoans (to name a few) have different cultural backgrounds and immigration patterns. Some came to this country to pursue jobs and economic opportunity. Others were fleeing war or persecution.

Additionally, Latino youth comprise the majority of young people in an increasing number of jurisdictions throughout the nation. An analysis of disparities in the youth justice system must account for the quickly growing Latino youth population, yet many data sources still do not require ethnicity as a key reporting measure.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) provides numerous data-analysis tools that allow review of statistics on youth involved in the justice system. While some of these tools provide information about the extent to which Latino youth are affected, several databases with key data on youth justice system decision making do not. Without ethnicity data, “Hispanic” youth are likely to be misidentified as White.^{iv} Given the lack of demographic data disaggregated by both race and ethnicity, the problem of racial inequity in the youth justice system for Latino youth is likely greater than what is represented in this report.

Until justice agencies at the county, state and national levels engage in intentional and thoughtful processes to improve data collection and analysis, jurisdictions will be constrained by their limited ability to understand important nuances in the population’s demographics. Despite all of these challenges, work to improve outcomes for youth of color should not stop. Imperfect data cannot become an excuse for inaction.



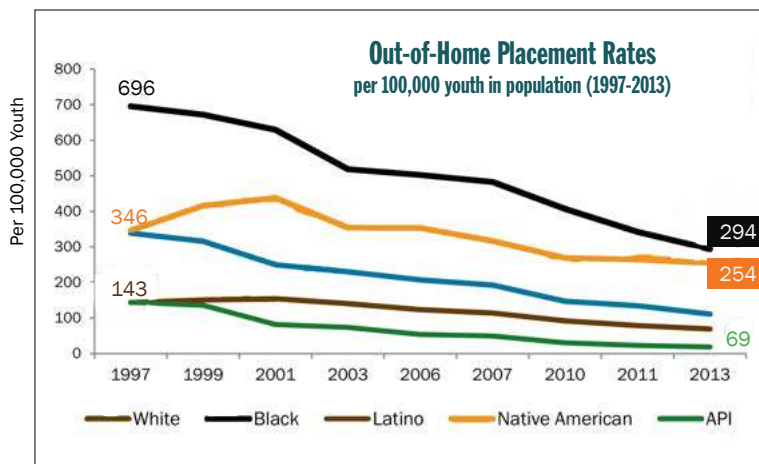
*See the appendix for more detail about the data sources.

2 National Trends in the Youth Incarceration, Through a Race & Ethnicity Lens (1997-2013)











TRENDS IN RACIAL & ETHNIC DISPARITIES: OVERALL REDUCTIONS, NATIONALLY

Despite dramatic overall reductions in incarceration nationally, youth of color are more likely than White youth to be placed out of home.

- The rate of out-of-home placements for Black and Native American youth was higher in 2013, after the historic and sweeping de-incarceration reforms of the late 1990s, than it was for White youth in 1997, before the reforms.
- Black youth consistently bear the brunt of out-of-home placement for youthful misbehavior. For the last 15 years, Black children were more than *four times as likely* as White children to spend the night in an out-of-home placement.
- Latino youth have been between *one and a half* and *two times* as likely as White youth to be committed to out-of-home placements. Moreover, data consistently indicate that Latino youth are undercounted, making it likely that the disparity is even more significant.
- Most troubling is the trend for Native American youth. The likelihood that Native American youth will spend the night in a court-ordered out-of-home placement is growing, from *2.4 times* as likely as White youth in 1997 to *3.7 times* as likely in 2013.



The Black youth rate of 294 and the Latino rate of 254 in 2013 is still twice as high as the White rate was in 1997 (143).

| One Day Count Disparity Gap in Out-of-Home Placements (1997 vs. 2013) | | | |
|--|--|---|---------------|
| 1997 | | 2013 | |
| White 1 |  |  | White 1 |
| Black 4.9 |  |  | Black 4.3 |
| Latino 2.4 |  |  | Latino 1.6 |
| Nat Am 2.4 |  |  | Nat Am 3.7 |
| API 1 |  |  | API 0.3 |

For every White youth in out-of-home placement in 1997, there were 4.9 Black youth, 2.4 Latino youth, 2.4 Native American youth, and 1 API youth.

For every White youth in out-of-home placement in 2013, there were 4.3 Black youth, 1.6 Latino youth, 3.7 Native American youth, and .3 API youth.

NATIONAL TRENDS IN RACIAL & ETHNIC DISPARITIES: BY FACILITY TYPE (1997–2013)

Proportionally, more youth are now sent to local and private facilities than state facilities and racial and ethnic disparities remain significant.

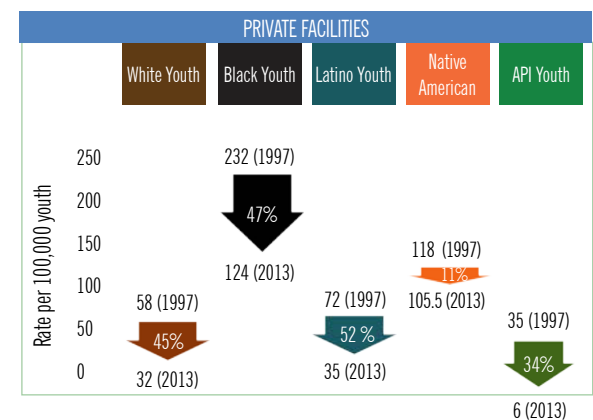
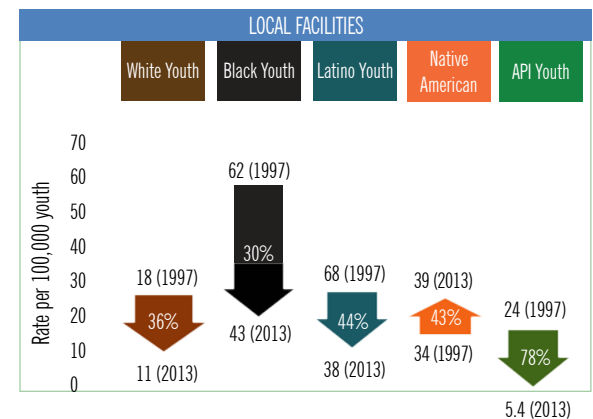
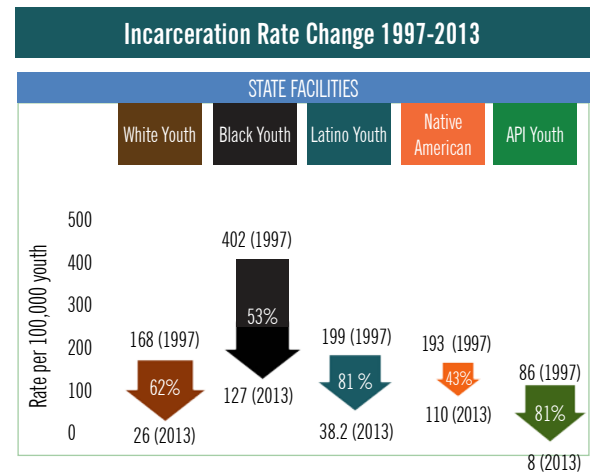
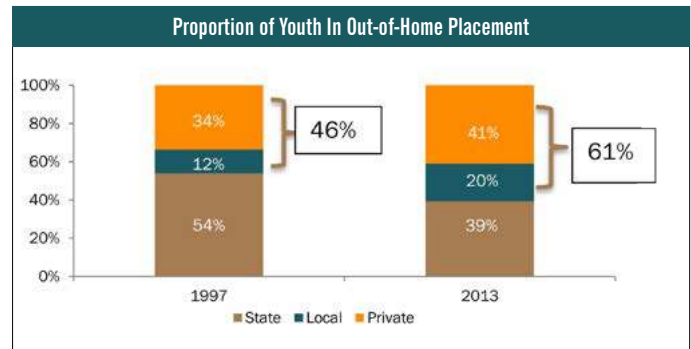
Over the past 15 years, many states enacted legislation that incentivized or required counties to maintain local control of youth who would otherwise be sent to state correctional facilities. Thus, it is not surprising that, compared with local or private facilities, state facilities have had the greatest reductions in population.⁴ As many states passed legislation that shifted responsibility for a significant number of adjudicated youth from state facilities to local jurisdictions, counties across the nation were faced with a new challenge. Local jurisdictions could supervise these youth in community settings, or they could shift their use of out-of-home placements from state facilities to local or private facilities.

Stakeholders contemplating further reform to bring more youth of color home must understand where youth are currently being placed. Counties need to investigate why particular placements were chosen for youth, the type of services and supports that are available at the current placements, and how those services and supports can be replicated in the community.

In 1997, only 46 percent of all incarcerated youth were placed in local or private facilities, 34 percent in private and 12 percent in local. By 2013, while fewer youth were placed out-of-home, the majority of incarcerated youth (61 percent) were placed in private or local facilities.

As we advocate for a more just system for youth of color, we must assess the use of local and private facilities to ensure that youth justice systems are not simply shifting incarcerated youth of color from state to local and private facilities. Advocates and policymakers must carefully monitor the effect of new legislation that mandates or fiscally dis-incentivizes the commitment of youth to state facilities. While youth justice systems have become more sophisticated in how they describe out-of-home placements, such as “camps,” “ranches,” or “cottages,” the effect on kids is the same. Whether a young person is placed in a locked facility or not, he or she is taken away from family, community, and support networks and is at much greater risk of a future laden with negative outcomes. Our goal must be to keep youth housed in their own communities.

- The rate of placement for **Black youth** to every facility type is significantly higher than that of White youth.
- For all facility types, the disparity gap for **Native American youth** has increased.
- The reduction in out-of-home placements to **local facilities** was not as great for **Black youth** as it was for White youth. The rate of commitment to **local facilities** decreased by 36 percent for White youth, but only by 31 percent for **Black youth**.
- From 1997-2013, the rate of commitment to **local facilities** increased for **Native American youth**.























⁴ See Appendix for reductions in out-of-home placements by facility.











TRENDS IN DISPARITY GAP BY FACILITY TYPE (1997–2013)

- The relative likelihood of being placed in a **local facility** has increased for **Black youth**, from 3.5 times as likely as White youth in 1997 to 3.8 times as likely in 2013.
- By far, the greatest disparity gap for **Latino youth** occurs in placements to **local facilities**. While there are disparate rates of commitment to other facility types, Latino youth were 3.3 times as likely as White youth to be committed to a local facility in 2013.



| Disparity Gap for <u>State</u> Facilities | | | |
|---|---|---|---------------|
| 1997 | | 2013 | |
| White 1 |  |  | White 1 |
| Black 5.9 |  |  | Black 4.9 |
| Latino 2.9 |  |  | Latino 1.5 |
| Nat Am 2.8 |  |  | Nat Am 4.2 |
| API 1.3 |  |  | API 0.3 |

| Disparity Gap for <u>Local</u> Facilities | | | |
|---|--|---|---------------|
| 1997 | | 2013 | |
| White 1 |  |  | White 1 |
| Black 3.5 |  |  | Black 3.8 |
| Latino 3.8 |  |  | Latino 3.3 |
| Nat Am 1.9 |  |  | Nat Am 3.4 |
| API 1.3 |  |  | API 0.3 |

| Disparity Gap for <u>Private</u> Facilities | | | |
|---|---|---|---------------|
| 1997 | | 2013 | |
| White 1 |  |  | White 1 |
| Black 4.0 |  |  | Black 3.9 |
| Latino 1.3 |  |  | Latino 1.1 |
| Nat Am 2.0 |  |  | Nat Am 3.3 |
| API .6 |  |  | API 0.2 |

NATIONAL TRENDS IN RACIAL & ETHNIC DISPARITIES: TIME SPENT IN OUT-OF-HOME PLACEMENTS (1997–2013)

Youth are being incarcerated for longer periods of time, with Black and Latino youth having the longest stays out of home.

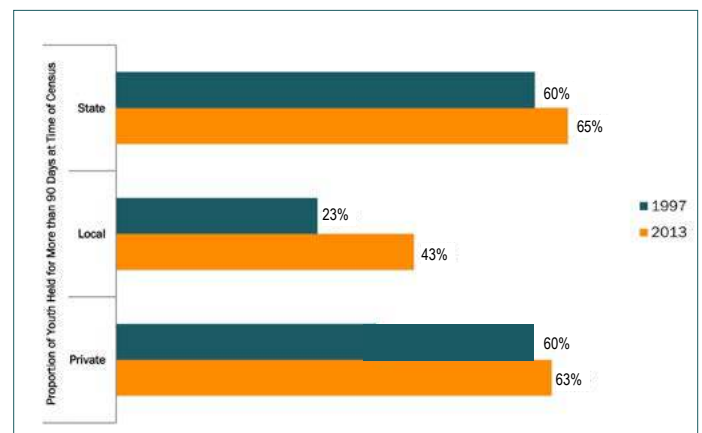
Lengthy out-of-home placements interrupt a young person's education, and, once incarcerated, some young people have a hard time returning to school. The longer a youth is in an out-of-home placement, the longer they are disconnected from their family, their community supports, and their educational pursuits. Research confirms that lengthy out-of-home placements for youth are bad public policy, too. A growing body of research indicates that youth who remain in facilities for longer periods of time have higher rates of re-arrest^v and re-incarceration than youth with shorter lengths of stay, even after controlling for demographics and risk levels.^{vi}

National average lengths of stay data for out-of-home placements are unavailable. However, the total number of days the youth has slept in an out-of-home placement is captured on the date of a national Census of incarcerated youth. Thus, as an indication of whether lengths of stay in each facility type is increasing or decreasing, BI reviewed the number of days youth spent in each facility type on the census date in 1997 and 2013.

BI reviewed whether lengths of stay in state, local and private out-of-home placement facilities shifted over the past 15 years, and found that the proportion of youth who are staying more than 90 days was greater for every facility type in 2013 than it was in 1997. Additionally, the proportion of youth staying for more than 180 days increased for local and state facilities.

In the 2013 one day census of youth in out-of-home placements, 21,273 youth (60 percent of incarcerated youth) had been languishing in out-of-home placements for more than 90 days, and 12,384 youth (35 percent) languished for more than 180 days.

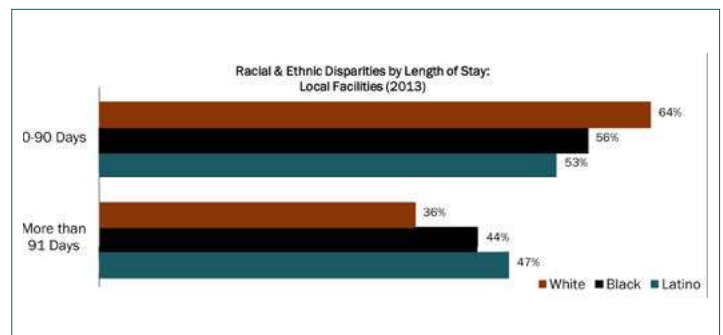
- The proportion of youth who were in a state, local or private facility for more than 90 days increased between 1997 and 2013.
- Length of stay increased most dramatically for youth in local facilities. In 1997, 29 percent of youth in local facilities had been there for more than 90 days on the day of the census. In 2013, this increased to 43 percent. For youth in local facilities for more than 180 days, this increased from 9 percent in 1997 to 18 percent in 2013.



The shift toward the use of local facilities between 1997 and 2013 disparately affected youth of color. In 2013, youth of color were committed for longer than White youth.

The reform legislation that led to reductions the use of many states' correctional facilities allowed or incentivized local control and custody of youth. The recent proportional increase in the use of local facilities coincides with an increased length of stay. On the day of the census in 2013, youth were in local facilities for a longer period of time than they were in 1997.

- In 2013, **Black and Latino youth** were *more likely* to have spent longer lengths of time in **local facilities than were** White youth. Whereas only 36 percent of White youth were in a **local facility for more than 90 days**, 44 percent of Black youth and 47 percent of Latino youth were placed out of home for more than 90 days, respectively.



- Also in 2013, Black and Latino youth were *more likely to have spent more than 180 days* in local facilities than were White youth. Fourteen percent of White youth spent **more than 180 days in local facilities**, compared to 18 percent of Black youth, and 22 percent of Latino youth.

NATIONAL TRENDS IN RACIAL & ETHNIC DISPARITIES: OUT-OF-HOME PLACEMENTS BY OFFENSE CATEGORY (1997–2013)

Trends in racial and ethnic disparities have persisted in every offense category from 1997 to 2013.

Research indicates that community-based, restorative alternatives to incarceration are a more humane response to youthful misbehaviors of all kinds. Incarceration does more harm than good, even for youth adjudicated for serious offenses.^{vii} To this end, alternative, culturally meaningful methods of accountability must be explored to combat disparities in placements, regardless of the offense the young person is charged with. While there are notable reductions in out-of-home placements for all offense categories, significant racial and ethnic disparities persist.

For every offense category, Black, Latino, and Native American youth are more likely to be sent out-of-home than White youth. The rate at which Black youth were committed in 2013 was higher than the rate for White youth in 1997, in almost every offense category.

Despite an overall decline in out-of-home placements, Native American youth have experienced an increase in their rate of commitment to out-of-home placements for certain offenses.

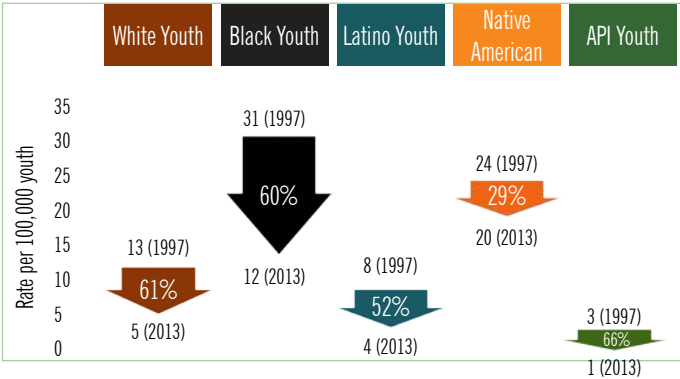
- Between 1997 and 2013, the rates of commitments decreased for all youth except Native American youth. For Native American youth, rates for out-of-home placements for drug offenses increased by 38 percent, while out-of-home placements for technical violations increased by 24 percent.
- In 2013, Native American youth had the highest rate of commitment for status (19.5 per 100,000 youth) and drug (19.2) offenses, as well as for technical violations (42.4) among all youth categories.



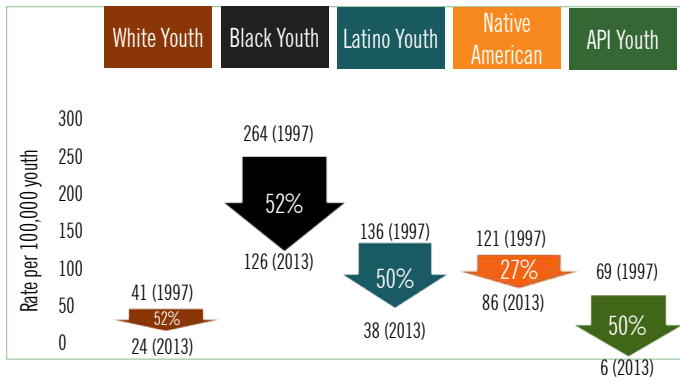
TRENDS IN RACIAL & ETHNIC DISPARITIES: OUT-OF-HOME PLACEMENTS BY OFFENSE CATEGORY (1997–2013)

Incarceration rates decreased overall for all offense categories, but rates remain substantially higher for youth of color than for White youth in each offense category.

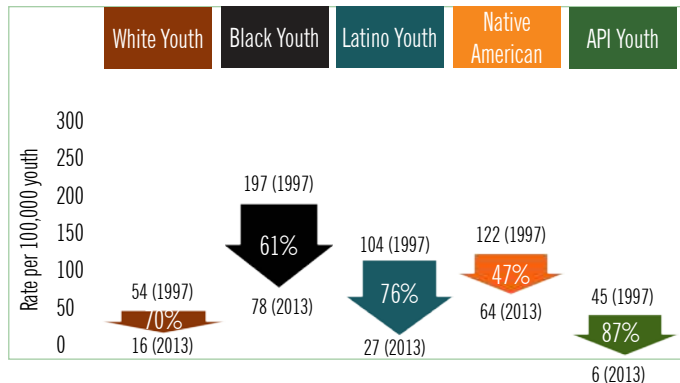
All Offense Categories



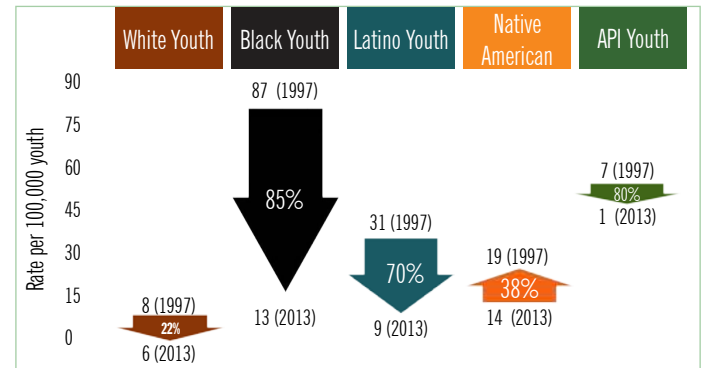
Person Offenses



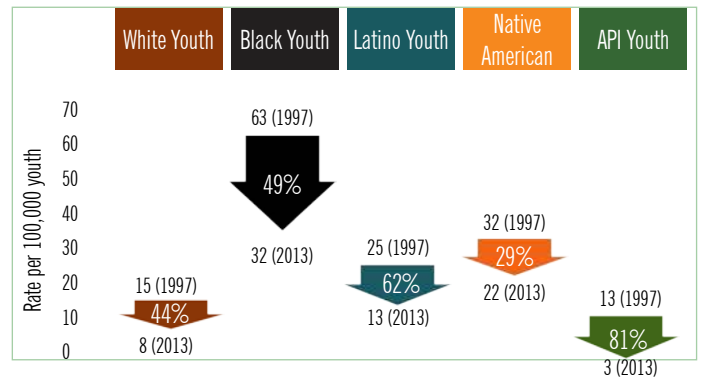
Property Offenses



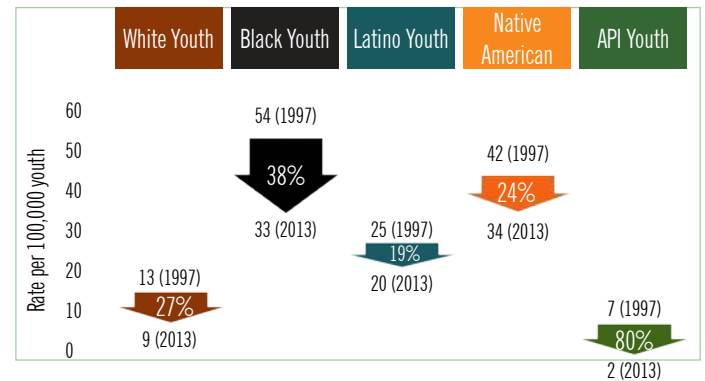
Drug Offenses



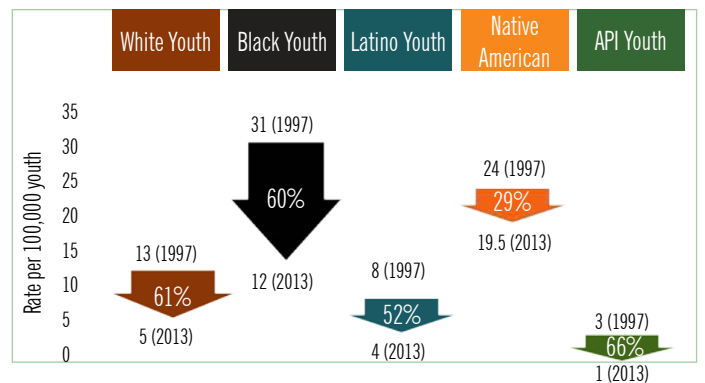
Public Order Offenses



Technical Violations



Status Offenses








NATIONAL TRENDS IN RACIAL & ETHNIC DISPARITIES: OUT-OF-HOME PLACEMENTS FOR TECHNICAL VIOLATIONS

On the average day in 2013, nearly 5,000 youth languished in out-of-home placements as the result of a technical violation. Sixty-seven percent of these youth were youth of color.

Youth should never be removed from his or her home for a technical violation. Technical violations come in many forms, such as the failure to appear for a drug test or a meeting, or an inability or unwillingness to pay restitution. For example, a young person may have been placed on probation as the result of a petty-theft or simple-assault adjudication and violated the terms and conditions of his or her probation by not abiding by curfew. Or, a young person may not have the transportation or family support needed to attend required meetings. The use of incarceration as a response to technical violations is particularly harsh and requires a high level of scrutiny.

- In 2013, youth of color were significantly more likely to be committed to an out-of-home placement for a **technical violation** than for other offenses.
- **Latino youth** were *two times as likely* as White youth to be committed out of home; **Black youth** were *almost four times as likely* and **Native American youth** were *more than four times as likely*.

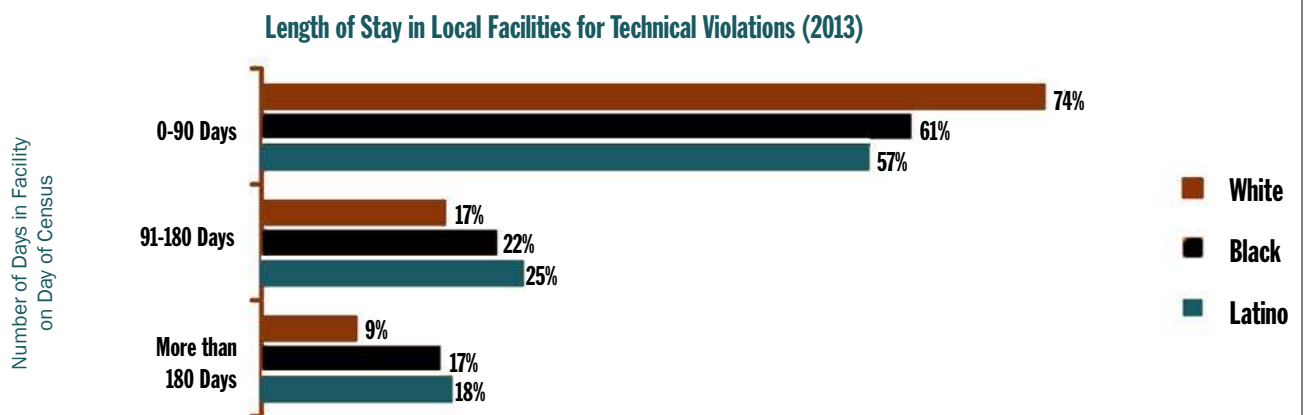
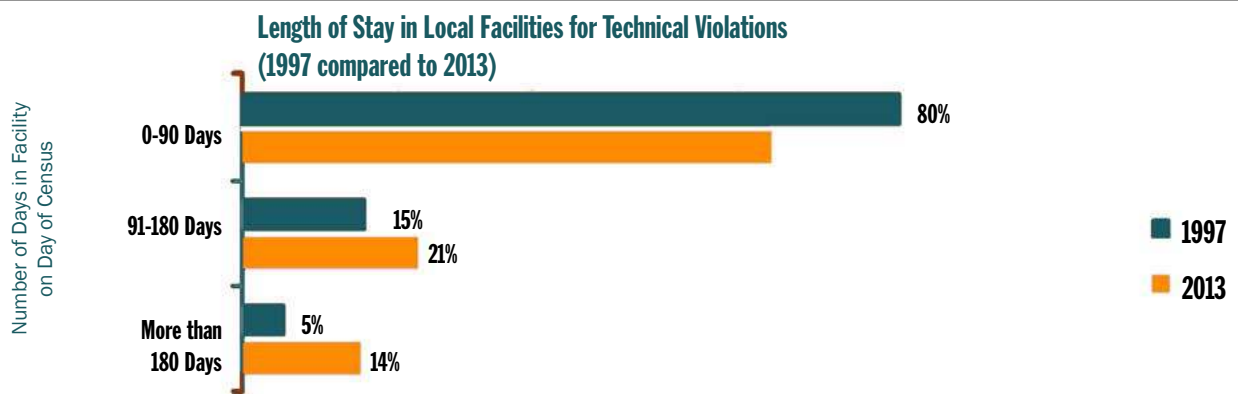
| Disparity Gap for Out-of-Home Placements for Technical Violations (2013) | |
|---|------------------------|
|  | White 1 |
|  | Black 3.5 |
|  | Latino 2.1 |
|  | Native American 4.5 |
|  | API 0.2 |

Between 1997 and 2013, reductions in out-of-home placements for technical violations did not keep pace with reductions for other offense categories.

- While there was a 52 percent reduction in the rate at which **all youth** were committed out-of-home, there was only a 24 percent reduction in out-of-home placements for technical violations.
- In 2013, for every 100,000 White youth in the population, 9.4 were placed out of home **for technical violations**. Comparatively, 33.2 Black youth, 20.1 Latino youth, and 34.3 Native American youth were placed out of home.
- In 1997, 8 percent of **all youth** placed out of home were there as the result of a technical violation. In 2013, technical violation placements were *14 percent of all* out-of-home placements.
- In 1997, 7 percent of **Latino youth** were committed to out-of-home placements for technical violations. However, in 2013, the proportion had *more than doubled* to 18 percent.
- The rate at which **Native American youth** were committed for technical violations *increased* by 24 percent, while there was a 27 percent reduction in commitments overall.

In 2013, a higher proportion of young people stayed in out-of-home placements for technical violations for greater lengths of time than they did in 1997. These increases were especially stark in *local* facilities with youth of color bearing the burden.

- The increased proportion of youth with longer stays for technical violations is particularly true for youth sent to **local facilities**. In 1997, 15 percent of children were in local facilities for 90 to 180 days, but in 2013, this rose to 21 percent. In 1997, only 5 percent of youth were in local facilities for more than 180 days, but in 2013, this rose to 14 percent.
- In 2013, Black and Latino youth were almost twice as likely as White youth to be in local facilities for more than 180 days on a technical violation: while only 9 percent of White youth were in a local facility for more than 180 days for a technical violation, 17 percent of Black youth and 18 percent of Latino youth were committed to local facilities for more than 180 days for technical violations.



















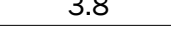
NATIONAL TRENDS IN RACIAL & ETHNIC DISPARITIES: OUT-OF-HOME PLACEMENTS FOR NATIVE AMERICAN YOUTH (1997–2013)

In every type of facility and in every offense category, the disparity gap for Native American youth increased between 1997 and 2013.

For centuries, U.S. policy toward Native American communities has violated their rights to sovereignty and self-determination. U.S. policy toward Native Americans includes the forced, and oftentimes violent, removal of children from their homes and families as a means of assimilation to the dominant culture. Advocates must be particularly thoughtful when it comes to rethinking the use of out-of-home placement for Native American youth.

Native American youth were more likely to be removed from their homes by the youth justice system in 2013 than White youth were at the height of incarceration in 1997. The disparity gap for Native American youth has increased since 1997 and is cause for great concern. Although the overall number of Native American youth in out-of-home placements is relatively small, the rates of out-of-home placement are high. It is critical to review and further analyze these trends lest we perpetuate the removal of Native American youth from their families and community.

- **Drug offenses** had the largest disparity-gap growth for Native American youth (77 percent), from 1.8 times as likely as White youth in 1997 to 3.2 times as likely in 2013.
- The disparity gap for **technical violations** more than doubled for Native American youth: from 2.7 times as likely in 1997 to 4.5 times as likely in 2013.
- The disparity gap for Native American youth by facility type increased across the board, however **local facilities** saw the largest increase in the disparity gap (77 percent), from 1.9 times as likely in 1997 to 3.4 times as likely in 2013.

| Disparity Gap Between White and Native American Youth in Out-of-Home Placements by Offense (1997 vs. 2013) | | | |
|--|--|--|--|
| | White | 1997 Native American | 2013 Native American |
| Total |  1 |  2.4 |  3.7 |
| Drugs |  1 |  1.8 |  3.2 |
| Public Order |  1 |  2.0 |  2.7 |
| Technical |  1 |  2.7 |  4.5 |
| Status |  1 |  1.8 |  3.8 |

3 RECOMMENDATIONS: Policy & Practice Reforms for Achieving Greater Racial Equity in Youth Incarceration

1. FIGHT THE MYTH THAT THE YOUTH JUSTICE SYSTEM SHOULD REMOVE ANY CHILD FROM HOME

In 2011, the Annie E. Casey Foundation (AECF) published *No Place for Kids: The Case for Reducing Juvenile Incarceration*. This seminal report presents a convincing analysis of what is wrong with America's youth corrections facilities, demonstrating such facilities are dangerous, ineffective, unnecessary, obsolete, wasteful and inadequate. These criticisms of youth prisons are valid, and are increasingly well accepted in the world of youth justice reform.

For far too long—even prior to the founding of the first juvenile court in the United States in 1899⁵—we have conclusively accepted a dangerous myth. This myth is that the justice system intervenes more effectively on behalf of children in need of support and supervision than do their own families and communities.

In order to achieve meaningful progress with specific strategies - including those suggested in this report - advocates must fight this pervasive notion. Instead, we must advance a strengths based approach to working with youth of color, their families, and communities.

2. INVEST IN CULTURALLY COMPETENT COMMUNITY-BASED ALTERNATIVES TO OUT-OF-HOME PLACEMENT

Supporting and serving young people in their own communities should be our ultimate goal

Community-based interventions and treatment strategies have demonstrated lower recidivism rates at lower costs. In 2014, Youth Advocate Programs published *Safely Home*, which demonstrates that community-based alternatives are more effective at reducing recidivism at a fraction of the cost of incarceration. Current research estimates that the annual cost of incarceration is almost \$150,000 per year, whereas the average cost of an effective community intervention is around \$20,000 per year.^{viii} Coupled with consistently high recidivism rates for youth released from out-of-home placements, it is clear that these placements are neither a success nor a wise investment. Policies must be enacted to encourage the development and adoption of culturally

relevant, community-based alternatives that can support the positive development of youth of color.

States should create fiscal incentives for community-based alternatives

Despite the cost-effectiveness of community-based alternatives, many counties across the nation working to reduce out-of-home placements are still challenged by a lack of appropriate resources. However, at some point states and counties must find a way to make the initial investment in communities rather than incarceration. To help jumpstart and sustain community-based alternatives, states should incentivize counties to invest in these alternatives.

States that realign funding to counties to support the care and supervision of youth no longer eligible for incarceration in state facilities should require that a substantial portion of the funding be allocated to community based alternatives to out-of-home placement. We must invest more heavily in community-based supports that are culturally and linguistically relevant to the youth who will be served.

Monitor Impact of Local Funding

Local programs supported by state funding should be monitored and evaluated to understand the impact on youth of color. This involves tracking the use of the funds and disaggregating performance outcomes by race and ethnicity.

3. IMPLEMENT STRUCTURED DECISION-MAKING AND INCLUSIVE PROCESSES TO LIMIT OUT-OF-HOME PLACEMENTS

When a young person goes through the court process and is found delinquent, it is important that jurisdictions have a structured process to determine the most appropriate and least restrictive options for disposition. The implementation of a validated, unbiased risk-assessment tool and an inclusive placement-screening committee can aid dispositional decision-making.

Ensure risk-assessment tools do not perpetuate bias

Counties attempting to objectively assess a youth's needs, as well as his or her risk of recidivism, are increasingly using risk-assessment tools. However, some risk assessments unintentionally exacerbate racial and ethnic disparities by over-identifying youth of color as "high risk." For example, tools that include risk factors based on official arrest records are particularly susceptible to racial bias due to racial and ethnic disparities in arrest patterns.^{ix} As youth of color pass through earlier youth-justice decision-making points at

⁵ The first juvenile court was based upon the legal doctrine of *parens patriae*, or "the State as Parent." This theory gave the state the right to intervene on behalf of children, when parents were deemed unsuitable. In the United States, the Supreme Court decision of *Ex Parte Crouse* in 1838 was a seminal case in determining the state's ability to intervene in the lives of families.

disproportionately higher rates than their White peers, risk-assessment tools that merely sustain these rates will never reduce racial and ethnic disparities in the use of out-of-home placements.

Furthermore, factors that are more likely to impact youth of color—such as parental involvement in the justice system, negative peer associations, or negative attitudes toward law enforcement—should not be used to substantiate the use of out-of-home placement. Rather, all relevant information about a youth's needs and strengths should be used to craft a plan to help the youth succeed in the community. Finally, all community-based alternatives should be exhausted before a youth is removed from home.

Implement placement-screening committees to ensure the best decision-making

Another strategy for limiting bias in the placement decision-making process is the use of a placement-screening committee, a committee of diverse stakeholders with the shared goal of keeping youth in the community. A placement-screening committee should incorporate youth, their parents, and community advocates. In fact, research shows that placement decisions produce better outcomes for youth when those most affected by the justice system, as well as those most invested in a youth's success, have a voice in the decision-making process.^x

Placement-screening committees that engage a multidisciplinary set of stakeholders can be effective because they allow every option for a youth to be explored. Each committee member brings unique expertise, perspectives, and critical insights to examining a young person's needs. When youth and family are able to participate in system decision-making, they become empowered and better able to take ownership of a young person's success. The benefits of using placement-screening committees extend beyond the outcomes of an individual; these partnerships can also help improve communication and trust among youth justice system stakeholders and members of the community.

4. CONTINUE ENACTING STATE AND LOCAL REFORMS TO REDUCE PRE-ADJUDICATION DETENTION

Research indicates that youth who are securely detained pre-adjudication are significantly more likely to be formally charged, found delinquent, and committed to youth corrections facilities than similarly situated youth who remain at home pending their adjudication. For example, a 2013 study found that youth detained pre-adjudication were three times as likely to be committed to a corrections facility as youth with identical offending histories who were not detained.^{xi}

Significant advocacy efforts in the last 20 years have focused on pre-adjudication detention reform for good reason.



Adolescence is a distinct, yet transient, period of development between childhood and adulthood characterized by increased experimentation and risk taking, a tendency to discount long-term consequences, and heightened sensitivity to peers and other social influences. A key function of adolescence is developing an integrated sense of self, including individuation, separation from parents, and personal identity. Experimentation and novelty-seeking behavior, such as alcohol and drug use, unsafe sex, and reckless driving, are thought to serve a number of adaptive functions despite their risks.^{xii}

Detention can be a slippery slope into out-of-home placement. Many successful strategies have been developed to safely reduce the use of pre-adjudication detention and these efforts resulted in a 44 percent decrease in pre-adjudication detention rates for youth nationwide between 1997 and 2013.^{xiii}

Despite these reductions, Latino youth were more than two times as likely as White youth to be detained in 2013; Native American youth were nearly three times as likely; and Black youth were more than five times as likely.

States and counties that seek to reduce the use of detention for youth of color should employ a number of critical strategies. First, they should adopt an intentional focus on youth of color. Second, they should develop strong collaborations between system and community stakeholders, including youth and parents with justice system involvement. These jurisdictions must recognize that communities most impacted by the justice system bring insight, resources, and a sense of urgency to the reform process. Third, successful efforts must utilize data—both quantitative and qualitative—to dispel myths and to understand and improve justice system decision-making.

In short, continuing to employ strategies to reduce the use of pre-adjudication detention will help prevent removal of youth from their homes at later decision-making points.

5. LIMIT THE USE OF PROBATION

Just as pre-adjudication detention is a slippery slope into out-of-home placement, so is placement on probation. Too many youth are committed to out-of-home placements as the result of a technical violation of probation.

In a recent report, youth justice practitioners acknowledged that too many low- and moderate-risk youth are unnecessarily processed through the justice system and placed on probation. In making a decision to place a youth on probation, system stakeholders must remember that low-risk youth “touched by these systems typically spiral *in* rather than *out*.”^{xiv} Youth should be diverted out of the justice system and provided supports in the community whenever possible. However, in cases in which probation is deemed necessary, the expectations of youth should be reasonable; all other interventions should be exhausted prior to sending youth back to court because of violated conditions; and technical violations should never result in incarceration.

When youth are placed on probation, expectations of them should be realistic

Rather than checking off a list of standard probation terms and conditions, stakeholders should think critically about what purpose a specific condition serves and limit the number of conditions with which youth must comply. Court terms and enforcement of these terms should consider the research on adolescent brain development.

Terms of probation should be written in plain language that youth and parents understand

For instance, one youth explained that he interpreted the term “appear in court as required” as an instruction about how he should look and what he should wear to court, not as a requirement to attend court on specific days and times. New practices for ensuring greater clarity of the terms of probation are needed, including written orders that align with the average literacy level of justice-involved youth.

The use of technical violations must be limited and carefully monitored

Probation departments must shift away from a culture of compliance and control. Innovative probation departments look for ways to support young people in the successful completion of probation, rather than respond punitively and reflexively when teenagers, acting age-appropriately, break the rules. These agencies employ a wide variety of strategies, including:

- Expanding community-based alternatives;
- Hiring people who believe their job is to help youth succeed;
- Providing ongoing staff development;
- Developing objective decision-making tools such as probation response grids;
- Mapping out steps that probation officers are expected to take before filing a violation.

6. KEEP YOUTH OUT OF ADULT PRISONS

The youth justice system was established more than 100 years ago with an emphasis on care and rehabilitation of youth rather than punishment. Over the last several decades, however, legislators and voters have increasingly sanctioned the transfer of youth into criminal courts, eroding the developmental distinction between youth and adults. Across the country, different pathways exist for youth to be transferred into the adult system, including transfer and waiver provisions, judicial waiver, prosecutorial waivers, statutory or legislative exclusions and “once an adult, always an adult” laws.^{xv}

In efforts to shut down youth prisons and reduce the incarceration of young people, advocates must simultaneously work to blockade all pathways into the adult system. Because these pathways are different in different states, the advocacy strategies must be locally targeted as well. It is critical to be aware of the unintended consequences of our work to limit incarceration in the youth justice system, including prosecution or transfer of youth to the adult system.

7. DISAGGREGATE NATIONAL YOUTH JUSTICE DATA BY RACE, ETHNICITY & TRIBAL AFFILIATION

Without an accurate understanding of the scope of racial and ethnic disparities at all decision points in the youth justice system, it is impossible to craft appropriate solutions. Involvement of Latino youth in the justice system may, in fact, be worse than it appears, given the poor data collection practices of youth justice systems across this country. In addition, when relevant, data for Native American youth should be collected and disaggregated on the basis of tribal affiliation.

Any data analysis tools promoted by the federal government as a way to understand the extent to which young people are involved in the justice system should take into account changing demographics and should ensure that data are disaggregated by both race and ethnicity at all decision points.



4 ENDNOTES

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5 APPENDIX

ABOUT THE DATA USED IN THIS REPORT

Census of Juveniles in Residential Placement Data

The primary source of data for examining out-of-home placements nationwide is the Census of Juveniles in Residential Placement (CJRP). Since 1997 and biennially since, the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP) conducts a survey of all youth held in residential placement facilities across the U.S. The census provides a snapshot of all youth confined on the day of the census, including those detained pre-adjudication and those committed to private, local or state-run facilities as part of their court-ordered disposition. This report focuses on youth committed to a placement, and compares 1997 data with 2013 data, which was the latest available data. The diagram illustrates the breakdown of youth confinement as captured by the CJRP.

| 2013 One Day Count Youth in Confinement (53,462 youth) | | | |
|--|------------------------------|------------------------|-------------------------|
| Detention (17,803 youth) | Commitment (35,659 youth) | | |
| | Private (14,657 youth) | Local (7,032 youth) | State (13,970 youth) |

The CJRP data are designate offense categories as follows:

- Person offenses, including aggravated assault, criminal homicide, robbery, simple assault, and violent sexual assault.
- Property offenses, including arson, auto theft, burglary, and theft (non-household larceny).
- Drug offenses, including trafficking.
- Public order offenses, including alcohol or drug offenses, driving under the influence, and weapons possession.
- Technical violations, including violations of probation, parole, or valid court orders and acts that disobey or go against the conditions of probation or parole. Examples include failure to participate in a specific program, failure to appear for drug tests or meetings, and failure to pay restitution.
- Status offenses, including curfew violations, incorrigibility/un-governability, running away, truancy, underage drinking, and other non-delinquency offenses.

The CJRP data are disaggregated by race and ethnicity as follows:

- White: White, not of Hispanic origin: A person having origins in any of the original peoples of Europe, North Africa, or the Middle East who is not of Hispanic origin.
- Black: Black, not of Hispanic origin: A person having origins in any of the black racial groups of Africa who is not of Hispanic origin.

- Latino or “Hispanic:” a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- Native American, or “American Indian or Alaskan Native:” A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliations or community recognition.
- Asian or Pacific Islander (“API”): A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. The Asian area includes, for example, China, India, Japan, and Korea. Pacific islands include, for example, Samoa, Guam, and Hawaii.

Although instruction was provided for capturing data on youths’ race and ethnicity in the CJRP, there are limitations to the accuracy of data. This is particularly true for Latino youth. In many parts of the country there are no accurate data on the number of Latino youth in the juvenile justice system. Instead, Latino youth are often counted as “White,” resulting in significant undercounting of Latino youth involvement in the justice system. Thus, the review of disparities for Latino youth may not represent the full extent to which Latino youth are overrepresented in commitments.

Additionally, while CJRP data can disaggregate Asian and Pacific Islander youth, these populations are not disaggregated in the youth population data. In youth population data, Asian and Pacific Islander youth are combined. Because understanding whether and to what extent racial and ethnic disparities exist relies upon a comparison to the youth population, Asian and Pacific Islander youth were combined for analysis in this report. As noted above, this categorization is problematic for many reasons. When data collection practices are sufficient, it would be ideal to disaggregate these very distinct youth populations.

Finally, it is important to note that one-day count data- particularly when disaggregated by race and ethnicity and offense type- can yield small numbers that are susceptible to misinterpretation. OJJDP protects the privacy of youth included in its surveys by rounding published tables to the nearest multiple of three. When a small number of youth are committed to state-run facilities for certain offense types, this rounding could impact the analysis.



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