RACIAL AND ETHNIC DISPARITIES

IN LANE COUNTY'S JUVENILE JUSTICE SYSTEM:

A CRITICAL RACE THEORY PERSPECTIVE

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ABOUT LANE COUNTY YOUTH SERVICES

LANE COUNTY YOUTH SERVICES "PROVIDES ASSESSMENT, PROBATION, TRAINING, COUNSELING, AND DETENTION SERVICES FOR ALL YOUTH, AGES 12-17 YEARS OLD, REFERRED BY LOCAL LAW ENFORCEMENT BECAUSE OF CRIMINAL BEHAVIOR. IT IS THE BRANCH OF LANE COUNTY GOVERNMENT RESPONSIBLE FOR SERVICES TO YOUTH ACCUSED OF LAW VIOLATIONS OR JUDGED DELINQUENT BY THE JUVENILE COURT" (LANE COUNTY YOUTH SERVICES WEBSITE, 2020).

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INTRODUCTION

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America's Juvenile Justice System has a problem. Youth of Color are overrepresented in nearly every part of the system, and these racial and ethnic disparities have existed for decades despite efforts to reduce them. For the most part, researchers, policy-makers, elected officials, and practitioners have not been asking the right questions to expose the root causes. This report begins to dig into those root causes

Let me ask you a question: If something was stinky in your refrigerator, wouldn't you open it up and look for whatever was causing the problem and remove it? Of course you would--we all have done exactly that. Finding the root cause of the stink is the first step.

It's a similar (albeit much more complex) issue for figuring out how to reduce racial and ethnic disparities in the Juvenile Justice System. Racial and ethnic disparities (RED) in America's Juvenile Justice System have existed for more than 40 years--there's been something stinky in the fridge for more than four decades. And yet, the disparities remain. Why? I think it's because researchers, policymakers,elected officials and practitioners have been looking in the wrong places for the root causes of the disparities--they haven't looked in the fridge for the stink. Instead they've wandered around looking in other areas and documenting that "yes, something stinks." This report offers evidence about what's been causing RED and what efforts are needed to eliminate it. It's high time to get rid of the stink.

THIS REPORT USES A CRITICAL RACE PERSPECTIVE TO EXAMINE RACIAL AND ETHNIC DISPARITIES IN LANE COUNTY'S JUVENILE JUSTICE SYSTEM.

THE REPORT'S PREMISE IS THAT DISPROPORTIONATE RISK FACTORS, INCLUDING TRAUMA, PROPEL YOUTH OF COLOR INTO THE JUVENILE JUSTICE SYSTEM "FASTER AND HOTTER" COMPARED TO WHITE YOUTH AND THAT ECOLOGICAL RISK FACTORS CONTRIBUTE GREATLY TO RACIAL AND ETHNIC DISPARITIES IN THE JUVENILE JUSTICE SYSTEM.

EXECUTIVE SUMMARY

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The current study investigated the history of RED in the Juvenile Justice System, then examined the status of RED in Oregon and in Lane County. The findings illustrated the persistence of RED in all three geographic catchment areas. An in-depth examination of RED in Lane County was completed using a mixed-method approach that combined quantitative documentation of RED as well as qualitative results from 22 interviews

This report addressed racial and ethnic disparities (RED) in Lane County's Juvenile Justice System in a way that has never been done before and in that light, this report will undoubtedly be controversial. This report used a Critical Race Theory perspective to examine the multitude of risk factors that are disproportionally heaped upon many youths of color compared to their White peers. Those disproportionate risk factors, including trauma, propel Youth of Color into the Juvenile Justice System at unsymmetrical rates. Once involved in the Juvenile Justice System, Youth of Color are treated more harshly compared to White youth. The Juvenile Justice System has long been criticized for such practices and as a result many jurisdictions, including Lane County, have dedicated efforts to reduce RED. Attention has been focused on discrimination against Youth of Color as a result of unintentional or unconscious implicit biases that come into play when making placement decisions for Youth of Color. For the most part, those efforts have failed to reduce RED in meaningful and sustainable ways. Why? I believe it is because efforts have missed the root causes of RED in the Juvenile Justice System. Undoubtedly, individual biases and prejudices play a role in the amount of RED in the Juvenile Justice System, but the premise of this report was that larger macro systemic forces are much more powerful than individual level interactions.

THIS STUDY INCLUDED AN IN-DEPTH LOOK INTO THE PHENOMENA OF RACIAL AND ETHNIC DISPARITIES IN LANE COUNTY'S JUVENILE JUSTICE SYSTEM USING A CRITICAL RACE THEORY PERSPECTIVE

Critical Race Theory

Critical Race Theory provided a lens by which to examine root causes of RED, and to move beyond looking at the collective actions of individuals as the primary reasons for disproportionate treatment towards Youth of Color in the Juvenile Justice System. Instead, Critical Race Theory allowed an examination into the forces of structural racism that permeates our communities, our schools, our governmental policies, and our criminal justice systems, including the Juvenile Justice System. The toxic effects of structural

racism contribute to Youth of Color experiencing trauma, including early childhood trauma, at higher rates compared to White youth. The foundation of this report assumed that what happens to Youth of Color before they become involved in the Juvenile Justice System contributes greatly to their trajectory and velocity into the Juvenile Justice System, and how they are processed after becoming involved. The laws and court proceedings which are supposedly blind to race, have resulted in RED in the Juvenile Justice System, and the adult criminal justice system where the Black to White incarceration disparity was 5.1 to 1 in 2016.

DESPITE EFFORTS TO REDUCE RACIAL AND ETHNIC DISPARITIES (RED) IN LANE COUNTY'S JUVENILE JUSTICE SYSTEM, RED HAS PERSISTED

Current Study

The current study investigated the history of RED in the Juvenile Justice System, then examined the status of RED in Oregon and in Lane County. The findings illustrated the persistence of RED in all three geographic catchment areas. An in-depth examination of RED in Lane County was completed using a mixed-method approach that combined quantitative documentation of RED as well as qualitative results from 22 semi-structured interviews conducted with people who work with juvenile justice-involved youth in Lane County. Both the quantitative and the qualitative data partially supported components of Critical Race Theory, thus lending clues about how to effectively reduce RED in the long-term.

The results of the study were a combination of disappointing amounts of RED in Lane County's Juvenile Justice System and also some encouraging signs that Lane County Youth Services has already taken some baby-steps towards reducing RED. For example, the study found that during 2010-2019, African American and Native American youth were overrepresented in the first (and therefore less severe) four decision-points in the juvenile justice process. During the same time, Hispanic youth experienced underrepresentation in the number of referrals (the first decision-point in the process). Asian youth were underrepresented in the first four decision-points. Generally, the numbers of Youth of Color decreased significantly after the Petition decision-point, which indicated some sort of "off-ramping" process away from a formal court process, which reduced the amount of RED in Lane County's system. The validity of the state of Oregon's Juvenile Justice Information System (JJIS) data has been called into question by the state, and therefore caution is warranted when making conclusions about RED in Oregon and in Lane County. Much more work is needed to improve the database, and to address RED.

LANE COUNTY CANNOT SINGLEHANDEDLY REDUCE RACIAL AND ETHNIC DISPARITIES IN THEIR JUVENILE JUSTICE SYSTEM

How to Move Forward

Lane County Youth Services cannot singlehandedly reduce RED because the root causes trace back to circumstances before youth become involved in the Juvenile Justice System. There are things that Lane County can do internally to make sure their policies and procedures are not inadvertently perpetuating RED within their system—but that's a smaller portion of the work that is required. In order for meaningful and sustainable reductions in RED to be realized, there must be widespread collaborative efforts with communities, schools, law enforcement, elected officials, policymakers, and service providers to address and tackle structural racism. Those will likely be uncomfortable conversations for some people because they will require a recognition that structural racism exists.

The Power of Counter-Stories

One of the central tenets of Critical Race Theory is that People of Color possess uniquely qualified perspectives to discuss race in ways that their White counterparts have little understanding or awareness (Delgado & Stefancic, 2017). Traditionally, these minority stories have been crowded out of the discussion by dominant stories that are told about the associations between race and life outcomes, including crime and the involvement in the Juvenile Justice System. There is a fair bit of critical thinking skills required to fully consider counter-stories because the process requires a willingness to suspend our disbelief, to consider alternative perspectives that run counter to the stories we have incorporated as the truth. Counter-stories can open new windows of different realities and can help us imagine how systems might change in positive ways that are distinct from realities created by more conventional (dominant) stories. In short, counter-stories can expand our imaginations about how things could be in ways that conventional stories cannot. Delgado (1989) wrote "Listening to the stories of outgroups can avoid intellectual apartheid", and "in order for systems to change, we must seek out storytellers different from ourselves and afford them the audience they deserve" (p. 2440). The pursuit of such counter-stories is the heart of this report.

CREATING SPACES FOR COUNTERSTORIES TO BE HEARD AND ACTED UPON WILL BE IMPORTANT MOVING FORWARD

BACKGROUND

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Critical Race Theory is used as the organizing perspective for this report which attempts to explain racial and ethnic disparities in the Juvenile Justice System. The premise of this report is that what happens before youth are involved in the Juvenile Justice System has a large effect on how they traverse the system after becoming involved. The Juvenile Justice System alone cannot effectively reduce racial and ethnic disparities

This report attempts to explain the phenomena of "Disproportionate Minority Contact" (DMC) within the Juvenile Justice System nationwide, in the state of Oregon and more specifically, in Lane County's Juvenile Justice System. The term DMC originated in the 1980s as a way to focus attention on racial disparities and it is still widely used today, however in this report I will use a more recent term that is a more accurate and encompassing phrase: Racial and Ethnic Disparities (RED)(Haywood Burns Institute, 2019). I will use a Critical Race Theory (CRT) perspective as the organizational schema from which to draw insight and meaning from the data, both quantitative and qualitative. In addition to offering a discussion of the current situation, I will also provide suggestions on how best to move forward in addressing the problem. This report takes a critical view of the current criminological literature that has done an unsatisfactory job of explaining the complex racial, socioeconomic, political, and historical forces that propel Youth of Color into the Juvenile Justice System at disproportionate rates compared to White youth. The effects of those disproportionalities have significant negative effects on the long-term health and well-being of Youth of Color and their families, including decreased physical and mental health, educational outcomes, employment trajectories, and life expectancies. For too many Youth of Color who are involved in the Juvenile Justice System, their enmeshment in a structurally unfair system often paves the way to further involvement with the adult criminal justice system, including increased incarceration rates compared to White adults.

The Juvenile Justice System Alone Cannot Reduce RED

I will also make the case that thinking the Juvenile Justice System has the power and ability to single-handedly reduce RED is folly, as long as systematic structural racism exists in our society. What happens to youth before they get involved in the Juvenile Justice System is often more impactful on RED than

CRITICAL RACE THEORY IS USED AS AN ORGANIZING FORMAT FOR THIS REPORT AND IS OFFERED AS A SIGNIFICANT EXPLANATION INTO WHY RACIAL AND ETHNIC DISPARITIES EXIST IN THE JUVENILE JUSTICE SYSTEM

anything the Juvenile Justice System can do to reduce RED after youth are involved. This is not to say that nothing can be done, or that nothing should be done. On the contrary, as long as RED exists in the Juvenile Justice System, juvenile justice professionals, decision-makers, elected officials and community leaders are obligated to do everything in their power to address RED and reduce it as much as possible. The solution does not lie within one singular system, such as the Juvenile Justice System. Instead, the solution to reducing RED requires constant vigilance to eliminate structural racism and be nimble enough to react to racism's constant metamorphosis, as it shape-shifts to perpetuate itself.

Structural racism has its own kind of malevolent agency, which it has proven throughout the past 100 years (Pierce, 2014; Rosiek, 2018). As policies and legislation are enacted to confront racism, it finds a way to pivot and flourish in slightly different forms, to the delight of the ugly monster, and to the dismay of well-intentioned juvenile justice professionals who must feel like Sisyphus rolling a boulder up the hill in the depths of Hades. No, the solutions to RED do not lie within solely within the Juvenile Justice System. Instead, the solution is hiding in plain sight--eliminating the structural racism within our communities, schools, healthcare systems, city planning policies, banking systems, child welfare systems, adult legal systems, law enforcement, housing policies, and of course, the Juvenile Justice System. The brutish nature of structural racism wants us to silo our efforts and to cast blame on one system, and wants us to continue to perform ill-designed research that only looks at isolated, clinical variables that do not tell the entire story so that we continue to chase after phantom "causes" of RED in the Juvenile Justice System. But if we come together as people to reduce structural racism's dominion over the Juvenile Justice System, and cast an encompassing gaze across all social systems, we will begin to gain a better understanding on how to attack the beast. If we continue to do what has always been done, structural racism will continue to harm Youth of Color and their families. Our best collaborative nature will be required to check structural racism's progress in the Juvenile Justice System, and we will have to be nimble enough to react when the beast slithers into unforeseen crevices of the system. This is perhaps the Juvenile Justice System's greatest challenge.

STRUCTURAL RACISM HAS ITS OWN KIND OF MALEVOLENT AGENCY WHICH IT HAS PROVEN THROUGHOUT THE PAST 100 YEARS

RED Exists Nationally, in Oregon and in Lane County

I will make the case that RED exists nationally, in Oregon, and in Lane County, and that the problem is wide spread, persistent, and extraordinarily resistant to change. The reasons for RED's tenacious hold on our Juvenile Justice System are numerous, and I will present evidence that the reasons have most to do with the toxic levels of structural racism that have been galvanized for decades in the crucible of White supremacy in our communities, culture and society, and that these forces help to propel Youth of Color into the Juvenile Justice System at higher velocities and at more severe trajectories compared to White youth. The term White supremacy is used to describe the White dominated systems that result in unequal distributions of resources and power that favor White populations.

THE TERM "WHITE SUPREMACY" IS USED TO DESCRIBE THE WHITE-DOMINATED SYSTEMS THAT RESULT IN UNEQUAL DISTRIBUTIONS OF RESOURCES AND POWER THAT FAVOR WHITE PEOPLE

What Happens to Youth of Color Before Juvenile Justice Involvement Matters

I will also make the case that the forces affecting Youth of Color make their deepest imprint during the developmental years leading up to involvement in the Juvenile Justice System—that is, what happens to a youth *before* they become involved in the Juvenile Justice System often influences their trajectory through the system *after* becoming involved in the Juvenile Justice System. Those devastating forces often overpower the good intentions of well-meaning individuals working within the Juvenile Justice System. Or, in other words, the systemic forces of racism and White supremacy can overwhelm efforts to counteract and reduce RED. Despite the best efforts of juvenile justice professionals who are keenly aware of RED and work to reduce it, the baked-in structural racism that exists within the legal framework of the Juvenile Justice System is often more overwhelming than the nondiscriminatory practices put to work by individuals.

"Colorblindness" Can Perpetuate RED

In addition, I will suggest that current national efforts to favor colorblindness as a decision-making perspective could actually be maintaining and perpetuating deeper involvement in the Juvenile Justice System for Youth of Color because it does not properly recognize the accumulation of risk factors

"BY IGNORING THE VERY REAL EFFECTS OF HOW RACE INTERSECTS WITH YOUTH DEVELOPMENT, COLOR BLINDNESS CAN STAND IN THE WAY OF TAKING ACCOUNT OF DIFFERENCES IN ORDER TO HELP PEOPLE IN NEED" (DELAGADO & STEFANCIC, 2017, P. 17)

that some Youth of Color experience from structural racism before their involvement in the Juvenile Justice System. If it is assumed that a youth's skin color (and the associated racism that accompanies that skin color) does not matter, then it is likely that the Juvenile Justice System will miss opportunities to correctly match treatment and rehabilitation to the youth's risks and needs. By ignoring the very real effects of how race intersects with youth development, color blindness can "stand in the way of taking account of differences in order to help people in need" (Delagado & Stefancic, 2017, p. 17). The plausible results of this colorblind approach are deeper involvement in the Juvenile Justice System by Youth of Color who might not receive well-matched services and treatments based on their individual risks and needs, and as a result, continue to reoffend. In other words, some Youth of Color need more intensive services and treatments because of their experiences with structural racism in their communities, schools, and other social systems. In these cases, disproportionate treatment is required (equity should be valued above equality).

Not Everyone Will Agree

Writing about racial and ethnic disparities in Lane County's Juvenile Justice System is fraught with controversy, and I am confident that most readers will find something in my report with which to disagree. My hope is that these disagreements will be passageways to increased understandings about racial and ethnic disparities in the Juvenile Justice System. I realize that some information and viewpoints in this report might be difficult for many readers to read and they might discount it entirely, claiming that I have conjured up an academic fairy-tale, or they might take offense to my suggestions that many of our systems carry with them the shameful echoes of slavery and subrogation of Black and Brown people. To those readers especially, I ask that they keep an open mind and consider the evidence that I present, and to consider

I AM CONFIDENT THAT MOST READERS WILL FIND SOMETHING IN MY REPORT WITH WHICH TO DISAGREE. MY HOPE IS THAT THESE DISAGREEMENTS WILL BE PASSAGEWAYS TO INCREASED UNDERSTANDINGS ABOUT RACIAL AND ETHNIC DISPARITIES IN THE JUVENILE JUSTICE SYSTEM

A NOTE ABOUT RACIAL CATEGORY DESCRIPTORS USED IN THIS REPORT

An important premise of this report is that racial categories are socially constructed. One symptom of social construction is that racial category descriptors have shifted over time, and there are inconsistencies on how governmental jurisdictions use the racial category descriptors. For example, many jurisdictions incorrectly classify Hispanic as a racial category (Hispanic is an ethnicity and can be any race). These inconsistencies and others make it difficult to validate any of the racial demographic data.
The following racial category descriptors are used in this report:

Black, African American
White
Native American, American Indian, Alaskan Native
Asian, Pacific Islander
Hispanic (many jurisdictions incorrectly use Hispanic as a racial category)
Other

ways to listen to the stories that have too long been squeezed out by the dominant culture's stories. To that end, I ask that all readers consider a time in their lives when they were not listened to, when their stories were not valued or considered—discounted as merely incorrect at best, and at worst labeled as a lie. What effect did those indifferences and disallowances have on readers' views of fairness and legitimacy of those in power?—whether the power was a parent, a teacher, a police officer, or a juvenile justice official. My claim is that when the dominant system does not actively listen to and empathize with less-dominant systems, it is predictable that the dominant system's inertia will be maintained and system change will be slow or non-existent. In the Juvenile Justice System, this inertia is manifested by persistent racial and ethnic disparities.

Moving Forward

For anyone who cares about the health and well-being of our Youth of Color, and therefore the future health of our community, this report serves as an important stepping stone towards making Lane County's Juvenile Justice System even more effective than it is now.

MOVING FORWARD WILL REQUIRE THE DOMINANT WHITE CULTURE TO CREATE SPACES WHERE LESS-DOMINANT COUNTER-STORIES CAN BE LISTENED TO AND ACTED UPON IN ORDER FOR PERMANENT AND SUSTAINABLE SYSTEMS CHANGE TO OCCUR

LEAD UP TO THE CURRENT STUDY: INCOMPLETE STORIES

Photo by Childtrends.org

Criminologists have done a poor job of asking the right questions about racial and ethnic disparities in the Juvenile Justice System--and they've been mostly ignoring the root causes that have plagued the system for more than 40 years. Part of that incomplete effort stems from not listening to counter-stories that tell an opposing view to the White dominant culture story based on equal treatment and fairness before the law. Qualitative counter-stories are an important part of systems change

In June 2019 Lane County Youth Services Manager Nathaline Frener asked me to investigate the phenomena of RED in Lane County's Juvenile Justice System, using determinants of RED recognized by the federal government. I was aware of the previous work that Lane County Youth Services had done around RED beginning in 2009, and I used that work as a beginning foundation to establish what was happening in Lane County. From that vantage point, I conducted a literature review of RED to determine the scholarly topography of the phenomena, and to explore how the knowledge base has been defined by critical perspectives.

That investigation took me on a journey that included stops in many different literatures—all of which inform the RED phenomena. I took excursions into the traditional criminology literature; I examined the legal history of our criminal justice system. I reacquainted myself with Bronfenbrenner's Ecological Systems Theory of Human Development. While these academic treks proved interesting, none provided a comprehensive theoretical foundation by which to describe RED in the Juvenile Justice System.

I was frustrated with the traditional viewpoint that neatly separated RED into two categories: before a Youth of Color becomes involved with the Juvenile Justice System, and after a Youth of Color becomes involved in the Juvenile Justice System. With few exceptions (i.e. Moffitt, 1993; Piquero, 2008; Schwartz, 1989) the juvenile justice literature treats what happens before a youth gets involved with the Juvenile Justice System as somehow magically not related at all to what happens to a youth after they become involved in the Juvenile Justice System. The perspective that social, racial, economic and political forces are not strongly related to how Youth of Color are treated after they became involved in the Juvenile Justice System seemed incorrect and unreasonable to me.

Traditional Criminologist Perspectives

The traditional criminologists for the most part, have described RED from this dichotomous and incomplete view. Generally, their claim is that before a Youth of Color becomes involved in the Juvenile Justice System, there are only two reasons that can explain RED: Differential Offending and Differential Selection. Differential Offending is the theory that Youth of Color commit more serious crimes compare to White youth, and Differential Selection posits that Youth of Color are "selected"

DESPITE DECADES OF DATA AND THOUSANDS OF STUDIES, VERY FEW AUTHORS HAVE TAKEN THE TIME TO ASK THE DEEPER QUESTIONS AS TO WHY THESE DISPROPORTIONALITIES MIGHT EXIST AND THE REASONS WHY THEY SEEM INDELIBLE AND ENDURING

(resulting in entry into the Juvenile Justice System) at higher rates compared to White youth because of differential enforcement (more police patrolling, more police presence, racial profiling). The traditional criminologist explanation of RED after a Youth of Color becomes involved in the Juvenile Justice System, stems from differential processing of Youth of Color (the idea that Youth of Color are treated more harshly for the same types of crimes, compared to White youth). The criminology literature is replete with quantitative evidence that supports the "before" involvement in terms of differential selection. There is little evidence suggesting that Youth of Color offend at higher rates compared to White youth, and in fact, most evidence suggests youth of all races commit crimes at comparable rates. There is substantial evidence supporting the differential "after" involvement—that is, Youth of Color are treated more severely compared to White youth. However, the conspicuous omission is that despite decades of data and thousands of studies, very few authors have taken the time to ask the deeper questions as to why these disproportionalities might exist and the reasons why they seem indelible and enduring.

Criminologists have failed to adequately address RED in the Juvenile Justice System for another reason that is based in how research has been applied. Although the idea that race is a social construct is widely accepted in sociology and related disciplines, criminologists have treated race as if it were a discrete statistical variable that is a unique characteristic similar to age, income, or education level. In their efforts to demonstrate relationships between race and crime, criminologists have traditionally employed a methodological technique called regression analysis that conceptualizes race as a separate, freestanding variable that is disconnected

ALTHOUGH THE IDEA THAT RACE IS A SOCIAL CONSTRUCT IS WIDELY ACCEPTED IN SOCIOLOGY AND RELATED DISCIPLINES, CRIMINOLOGISTS HAVE TREATED RACE AS IF IT WERE A DISCRETE STATISTICAL VARIABLE THAT IS A UNIQUE CHARACTERISTIC

from other non-racial variables. Regression analysis examines the relationships between race and an outcome—perhaps a police stop, an arrest, or a crime. But regression analysis fails to take into account the social processes that lead up to that outcome, and erroneously empower the statistical analysis to relate a relationship to a person's race as a contributing factor. Social processes that constitute an action are ignored. Race is conceptualized as a discrete factor, only

related to other discrete parts of an explanation in statistical terms. Holdaway (1997) wrote:

> If inner city areas are consistently high crime areas and this is where largish numbers of Black and Asian people live, it follows that their residence in a high crime area is of relevance to the rates of criminal victimization they experience. If we then ask why they settled in inner city areas in the first place, and document the historical processes that led to such a pattern of residence, we are faced with constraints related to the racialization of the residential and employment prospects of Black and Asian people (p.384)

We've Known About RED for 40 Years

My dissatisfaction with the criminology literature deepened when I learned that RED was identified as a serious issue nearly four decades ago, although at the time, RED was referred to as DMC and the "C" stood for "Confinement" only. In 1984 the federal Office of Juvenile Justice and Delinquency Prevention noted that minority youth were 32% of the general population in the United States, but composed 53% of all youth held in secure detention facilities and 56% of youth held in juvenile corrections centers. These miserable statistics kept rolling in for the next 20 years, and to the credit of some policy makers and elected officials, a few reforms did take place. For example, in 1992, the Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974 was amended to

IF OUR NATION IDENTIFIED RACIAL AND ETHNIC DISPARITIES AS A SIGNIFICANT PROBLEM OVER 40 YEARS AGO, WHY HAVEN'T WE SOLVED IT?

highlight the problem of RED, and included financial penalties (potential loss of federal grant funding) for jurisdictions that did not reduce RED. That amendment had little effect. In 1997, minority youth comprised 34% of the overall general juvenile population but were 62% of all youth held in secure detention facilities, and 67% of all youth in juvenile correctional facilities.

In 2002, the JJDPA was amended for the third time, and changed the "C" in DMC to include "Contact" in an effort to expand the scope of the description of RED. The grim statistics didn't change much, however, especially for Black youth. Between the years 2002 and 2004, Black youth were 17% of the general youth population, but accounted for 28% of all juvenile arrests, 37% of all youth in secure detention, and 58% of all youth committed to state adult prisons. Clearly, the problem of RED had not been sufficiently addressed or resolved. One question persisted in my mind: If our nation identified RED as a significant problem 40 years ago, why haven't we solved it?

Basic Steps in Problem-Solving

My curiosity led me to review the basics of problem solving: define the problem (differentiate

fact from fiction, and identify the underlying root causes), generate alternatives, evaluate and select an alternative, implement the alternative and reevaluate (Isaksen, Dorval, & Treffinger, 2000). The deficit in the RED problem-solving endeavors sticks out like a sore thumb and is found in the first step of solving a problem: differentiate fact from fiction, and identify the root causes. In my view, the reason that our nation has not adequately addressed and reduced RED is undeniably because facts have not been sufficiently identified from the colossal volumes of fiction that is told about RED, and therefore the root causes have not been correctly identified in the criminology literature. This revelation led me to my next clue: Perhaps other literatures held information regarding the root causes of RED in the Juvenile Justice System.

THE FIRST STEP OF SOLVING A PROBLEM: DIFFERENTIATE FACT FROM FICTION, AND IDENTIFY THE ROOT CAUSES.

A Search for a Theoretical Foundation

That hint led me on a side-trip to revisit Ecological Systems Theory of Human Development (Bronfenbrenner, 1979). It made sense to me that at least part of RED might be explained by what happens to a youth before they become involved with the Juvenile Justice System, and that early childhood experiences, including trauma, likely propels youth into the Juvenile Justice System at different trajectories and velocities, depending on the severity of the trauma experienced. Bronfenbrenner's theory considers the effects of family, school, community, and access to supports, in youth development. As an adjunct to Bronfenbrenner's theory, Patterson's Coercive Family Processes theory and his classic longitudinal study of 4th and 5th grade boys who had disruptive externalizing behaviors, documented the negative effects that coercive family processes had on the boys' development, and demonstrated the correlations between family functioning, socioeconomic status, and the development of juvenile delinquency (Eddy, Leve, & Fagot, 2001; Patterson, Reid, & Dishion, 1992). Both of these theoretical perspectives seemed capable of illustrating the "before" (before juvenile justice involvement) portion of RED, but did little to reveal the root causes of the "after" (after juvenile justice involvement) portion of RED.

My nosiness led me to the Haywood Burns Institute for Youth Justice Fairness & Equity. The Haywood Burns Institute's philosophy is that incarceration is harmful to the positive development of youth; that data is important in understanding the racial inequities in the Juvenile Justice System, and that local communities play a critical role in transforming the Juvenile Justice System (Haywood Burns Institute, 2016). Their publication entitled "Repairing the

Breach: A Brief History of Youth of Color in the Justice System" summarized the research documenting the shameful racist history of the Juvenile Justice System, and described the powerful White supremacist forces that not only defined the original structural contours of the Juvenile Justice System, but also continue to this day, sustaining disproportionalities for Youth of Color. The Haywood Burns Institute also suggests setting aside the term "Disproportionate Minority Contact" and replace it with a more accurate term "Racial and Ethnic Disproportionalities" or "RED", because in some areas, Youth of Color are not a minority population, and the word "Contact" implies a narrow slice of engagement with the Juvenile Justice System. The term RED is also more accurate because it considers disparities at multiple decision points within the Juvenile Justice System.

Critical Race Theory and the Power of Stories

The search for a theoretical platform that could sufficiently address the first step in the problem solving process (and therefore identify subsequent steps required to rectify the problem) ushered me to Critical Race Theory (CRT), a unified collection of theories that speak clearly to the issues of structural racism, White supremacy, the social construction of race, critical legal studies, and a critique of "color-blindness" (the idea that decisions should not consider a person's race). CRT is not a monolithic commentary, but instead it is a well-established and thriving amassment of diverse voices from a variety of perspectives that congregate upon the concept that race is a socially constructed notion—that is, the concept of race is make-believe, but the effects of how our society applies race are very real, powerful, and consequential for People of Color (Delgado & Stefancic, 2017; Delgado & Stefancic, 2007; Sage, 2013).

CRITICAL RACE THEORY (CRT) IS A UNIFIED COLLECTION OF THEORIES THAT SPEAK CLEARLY TO THE ISSUES OF STRUCTURAL RACISM, WHITE SUPREMACY, THE SOCIAL CONSTRUCTION OF RACE, CRITICAL LEGAL STUDIES, AND A CRITIQUE OF "COLOR-BLINDNESS" (THE IDEA THAT DECISIONS SHOULD NOT CONSIDER A PERSON'S RACE)

Counter-Storytelling as a Constructivist Philosophy

Storytelling, and more specifically "Counter-Storytelling" (Delgado, 1989) is an important component of CRT that has utility in the first step of problem solving: differentiate fact from fiction, and identify the underlying root causes. As previously stated, criminologists have historically relied upon quantitative analyses to describe RED—a

methodological approach informed primarily from a positivist viewpoint. Positivism is a philosophical system that holds that all knowledge is created from empirical (sensory) observations of natural phenomena— one must be able to observe a phenomenon in order to measure it, which then leads to knowledge based upon interpretation, reason, and logic. The negative corollary is that if one cannot see, hear, touch, or otherwise empirically observe something, then it doesn't exist, or at least, its existence cannot be proven. Positivism embodies the concept of an absolute objective and measurable truth (Shadish, Cook, & Campbell, 2002).

RESEARCHERS HAVE GENERALLY DONE A POOR JOB OF STUDYING RED IN THE JUVENILE JUSTICE SYSTEM BECAUSE THEY HAVE RELIED UPON POSITIVIST RESEARCH DESIGNS THAT ARE PHILOSOPHICALLY BLIND TO STRUCTURAL RACISM

The philosophical obverse to positivism is constructivism—the idea that truth is subjective and that humans construct knowledge and meaning based upon their experiences. And this is how CRT's emphasis on storytelling relates to the construction of knowledge about RED in the Juvenile Justice System—stories, and particularly counter-stories are important sources of shared realities that challenge the perceived truth regarding RED in the Juvenile Justice System, and present alternate possibilities of the truth that can illuminate the steps needed to properly differentiate facts from fiction, and highlight the subsequent steps our society must undertake to reduce RED.

There is a fair bit of critical thinking skills required to fully consider counter-stories because the process requires a willingness to suspend our disbelief, to consider alternative perspectives that run counter to the stories we have incorporated as the truth. Counter-stories can open new windows of different realities and can help us imagine how systems might change in positive ways that are distinct from realities created by more conventional (dominant) stories. In short, counter-stories can expand our imaginations about how things could be in ways that conventional stories cannot. Delgado (1989) wrote: "Listening to the stories of outgroups can avoid intellectual apartheid", and "in order for systems to change, we must seek out storytellers different from ourselves and afford them the audience they deserve" (p. 2440). The pursuit of such counter-stories is the heart of this report.

My Story

I started to wonder about how my perceptions of the truth have been influenced by the dominant stories I have been told throughout my life about how People of Color are defined by a predominantly White society. What are the stories that have been so forceful and

COUNTER-STORIES CAN EXPAND OUR IMAGINATIONS ABOUT HOW THINGS COULD BE IN WAYS THAT CONVENTIONAL STORIES CANNOT

persistent that they have occupied a place in my thoughts labeled "truth?" I began to account for the ways in which my life experiences have brought me to a place to where I have started to understand CRT and how my place as a privileged White male has allowed me to navigated life from a dominant group perspective. The following events are relevant in this discussion.

A Cross

In 1964 my father, who owned a concrete construction company, erected a 51-foot concrete cross on public property on top of a predominant hill overlooking our city of Eugene, Oregon. While there is an extensive volume of history leading up to that event, I will spare the reader those details. What is pertinent to this report is the fact that this was the first time as a child, my comfortable place as a White upper middle class kid was beginning to soften to the possibility of opening my imagination for alternative perspectives. I remember thinking how did my father believe that it was perfectly acceptable to erect a dominant Christian religious symbol on public property? I pondered the concept of separation of church and state, and wondered how my father reconciled this seemingly omnipotent rule. My questions persisted throughout the subsequent 32 year legal battle that ensued about the cross which finally resulted in the courts ordering the cross removal. On June 14, 1997, I was the lead Engineer who took the cross down—a pointed end to the debate, but my questions lingered. How did my father's status as a prominent White businessman play into his decision to erect the cross? How did people who did not identify as Christian feel about a large Christian symbol looming over their city? Why was it that the outcries from those opposed to the cross were repackaged as un-American or merely angry voices from unchurched and morally corrupt people?

Whitewashed History

My dominant culture education continued relaying stories to me portrayed as the singular truth. In my elementary school we celebrated Thanksgiving by dressing up as pilgrims and Indians (my mom made buckles out of Black construction paper to put on my shoes), and we read about how friendly the original pilgrims were to the indigenous people (my textbook called them "savages"). There were other stories about the hardships due to weather and disease, and that the Indians had saved the pilgrims' crops by placing dead fish next to the corn plants for fertilizer. We were shown many pictures of happy pilgrims and Indians eating together at the first Thanksgiving feast, complete with turkey supplied by the pilgrims, and multi-colored corn supplied by the Indians. It wasn't

THE "BLACK CODE" LAWS PASSED AFTER THE CIVIL WAR ALLOWED BLACK CITIZENS TO BE INCARCERATED FOR BEHAVIORS THAT WOULD NOT BE CRIMINAL HAD THE CITIZENS BEEN WHITE. ONCE BLACK PEOPLE WERE INCARCERATED, THE STATE USED THE 13TH AMENDMENT TO RE-ENSLAVE BLACK PEOPLE (HAYWOOD BURNS INSTITUTE, 2019)

until much later that I began to learn that this version of Thanksgiving was a story told from the dominant White perspective which left out the counter-stories of disease introduced by the White settlers, and the murder, rape and domination of the indigenous people. My education throughout junior high and high school was consistently focused through a lens that projected the dominant White culture view of history and how the world worked. For example, my introduction to the history regarding the Civil War was dichotomized into a simple "pro-slavery" (Southern) versus an "anti-slavery" (Northern) viewpoint. It wasn't until much later in life that I began to seek more complex and alternative stories that included nuanced perspectives taking into account racial, socioeconomic and political viewpoints.

Mass Incarceration and Structural Racism

More recently I have researched the issue of mass incarceration of adults in our country. It is common knowledge that America incarcerates more people than any other nation, and that most of the adults in custody are Black and Brown (Lacey, 2010; Petit & Gutierrez, 2018). Since there is no credible evidence suggesting that Black and brown people commit more crimes than White people, what could possibly explain the large disparities? A quick look at the 13th Amendment to the U.S. Constitution provided insight: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." In other words, slavery is allowed in America as punishment for committing a crime. A little more poking around the history of the 13th Amendment revealed that it was written as a consolation to the southern states who had suffered defeat in the Civil War. Among the results of the 13th Amendment was that southern agricultural interests utilized "convict leasing" where prisoners were rented out for manual labor. Black codes, which allowed Black citizens to be arrested, tried and convicted for behaviors that would not be criminal had they been White, resulted in a system of re-enslavement of Blacks, many of whom were youth (W. Haywood Burns Institute, 2019). Thus, an institutionalized apparatus of structural racism provided the legal foundation for a racially unfair system that has continued to evolve into something that is ultimately more powerful and anti-democratic than mere individual racial animus (Tanenhaus, 2005; Wilson, 2018).

The Social Construction of Race

An appraisal of the history of race and the social construction of racial categories provided additional insight. I began to question the idea of different races, and how the present five categories of race commonly used in census data (including the Juvenile Justice System) came to be. In sum, racial categories are made-up—there are no scientifically identifiable determinants of race. That is, there are no significant biological differences between races (Witherspoon, et al., 2007). The social construction of racial differences began in the 19th century when many White authors promoted pseudo-scientific theories of race, including fallacious suppositions from anthropology and medicine that suggested Caucasians had an unquestionable superiority. The combined stories of these White authors were repeated continuously without question until their stories were adopted by the dominant White culture as the truth. For example, many White authors co-opted Darwin's Origin of the Species as justification for subordination of Black people, claiming it was "the law of nature" (Western States Center, 2019). Many of these stories about racial differences were generated by polygenists (the idea that humans do not share a common decent), who promoted the idea of racial differences based on seemingly race-specific features such as skin color and hair type, and that those differences were quantifiable "objects of scientific inquiry" (Keel, 2013, p. 30). Using a positivist perspective, the polygenists fostered the so-called scientific conversation to uphold the idea that racial differences could be easily observable, measurable, and demonstrated as clearly as the revolution of the earth around the sun, the discoveries in geology, and the circulation of blood (Nott, 1851). This was the beginning of identifying race as a unit of measure in the United States. It is important to note that the emergent social construction of race was being shaped within the violent crucible of the Civil War, which would hammer its imprimatur upon racial categories for generations. The echoes of slavery shifted from plantations to prisons in the next generation.

WHITE FOLKS PROMOTED THE IDEA OF WHITE SUPREMACY BASED ON FALLACIOUS ASSUMPTIONS AND THEN REPEATED THAT STORY UNTIL PEOPLE JUSTIFIED THE SUBORDINATION OF BROWN AND BLACK PEOPLE AS "THE LAW OF NATURE"

The social construction of race has been further galvanized through the U.S. Census process, that despite countless examples of bad science, has perpetuated the idea of racial differences. The dominant White perspective and the stories that escort that perspective, have been repeated so often that many people take them as the truth. But if they are true, why have the stories shifted over time in

ways that uphold White dominance? For example, the concept of "Whiteness" has changed considerably in the past 100 years, and that concept of "Whiteness" is just as much of a socially constructed idea as other race differences. "Whiteness" in America has proven itself to be temporally and geographically fluid, changing in ways that ensure White people remain at the top of the struggle for power and resources. For example, for most of the 19th and 20th centuries, Irish, Jews, and Italians were not considered "White" for census purposes. In order to gain Whiteness, these groups had to complete a process of assimilation that required integration with White society that allowed access to socioeconomic and political power (Alba & Tsao, 2010). Later in this report, I will touch on Derrik Bell's Interest Convergence theory that explains the idea that policies that seek to achieve racial equity are likely to be enacted only when they are advantageous to the mainstream White society.

THE CONCEPT OF "WHITENESS" IN AMERICA HAS SHIFTED OVER TIME. FOR MOST OF THE 19TH AND 20TH CENTURIES IRISH, JEWS, AND ITALIANS WERE NOT CONSIDERED "WHITE"

If race categories were indeed scientifically valid, then it would not matter where a person lived in the world—White would be considered White no matter if a person lived in Chicago, Illinois, Dakar, Senegal, or Johannesburg, South Africa. But, of course that is not the case. It is easy to imagine that the same person living in Chicago could be considered White, Black, or something else in Senegal or South Africa, depending on the mere pigment of their skin. Finally, to put an exclamation point on the social construction of race, consider how the United States categorizes people of Latin or Hispanic origins. "As late as 1969, the U.S. Census Bureau classified Mexican Americans, Puerto Ricans, and Cuban Americans, the nation's three largest Latin American groups at the time, as White, effectively aggregating their information with data on so-called Anglo-Americans. A third-generation Mexican American, for example, would be classified in the same category as a person of Irish decent" (Mora, 2014, p. 183).

The Problem with Race Data

We don't even follow our made-up rules about racial categories. In the Juvenile Justice System, a youth's race is often determined by court officials or police by appearance alone—self-reports of race are seldom used. And, because there are no unified standards regarding how ethnicity data are collected, many times Hispanic (ethnicity) is coded as White (race), likely resulting in underreporting youth who identify as Hispanic (U.S. Department of Justice, 2016; The Sentencing Project, 2020) For example, if a youth has an ethnicity of Hispanic, she will be counted as

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Hispanic regardless of race. That's because a Hispanic person can be any race, but some agencies identify Hispanic as a racial group. These common practices have corrupted the data sets in not only our Juvenile Justice Systems, but in all criminal justice related data bases, thus rendering most, if not all, of the positivist research methodologies suspect. We have created a made-up racial classification system based upon fallacious and non-scientific criteria, and we have incrementally built upon that crumbling foundation for over 200 years, fervently telling a story about the connections between race and crime are true. And clearly the story is not true.

Moving Towards Trading Stories

There has been a war between stories in this country about race, crime, and about the Juvenile Justice System. These stories "contend for, tug at, our minds" (Delgado, 1989). The time is long overdue to stop the war and start the process of trading stories, and allowing space for counter-stories to be heard and acted upon. This will require to set aside the notion that positivist inquiry has a monopoly on the creation of knowledge, and to recognize the scientific currency of constructivist inquiry. The activity will not be easy or pleasant, and will likely be full of confrontation, disagreement, complaints and objections. But if we truly want to consider how things could be, and to fully address RED in the Juvenile Justice System, then we must open our minds to the possibility that the stock stories that the dominant White culture have proclaimed as truth are incomplete, erroneous and harmful. Critical Race Theory provides a comprehensively robust foundation upon which to build a greater understanding of RED in the Juvenile Justice System in general, and expressly in Lane County.

THERE HAS BEEN A WAR BETWEEN STORIES ABOUT RACE, CRIME AND THE JUVENILE JUSTICE SYSTEM. IT'S TIME TO STOP THE WAR AND START ALLOWING SPACE FOR COUNTER-STORIES TO BE TOLD, LISTENED TO AND ACTED UPON

CRITICAL RACE THEORY AND THE JUVENILE JUSTICE SYSTEM

Photo by Louis Quintero from Pexels

Critical Race Theory emerged in the late 1980s as a consolidated assemblage of themes and perspectives from legal scholars and activists who were concerned that progress in the civil rights movement had stalled, and that new theories and strategies were needed to confront the shrewd inconspicuous forms of racism that were gaining traction

Critical Race Theory (CRT) emerged as a consolidated assemblage of themes and perspectives from legal scholars and activists in the late 1980s who were concerned that progress in the civil rights movement had stalled, and that new theories and strategies were needed to confront the shrewd inconspicuous forms of racism that were gaining traction (Delgado & Stefancic, 2017). Suddenly, the progressive gains and momentum from the civil rights era of the 1960s were being eroded by less conspicuous forms of racism that were appearing, and legal scholars agreed there needed to be strong reactions. Critical Race Theory was one of new approaches of those strong reactions, and it built upon the intuition of two previous social and academic movements: critical legal studies and radical feminism.

Major Tenets of Critical Race Theory
Racism is Ordinary and Normal
Race is Socially Constructed
Interest Convergence
Intersectionality and Anti-essentialism
Critique of "Color-Blindness"
Unique Voices of Color

Currently, the CRT movement seeks to "transform the relationships between race, racism, and power" (Delgado & Stefancic, 2017, p. 3). Recent efforts to apply CRT to the criminal justice system have provided insight into the racial disparities that plague the juvenile and adult systems (Delgado & Stefancic, 2007).

Major Tenets of Critical Race Theory

There is not a perfectly coiffed vessel that contains a universally accepted collection of CRT perspectives, and there is an appreciable amount of disagreement amongst CRT scholars about a specific platform or set of defining tenets. That said, most CRT scholars would acknowledge the following components as distinguishing themes.

THE ORDINARINESS OF RACISM MAKES IT DIFFICULT FOR MOST WHITE FOLKS TO RECOGNIZE BECAUSE FOR THE MOST PART, THEY ARE NOT DIRECTLY AFFECTED PERSONALLY, AND BECAUSE STRUCTURAL RACISM RARELY LOOKS LIKE BLATANT OVERT RACIST PRACTICES

Racism is ordinary and normal

This is perhaps the most commonly recognized and agreed upon component of CRT—that racism underpins the customary way of how society does business in the United States, and therefore represents the standard experience for most People of Color (Delgado & Stefancic, 2007). CRT theory holds that racism is deeply embedded into social, political, educational, economic, healthcare and legal systems to the point to where it is ubiquitous, albeit hard to detect or address by dominant groups because it is so ordinary—deeply seated into everyday life and systems, including children's books, songs, movies, schools, banking practices, land-use ordinances, access to health care, employment practices, the Juvenile Justice System, and the adult criminal legal system. The ordinariness of racism makes it difficult for most White folks to recognize because for the most part, they are not directly affected personally, and because structural racism rarely looks like blatant overt racist practices, its effects are mostly blind to people in the dominant culture. The inability for dominant culture people to recognize the existence of structural racism is sometimes illustrated when litigants suing for discrimination are viewed as hypersensitive troublemakers whose alleged victimization is perceived as petty and acrimonious. Delgado and Stefancic found "unless what the defendant did was outrageous, intentional, and outside the pale, courts are unlikely to award relief" (2005, p. 503). The question becomes what is "outside the pale?" when the "pale" contains decades of overwhelming evidence of structural racism. To be outside the "pale" requires egregious actions directed at an individual by another individual, such as an overt racist attack. In contrast, structural racism is a *covert* attack on a *group* of people based on their perceived race, and therefore is often invisible to the dominant culture.

That said, the evidence of persistent and indelible structural racism is abundant and spans multiple systems. For example, in 2016 the Federal Reserve found that the median wealth for African American and Hispanic families was 10.3% and 12.1%, respectively, compared with the median wealth for White families, and these disparities have existed for decades (Hanks, Solomon, & Weller, 2018). The American Association of Family Physicians (AAFP) reported that African American life expectancy is nearly four years less than White life expectancy, and that African Americans ages 18-34 are nine times more likely to die from homicide compared to Whites in the same age group (AAFP, 2019). In 2015, poverty rates for American Indians, African Americans, and Hispanics were more than double the poverty rates for Whites (Iceland, 2019). In the same report, it was found that 6% of Whites had less than a high school education, compared with 15% of American Indians,

11% of African Americans, and 30% of Hispanics. Racial disproportionalities exist in the child welfare system as well. In 2016 the Child Welfare Bureau reported that compared to White children, Children of Color were overrepresented in the number of victims of child abuse and neglect, and the number of children entering foster care (Child Welfare Information Gateway, 2016).

It is well documented that the enormous increase in America's incarceration rate has affected People of Color disproportionately. In the past forty years, the incarceration rate has increased more than 500% (Lacey, 2010) mostly as a result of "tough on crime" policies and laws. While there is encouraging evidence that prison populations are declining, (Guerino, Harrison, & Sabol, 2012), racial disparities still exist. For example, the Black-White state prison disparity was 5.1-to-1 in 2016 and the Hispanic-White disparity was 1.4-to-1 (Sabol, Johnson, & Caccavale, 2019). Racial disproportionalities in the Juvenile Justice System have been recognized by the federal government since the mid-1980s when the National Research Council reported that Youth of Color were 32% of the general juvenile population, but constituted 53% of all youth experiencing secure detention (pre-adjudicatory and post-adjudicatory) and 56% of all youth held in secure youth correctional facilities (National Research Council, 2013). Since then, the disparities have decreased, but remain at elevated levels especially for African American youth: in 2004, African American youth were 17% of the general youth population, but accounted for 28% of all youth arrests, 37% of youth experiencing secure detention, and 58% of youth held in secure youth correctional facilities. Racial disproportionalities have long been recognized in the adult correctional system as well, with African Americans and Hispanics overrepresented in America's prisons (Pettit & Gutierrez, 2018). For example, Pew Research Center reported that African Americans were 12% of the U.S. adult population but represented 33% of all state and federal prisoners, and that Hispanics were 16% of the U.S. adult population but represented 23% of all state and federal prisoners (Pew Research Center, 2019).

Race is socially constructed

The vast majority of CRT scholars recognize the fallacies of racial categorization and the malevolent origins of race that were forged in the crucible of 17th and 18th century slavery (Delgado & Stefancic, 2017) and that the idea of racial differences is in large part an invention of the modern era (Bronner, 1998). CRT acknowledges that race is a false categorization of people based on physical appearances, and that the idea of race has no credible biological evidence to support differences between races (Bronner, 1998; Western States Center, 2020). Delgado and Stefancic (2017) wrote:

> People with common origins share certain physical traits, of course, such as skin color, physique, and hair texture. But these constitute only an extremely small portion of their genetic endowment, are

THE IDEA THAT RACE IS SOCIALLY CONSTRUCTED SHOULD NOT MINIMIZE THE FACT THAT THE EFFECTS OF RACE AND RACIAL CATEGORIES ARE EXTRAORDINARILY REAL AND FORMIDABLE

> dwarfed by what we have in common, and have little or nothing to do with distinctly human, higher-order traits, such as personality, intelligence, and moral behavior. That society frequently chooses to ignore these scientific truths, creates races, and endows them with pseudo-permanent characteristics is of great interest to critical race theory (p. 9).

The idea that race is socially constructed should not minimize the fact that the effects of race and racial categories are extraordinarily real and formidable, for most people. For people occupying the dominant culture, the effects of structural racism have advantaged dominant culture folks to disproportionate amounts of power and inflated allocation of resources. CRT has generated the term "White privilege" to describe the multitude of social advantages that are associated with members of the dominant culture (Karen Weekes, 2009). For People of Color, the effects of race and racism have been impactful in terms of social, political, educational, economic, healthcare and legal outcomes, mostly in negative terms. It is also important to note that not only is race socially constructed, it has been constructed mostly by the dominant culture (White) to maintain power over others, and to reinforce the idea that "White" is at the top of the hierarchy (American Association of Anthropology, 2019; Bronner, 1998; Delgado & Stefancic, 2017; History of the Race Construct, 2019)

Additional evidence supporting the idea that race is socially constructed is manifested in the way that the United States census has evolved over time on how "Whiteness" is counted. CRT scholars point to this phenomena as evidence of "differential racialization"—the idea that the dominant society "racializes different minority groups in different ways at different times in response to shifting needs, such as the labor market, with our system of laws following suit" (Delgado & Stefancic, 2007, p. 137). For example, until 1969, the U.S. Census Bureau classified Mexican Americans, Puerto Ricans, and Cubans, the country's three largest Latin American groups, as White, thus combining their "racial" information with "Whites." The effects of that practice meant that a fourth-generation Mexican American would be classified the same as a person of Irish decent (Mora, 2014). An example of how the dominant culture racializes different minority groups over time is demonstrated in the experiences of early 20th century immigrants to the United States—specifically Irish, Italian, and people identifying as Jewish. These groups were not considered "White" by the dominant culture at the time, and through a process of assimilation, they gained acceptance into the dominant culture and achieved White privileges (Western States Center, 2019). To further underscore the concept that race is socially constructed; consider the example of geographic differences about the definition of race, and the perception of racial categories. If race was indeed a scientifically-based and verifiable construct,

then it would not matter where in the world a person lived to be classified as a certain race—geography would not matter (Western States Center, 2019). But that is clearly not the case. A person of mixed race might be considered African American if they lived in Chicago, a "colored" person if they lived in Johannesburg, South Africa, or "White" if they lived in Rio de Janeiro, Brazil (Onwuachi-Willig 2016). The concept of race and the perception of racial differences vary with both time and place, thus adding further evidence to the social construction of race.

Interest Convergence

This component of CRT was first put forth by the legal scholar Derrick Bell's sensational article in 1980 that analyzed the U.S. Supreme Court's decision Brown v. Board in terms of racialized politics, and his unconventional rebuttal that the court made their decision purely on the grounds of a moral epiphany that corrected the fundamental unfairness of school segregation (Bell, 1980; Delgado & Stefancic, 2007; Terry, 2013). More than a quarter-century after the landmark decision, Bell argued that there were more powerful and corrupt forces at work than merely racial goodwill and efforts to address long-standing discrimination. Bell coined the term "interest convergence" to describe the condition when interests of the dominant culture converge with the interests of the minority culture to produce a political environment that facilitates legislation and policy changes favoring the minority culture. In other words, when the interests of the powerful converge with the interests of the marginalized, "official policies that support minority agendas will emerge, but absent such convergence, governmental institutions—assumed to be controlled by the majority—will not protect or advance minority interests in meaningful ways" (Terry, 2013, p. 1490). To put it another way, large segments of the American society have little incentive to take active measures against racism because they benefit from it in some fashion. In 2004, Lani Guinier proposed a corollary to Bell's interest convergence, with her interest *divergence* hypothesis. This was a natural extension of Bell's work, and it provided explanations that as the interests of the dominant culture differ from the interests of the minority culture, the dominant culture will be less inclined to participate in activities that protect the interests of the minority culture (Guinier, 2004; Terry, 2013). There is strong evidence supporting these hypotheses, especially regarding schools and the diminishing effects of Brown v. Board's court-

"INTEREST CONVERGENCE" WAS COINED BY DERRICK BELL IN 1980 TO DESCRIBE THE CONDITION WHEN THE INTERESTS OF THE POWERFUL CONVERGE WITH THE INTERESTS OF THE MARGINALIZED TO PRODUCE POLICIES THAT SUPPORT THE MARGINALIZED--BUT ONLY WHEN THE INTERESTS OF THE POWERFUL REMAIN ON TOP

ordered desegregation of public schools. Glenn (2012) conducted a literature review of school segregation and found support for Kozol's (2005) assertion that many public school students attend racially segregated schools at similar levels of segregation found prior to Brown v. Board. Despite rapidly changing student demographics during the past 30 years that has seen the percentage of White students decline from 78% to 58%, most public schools do not reflect the changing demographics. For example, nearly 40% of African American and Hispanic students attend public schools that are overwhelmingly (at least 90%) African American and Hispanic. This is at the same time that the average White student attends a school that is about 80% White (NAACP, 2005).

It is also worthwhile to note criticisms of Bell's interest convergence theory (and therefore Guiner's interest divergence theory). Professor Driver is one of the more vocal critics of these views, and he objects to the way that, in his words, the theories are put forth as "a kind of received wisdom" –that is, accepted as truth without rigorous scholarly critique (Driver, 2011, p. 164). Driver discussed three areas of deficiencies: Bell's theory oversimplifies the problem by separating the issues into "White" (majority) and "Black" (minority); significant and important racial progress has happened since Bell first proposed his theory in 1980; and Bell's theory ignores the idea that minority groups have agency in their circumstances (Terry, 2013).

Intersectionality and Anti-Essentialism

This CRT component is closely related to the concept that race is socially constructed, and the offshoot that there is differential racialization. Intersectionality (Crenshaw, 1991) and anti-essentialism recognizes that each person has their own unique and complex combinations of characteristics that form identity, and that people do not have a singular, easily definable identity based on a discrete racial category. The result is that everyone has "potentially conflicting, overlapping identities, loyalties, and allegiances" (Delgado & Stefancic, 2017, p.11). Consider an Asian man who recently emigrated from Vietnam, who is fluent in French, English and Italian, identifies as non-binary, is a member of the Republican political party, and who works for a Detroit-based nonprofit addressing urban revitalization. Or a White woman who is a single mother, attending university to achieve a law degree, who grew up poor in a rural area, and is a practicing Buddhist. Certainly by identifying each of these people by checking one of the five federally recognized racial and ethnic categories (White, African American, Asian, American Indian/Alaskan

INTERSECTIONALITY AND ANTI-ESSENTIALISM RECOGNIZES THAT EACH PERSON HAS THEIR OWN UNIQUE AND COMPLEX COMBINATIONS OF CHARACTERISTICS THAT FORM IDENTITY, AND THAT DISCRETE RACIAL CATEGORIES ARE INCOMPLETE AND HARMFUL

COLOR-BLINDNESS IS A CONTEMPORARY FORM OF RACISM THAT HAS TRANSFORMED ITSELF FROM THE JIM CROW GENERATION OF OVERT GOVERNMENT-SPONSORED DISCRIMINATORY PRACTICES, TO A MUCH LESS VISIBLE FORM OF RACISM

Native, Hispanic, non-White) would not begin to describe the interwoven sophistications of each individual. The reader is encouraged to consider their own distinctive collection of identity characteristics and ask themselves if any of the federally recognized racial categories accurately and completely describe their interests, loyalties, perspectives, and allegiances. Intersectionality is an important concept because it speaks directly to the processes by which individuals experience various layers of disadvantage and oppression. For example, how would a Latinx transgender woman experiencing oppression and discrimination in her workplace differ from the experiences of a Black woman first generation immigrant from Senegal who identifies as Muslim and wears a headscarf? This is not merely an academic question—it has real-world implications because in order for social change to occur regarding racial oppression, large numbers of oppressed people must make their voices heard collectively. But not all oppressed voices fit into one single classification, and CRT scholars point out the importance of recognizing intersectionality and the necessity to embrace anti-essentialism in order to adequately address the needs of folks who occupy multiple intersections of race, ethnicity, culture, socioeconomic status, sexual orientation, religion, and political status (Delgado & Stefancic, 2017).

Critique of "Color-Blindness"

CRT theory takes a critical view of the widely held liberalist notion that a person's skin color should not be considered when making decisions in legal matters, employment, education, health-care, housing, and in other important social systems. A common liberal viewpoint is centered on the race-neutral principles of constitutional law, and the idea of equality—that all people should receive equal treatment no matter their different personal histories and experiences (Delgado & Stefancic, 2017). Bonilla-Silva (2010) argued that color-blindness is a contemporary form of racism that has transformed itself from the Jim Crow generation of overt government-sponsored discriminatory practices, to a much less visible form of racism. This contemporary post-Civil Rights era racism manifests itself in "seemingly race-neutral policies and practices" that continue to disadvantage racial and ethnic minorities disproportionately compared to Whites (Warren, 2013, p. 213). Color-blindness is deeply embedded into America's psyche because it is strongly correlated with the American Dream—the concept that opportunities for economic, political, and individual success are equally available to everyone who is willing to work hard for them. Strongly

held ideals of equal opportunity and individual responsibility also play into the concept of Color-blindness because of their association with the American Dream—again, the concept that individual responsibility and merit-based ideals are singularly related to success and elevated status, regardless of race. These deeply held ideals form the basis of color-blind racism when they are used to justify placing blame on racial and ethnic minorities for their lack of economic progress, diminished educational attainment, utilization of governmental support programs, and overrepresentation in the juvenile and adult legal systems and correctional facilities (Gallagher, 2003; Harman, Gerteis, & Croll, 2009). Regarding the Juvenile Justice System specifically, a critically minded person might wonder how it is possible that in 2017, Youth of Color represented about 70% of all youth detained and about 65% of all youth adjudicated delinquent (OJJDP, 2017). However, many people would apply a color-blind racist perspective by saying "well, the Youth of Color are overly involved in the Juvenile Justice System because they committed a crime and were adjudicated in a court, so I guess they deserved it." Fewer people would examine the ecological systems factors (family, school, neighborhood) and the color-blind racist factors that contributed to the youth being involved in the Juvenile Justice System in the first place.

There is a sizeable body of empirical evidence demonstrating the existence of this color-blind racism. Warren (2013) found evidence of color-blind racism in his study that examined attitudes towards Hurricane Katrina evacuees that were relocated to Huston, Texas. Wilson found that typically, Whites held stronger color-blind perspectives compared to Blacks, although not exclusively. In an important study that examined color-blind racial beliefs in police and police recruits, it was found that compared to laypersons, police and police recruits have higher ratings of color-blind racism, even when sociodemographic variables were controlled (Hughes, Hunter, Bargas, Schlosser, & Malhi, 2016). This study provided insight into the reasons why people who pursue law enforcement careers have higher levels of color-blind racism, and it added to the literature regarding possible explanations for the "racial disparities in the U.S. criminal justice system and the racialization of crime" (Hughes, et al., 2016, p. 168). In a recent national survey on race relations, Pew (2019) found large differences in attitudes between Whites and Blacks. For example, Whites were much less likely to agree that being Black hurts people's ability to get ahead—or another way to say it—Blacks were much more likely to agree that being Black hurts people's ability to get ahead. Compared to Blacks, Whites were also much less likely (between 20% and 35% less likely) to agree that Blacks are treated unfairly in dealing with police, the criminal justice system, in hiring, pay and promotions, and when applying for a loan or a mortgage.

Unique Voices of Color

Minority status accords an assumed competence to

"speak about race and racism" (Delgado & Stefancic, 2017, p. 11) in ways that their White counterparts have little understanding or awareness. That is, Black, Asian, Hispanic (non-White), American Indian, and other marginalized people have a unique voice that is part of the larger story. Traditionally these minority stories have been crowded out of the discussion by dominant stories that are told about the associations between race and life outcomes, including crime and involvement in the Juvenile Justice System. Delgado (1989) characterized this dynamic as a conflict between the "in-group" (dominant) and the outgroup whose "marginality defines the boundaries of the mainstream, whose voice and perspective—whose consciousness—has been suppressed, devalued, and abnormalized" (p.2412). The outgroup creates counterstories to the dominant group's description of reality in ways that challenge the dominant group's assumed superior position. In this way, the outgroup's unique voice can "open new windows into reality, showing us that there are possibilities for life other than the ones we live" (p.2415).

"MINORITY STATUS ACCORDS AN ASSUMED COMPETENCE TO "SPEAK ABOUT RACE AND RACISM"(DELGADO & STEFANCIC, 2017, P. 11)

The value of storytelling can also be described in terms relating to social science methodology and the fundamental shortcomings found in the traditional criminology literature. Criminologists have traditionally studied the relationships between race and crime through a positivist lens—that is, mainly from a quantitative perspective that assumes race is a discrete variable that can be separated and analyzed clinically, without consideration of underlying social forces. Positivism has underwritten the idea that knowledge is created from measurement of a direct observation—if it cannot be observed, then it does not exist. Storytelling, and specifically counterstorytelling, employs a constructivist perspective that assumes a subjective "truth" that embodies multiple perspectives involving qualitative data. This methodological scrimmage highlights the foundational weaknesses with traditional criminology—the positivist approach states that everything that counts can be measured, while the constructivist approach states not everything that counts can be measured. In other words, conventional criminology (positivist) assumes racism cannot be measured in quantitative ways, therefore it does not exist. As a result, there is an emergent literature that examines the relationships between race and crime through a more qualitative (constructivist) lens that considers the effects of structural racism and the fallacies of race-neutral approaches to juvenile justice. Counterstories are one of the important ways in which to better understand how so-called race-neutral polices feel to an outsider (Delgado, 1989).

THE CURRENT STUDY

Photo by Iona Virgin on Unsplash

The current study uses a Critical Race Theory perspective to examine the multitude of risk factors that many Youth of Color accumulate prior to their entry into the Juvenile Justice System. The premise of this report is that what happens to a youth before becoming juvenile justice involved overwhelms any well intentioned actions employed to reduce RED after a youth becomes involved in the Juvenile Justice System

Forty years of research has consistently documented the existence of racial and ethnic disparities (RED) in the Juvenile Justice System (Jones, 2016; Robles-Ramamurthy & Watson, 2019; Rovner, 2014; Spinney, Cohen, Feyerherm, Stephenson, Yeide, & Shreve, 2018). In fact, there is perhaps no other topic in juvenile justice that has earned such efforts among researchers, academics, policymakers, and juvenile justice professionals. Given the fact that racial and ethnic disparities have received extensive study, it is troubling that disparities have remained consistently unwavering for the past four decades. The current study is divided into three large parts corresponding to geography for the purpose of explanation and comparison: United States, Oregon and Lane County. The study begins with historical and contextual information on a national scale, including a description of the racialized history of America's Juvenile Justice System, the effects of early childhood trauma on RED, and the current status of RED. The study then turns to more specific information regarding Oregon and Lane County Juvenile Justice Systems.

"...IT SEEMS ONLY NATURAL TO LOOK AT THE AMERICAN PAST IN ORDER TO UNDERSTAND THE CONTINUING PROBLEM OF THE OVER-REPRESENTATION OF MINORITIES IN JUVENILE JUSTICE" (TANENHOUS, 2005, P.105)

History of RED in U.S Juvenile Justice System

While many juvenile justice scholars chose to begin their inquiry of racial disparities in the early 1980s, it is useful to look at the historical trends starting with the inception of the first juvenile court in 1900, for clues into the structural nature of racial and ethnic disparities. Tanenhaus (2005) is one of the few scholars that has written about the racialized policies and practices that were part of the original court's make-up, and which continue to influence the Juvenile Justice System today. Tanenhaus wrote:

> In light of the nation's long and unfortunate history of discriminating against People of Color in justice systems, it seems only natural to look at the American past in order to understand the continuing problem of the over-representation of minorities in juvenile justice (p.105)

The original architects of the Juvenile Justice System wanted to spare children from being harmed by the adult criminal justice system and thus created a separate system in which juveniles could be rehabilitated. The early reformers saw their undertaking as not only "child-saving" but also as a means to "Americanize" foreign-born youth who arrived at America's shores by the millions at the start of the 20th century (Feld, 2017; Tanenhaus, 2005). Those youth and their families constituted a majority of the populations of major urban areas and were seen as a substantial threat to the nation's values. To address this threat, the juvenile court took on the role of the benevolent parent, in an effort to address so-called deficits in the foreign-born youth who came into contact with the law and to invigorate a spirit of "democratization and citizen building" (Tanenhaus, 2005, p. 23). At the same time, there was a general sense of empowerment by Progressives at the time to borrow the emerging expertise from "medicine, psychology and social work to reinforce their beliefs that experts and professionals could and should solve social problems" (Tanenhaus, 2005, p.23). To further this effort, the legal perspective of "parens patriae" (the state as father or parent) was used to hasten the "Americanization" of foreign-born youth and their families. The underlying belief in the state's ability to do good was a foundational tenet of Progressivism (Feld, 2017), and they used this empowerment to justify their belief that the state could be both an agent of reform as well as a punisher for criminal deeds. At the same time, Progressives contorted Darwin's evolutionary theories into a "social Darwinism" viewpoint that held social advancement was directly tied to "survival of the fittest" which provided a rationale for Progressives to justify inequality and domination of those they deemed "inferior races" (Feld, 2017, p. 23). This discriminatory view was further underscored by Progressive's incorporation of positivist-based science that validated the idea of "inherited or biological determinants of criminal behavior" (Feld, 2017, p.29). These Darwin-esque views towards foreign born youth were quickly applied to Youth of Color, and youth living in poverty, thus extending the juvenile court's arm of social control (Tanenhaus, 2005).

PROGRESSIVES CONTORTED DARWIN'S THEORY OF EVOLUTION INTO A "SOCIAL DARWINISM" PERSPECTIVE WHICH PROVIDED JUSTIFICATION FOR INEQUALITY AND DOMINATION OVER THOSE DEEMED "INFERIOR RACES"

During the initial start-up period for the Juvenile Justice System, there were very few voices of concern regarding racial and ethnic disparities. Sellin (1935) was one of the social scientists who questioned the idea that all youth were receiving equal justice, and that the law was being administered fairly for Youth of Color. Sellin (1935) wrote about the effects of race and

its effect on length of sentences:

> Although these factors (race) may play a role, they are probably not responsible for the great and relatively constant variations observed. These we must largely attribute to the human equation in judicial administration and as evidence that equality before the law is a social fiction. (p.217)

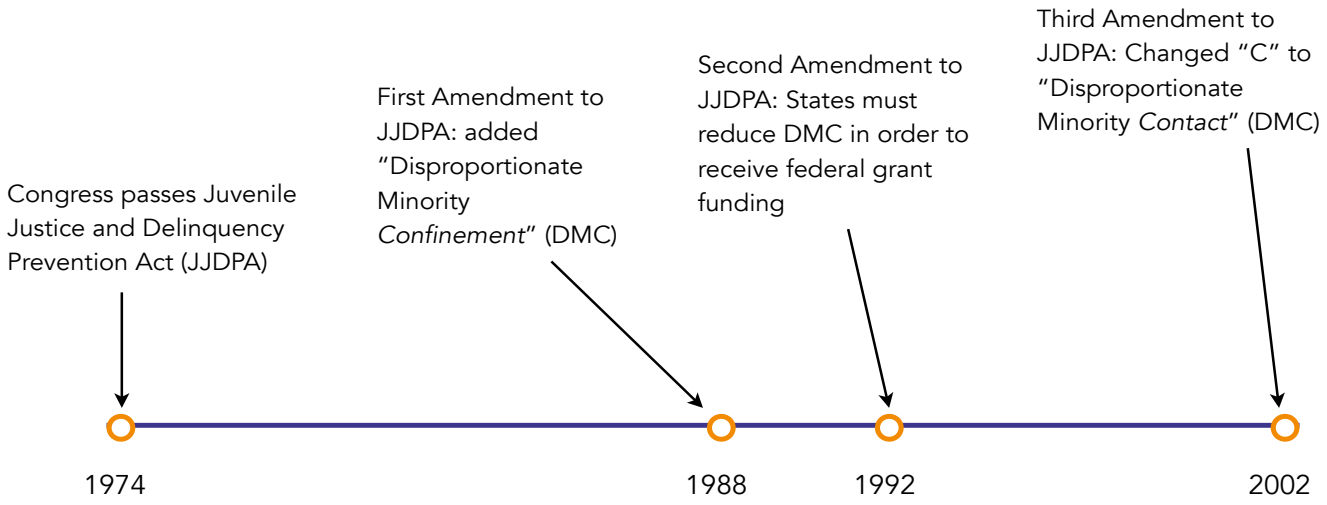
AS EARLY AS 1935 SOCIAL SCIENTISTS WERE QUESTIONING IF YOUTH OF COLOR WERE BEING TREATED FAIRLY IN THE JUVENILE JUSTICE SYSTEM

This critical review of the origins of the Juvenile Justice System highlights the origins of the juvenile court might have been built upon good intentions, the results have included undesirable effects for Youth of Color. It is not an unreasonable conclusion to say that structural racism is built into the underlying DNA of the Juvenile Justice System, and that this structural racism likely plays a role in perpetuating racial disproportionalities. The next sections will discuss contemporary racial disproportionalities that continue to plague the Juvenile Justice System today.

Early Research on Racial and Ethnic Disproportionality

Beginning in the early 1980s, researchers identified racial disproportionalities in the nation's Juvenile Justice System, particularly in terms of secure confinement (including pre-adjudicatory and post-adjudicatory confinement) (Robles-Ramamurthy & Watson, 2019; Rovner, 2014). These studies were presented to Congress which led to an amendment in 1988 to the Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974 that focused on disproportionate minority confinement; thus, the term "DMC" was created, with the "C" representing confinement only. Research continued to document significant racial and ethnic disparities in the Juvenile Justice System, which led Congress to revise the JJDPA a second time in 1992. This amendment identified reducing DMC as a core requirement tied to states receiving federal grant dollars, although there were no substantive guidelines or standards offered on how to reduce RED. As research continued to document ongoing racial and ethnic disparities, the JJDPA was amended a third time in 2002, this time changing the identification of "C" in DMC from "confinement" to "contact," in an effort to recognize the fact that Youth of Color were overrepresented in all aspects of the Juvenile Justice System, not merely in secure detention (OJJDP, 2014). More recently, the term "DMC" has been revisited and revised to

TIMELINE OF FEDERAL MILESTONES FOR "DMC"



Note: The term DMC is now generally regarded as outdated and inaccurate. In its place, the Haywood Burns Institute suggests "Racial and Ethnic Disparities" (RED) as a more accurate and inclusive term because disparities exist in all areas of juvenile justice, not just "contact."

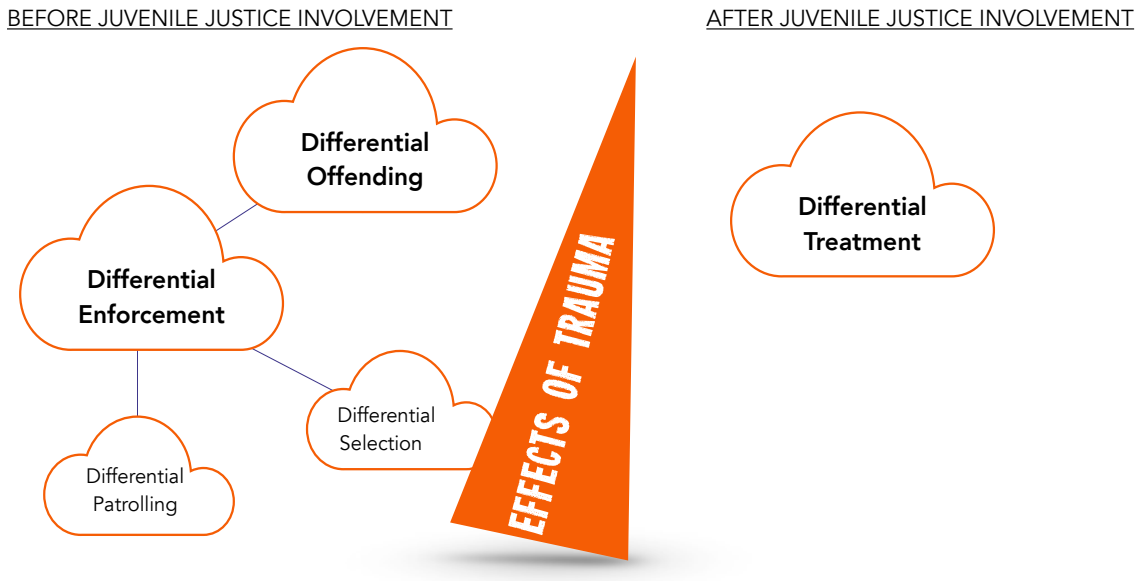
"Racial and Ethnic Disparities" (RED) to reflect that overrepresentation occurs in all areas of the Juvenile Justice System beginning with initial contact and continuing through all decision-points within the system (Burns Institute, 2020). The term RED is the preferred acronym that will be used in this report.

Theories of Disproportionality

There are generally two large groups of theories that attempt to explain RED in the Juvenile Justice System: Differential Offending and Differential Involvement (also referred to as Differential Selection) (Jones, 2016; National Research Council, 2013; OJJDP, 2014; Piquero, 2008; Spinney, et al., 2018). The Differential Offending scholars have attempted to document differences in offending between minority youth compared with White youth, especially for serious person-to-person crimes. The Differential Involvement scholars have examined how minority youth are treated differently within the Juvenile Justice System compared to White youth, and also how minority youth are recipients of different levels of law enforcement (also referred to as Differential Selection), which includes differential surveillance and enforcement practices (Jones, 2016).

Both theoretical camps suffer from severe conceptualization gaps that have caused more socially inclusive researchers to question the utility of traditional criminological research and to suggest future efforts concentrate on social-level ecological effects on individuals such as family functioning, school discipline, neighborhood conditions, and systemic racism (Kempf-Leonard, 2007; Majumdar,

GAPS IN THE ACADEMIC LITERATURE



The largest gap in the academic literature is that there is very little mention of the effects of Trauma on youths of color involvement in the juvenile justice system

2017; Jones, 2016; Piquero, 2008; Sampson & Wilson, 2000). McCord, Widom and Crowell (2001) wrote:

> "scant research attention has been paid to understanding the factors contributing to racial disparities in the Juvenile Justice System" (p. 258).

The Effects of Early Childhood Trauma on RED

Moffit (1993) was one of the first to study the effects of early childhood trauma, family disorganization, school disruption and community violence on the development of juvenile delinquency, and her work is important in understanding the differential risk factors that many Youth of Color experience, and therefore offering insight into both the Differential Offending and Differential Involvement theories. A strong body of research has documented the relationships between early childhood trauma and the subsequent development of juvenile delinquency, with particular attention to the age of first arrest. Research has consistently found that the age of 14 years is an important milestone that highlights two developmental pathways: youth arrested before age 14 are much more likely to continue their criminality into adulthood—this group is referred to as "early starters." Youth arrested after age 14 are much more likely to desist their criminal behaviors as they reach young adulthood—this group is referred to as "late starters" (Alltucker, Bullis, Close & Yovanoff, 2006; Eddy, Reid, & Curry, 2002; Loeber & Farrington, 2001; Patterson, Capaldi, & Bank, 1991). Early Starters are more likely to have experienced early childhood trauma (abuse and neglect), family violence, family disruption (i.e. parental criminality and incarceration), poverty, and chronic environmental

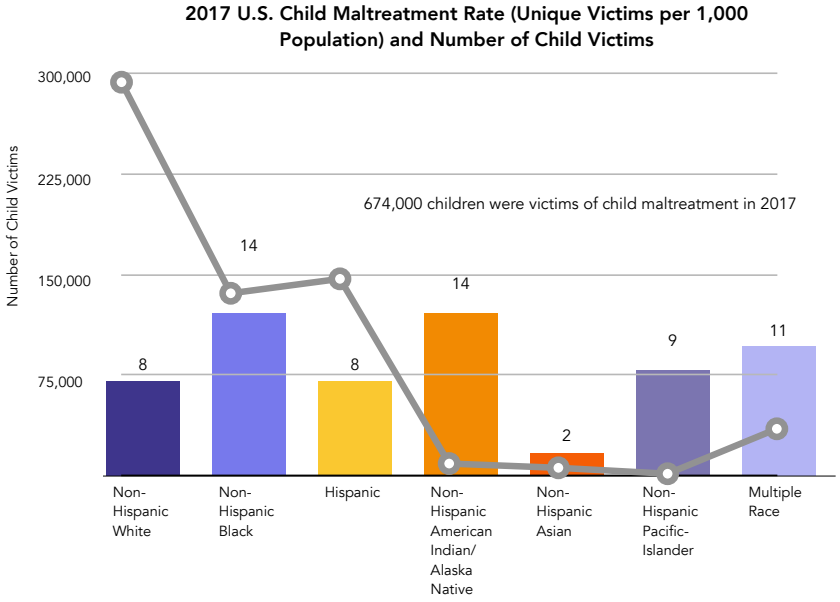
stress, compared to Late Starters (e.g. Alltucker, et al., 2006; Bernstein, 2014; Feld, 2017; Loeber & Farrington, 1998; National Research Council, 2013). Neurological differences have been noted in the Early Starter group and there is a general consensus that early childhood trauma affects adolescent brain development in negative ways that diminish healthy brain functions associated with prosocial behaviors, emotional regulation, and risk-taking behaviors (Cauffman & Steinberg, 2012; Cauffman, Steinberg, & Piquero, 2005). Thus, the effects of early childhood trauma are likely highly correlated with early and persistent involvement in the Juvenile Justice System. Because Youth of Color are more likely to live in circumstances that facilitate early childhood trauma compared to their White peers, understanding the effects of trauma is important in the larger understanding of RED in the Juvenile Justice System.

"SCANT RESEARCH ATTENTION HAS BEEN PAID TO UNDERSTANDING THE FACTORS CONTRIBUTING TO RACIAL DISPARITIES IN THE JUVENILE JUSTICE SYSTEM" (MCCORD, WIDOM, & CROWELL (2001)

National Child Abuse and Neglect Statistics

National child maltreatment statistics are a strong source of evidence for early childhood trauma and are introduced here to support the connection between early childhood trauma and subsequent involvement in the Juvenile Justice System. Because most minorities are disproportionately represented in the child maltreatment data (especially Black and African American) it makes sense to further examine possible connections between child maltreatment and RED in the Juvenile Justice System.

The national statistics of child abuse and neglect paint a disheartening picture of early childhood trauma that falls disproportionately on minority youth. Between 1990 and 1994 the number of reports of child abuse rose from 861,000 to 1,032,000 (a rate of 15 per 1,000 children under the age of 18 years). Since 1994 there has been a slight downward trend, although the rates remain unacceptably high. In 2017, the most recent data available showed there were 674,000 substantiated cases of abuse (rate of 9 per 1,000 children). Minority youth had higher rates of child maltreatment rates compared to White children, with African American children and American Indian/Alaska Native rates 1.75 times higher. Multiple-race children victimization rates were 1.38 times higher than White children (Child Maltreatment, 2020).



Source: U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth, and Families, Children's Bureau (2019)

Crossover Youth

Crossover youth are defined as children under the age of 18 years who are involved with both the child welfare system and the Juvenile Justice System (Kolivoski, Goodkind, & Shook, 2017). This is a particularly vulnerable population that has attracted attention from researchers and policymakers who are interested in learning more about how best to serve the needs of these highly traumatized youth. Depending on how crossover youth are defined, national estimates of youth in the Juvenile Justice System with child welfare involvement is nearly 50% (Juvenile Justice Information Exchange, 2020). Because minority youth are overrepresented in the child welfare system and therefore experience trauma at higher rates compared to White youth, it is no surprise that African American youth are overrepresented in the crossover population (Kolivoski, Goodkind, & Shook, 2017; Youth.gov, 2020). Crossover youth are more likely to experience multiple, invasive personal trauma events and more likely to suffer long-term impacts including higher recidivism rates, chronic poverty, diminished family relationships, mental health disorders, reduced educational attainment, and higher rates of substance abuse (Grisso & Vincent, 2012; Juvenile Justice Information Exchange, 2020; Youth.gov, 2020). In a 2011 study that looked at ten years of data from Illinois, it was found that youths with child welfare involvement were more than twice as likely to have a formal petition filed in the juvenile court compared to youth with no child welfare involvement. Because

CROSSOVER YOUTH ARE DEFINED AS CHILDREN UNDER THE AGE OF 18 YEARS WHO ARE INVOLVED IN BOTH THE CHILD WELFARE SYSTEM AND THE JUVENILE JUSTICE SYSTEM

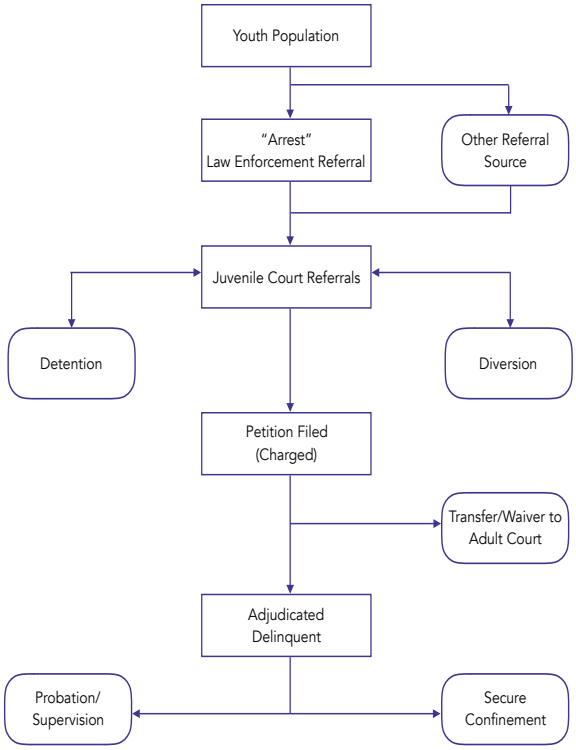
African American youth are overrepresented in child welfare, the authors concluded that child welfare involvement was a probable contributing factor to RED in the Juvenile Justice System (Ryan, Chiu, & Williams, 2011).

Current Status: Measuring RED with Relative Rate Index

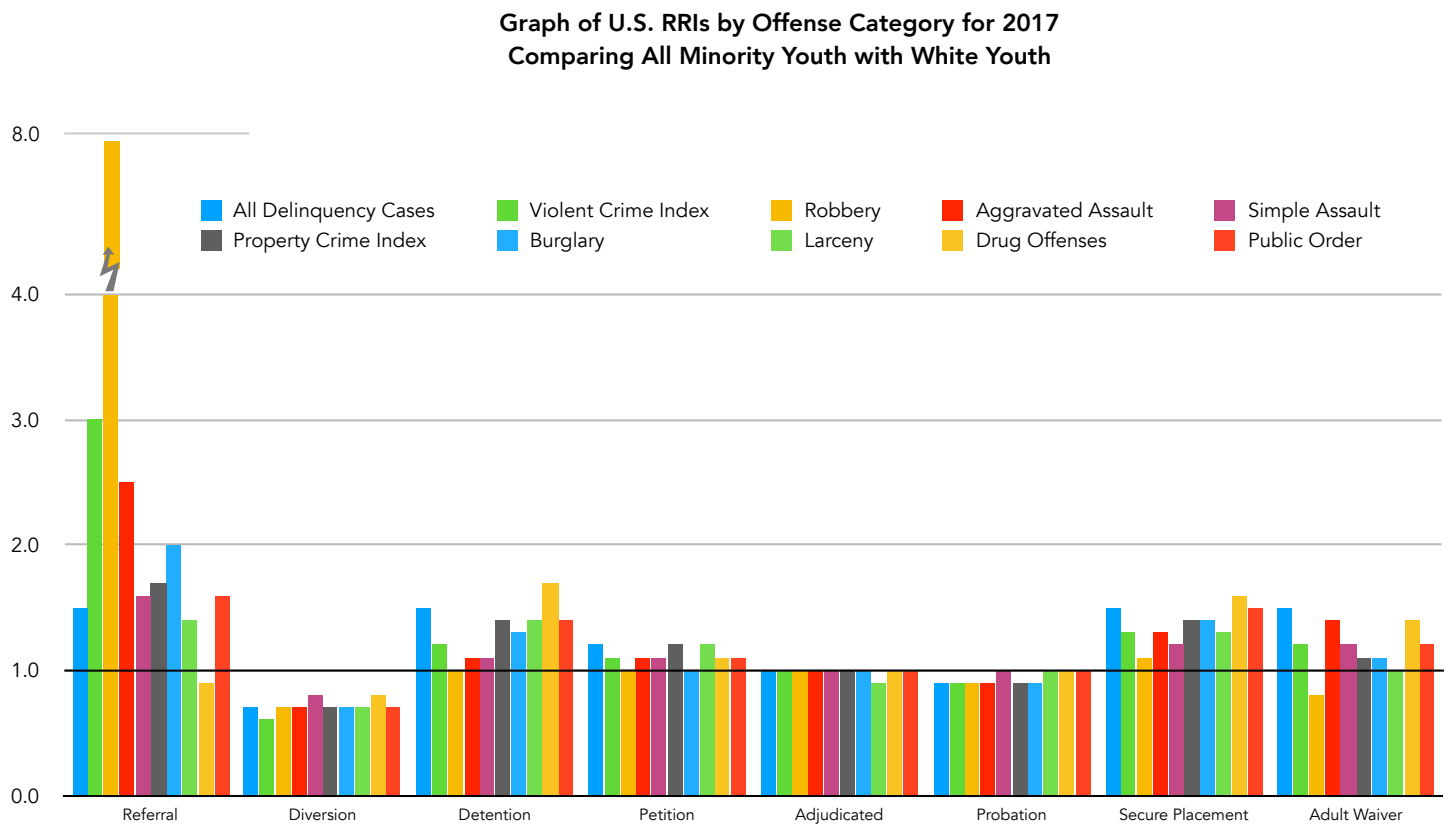
Since 2002, OJJDP mandates that states measure RED by using what is called the "Relative Rate Index" (RRI). The RRI compares the rate of processing of minority youth at eight different "decision points" within the Juvenile Justice System, compared to the rates of White youth (OJJDP, 2014). The eight decision points are arrest (referral), diversion, detention, petitioned, adjudicated delinquent, probation, secure close-custody, and, transfer to adult criminal court (Piquero, 2008).

The RRI values can range (theoretically) from zero to infinity (Feyerherm, 2012). The RRI calculation is straightforward: the minority youth rate is divided by the White youth rate. A number less than one indicates the minority rate is less than the White rate, and a number greater than one indicates the minority rate is more than the White rate. For example, a detention RRI of 2.86 would mean that minority youth were detained 2.86 times the rate of White youth. The statistical significance of the RRI is calculated by using a 2 x 2 Chi Square test (with 1 degree of freedom), with a p-value of <0.05 (meaning

FLOW CHART OF JUVENILE JUSTICE PROCESS
DECISION POINTS FOR CALCULATING RRI



there is less than a 5% likelihood the results are due to random chance). Researchers have generally agreed that the RRI calculation cannot be made if the number of youth in question at a particular decision point is less than 1% of the previous youth population that includes the subgroup. For example, the RRI for Detention is based on the previous population group of total youth referrals. If the number of Asian youth receiving a referral was 500, and the number of Asian youth receiving detention was 2, the RRI for Asian youth detention could not be calculated (2/500 = 0.40 which is less than 1%). In addition, the RRI cannot be calculated if the number of youth at any decision point is less than five, or if the number of youth in the



previous base-line population is less than 30 (OJJDP, 2009).

The RRI is widely used to quantify RED, although many have questioned its utility from an ecological standpoint. For example, Piquero (2008) argued that the RRI fails to consider the individual and social factors that may have "caused the original disparities in the first place" (p. 62). Thus, the RRI may tell us how Youth of Color are overrepresented in the Juvenile Justice System, but it does not address the question of *why* Youth of Color are overrepresented. There are more fundamental limitations to the RRI as well. For example, the national RRI numbers do not consider ethnicity and therefore do not include Hispanic youth. It is also important to point out that not every state produces data for the eight points of contact (The Sentencing Project, 2014).

National RRIs

The most recent data from OJJDP is from 2017. The summary of RRIs for the eight standardized decision points shows disproportionalities for most categories. It is important to note that OJJDP reports RRIs for all minority youth in one category.

For example, minority youth were 50% more likely to be referred to juvenile court for a delinquency offense compared to White youth. The RRI for adjudicated delinquent was 1.0, which indicated parity between minority and White youth. The RRI for probation was nearly equal at 0.9, which indicated minority youth were slightly less likely to receive probation compared with White youth (OJJDP, 2020). Using a global view, more than three quarters (76.3%) of the national RRIs

in 2017 were unfavorable for minority youth.

It should be noted that there are inconsistencies in how a youth's race is determined. For example, some jurisdictions use census guidelines in which Hispanic youth are identified as being White or non-White, as Hispanic is regarded as an ethnicity. Other jurisdictions use Hispanic as a race. The result is that the number of Hispanic youths is likely underreported.

The Sentencing Project has tracked RRIs over the past 30 years, comparing African American youth with White youth, and the results document long-standing disparities. For example, even as arrest rates have plummeted to historically low levels, the RRI for African American youth has remained consistently around twice that of White youth (The Sentencing Project, 2014).

RELATIVE RATE INDEX NUMBERS SHOW THE "WHAT" FOR MINORITY YOUTH DISPROPORTIONALITIES BUT THEY DO NOT EXPLAIN THE "WHY"

Summary of National RRIs

National RRIs provide clear evidence that RED has existed in the Juvenile Justice System for decades with rates that continue to demonstrate minority youth are disproportionately involved in most systemic decision points, compared to White youth. The RRIs provide a quantitative confirmation of disproportionalities but do little to characterize the reasons behind the disparities. A more complete understanding of RED needs to include the historical roots of the Juvenile Justice System and the structural racism that is baked into the legal processes and philosophies of the system. The high rates of child abuse and neglect for minority children, and the high percentage of crossover youth are important factors to consider when trying to explain the "why" of RED in the Juvenile Justice System. Part of the explanation into the dismal success in reducing RED is that researchers have likely been asking the wrong questions and have merely documented the existence of RED without sufficiently exploring the precedent events that push a disproportional volume of Youth of Color into the Juvenile Justice System.

Racial and Ethnic Disparities in Oregon's Juvenile Justice System

Oregon RRIs

The Oregon Youth Authority is the statewide administrative body responsible for the supervision, management and administration of the state's youth correctional facilities, state parole and probation services, community out-of-home placements for adjudicated youth, and other functions related to state programs for youth corrections

Definitions of Decision Points used in Oregon

Referral to Juvenile Court
A report to a juvenile department, typically by law enforcement, that a youth is alleged to have committed an act that if done by an adult would constitute a crime

Case Diverted from Juvenile Court (Diversion)
A case that is handled through informal means, such as a diversion program or sole sanction

Use of Secure Detention
A youth may be held in a county juvenile detention facility, per statute, for pre-adjudication holding, as a sanction for an adjudicated offense, or for a probation violation

Case Petitioned to Court
A referral that is charged in a petition, usually by the county district attorney's office, and is filed with the court

Adjudicated Delinquent
Analogous to an adult "conviction," it is a formal finding by the juvenile court, after an adjudicatory hearing or the entering of a guilty plea/admission, that the juvenile has committed the act for which he/she/they is charged

Cases Resulting in Probation
A disposition option available to the court as an alternative to commitment, in which an adjudicated juvenile may be released back into the community under certain conditions and under the supervision of a probation officer for a specified period of time

Case Resulting in Secure Confinement in a Youth Correctional Facility
A disposition order of an adjudicated petition that results in a youth being placed in a youth correctional facility

Case Transferred to Adult Court
A case that is transferred to adult court, either through a waiver process or through an automatic waiver of a Measure 11 charge (OYA, 2019)

(Oregon.gov, 2020). Just as national rates for youth referrals have decreased significantly in the past decade, the number of youth referrals in Oregon have tumbled 56% since 2007 (Alltucker, 2019), although RED remains tenaciously persistent. In 2019, 11,209 youth were referred to county juvenile departments for a total of 17,535 referrals. Most of the referrals were criminal (54.3%) followed by 23.5% non-criminal and 22.2% dependency status (runaway) (OYA, 2020). The Oregon Youth Authority (OYA) calculated RRIs for the years 2016, 2017, and 2018, for each of the 36 counties in the state. OYA made the point to caution readers that a state-wide RRI comparison is not possible due to inconsistencies between counties on data collection, missing data, and also small sample sizes in some of the rural, less populated counties (Oregon.gov, 2020). The state of Oregon measured RRI across eight decision points in their Juvenile Justice System; referral to juvenile court, diversion, secure detention, court petition, adjudicated delinquent, probation, secure confinement, and case transferred to adult court. The explanations for each step are shown in the

2018 RRI Values for Most Populated Oregon Counties

NOTE: The state of Oregon has questioned the validity of their JJIS data used to calculate RRI values

	African-American					Hispanic					Asian					Native American				
Decision	CL	LA	MA	MU	WA	CL	LA	MA	MU	WA	CL	LA	MA	MU	WA	CL	LA	MA	MU	WA
Referral	*	2.93	*	6.81	2.18	0.94	0.57	0.93	1.10	1.44	*	*	*	0.75	*	*	*	5.89	*	*
Diverted	0.98	0.69	*	0.56	0.73	0.90	0.79	0.89	0.71	1.01	*	*	*	0.55	0.98	*	0.86	1.23	0.99	
Detention	*	1.06	*	1.15	*	*	0.94	1.11	*	0.95	*	*	*	*	*	*	*	*	*	*
Petitioned	*	*	*	1.78	*	*	*	1.48	1.31	1.03	*	*	*	*	*	*	*	*	*	*
Confinement	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Adult Trns	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*

Note: CL = Clackamas, LA = Lane, MA = Marion, MU = Multnomah, WA = Washington

RRI is undesirable

RRI is desirable

2017 RRI Values for Most Populated Oregon Counties

NOTE: The state of Oregon has questioned the validity of their JJIS data used to calculate RRI values

	African-American					Hispanic					Asian					Native American				
Decision	CL	LA	MA	MU	WA	CL	LA	MA	MU	WA	CL	LA	MA	MU	WA	CL	LA	MA	MU	WA
Referral	*	*	*	7.33	4.09	0.61	0.39	1.60	1.11	1.35	*	*	*	*	*	*	*	17.42	*	*
Diverted	1.08	*	*	0.64	0.66	1.01	0.84	0.77	0.86	1.06	*	*	*	0.63	1.25	*	*	0.33	0.80	*
Detention	*	1.44	2.30	0.91	1.57	*	1.46	0.84	1.40	1.23	*	*	*	*	*	*	*	*	*	*
Petitioned	*	*	*	1.06	1.86	*	*	0.84	1.08	0.96	*	*	*	*	*	*	*	*	*	*
Confinement	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Adult Trns	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*

Note: CL = Clackamas, LA = Lane, MA = Marion, MU = Multnomah, WA = Washington

RRI is undesirable

RRI is desirable

2016 RRI Values for Most Populated Oregon Counties

NOTE: The state of Oregon has questioned the validity of their JJIS data used to calculate RRI values

	African-American					Hispanic					Asian					Native American				
Decision	CL	LA	MA	MU	WA	CL	LA	MA	MU	WA	CL	LA	MA	MU	WA	CL	LA	MA	MU	WA
Referral	2.58	1.71	1.90	5.47	3.09	0.63	0.35	1.27	0.97	1.40	*	*	*	0.46	0.46	*	*	11.31	3.65	*
Diverted	0.99	*	*	0.85	0.84	0.97	0.85	0.99	0.97	1.03	*	*	*	0.80	1.09	*	*	0.45	*	*
Detention	*	1.62	2.58	1.25	2.03	*	1.70	1.08	1.57	1.17	*	*	*	*	*	*	*	*	*	*
Petitioned	*	*	*	1.46	2.34	*	*	1.08	1.25	0.84	*	*	*	*	*	*	*	*	*	*
Confinement	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Adult Trns	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*

Note: CL = Clackamas, LA = Lane, MA = Marion, MU = Multnomah, WA = Washington

RRI is undesirable

RRI is desirable

highlighted box on page 45.

An analysis of the five most populated counties (about 60% of the total state population) in Oregon summarizes the RRI values for six decision-points. Several components of the summary are useful to highlight. First, about 67% of the cells have values, which is likely an indication of the relative "Whiteness" of the state—meaning that for about a third of the decision points there were insufficient numbers of minority youth to allow for analysis. Second, there are more red shaded cells compared to green shaded cells. Most of the occupied cells (about 74%) are shaded red which indicates an undesirable RRI, and only about 26% of the cells are shaded green, indicating a desirable RRI. It is important to understand that in some decision points, such as "Diverted", an RRI more than 1.0 is considered desirable because "Diverted" means the youth's case was handled in an informal manner, such as being required to attend a Minor in Possession class. Therefore, it is important to understand that an RRI greater than 1.0 does not automatically mean an undesirable RRI. In terms of rank order, across all five counties, African American youth had the most red shaded cells (undesirable RRI) with 34 cells, followed by Hispanic youth (31 cells), American Indian youth (9 cells), and Asian youth (4 cells). Hispanic youth had the most number of green shaded cells (desirable RRI) with 19, followed by Asian youth (5 cells), African American youth (2 cells), and Native American youth (1 cell).

The lack of data consistency between counties, as noted by OYA, prevented any comparisons between counties, although the tables listed above provide a visual presentation of the RRI values from which to observe trends during the years 2016 -2018.

The Effects of Early Childhood Trauma on RED in Oregon's Juvenile Justice System

There have been a small number of studies completed that have investigated the relationships between early childhood trauma and juvenile offending in Oregon. Alltucker and his colleagues expanded on Moffitt's work on early-onset delinquency and its relationships with childhood trauma in Oregon by completing a study in 2006 of 531 previously incarcerated youth in the Oregon Youth Authority.

ALLTUCKER, BULLIS, CLOSE & YOVANOFF (2006) FOUND THAT YOUTH WITH FOSTER CARE EXPERIENCE WERE FOUR TIMES MORE LIKELY TO BE ARRESTED BY AGE 14 (I.E. EARLY STARTERS)

Building upon Patterson's Coercive Family Processes theory, and his "Early Start/Late Start" taxonomy of juvenile offending (Moffitt used the term "Life-Course Persistent" to describe those youth who are more likely to become involved in the Juvenile

IN 2018 THERE WERE 84,233 REPORTS OF CHILD MALTREATMENT IN THE STATE OF OREGON. AFRICAN AMERICAN AND NATIVE AMERICAN CHILDREN WERE MORE LIKELY TO BE VICTIMIZED COMPARED TO WHITE CHILDREN

Justice System and continue their criminality into adulthood), Alltucker et al. focused on the predictive quality of age of first arrest and examined the differences between "Early Starters" (arrested before age 14 years) and "Late Starters" (arrested after age 14 years). They found that youth with foster care experience (an indication of early childhood trauma) were four times more likely to be "Early Starters" compared with youth with no foster care experience, and that youth who had a parent with a felony conviction were twice as likely to be arrested by age 14 compared to youth with no parental felony conviction (Alltucker, Bullis, Close, & Yovanoff, 2006). This study and others corroborate the large body of evidence demonstrating the interactive nature of trauma and disadvantaged familial situations, and the correlations with juvenile justice involvement. All of this is to underscore that studying RED in the Juvenile Justice System is difficult because of the intricate relationships "between crime and the many social factors that affect communities in which minority youth are more likely to be raised" (Robles-Ramamurthy & Watson, 2019, p.4).

Oregon Child Abuse and Neglect Statistics

Oregon's child abuse and neglect statistics echo national statistics and paint a similarly disheartening picture of early childhood trauma that falls disproportionately on minority youth. Between 2000 and 2018 the number of reports of child abuse rose 24% from 35,552 to 84,233 (Oregon Department of Human Services, 2019). In 2018 African American children had a child abuse victimization rate 1.3 times higher than White children, and American Indian/Alaskan Native children victimization rate was twice that of White children. Asian/Pacific Islander children victimization rates were 0.3 compared to White children. African American children were disproportionately represented in foster care, with rates 1.63 more than White children. American Indian/Alaskan Native children had a foster care rate 2.98 times that of White children. Asian/Pacific Islander children were underrepresented in foster care, compare to White

CROSSOVER YOUTH ARE DEFINED AS CHILDREN UNDER THE AGE OF 18 WHO ARE INVOLVED IN BOTH THE CHILD WELFARE SYSTEM AND THE JUVENILE JUSTICE SYSTEM. CROSSOVER YOUTH ARE MORE LIKELY TO BE YOUTH OF COLOR (FEYERHERM & JOHNSON, 2012)

children. Nearly two-thirds (63.4%) of children in foster care experienced more than one placement, and 13.7% had six or more placements (Oregon Department of Human Services, 2019)

Crossover Youth

Feyerherm and Johnson (2012) completed a comprehensive study of Oregon's crossover youth that included 12,307 individual youth who had records in both the child welfare system and the Juvenile Justice System. Based on their results, it was estimated that 15.4% of youth juvenile justice referrals had a confirmed case of child maltreatment before their entry into the Oregon's Juvenile Justice System. Extrapolating data from 1988 – 2009, they determined that for "any case involving child maltreatment, the odds of that youth being referred to the juvenile court system at some time before they become an adult is one in five" (p. 8). Feyerherm and Johnson also found that crossover youth were more likely to be racial or ethnic minority, that crossover youth had a higher variety of referrals, were more likely to have serious criminal allegations, and were more likely to be referred to the Juvenile Justice System at a younger age, compared to non-crossover youth. Their finding that 45% of crossover youth had their first referral prior to age 13 years, compared with 14% of non-crossover youth, is staggering because of the long-term criminal implications supported by Moffit's (1997), Alltucker et al. (2006), Patterson et al. (1991) and Eddy et al. (2002) research on early start juvenile delinquency.

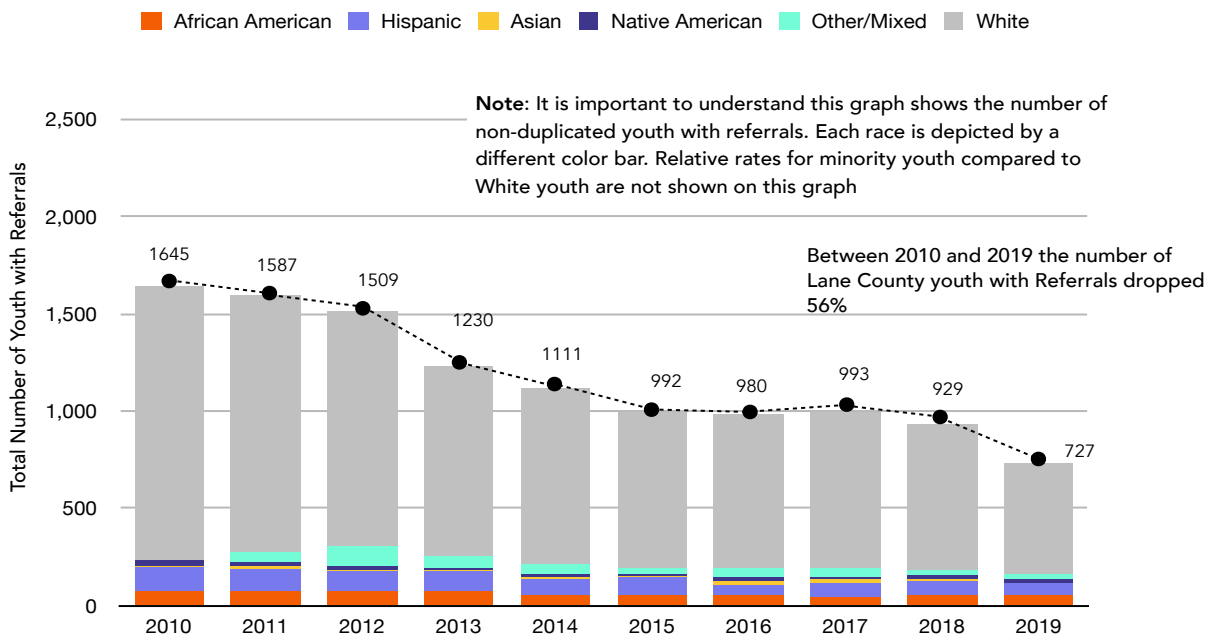
45% OF OREGON CROSSOVER YOUTH WERE ARRESTED BEFORE AGE 13 (EARLY STARTERS), COMPARED TO 14% OF NON-CROSSOVER YOUTH (FEYERHERM & JOHNSON, 2012)

Summary

In summary, data collected by OYA for the years 2016-2018 clearly show the existence of RED in the state of Oregon as evidenced by a majority of undesirable RRI values.

While several of the five most populated counties demonstrated progress over the three-year period, substantial undesirable RRI values persisted. The RRI values merely highlight the existence of RED in the state and do not offer any clues into the causes of RED in Oregon's Juvenile Justice System. Alltucker et al. (2006) and the Feyerherm and Johnson 2012 study provided additional support for the theory that ecological forces that facilitate conditions for childhood trauma are important explanatory features of RED in Oregon's Juvenile Justice System. The increased trauma that

Graph of Lane County Youth with Referrals by Race 2010-2019



crossover minority youth experience and their overinvolvement in the Juvenile Justice System is further explanation into the "why" of RED in Oregon.

Racial and Ethnic Disparities in Lane County's Juvenile Justice System

This section describes quantitative and qualitative analyses of RED in Lane County's Juvenile Justice System. The documentation of RED is first examined by calculating RRI values for minority youth during a nine-year time frame 2010-2018. RED is further examined by analyzing qualitative interviews conducted during 2019 and 2020 of professionals who work with juvenile justice-involved youth in Lane County. In addition, child maltreatment statistics are provided to give context to the occurrence of early childhood trauma and its contributions to RED in Lane County.

Lane County Youth Services "provides assessment, probation, training, counseling, and detention services for all youth, ages 12-17 years old, referred by local law enforcement because of criminal behavior. It is the branch of Lane County government responsible for services to youth accused of law violations or judged delinquent by the juvenile court" (Lane County Youth Services website, 2020). The number of youth referred to Lane County Youth Services has declined steadily in the past decade, matching national and state trends. Between 2010 and 2019, referrals to Lane County Youth Services dropped 56%. In 2019 there were 727 youth referred to Lane County Youth

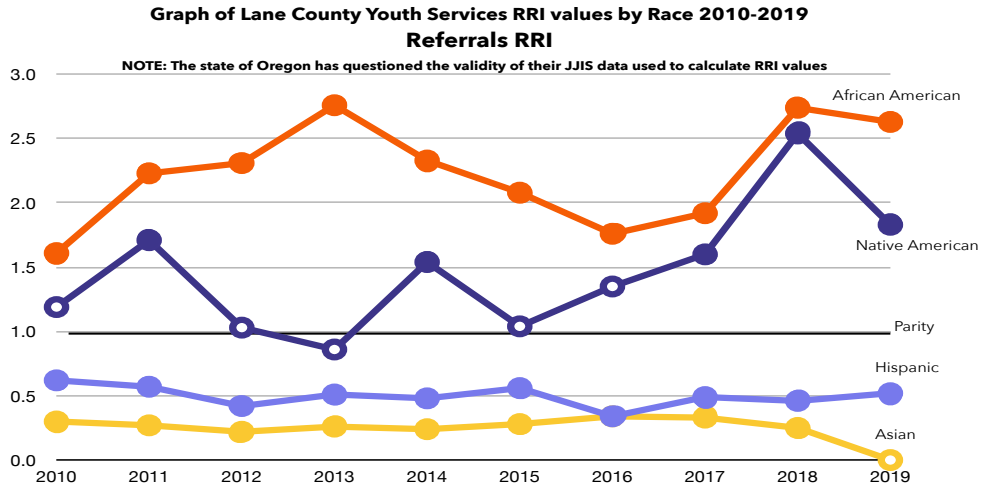
IN 2009 LANE COUNTY YOUTH SERVICES STARTED TO EXPLORE THE ROOT CAUSES OF RED

Services for a total of 1,159 referrals. Of those referrals, 70.7% were criminal, 28.0% non-criminal, and 1.3% dependency status (runaway) (OYA, 2020).

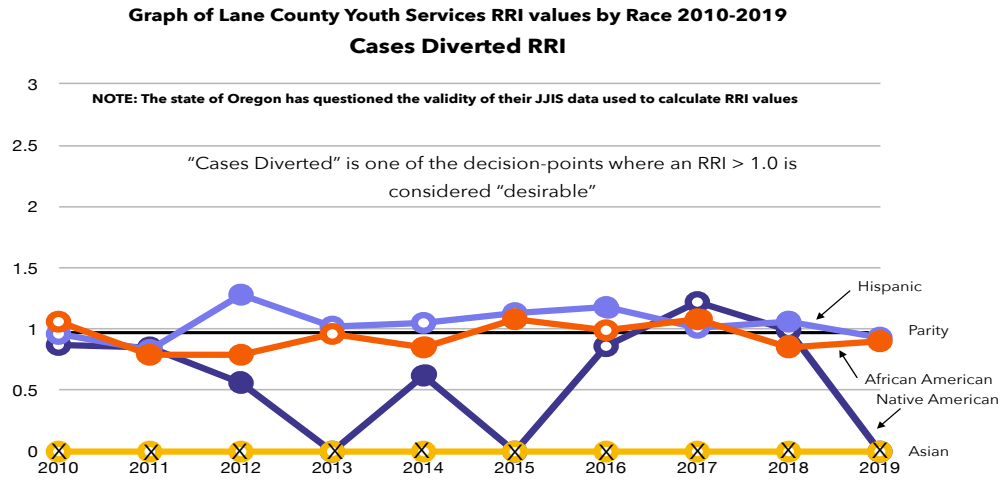
Beginning in about 2009, Lane County Youth Services personnel embarked on an effort to reduce RED in their jurisdiction. These efforts culminated in receiving a grant from the Office of Juvenile Justice and Delinquency Prevention to examine and address RED for a period of two years. Lane County Youth Services staff recognized that what happened to youth before they became involved in the Juvenile Justice System had a large effect on RED, and to that end, efforts were made to explore disproportionate levels of risk that Youth of Color were experiencing in their families, schools, and neighborhoods (Jennifer Cearley, personal communication, January 24, 2020). Community members were interviewed and several meetings with community partners occurred in an effort to analyze the data and develop an action plan to reduce RED. With those efforts, Lane County Youth Services demonstrated an unusually comprehensive understanding about the root causes of RED in Lane County's Juvenile Justice System.

At the same time, the Annie E. Casey Foundation's Juvenile Detention Alternative Initiative (JDAI) was gaining ground nationally, and Multnomah county was participating as a JDAI site. Lane County Youth Services staff worked with Multnomah County to institute changes in Lane County that attempted to address possible negative effects of individual personal implicit biases that were theorized to be affecting Youth of Color after becoming involved in the Juvenile Justice System. Two major system changes resulted from those efforts: The Risk Assessment Instrument (RAI) is a detention screening tool designed to reduce implicit bias when making decisions about detaining youth prior to adjudication. The RAI has been used at Lane County Youth Services since 2012, and its use was most recently emphasized in a June 25, 2018 revision to the Lane County Youth Services Policies and Procedures Manual, Intake, Admissions, and Release—Detention Decisions section.

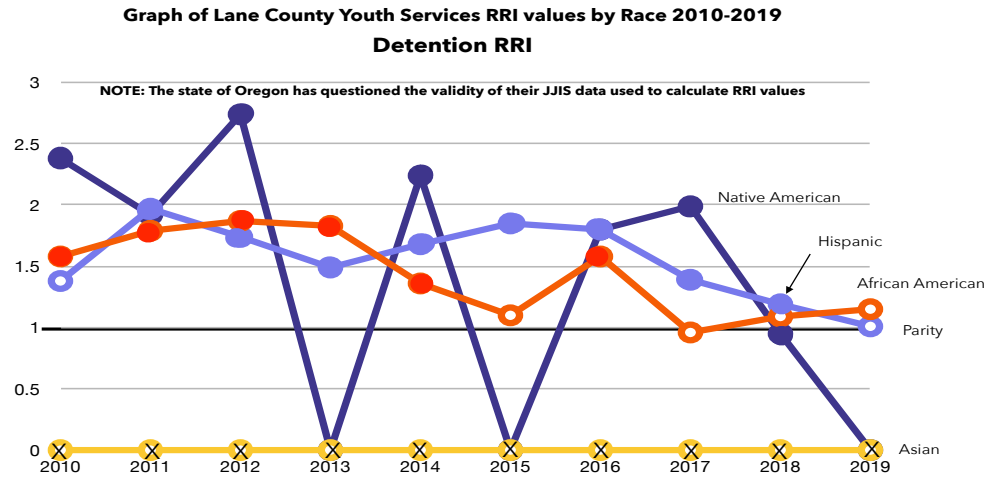
The other system change was the implementation of the Program Services Matrix, which is a decision-making matrix designed to reduce the effects of implicit bias when making placement decisions. The Disposition Matrix is intended to better match Lane County Youth Services' response to a youth's individual risks and needs in a consistent manner in order to avoid implicit biases against Youth of Color. The use of the Disposition Matrix was recently revised in an April 8, 2019 update to the Lane County Youth Services Policies and Procedure Manual—Disposition and Case Management Matrixes section.



Note: Solid color data point indicates statistical significance p-value < 0.05



Note: Solid color data point indicates statistical significance p-value < 0.05
"X" = Insufficient number of youth to analyze



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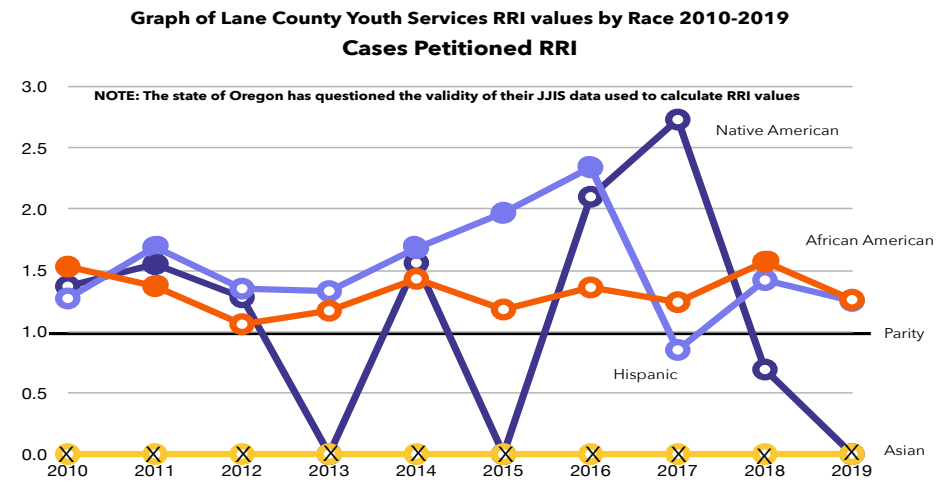

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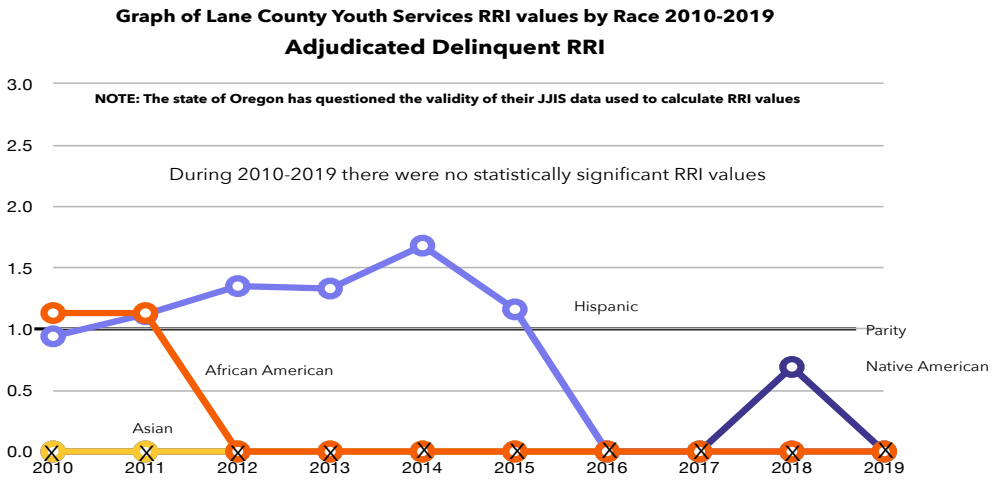
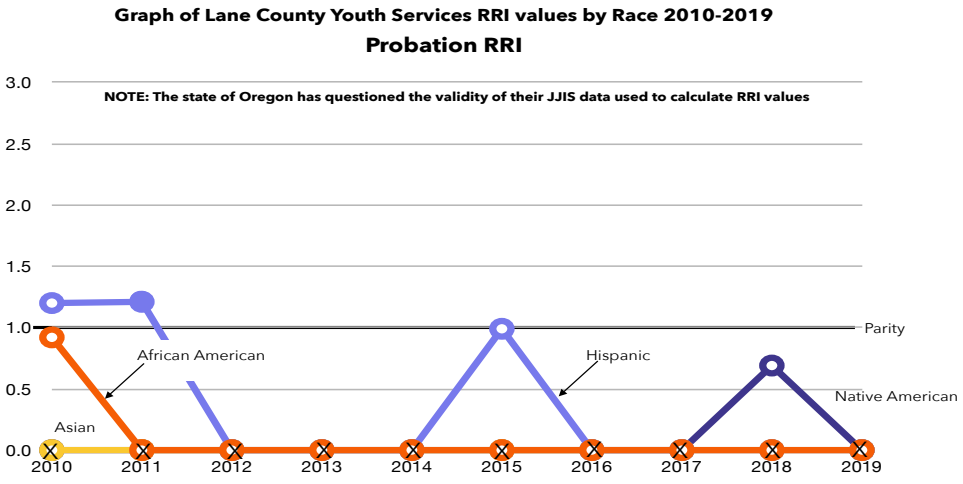


Note: Solid color data point indicates statistical significance p-value < 0.05
"X" = Insufficient number of youth to analyze



Note: Solid color data point indicates statistical significance p-value < 0.05
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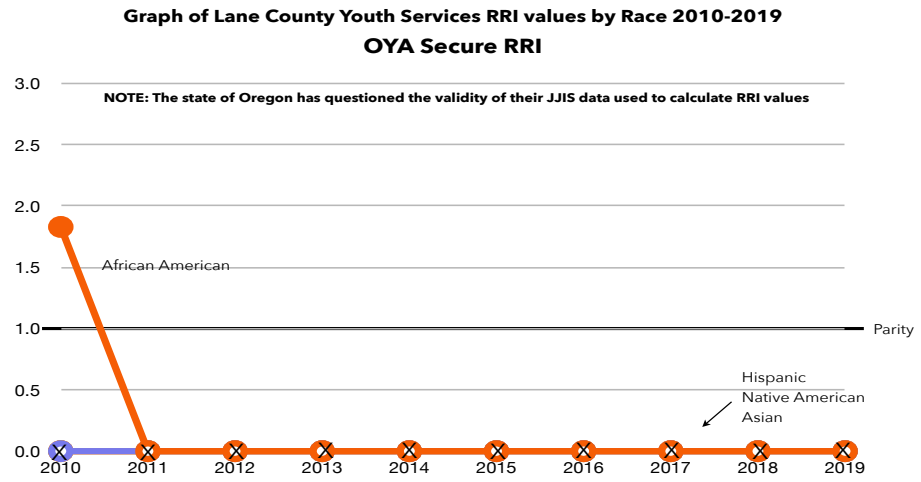
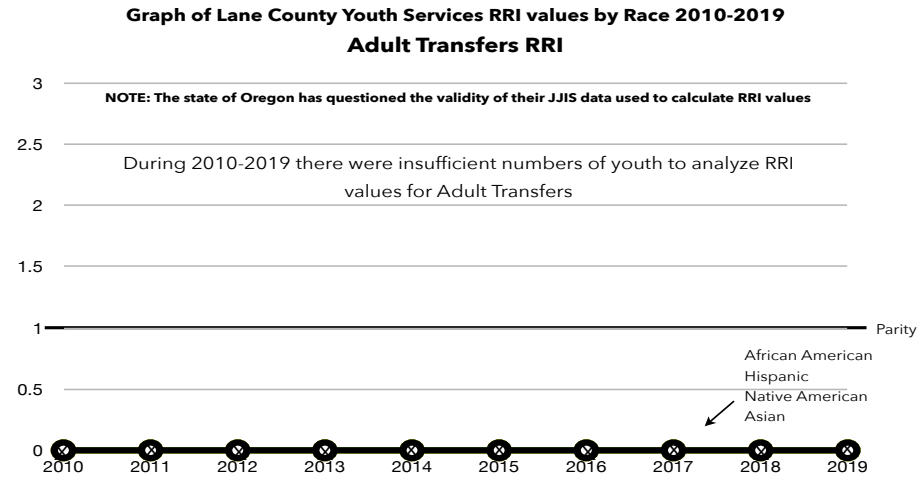


Note: Solid color data point indicates statistical significance p-value < 0.05
"X" = Insufficient number of youth to analyze



Note: Solid color data point indicates statistical significance p-value < 0.05
"X" = Insufficient number of youth to analyze

Quantitative Data

Lane County RRI Values

Using data from Oregon's Juvenile Justice Information System (JJIS), RRIs were calculated for Lane County Youth Services for 10 years 2010 – 2019 for the eight different decision points. It is important to understand that due to inconsistencies in how Hispanic youth are identified (Hispanic is an ethnicity, and can be any race), it is highly likely that the number of youth identified as Hispanic is underreported. It is also important to note that irregularities in the JJIS database have been documented (Doug Thomas, personal communication, July 17, 2020), and therefore the validity of the JJIS information is suspect.

There are important observations to note from the summary of Lane County's RRI values during the years 2010- 2019.

Referrals

Generally, African American and Native American youth had RRIs greater than 1.0, indicating the presence of undesirable RED for these two groups. In contrast, Hispanic and Asian youth had RRIs less than 1.0, indicating the presence of desirable RED for these two groups. Of the four racial categories, Asian youth had the lowest (and therefore desirable) RRI values.

Cases Diverted

The Cases Diverted RRI values were generally tightly clustered around 1.0, indicating near parity with White youth. African American youth were the exception, and their RRI values were for the most part below 1.0, indicating an undesirable RRI. This trend for African American youth improved slightly in 2017 and 2018, with statistically significant RRI values of 1.08 and 0.85 respectively.

Detention

The RRI trendlines for three of the four categories of minority youth had a downward slope during the nine-year period that was investigated. African American youth RRIs ranged from a high of 1.87 in 2012 to a low of 1.36 in 2014. Their RRI values decreased to nearly 1.0 in 2017 and 2018, although the results were not statistically significant. During the entire ten-year period Asian youth did not have sufficient numbers at the Detention decision-point to calculate an RRI value.

Petitioned

Native American, Hispanic and African American youth RRI values were generally greater than 1.0 during the nine-year time frame, although there were many non-significant values. Asian youth did not have sufficient numbers of youth whose cases were petitioned to the juvenile court to calculate RRI values.

Adjudicated Delinquent

At this fifth step in the decision-making flow, there were no statistically significant RRI values.

Probation

There was only one statistically significant RRI value for the Probation decision-point: Hispanic youth RRI in 2011 was 1.21 (desirable).

OYA Secure

There was only one statistically significant RRI value for African American youth in 2010 (1.83). The RRIs for all other years could not be calculated due to insufficient numbers of youth at that decision-point.

Adult Transfers

There were insufficient number of youth in all minority categories to calculate RRI values.

Summary of RRI values for 2010 - 2019			
Youth Demographic	Occasions of "Insufficient Youth to Analyze" (80 max possible)	Number of Undesirable RRI	Number of Desirable RRI
African American	36	25 (43.9%)	2 (7.7%)
Hispanic	34	15 (26.3%)	14 (53.8%)
Asian	71	0 (0.0%)	9 (34.6%)
Native American	49	17 (29.8%)	1 (3.8%)
Totals		57	26

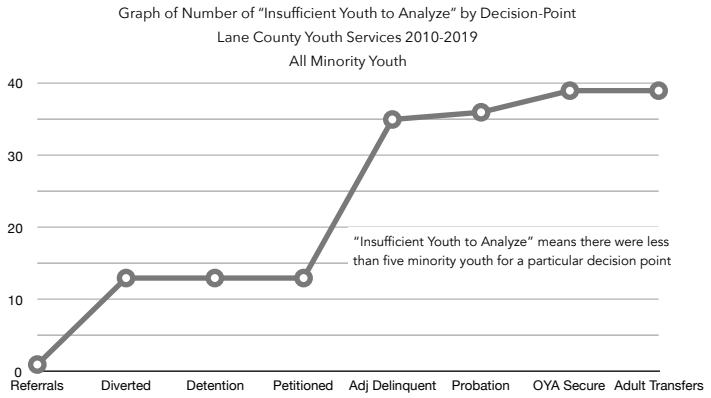
Note: Only RRI values that were statistically significant are included in the table

Summary of RRI Values for 2010 - 2019

A frequency analysis of RRI values was completed and the results are shown below.

African American youth had the most undesirable RRI values with 25, followed by Native American youth with 17, then Hispanic youth with 15, and Asian youth with zero undesirable RRIs. Native American youth had the fewest desirable RRI values with one, followed by African American youth with two, then Asian youth with nine, and Hispanic youth with 14 desirable RRIs. The number of occasions when there were insufficient numbers of youth to analyze (fewer than five youth at any particular decison point) was summarized. Asian youth had the highest number with 71, followed by Native American youth with 49, then African American youth with 36, and Hispanic youth with 34. A higher number indicates a lower involvement in the Juvenile Justice System.

An investigation of "Insufficient Youth to Analyze" was completed to determine if there were patterns of minority youth involvement along the decision-making milestones. The graphic summary is shown above.



A Closer Look at Referrals: Clues into Disproportionate Rates

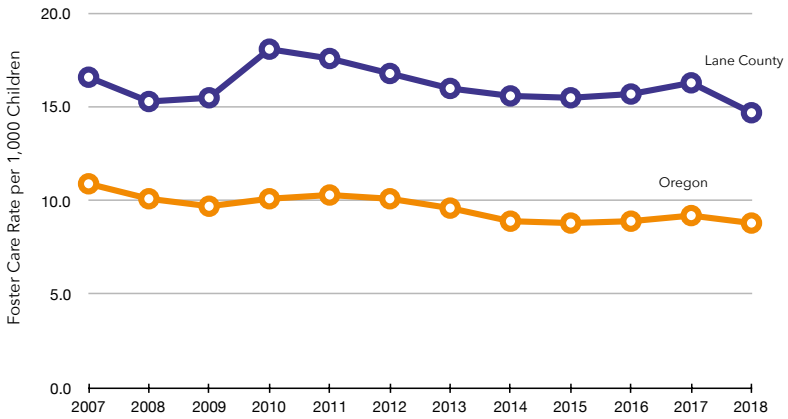
An examination of the past three years of referrals to Lane County Youth Services was completed

Lane County Comparisons of Criminal Referrals and Person Crime Referrals by Minority Youth Ages 10 - 17 Years 2017 - 2019												
	African American			Asian			Hispanic			Native American		
	2017	2018	2019	2017	2018	2019	2017	2018	2019	2017	2018	2019
Percent of Lane County Population Age 10 -17	2.7%	2.6%	2.6%	3.7%	3.8%	3.8%	14.6%	15.3%	15.3%	1.5%	1.5%	1.5%
Percent of Criminal Referrals	4.1%	5.8%	8.1%	1.6%	1.7%	0.8%	8.3%	9.2%	9.5%	2.0%	3.1%	3.4%
Disproportionality												
Percent of Person Crime Referrals	5.8%	7.0%	10.4%	1.4%	1.3%	0%	7.2%	8.9%	16.0%	2.9%	3.8%	4.0%
Disproportionality												

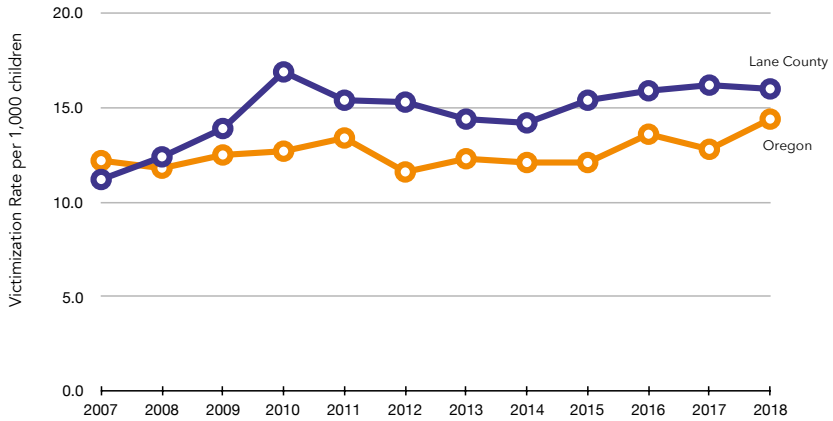
Note: Source for Lane County population ages 10-17 years: OJJDP Ezapop; Source for Lane County referrals: Oregon Youth Authority
Disproportionality "Red" is unfavorable compared to general youth population, "Green" is favorable compared to general youth population

for the purpose of highlighting racial disproportionalities that might exist within specific categories of referrals. Specifically, differences in criminal referrals were examined. Within criminal referrals, the number of person crimes were highlighted. Person crimes include serious violent crimes (assault, homocide, sex offense) and are generally perceived as more serious crimes than non-criminal referrals (alcohol/minor-in-possession, curfew, marijuana and tobacco offenses). African American youth had undesirable disproportionalities in criminal referrals and the more specific person crime referrals. Native American youth had similar undesirable disproportionalities. Asian and Hispanic youth (with the exception of 2019 person crime referrals) had favorable disproportionalities in criminal referrals and person crime referrals for each year examined.

Graph of Foster Care Rate per 1,000 Children 2007 - 2018
Comparison of Lane County and State of Oregon



Graph of Child Abuse Victim Rate per 1,000 Children 2007 - 2018
Comparison of Lane County and State of Oregon



Child Welfare and Crossover Youth

Lane County's child maltreatment rates are consistently above the state average. During the 12-year period between 2007 and 2018, Lane County's child abuse victimization rate ranged from a low of 11.2 victims per 1,000 children in 2007, to a high of 16.9 victims per 1,000 children in 2010. In 2018, the victimization rate was 16.0 victims per 1,000 children.

The differences between Lane County's

Lane County "Post-Launch" Crossover Youth 2016	
Male	42 (65%)
Female	23 (35%)
White	51 (78%)
African American	3 (5%)
Multi-racial	4 (6%)
American Indian	3 (5%)
Native Hawaiian/Pacific Islander	1 (1%)
Unknown	3 (5%)
Average Age	15.4 yrs
9-month Tracking results:	
Dependency case closed	13/41 (32%)
Delinquency case closed	21/41 (51%)
Both cases closed	9/41 (22%)
New Juvenile Court Referral	17/41 (41%)
New Juvenile Court Petition	5/41 (12%)

Foster Care rate per 1,000 children and the state of Oregon's rate are more pronounced. Lane County's Foster Care rate was significantly higher during 2007-2018, with values more than 30% higher than the state Foster Care rates.

Crossover Youth

In 2015 five Oregon counties, including Lane County, began working with the Center for Juvenile Justice Reform at Georgetown University to implement the "Crossover Youth Practice Model." The Crossover Youth Practice Model (CYPM) works to increase collaboration between juvenile justice, Department of Human Services (DHS) Child Welfare, Mental Health, and other systems to support crossover youth and prevent them from deeper penetration into the Juvenile Justice System. Research and evaluation efforts on Lane County's Crossover Youth Practice Model have not produced information regarding the effects of CYPM as of now. Despite efforts to implement the CYPM in Lane County, it appears the work has slowed, and the following incomplete data for 2016 is the most current information available.

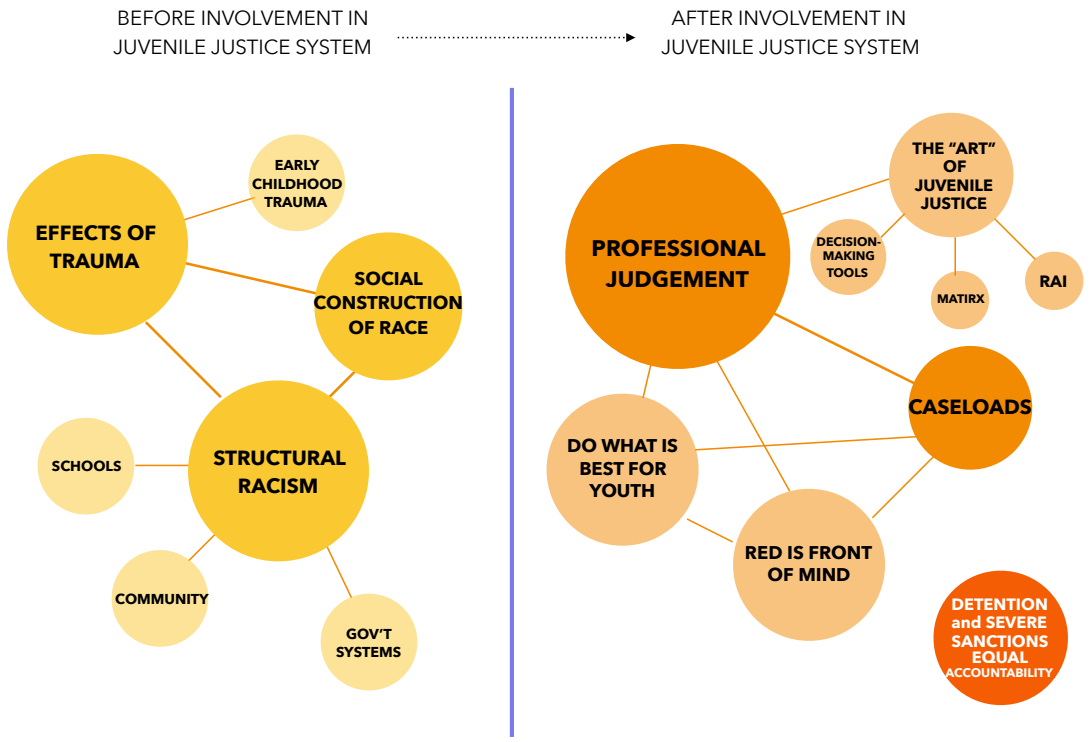
Qualitative Data

Semi-Structured Qualitative Interviews

In an effort to collect qualitative data regarding RED in Lane County's Juvenile Justice System, 22 semi-structured interviews were conducted between November 2019 and April 2020. Each interview lasted approximately 20 minutes, for a total time of more than seven hours of interviews. All of the interviews were voluntary. Recruitment was through word of mouth, phone calls from the evaluator, and by face-to-face impromptu invitations during normal business hours—the evaluator worked in the same

Description	Number of People Interviewed
Lane County Youth Services Personnel (Juvenile Counselors, Supervisors, Detention Manager, Substance Use Disorder Counselors)	14
State of Oregon Circuit Court Judge	1
Local Law Enforcement officials	1
School Personnel	4
Former Data Analyst	1
District Attorney Personnel	1
Total People Interviewed	22

SUMMARY OF QUALITATIVE RESULTS
PROMINENT THEMES AND PATTERNS



NOTE: Qualitative data was summarized from 21 interviews conducted between November 2019 and April 2020. Data were summarized using and inductive approach (Patton, 1987)

building as many of the Lane County Youth Services staff. Most of the interviews took place at the Lane County Youth Services Serbu campus located in Eugene. A handful of interviews took place off-site at locations convenient for non-Lane County Youth Services employees, or via telephone. There were two basic interview questions: 1. How do you think about racial and ethnic disparities in the Juvenile Justice System? 2. How do your thoughts about racial and ethnic disparities in the Juvenile Justice System affect how you do your job? The interview format allowed a free-flowing conversation about RED, and the interviewer followed the lead of the participants in exploring concepts and issues that came up organically during the conversations.

Interviewees were informed that their responses would not be personally identifiable—this was done to reduce any concerns from the participants that their comments might result in retributions from their coworkers or supervisors. The evaluator took notes during the interviews, and then immediately following, summarized the notes to capture the relevant themes that were discussed.

THE MAJORITY OF PEOPLE INTERVIEWED DEMONSTRATED AWARENESS AND UNDERSTANDING ABOUT THE EFFECTS THAT EARLY CHILDHOOD TRAUMA HAS ON YOUTH

EVIDENCE OF THE "SCHOOL-TO-PRISON-PIPELINE" WAS FOUND IN OREGON'S SCHOOL SYSTEM. IN 2015 THE OREGON DEPARTMENT OF EDUCATION FOUND THAT AFRICAN AMERICAN STUDENTS AND MULTIRACIAL STUDENTS WERE MORE LIKELY TO RECEIVE HARSHER PENALTIES THAN WHITE STUDENTS

The data were analyzed using a content analysis (Patton, 2002). This involved identifying the coherent and consistent themes and patterns that emerged from the interview discussions. An inductive approach was used, meaning the themes and patterns emerged from the data (Patton, 1987).

Prominent Themes and Patterns

Two main themes emerged from the data that were categorized as "Before Juvenile Justice Involvement" and "After Juvenile Justice Involvement." Each theme contained several patterns. Within the "Before" theme, there was a strong pattern regarding the effects of trauma on minority youth and how the effects of trauma greatly influence how minority youth come into contact with the Juvenile Justice System and their subsequent experiences within that system. The social construction of race, and the presence of structural racism in schools and communities, were additional patterns. There was a singularly dominant pattern within the "After" theme regarding professional judgement. Within that theme were three patterns: balancing what is best for the youth with concerns about community safety; the practice of assigning Youth of Color to juvenile counselors of color; and an awareness regarding schools' and law enforcement's equating youth accountability to secure detention. Further discussion of the qualitative data follows below.

Before Juvenile Justice Involvement

The vast majority of participants expressed an awareness and understanding about the function that trauma plays in propelling youth into the Juvenile Justice System. Early childhood trauma resulting from family disruption and violence, and child abuse and neglect, were noted as fundamental risk factors that were disproportionately experienced by Youth of Color in our community. Several participants pointed to the disproportionate minority youth involvement in the child welfare system as evidence of not only low family functioning and family violence, but also as attestation of structural racism in large governmental support systems. Most interviewees commented on the social construction of race, the lack of biological differences between races, and the misguided practice of trying to squeeze youth into one easily definable race category. Several respondents commented on the role that schools play in facilitating minority youths' introduction to the Juvenile Justice System. For example, it was noted that some local school districts have become more punitive towards all youth

who break the rules both at school and away from school. Examples were given about schools utilizing suspensions and expulsions more, and also using Title IX laws to justify expelling students accused of sexual assault and sexual harassment, no matter where the alleged crime occurred—on campus or off. There was general consensus that school disciplinary actions affect minority students disproportionately compared to White students, and as a result schools were participating in the "school-to-prison pipeline" phenomenon. The school-to-prison pipeline moniker is used to describe the process by which minority students experience disproportionate school suspensions and expulsions which in turn increase the likelihood of juvenile justice involvement and subsequent adult criminal justice involvement including imprisonment (Barnes & Motz, 2018; Kim, Losen, & Hewitt, 2010). In-school staff commented that often students of color try to conform to the common tropes about how Youth of Color are depicted in popular culture (violent, gang-involved, drug-dealing, saggy pants, etc.) and that these actions often catch the attention of school officials who equate certain outward appearances and behaviors with criminal activity. While there is scant information regarding the relationships between how school officials stereotype Youth of Color and school discipline, there is evidence supporting disproportionate levels of school sanctions for Youth of Color. For example, in 2015, the Oregon Department of Education found that African American and Multiracial students were more likely to receive harsher punishments than White students, for similar infractions. A 2014 study by U.S. Department of Education that investigated suspension and expulsion patterns in six Oregon school districts found similar disproportionalities for students of color (Burke & Nishioka, 2014). Nationally, the statistics show a similar pattern. Nationwide suspension rates for all U.S. elementary and secondary schools during 2011-12 were substantially higher for minority students compared to White students. The differences were most noticeable for African American secondary school students who experienced 23.2% suspension rates compared to 6.7% suspension rates for White students (The Center for Civil Rights Remedies, 2020). Because students who are suspended are more likely to repeat a grade, dropout, and become involved in the Juvenile Justice System, these racial and ethnic disparities in school discipline have profound effects for Youth of Color (Lee, Cornell, Gregory, & Fan, 2011).

After Juvenile Justice Involvement

THERE WAS A CONSTANT BALANCING ACT BETWEEN DOING WHAT WAS BEST FOR YOUTH AND KEEPING THE COMMUNITY SAFE. SOMETIMES DOING WHAT WAS DEEMED BEST FOR A YOUTH RESULTED IN INCREASED RED IN LANE COUNTY

DECISION-MAKING TOOLS AND MATRICES WERE GENERALLY PERCEIVED AS HELPFUL, BUT MOST PEOPLE BELIEVED THAT PROFESSIONAL JUDGEMENT SHOULD ALWAYS PREVAIL

The utility of professional judgement and its importance in everyday decision-making was the dominant theme. Most participants commented on the "art" of juvenile justice and the idea that decisions should be made in accordance with what is best for the youth and their family. Juvenile Counselors, in particular, commented on their constant balancing act of considering what is best for youth with how to maintain community safety. Consistently navigating the fine line that separates what is best for the youth and community safety was front of mind for most Juvenile Counselors, and as a result, some were concerned about "overcompensating" for Youth of Color to keep them from penetrating the system further. That is, because RED was front of mind for many Juvenile Counselors, it created an additional nuance for them to consider when making placement decisions for Youth of Color. Some were concerned that placement decisions could be made to reduce RED, instead of what was best for the youth. This tension was exacerbated by the understanding that the Juvenile Justice System itself likely contributes to trauma, and that deeper involvement in the system could result in additional trauma, especially for Youth of Color (Barnert, et al., 2017; DiClemente & Wingood, 2017). A smaller number of respondents commented that a youth's race did not factor into their decision-making process, which they characterized as being "color-blind." Many interviewees commented on the troubling issues involving detention, especially when a particular youth has no other safe place to go. On one hand, detention represented a serious deepening involvement in the Juvenile Justice System, with the known negative effects that such involvement brings, especially to Youth of Color. On the other hand, what if releasing a youth (based on RAI scores, or the Decision Matrix), actually puts that youth at higher risk of being trafficked, or more drug use? Many Juvenile Counselors expressed how difficult those types of decisions are to make because by detaining, the phenomena of RED might be increased, but by releasing, youth safety (and perhaps community safety) could be jeopardized. An ancillary pattern to this concern was the idea that some youth can be high needs and low risk—to which the decision-making tools might indicate no placement involvement for the youth. But, as a result of experience gained through years of working with youth, a Juvenile Counselor

YOUTH OF COLOR WERE GENERALLY ASSIGNED TO JUVENILE COUNSELORS OF COLOR

THERE WAS EVIDENCE OF "TOUGH ON CRIME" PERSPECTIVES FROM THE SCHOOLS AND FROM LAW ENFORCEMENT

might recommend a placement that allows the youth to access treatment support for their needs, such as mental health or substance use. This decision to place the youth deeper into the Juvenile Justice System would be based on what was best for the youth, but at the same time, might increase RED in Lane County's Juvenile Justice System.

While the use of decision-making tools such as the RAI and the Matrix was noted as being generally useful by many Juvenile Counselors, most considered the tools to be just that—tools—and should not be used "carte blanche" as decision-making instruments. The importance of professional judgement was highlighted as critically important. Specifically, with the RAI, there were many concerns that the instrument was not being implemented with fidelity to the original model. Concerns regarding the training about how to use the RAI was a prominent pattern.

There was a consistent pattern among Juvenile Counselors of color that their caseloads consisted mainly of Youth of Color. That was generally perceived as a good thing because of the increased potential to develop trusting relationships with Youth of Color. But there were concerns that because their caseloads were mostly Youth of Color, all placement decisions could disproportionately affect levels of RED in Lane County's Juvenile Justice System. There was also an undivided pattern amongst all Juvenile Counselors expressing concerns about large caseloads, and the possible cascading negative effects caused by not having enough time to fully develop relationships with the youth and families. Juvenile Counselors were concerned that not having enough time to develop trusting relationships, and pressure to make decisions quickly in order to move on to the next case, could ultimately increase RED and also not be in the best interests of the youth.

Finally, local law enforcement officials expressed frustrations over what they perceived to be Lane County Youth Services' lack of holding youth accountable for their crimes. It was noted that many times law enforcement will bring a youth to Serbu for intake processing only to have the youth released quickly. Thus, there was a perception from law enforcement that increased youth accountability was directly correlated with increased detention rates.

Discussion

Quantitative Results: RRIs

THE QUANTITATIVE RESULTS SHOWED THAT AFRICAN AMERICAN AND NATIVE AMERICAN YOUTH HAD THE MOST UNDESIRABLE RRI'S

AFRICAN AMERICAN AND NATIVE AMERICAN YOUTH WERE OVERREPRESENTED IN SERIOUS CRIME REFERRALS DURING 2017-2019

Overall, the RRI results were mixed, with Asian youth having desirable disproportionality (less than White youth) and African American, Native American and to large extent, Hispanic youth having undesirable disproportionality compared to White youth.

Several larger overall trends were observed in the data. A general observation is that the deeper the decision-point is in the processing flow through the system, the fewer Youth of Color there were, as indicated by the large number of "insufficient youth to analyze" result. This indicates the presence of a sequencing process resulting in fewer minority youth penetrating deeper into the Juvenile Justice System. This overall trend is a good thing because it suggests that minority youth are being "off-ramped" into less-restrictive environments. The quantity of insufficient numbers of youth to analyze an RRI jumped considerably after the "Petition" decision-point, indicating a possible exit point for many minority youth in Lane County's Juvenile Justice System. The data clearly showed the number of "insufficient youth to analyze" tripling at the "Adjudicated Delinquent" decision-point, which could be the point at which minority youth were moving to less-restrictive conditions of supervision.

Despite the overall trends, there were clear differences between the racial categories. Asian youth had the most instances of "insufficient youth to analyze" which indicated the lowest involvement in Lane County's Juvenile Justice System of any race.

During 2010-2019, Asian youth had the highest numerical count of desirable RRI values (9). During the study period, Asian youth did not have any undesirable RRI values. In contrast, African American youth had the highest number of undesirable RRI values (25), followed by Native American youth (17) and Hispanic youth (15). It is noteworthy that Hispanic youth had the highest numerical count of desirable RRI values (14).

The analysis of RRI values for 2010-2018 established the existence of RED in Lane County's Juvenile Justice System during the years 2010-2019, with the caveat that the validity of the JJIS data has been called into question by the state of Oregon. Overall, African American youth and Native American youth experienced the greatest number of unfavorable RRI values which indicated continuing RED for these two groups.

The three-year (2017-2019) analysis of criminal referrals and person crime referrals indicated that African American and Native American youth are overrepresented in those two serious crime categories, suggesting that they enter the Juvenile Justice System with a higher and more serious level of criminality.

The phenomenom of African American and Native American youth entering the Juvenile Justice System "faster and hotter" compared to White youth might

CHILD MALTREATMENT RATES IN LANE COUNTY WERE SUBSTANTIALLY HIGHER THAN THE STATE AVERAGE DURING 2001-2018

partially explain their elevated RED in Lane County's Juvenile Justice System, and lends support to this report's Critical Race Theory premise.

The data did not establish any clear patterns of reducing RED after 2010 when Lane County Youth Services started to aggressively address RED by means of community collaboration, and systematic changes to try to reduce effects of implicit biases on the part of juvenile counselors and others involved in the decision-making process. All this is not to say that nothing has worked to reduce RED in Lane County's Juvenile Justice System. There is no way of knowing what the levels of RED would have been without those efforts.

The rates of child maltreatment in Lane County as evidenced by the victimization and foster care rates during 2007 - 2018, were much higher than the state average, indicating higher levels of early childhood trauma in Lane County. While an in-depth exploration into the specific relationships between Lane County's child maltreatment rates and minority youth involvement in the Juvenile Justice System is outside the scope of this report, the data indicate support for increased childhood trauma for Youth of Color in Lane County. Unfortunately, the data on crossover youth was incomplete and more exploration into Lane County's efforts to implement the Crossover Youth Practice Model should be completed to determine the best ways to serve this highly vulnerable population.

In many ways, the stubborn persistence of unfavorable RRI values for most minority youth, despite concentrated efforts to address RED in Lane County's Juvenile Justice System, is symptomatic of the larger issue that has plagued state and national unsuccessful efforts to reduce RED in the Juvenile Justice System. The larger issue is that researchers, juvenile justice professionals, policymakers and elected officials have been asking the wrong questions and have ill-framed RED in terms of either Differential Offending or Differential Involvement (also referred to as Differential Selection). These dichotomous categories have been traditionally examined from a quantitative

A REASONABLE ARGUMENT CAN BE MADE THAT THE ACCUMULATED RISK FACTORS YOUTH OF COLOR IN LANE COUNTY EXPERIENCE BEFORE THEIR INVOLVEMENT IN THE JUVENILE JUSTICE SYSTEM OVERWHELMS THE WELL-INTENTIONED POLICIES AND PRACTICES THAT ARE PUT IN PLACE TO REDUCE RED AFTER THEIR INVOLVEMENT IN THE JUVENILE JUSTICE SYSTEM

(positivist) viewpoint which has neglected important qualitative data that could better illuminate the social, economic, political, racial and educational risk factors impinging upon Youth of Color before their involvement in the Juvenile Justice System. In this light, a reasonable argument could be made that Lane County's results lend support to the thesis of this report—namely, what happens to Youth of Color *before* they become involved in the Juvenile Justice System has an overwhelming effect on how they experience the Juvenile Justice System, and how they are processed through the system. Lane County Youth Services has done considerable work to address RED in their Juvenile Justice System and yet undesirable RED remains for African American, Native American and Hispanic youth. A reasonable argument can be made that the accumulated risk factors that Youth of Color in Lane County experience before their involvement in the Juvenile Justice System overwhelms the well-intentioned policies and practices that are put in place to reduce RED after their involvement in the Juvenile Justice System. The evidence suggests more than a small degree of support for this report's Critical Race Theory underpinning. It is important to note that the validity of the JJIS data has been questioned by the state of Oregon and therefore any conclusions based on the quantitative data should be tempered accordingly.

MANY RESPONDENTS DEMONSTRATED AN INHERENT UNDERSTANDING ABOUT CRITICAL RACE THEORY

Qualitative Results

The qualitative data fell neatly into two main categories: before involvement in the Juvenile Justice System and after involvement in the Juvenile Justice System. In this way, the respondents' answers were consistent with the existing literature in that American criminologists have traditionally categorized RED in the Juvenile Justice System as having two theoretical sources: differential offending and differential selection/treatment. Interviewees demonstrated a deep understanding about the effects from ecological forces that propel some Youth of Color into the Juvenile Justice System, and how a youth enters the system has a lot to do with the legal decision-making processes once they are in the system. Many respondents described prominent features of Critical Race Theory (CRT) without knowing the academic documentation of CRT—that is, many of their descriptions regarding experiences with Youth of Color aligned well with CRT components. The qualitative data also contained a distinct division of viewpoints that paralleled national perspectives on "tough on crime" versus "smart on crime." Finally, the importance of stories and more specifically counter-stories

DESPITE USING RISK ASSESSMENTS AND DECISION-MAKING MATRICES, RED PERSISTS IN LANE COUNTY'S JUVENILE JUSTICE SYSTEM, MOSTLY FOR AFRICAN AMERICAN AND NATIVE AMERICAN YOUTH

(Delgado, 1989) was an overarching ramification of the qualitative data.

Before Juvenile Justice Involvement

American criminologists have deemed differential offending to take place before juvenile justice involvement and differential selection/treatment is something that happens after a youth becomes involved in the Juvenile Justice System (National Research Council, 2013; Robles-Ramamurthy & Watson, 2019). It is interesting to note that traditional criminologists have come under criticism for some time for their clumsy and inaccurate handling of race as a magically separable variable that is unlinked with influential social and ecological factors such as discrimination, social class, neighborhood conditions, and access to resources and power (Holdaway, 1997). Despite the criticisms, the literature on what happens before Youth of Color become involved in the Juvenile Justice System is somewhat incomplete and only a handful of scholars have paid attention to effects of social and ecological factors (i.e. Alltucker, Bullis, Close & Yovanoff, 2006; Bishop, 2005; Tracy, 2005). The qualitative results from this study add important information to fill the existing gap in the literature regarding these issues. Respondents in this study demonstrated a deeper appreciation and understanding about the effects of social and ecological factors on minority youths' trajectory into the Juvenile Justice System than the greater part of the existing academic literature. Specifically, the interviewees described many of the youth they worked with had experienced early childhood trauma which affected their emotional regulation and risk-taking behaviors. The effects that early childhood trauma have on the development of juvenile delinquency is well supported in the literature (i.e. Alltucker, Bullis, Close & Yovanoff, 2006; Cicchetti, 1993; Moffitt, 1994; Piquero, 2008)

The respondents also demonstrated an inherent knowledge and awareness regarding four components of Critical Race Theory (CRT)—namely that racism is ordinary and normal, that race is socially constructed, intersectionality and anti-essentialism, and a critique of color-blindness (Delgado & Stefancic, 2017).

In total, the respondents provided a street-level perspective that what happens to a Youth of Color

JUVENILE COUNSELORS DESCRIBED THEIR DAILY STRUGGLES WITH TRYING TO DO THE BEST FOR YOUTH WHILE AT THE SAME TIME ADDRESSING RED IN THE JUVENILE JUSTICE SYSTEM

before they become involved in the Juvenile Justice System has far-reaching effects on what happens to them after they become involved in the Juvenile Justice System.

"TOUGH ON CRIME" PERSPECTIVES THAT EQUATE YOUTH ACCOUNTABILITY WITH INCREASED USE OF SECURE DETENTION WERE A SMALL PART OF THE QUALITATIVE DATA

After Juvenile Justice Involvement

Concerning what happens to a Youth of Color *after* they become involved in the Juvenile Justice System, the respondents gave evidence that illustrated the nuances of decision-making and the constant balancing between doing what is best for the youth and adhering to decision-making guidelines that are designed to reduce RED in the system. On this point, the literature is conflicted. One well-documented component is that the Juvenile Justice System was originally designed to allow for individualized decisions according to what was best for the youth (Feld, 1999), and to divert youth from the criminal justice system and to substitute the state as the parent ("parens patriae") (Feld, 2017). The Juvenile Counselors held this responsibility of acting as an agent of the state (as a parent) in the front of their mind—they described almost daily struggles with trying to decide what was best for the youth under their care, while considering how to address and reduce RED in Lane County's Juvenile Justice System. This qualitative evidence aligns with the literature that illustrates the conflicts between relying solely on professional judgement (a foundational principle of the Juvenile Justice System) or relying on standardized decision-making processes that attempt to eliminate biases. There is a well-developed literature component that documents the abuses that have occurred when professional judgement was left unabated. For example, many scholars point to the over-reliance on professional judgement as one of the primary reasons that RED exists in the Juvenile Justice System—stemming from either overt racism, color-blind racism, or implicit biases. Many jurisdictions, including Lane County, have implemented checklists, risk assessments, and decision-making matrices in an attempt to standardize placement decisions and in turn, reduce REDs. And this is the tug-of-war between philosophies. On one side is the long-standing and rudimental philosophy that professional judgement is required in the Juvenile Justice System because that is

THE RESULTS OF THIS STUDY PROVIDE SUPPORT TO THE IDEA THAT ACCUMULATED RISK FACTORS FOR YOUTH OF COLOR GREATLY AFFECT THEIR ENTRY INTO THE JUVENILE JUSTICE SYSTEM AND ALSO HOW THEY ARE PROCESSED THROUGH THE SYSTEM

DESPITE KNOWING ABOUT RED IN THE JUVENILE JUSTICE SYSTEM FOR MORE THAN FOUR DECADES, RED REMAINS PERSISTENT

what the original juvenile court was built upon. On the other side is the critical perspective that professional judgement is a contributing factor of how RED exists and persists in the Juvenile Justice System, and that standardization is preferable. Many respondents expressed a mixture of emotions regarding the indelible nature of RED in Lane County's Juvenile Justice System. A common defensive sentiment was something along the lines of "I'm not a racist, and I'm trying really hard to reduce RED." Several people expressed frustration with all the trainings on implicit bias, the implementation of the RAI and the Decision Matrix, and still no significant improvement in RED. There is evidence in the literature that implicit biases are not the causes of racism, but rather, a symptom of racism. Bourne (2019) provided a searingly critical perspective on implicit bias and the dangers of expecting such unconscious biases to be an explanation of racism. She warned:

> "now suddenly we find the new narrative: racism is covert, not overt; it is psychological, not social; it is individual not structural; it is subconscious not conscious. Hence, it effectively exonerates governments, institutions, organisations, even individuals, for it is unconscious, inevitable. But it can be remedied--through retraining and therapy for the individual. Unconscious bias (UB) is the child of neoliberalism (p. 71)

Finally, some of the qualitative results illustrate the debate between "tough on crime" and "smart on crime" approaches to juvenile justice. The "tough on crime" viewpoint was forged most recently in the 1990s when economic, racial, and political changes materialized into racializing youth crime as a Black and minority youth problem. The highly racialized term "super-predator" invented by political scientist John DiIulio became code for "inner-city Black youth" and helped stoke the fires of a national moral panic. During that time, most states, including Oregon, passed mandatory minimum sentences and automatic transfers to adult court for youth as young as 15 years old as a result of committing certain violent crimes. Around the same time, the voters of Lane County approved a $39 million bond measure to construct a new juvenile justice center with 96 secure detention beds.

The "smart on crime" approach was activated in large part by the emergence of neuroscience information in the late 1990s that indicated adolescent brain development had a large influence on behavior—namely that adolescents have less capacity for self-regulation compared with adults, especially in emotionally-charged situations. The emergent brain research has documented that youth are more susceptible to negative peer influences and immediate incentives compared to adults. Youth are also less future-oriented than adults and therefore less likely

to make decisions based on future consequences (Cauffman, Steinberg, & Piquero, 2005).

"Tough on crime" attitudes were found in some of the qualitative data, which indicates the tenacity of such views even in light of the current literature that dispute the effectiveness of "tough on crime" practices. Specifically, some of the evidence from the schools that suggested an increasing use of punitive responses to student behaviors (both on campus and off campus) suggests a "tough on crime" response. In addition, some data from local law enforcement implying that accountability would be increased with a greater use of secure detention (even for non-violent crimes) is another example of the indelibility of "tough on crime" viewpoints.

Summary of Racial and Ethnic Disparities in U.S., Oregon, and Lane County Juvenile Justice Systems

This section provided evidence supporting the fact that racial and ethnic disparities (RED) exist in the national, Oregon, and Lane County Juvenile Justice Systems despite decades of efforts to reduce RED. Historical context was furnished to illuminate the racialized beginnings of the juvenile court which have continued to influence its systemic characteristics in how Youth of Color come to be involved in the Juvenile Justice System and how they are processed after becoming involved. The argument was made that criminologists have traditionally done a poor job in researching RED, choosing to quantify the existence of RED but neglecting for the most part to examine the ecological factors that Youth of Color experience prior to their involvement in the Juvenile Justice System. The pervasive effects of early childhood trauma were discussed as an example of how higher rates of trauma can propel Youth of Color into the Juvenile Justice System at faster and higher velocities compared to their White peers.

Qualitative data results indicated that survey participants had an inherently comprehensive understanding of several components of Critical Race Theory, including the idea that racism is a normal and everyday experience for People of Color, race is a socially constructed notion, intersectionality and anti-essentialism, and a critique of color-blindness. In total, survey participants demonstrated a deep understanding about the power that ecological systems have on Youth of Color before they become involved in the Juvenile Justice System, and that what happens to Youth of Color before they become involved has a large effect on how they are treated during their involvement. In particular, Juvenile Counselors were distinctly aware of the challenging situation in which they are

"EXPECTING THE JUVENILE JUSTICE SYSTEM TO SINGLE-HANDEDLY CONFRONT AND REDUCE RED IS MAGICAL THINKING"

AN IMPORTANT STEP MOVING FORWARD IS FOR THE DOMINANT WHITE SOCIETY TO RECOGNIZE THE VALIDITY OF CRITICAL RACE THEORY AND TO MAKE SPACES FOR COUNTER-STORIES TO BE HEARD AND ACTED UPON

called upon to reduce RED, while at the same time do what is best for the youth. Often their professional judgement suggests a deeper involvement for the purpose of accessing desperately needed services for Youth of Color (substance use disorder, mental health, etc.) but the threat of inadvertently increasing RED tugs at their minds. There was evidence of a "tough on crime" way of thinking by some school systems and law enforcement—both of which equated increased youth accountability with increased use of detention. The current juvenile justice literature contains a good deal of evidence to contradict "tough on crime" policies and it is possible that school and law enforcement officials are not aware of the sometimes inaccessible and dense academic literature. In some ways, the "tough on crime" attitudes revealed in this study support the power of the dominant culture stories that have been repeated so often that many people consider them the entire "truth." Those dominant culture stories put forth that crime and racism are individual problems, rather than structural and systemic (Brewer & Heitzeg, 2008). The dominant culture stories also support the notion that increased detention and incarceration are needed to increase community safety, and these are the stories that carried the conversations in the state of Oregon when voters approved mandatory minimum sentencing laws and allowing youth to be tried in adult courts for certain crimes. Those dominant stories were also key in convincing Lane County voters to approve building 96 new detention beds in 1996.

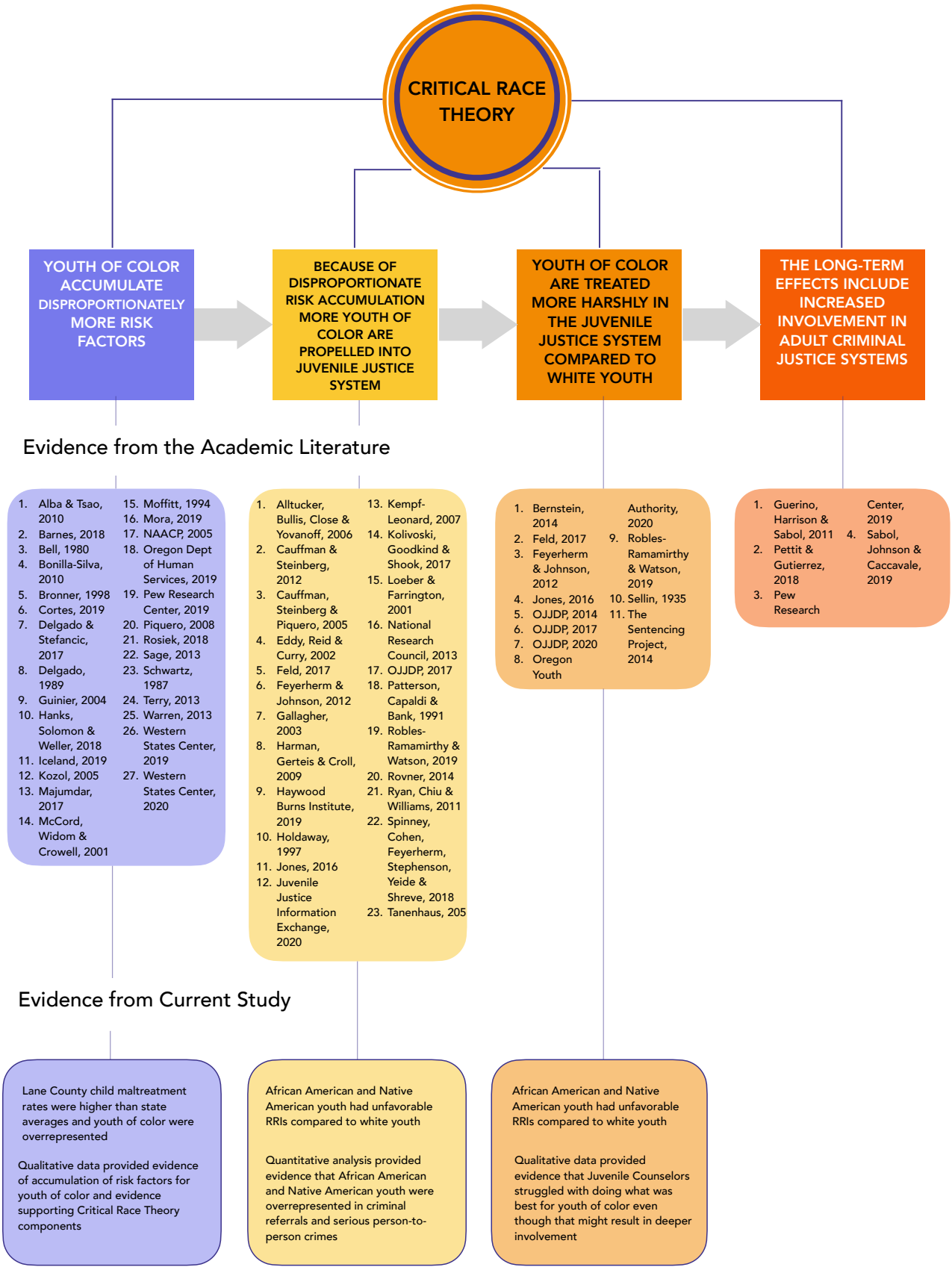
Lane County Youth Services has conducted implicit bias training, and implemented two procedures (RAI and Decision Matrix) in an effort to reduce RED by standardizing decision making and attempting to factor out subjective decisions and implicit biases. Despite these efforts, there is no evidence that they have reduced RED in Lane County. Although this might be dismaying to the reader, it can also be taken as support for the premise of this report: what happens to Youth of Color before becoming involved in the Juvenile Justice System has an exorbitant influence on RED that overwhelm any well-intentioned and well-meaning efforts on the part of juvenile justice professionals to reduce it after youth become involved in the Juvenile Justice System. Expecting the Juvenile Justice System to single-handedly confront and reduce RED is magical thinking. Instead, researchers, policymakers, elected officials and juvenile justice professionals should recognize that RED in the Juvenile Justice System

will not be reduced until the social, political, racial, economic, and educational factors that cause Youth of Color to accumulate risk factors at disproportionately higher rates, are addressed and repaired. An important step in accomplishing that will require the dominant White society to reconcile with the tenets of Critical Race Theory, create spaces for counter-stories to be heard and acted upon, and to move forward in a collaborative community-based style that is in the best interests of all youth.

Limitations

This study had potential limitations and restrictions that should be mentioned in order to apply an appropriate level of confidence to the findings.
The state of Oregon quantitative data had known irregularities that could have affected the RRI calculations. The Oregon Youth Authority and the Juvenile Justice Information System (JJIS) administrators have been aware of the irregularities for some time and are taking steps to improve the validity of the database (Doug Thomas, personal communication, July 14, 2020). In the meantime, caution should be utilized when making conclusions about the quantitative results.
There was limited access for people to be interviewed and it is possible that if more people participated additional insights would be uncovered. For example, no one who worked in the Diversion Services portion of Lane County Youth Services was interviewed. The study was limited by time in that the investigator was restricted to working 10 hours per week on the project. Due to the time constraint, the scope of the project was scaled down so that it could be completed in approximately six months. It is likely that with more time additional qualitative data could be gathered and analyzed, which might reveal trends and patterns that would further explore the Critical Race Theory premise. For example, it would have been useful to interview more school officials and more law enforcement officials to gain additional understanding about their perspectives. The qualitative data were self-reported and therefore could not be independently verified. Self-reported data can contain potential sources of bias including selective memory, social desirability (reporting oneself in a socially desirable manner), attribution (attributing positive events and outcomes to one's own agency but attributing negative events and outcomes to external forces), and exaggeration. Self-bias on the part of the investigator could have influenced how the qualitative data were analyzed, and also could have affected how the literature review was conducted—selecting evidence that supported Critical Race Theory. The relationships between early childhood trauma (specifically child abuse and neglect) and juvenile justice involvement are correlational and therefore not causal. Finally, Critical Race Theory could have been an incomplete explanation into the phenomenon of racial and ethnic disparities in the Juvenile Justice System. Considering all the potential limitations of this study provides a direction into additional research that should be conducted in order to firmly document the root causes of racial and ethnic disparities in the Juvenile Justice System.

Logic Model Summary of Study



FINDINGS

Photo by Jennifer Marquez on Unsplash

The findings from this study provide a mixture of positive and negative results. The negative findings were that RED exists in Lane County's Juvenile Justice System (especially for African American and Native American youth), despite more than 10 years of efforts to reduce them. Both the quantitative and qualitative data provided partial support for the study's Critical Race Theory foundation

The following 12 findings from the current study are presented below.

1. Racial and ethnic disparities (RED) exist in Lane County's Juvenile Justice System for the first four decision points (Referrals, Cases Diverted, Detention, and Cases Petitioned). These disparities have persisted despite concerted efforts to reduce them
2. For the first four decision points, African American and Native American youth had higher levels of RED compared to Hispanic and Asian youth
3. Asian youth had no unfavorable RED during the timeframe of the study 2010-2019
4. Generally, the decision point Petitioned represented the point at which Youth of Color were "off-ramped" from the formal court process
5. There were insufficient numbers of Youth of Color at the decision point Adult Transfers to calculate RRIs during the timeframe of the study 2010-2019
6. For the years 2017-2019, African American and Native American youth were overrepresented in the percent of overall criminal referrals, and the percent of person-to-person criminal referrals. These results partially supported Critical Race Theory components
7. The rates of child maltreatment and foster care placement in Lane County were substantially higher compared to the Oregon rates during 2007-2018. Youth of Color were overrepresented in the data
8. Quantitative data on child maltreatment partially supported Critical Race Theory components
9. Data for Lane County Crossover youth was incomplete
10. State of Oregon JJIS reports had known irregularities in the data
11. Qualitative data provided partial support of Critical Race Theory components
12. Juvenile Justice professionals were challenged to balance the dual mandate of "what is best for the youth" with "reducing RED in Lane County's Juvenile Justice System."
13. A minor portion of the qualitative data illuminated philosophical perspectives that equated increased youth accountability with increased detention. This is important because it demonstrated the staying power of tough on crime viewpoints

RECOMMENDATIONS

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The following recommendations are deceptively complex because they require an acceptance that structural racism exists in our society, in our communities and in the very system that is supposed to help youth. The work will be uncomfortable at times, frustrating, and probably slow. But we are all obligated to put our shoulders to the wheel and understand that genuine service requires humility (Bell, 2000)

The following nine recommendations are offered to Lane County Youth Services as a roadmap to reduce racial and ethnic disparities (RED) in their Juvenile Justice System.

1. Embrace the idea that the majority of sources of RED originate early in life (structural racism) and are therefore outside of the control of Lane County's Juvenile Justice System—but that does not mean that nothing can be done
2. Lane County Youth Services alone cannot substantially reduce RED, therefore there must be meaningful and sustained collaboration with communities (including juvenile justice-involved youth), schools, law enforcement, district attorneys, elected officials, policymakers and service providers
3. The state of Oregon JJIS system should be evaluated to identify sources of errors and the system should be improved accordingly
4. Use Derrick Bell's "Wanted: A White Leader Able to Free Whites of Racism" (2000) as an aspirational document by which to organize the collaborative work recommended above. Understand that Bell rejected the standard model of an educational campaign leading to enlightenment, leading to empathy and then to reform
5. Validate that acknowledging structural racism exists in the community will be uncomfortable for some people
6. A Task Group should review all policies and procedures within Lane County's Juvenile Justice System that could contribute to RED, including the Risk Assessment Instrument (RAI), Juvenile Crime Prevention assessment (JCP), and the Decision Matrix. The Task Group should include members from other agencies and from the community. The review should use Critical Race Theory as the organizing lens
7. Understand that implicit biases do not cause RED, but are instead a symptom of structural racism, therefore implicit bias trainings will have little effect on reducing RED
8. The results of this study should be widely distributed within Lane County Youth Services, Health and Human Services, and the Board of Commissioners
9. A Task Group should review recommendations from the National Institute for Criminal Justice Reform's "A Positive Youth Justice System," the Coalition for Juvenile Justice, the Annie E. Casey Foundation, and MacArthur Foundation's "Models for Change."

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Photo by Louis Quintero from Pexels

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