

*Data Driven Decisions*

# **DISPROPORTIONATE MINORITY CONTACT ASSESSMENT: COURT AND DIVERSION REFERRAL DECISIONS IN VERMONT'S JUVENILE JUSTICE SYSTEM**

*Submitted to*

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and

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## EXECUTIVE SUMMARY

- The goal of this assessment was to use three years of individual-level data for Chittenden, Rutland and Bennington Counties to examine the representation of white and minority youth at three decision points in the juvenile justice system: referrals to juvenile court, referrals to adult court and referrals to diversion (including, to the extent possible, referrals to Community Justice Centers). The study used three years of court and (pre-charge) Community Justice Center (CJC) data for 1,992 youth. Of these, 1,851 cases had race data—1,671 youth were white and 180 were minorities. Due to small numbers, minority youth were aggregated into one group—approximately three-quarters of these youth were black. The assessment used statistical methods to control for factors that may account for differences in the likelihood of each type of decision to determine whether minority status appears to affect decisions independent of other factors (e.g., age of offender, severity of offense).
- Aggregate-level data for fiscal years 2009-2011 show that minority youth were more likely than white youth to be referred to adult court and to Community Justice Centers (CJCs), but less likely to be referred to juvenile court and court diversion. When the two types of diversion were combined, minority youths' greater likelihood of referral to a CJC and lower likelihood of a referral to court diversion canceled each other out. Thus, the two groups do not differ in the likelihood of a referral to *some* type of diversion.
- Comparing the average characteristics of white and minority youth shows that minority youth were on average marginally older than white youth, and had a slightly higher average ranking of their most serious charge. On average, minority youth had fewer prior juvenile dockets, prior delinquencies, total prior dockets (both courts combined), and total prior convictions (both courts combined) than white youth. No differences between white and minority youth were evident in the percentage of males in the two groups, the average number of charges, average prior adult court dockets or convictions, or prior number of misdemeanor and felony convictions.
- Referral patterns for white and minority youth within the same offense category (most serious offense) show some differences. White youth were more likely than minority youth to be referred to juvenile court for public order, drug, and theft offenses, while minority youth were more likely to be referred to adult court. However, minority youth were more likely to be referred to a CJC for public order and theft. At least some of these patterns may be due to differences in offenses *within* these broader offense

categories (e.g., retail theft vs. burglary, both of which are categorized as theft offenses).

- Logistic regression models predicted each referral outcome to determine whether minority status influenced the likelihood of a particular referral after taking into account any effects of age, sex, number of charges, rank of most serious charge, and measures of prior involvement with the courts (note that controlling for some of these factors may mask any differential treatment in reporting and processing, thus underestimating any effect of minority status on referrals). Minority status did not independently influence the probability of referral to adult court or the combined measure of referral to diversion (court diversion and CJC combined).
- The regression models found an independent effect of minority status on the likelihood of being referred to juvenile court, court diversion, and a Community Justice Center. Minority youth were 48.8% less likely than comparable white youth to be referred to juvenile court, and 53.3 percent less likely to be referred to court diversion. However, minority youth were 86.5 percent *more* likely to be referred to a Community Justice Center than comparable white youth (this in part accounts for minority youths' reduced likelihood of a referral to juvenile court).
- Results of analyses for Chittenden, Rutland and Bennington Counties separately found that results for Chittenden County largely mirror those for the three counties combined (Chittenden County contributed half of the cases to the assessment). Minority youth in Chittenden County were less likely to be referred to juvenile court and court diversion, but the latter effect disappeared when the analysis was confined only to youth who were referred to court (that is, when youth referred to a CJC were omitted from the analysis). Minority status did not affect the probability of referral to adult court or to some type of diversion (court diversion and CJC combined).
- In Rutland County, only referrals to court diversion were influenced by minority status, with minority youth being less likely to be referred. This pattern was also evident in Bennington County, although the odds ratio for minority status did not quite achieve statistical significance (note that statistical significance is sensitive to the number of cases in an analysis).
- Although not the primary relationship of interest in this assessment, it deserves mention that the analyses showed effects of being female on referral outcome. Being female increased the probability of a referral to adult court relative to comparable males, and

reduced the probability to being referred to a CJC and to diversion (both types combined). Being female did not affect referrals to juvenile court or court diversion.

- Recommendations include advocating for retention of expunged cases for research purposes; sharing findings concerning referrals to court diversion in Rutland County (and perhaps Bennington County as well) with that county's state's attorney and juvenile prosecutor; monitoring the race/ethnicity of youth referred to court diversion by county; conducting an in-depth review of a sample of Burlington police cases within one broad offense category where minority youth were more likely to be referred to a CJC than white youth (public order or theft) to determine if other factors not captured by the data are responsible for the different referral patterns; work with police departments to assure that all officers having contact with juveniles understand when a CJC referral is appropriate and that such referrals are made consistently; advocate for direct referrals to Bennington's CJC by law enforcement and for new CJCs, particularly in communities with higher proportions of minority youth; and consider whether interventions may be appropriate regarding the apparent disadvantage faced by females in Vermont's juvenile justice system.

## **INTRODUCTION**

That minority youth are disproportionately represented in the juvenile justice system is well-established. Youth of color are over-represented nationally, and in nearly all states. Overrepresentation is particularly extreme for African American youth (Leiber 2006). The juvenile justice system may best be thought of as a series of critical decision points: arrest, pre-adjudication detention, referrals to juvenile court, waiver to adult court, detention, and incarceration in juvenile and adult facilities (OJJDP 2009). Racial disparities are evident throughout the juvenile justice system, a pattern that is referred to as Disproportionate Minority Contact or DMC (OJJDP 2012; National Council on Crime and Delinquency 2007; see also Annie E. Casey Foundation 2009).

In 2002, the State of Vermont began to monitor the contact of minority youth relative to white youth at various points in the Juvenile Justice system. In addition to compiling a statewide matrix annually, Vermont's juvenile justice specialist also gathers aggregate-level data for Chittenden, Rutland and Bennington Counties. The Vermont Center for Justice Research (VCJR) conducted three prior DMC assessments using individual-level data to determine the mechanisms responsible for the DMC reflected in aggregate-level data. These assessments examined DMC in admissions to Vermont's juvenile detention facility, DMC in arrests in four municipalities, and DMC in arrests in Burlington, Vermont's largest municipality.

The primary goal of the current assessment was to explore whether there were indicators of DMC during a three-year period at three decision points in the juvenile justice system—referrals to juvenile court, referrals to adult court, and referrals to diversion, including to the extent possible pre-charge referrals to Community Justice Centers (CJCs). The assessment used individual-level court, juvenile/criminal history and CJC data for youth in Chittenden, Rutland and Bennington Counties for fiscal years 2009-2011 to determine whether individual-level differences between white and minority youth explain any disproportionate minority representation at the decision points of interest.

## **REVIEW OF LITERATURE**

### **Overview of Disproportionate Minority Contact**

Nationally, DMC has been reduced during the past several decades at some points in the juvenile justice system and in some jurisdictions, but progress has been slow. For example, Davis and Sorenson (2010) estimate that between 1997 and 2006, the ratio of black to white



juveniles confined in the U.S. was reduced by only one-fifth, after controlling for each group's arrest rates. The President of the Youth Law Center stated at the end of that organization's DMC initiative that "the most pervasive, difficult, and intractable problem I have seen nationwide is racial and ethnic disparities faced by youth of color in the justice system" (Soler 2005, p. 2).

Some criticize the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for not holding states more accountable for reducing DMC and for not sanctioning states that do not demonstrate progress (Bell et al. 2009; 2008; see also Leiber and Rodriguez 2011). Others recognize the deep historical roots and complex forces that continue to contribute to DMC (Kempf-Leonard 2007). Devine et al. (1998, p. 11) wrote that of the lessons learned from OJJDP's initial DMC reduction efforts in the 1990s, "possibly the most important effect was a greater understanding within the pilot communities of the complexity and pervasiveness of DMC issues and the realization that serious efforts to address DMC require numerous resources, including time, money, technical assistance, and above all, commitment." This assessment continues to hold true today.

### **Explanations for DMC**

While there is general consensus that racial/ethnic minorities are disproportionately represented in the juvenile justice system, there is less agreement about the reasons that the overrepresentation of minorities has "come to be considered an established fact of crime" (Picquero 2008, p. 63). Explanations for DMC typically fall into two broad categories—"differential offending" and "differential selection" (Nellis and Richardson 2010; Picquero 2008). The former refers to differences between white and minority youth in offending patterns (e.g., severity of offense; history of offending) which may at least partly contribute to differential outcomes in the juvenile justice system (Lauritsen 2005). The latter refers to differences in the way that the juvenile justice system treats white and minority youth, independent of offending patterns.

On the surface, differential offending may appear to be an objective and acceptable explanation for DMC. Picquero (2008) reports that studies of both self-reported behavior and police records find disproportionate involvement in violent crimes among blacks and to a lesser extent Hispanics. In 2011, the rate of arrests for violent crimes among black youth was five times that of whites (Puzzanchera 2013). Violent crimes are most likely to be reported, and their perpetrators convicted and punished. However, while research shows that disproportionate involvement in violent crimes accounts for much of the overrepresentation of minorities in prison, it does not account for all.

A study of police contact/referrals to court in three cities found that greater proportions of minority youth were contacted/referred relative to white youth. Although the effect of race/ethnicity on the odds of being contacted/referred was reduced after controlling for the effects of delinquency and other risk factors, it was not eliminated (Huizinga et al. 2007). The authors conclude that “the often-stated reason for DMC—that it simply reflects the difference in offending rates among different racial/ethnic groups—cannot be supported ... and we suspect that it is simply incorrect in general” (p. 41).

Importantly, comparing the arrest rates of white and minority youth does not take into account racial differences in the likelihood of being arrested and factors that may influence this decision. Picquero (2008, p. 69) observes that “the police are a critical part of the juvenile justice decision-making system and are afforded far more discretion than any other formal agent of social control, but researchers have paid surprisingly little attention to contacts between police and citizens, especially juveniles.” Kempf-Leonard (2007) notes that juvenile justice systems were founded and continue to respond to youth both on punitive/disciplinarian and need-for-services bases. Discretion in the juvenile justice system permits those involved to respond to juvenile offenders on one or the other of these approaches, potentially contributing to DMC if the response tends to differ systematically for white youth and youth of color (see also Feld 1999).

Differences in arrest rates can be affected by police decisions to target particular neighborhoods or particular crimes; variation in the visibility of criminal behavior (e.g., using or selling drugs publicly, as minority youth are more likely to do, versus doing so at home, as white youth are more likely to do); and the propensity of citizens to call the police, which may be influenced by the race/ethnicity of offenders and victims, and the racial/ethnic composition of communities. The appearance and demeanor of a youth may also affect police decisions to charge versus warn a juvenile, or to refer a youth to a community justice program if available.

As youth enter and move through or exit the juvenile justice system, different treatment of minority youth relative to white youth may reflect overt bias on the part of decision-makers. More likely, however, it reflects a social structure (laws, policies and procedures) with historical roots dating back to a time when racism and discrimination were both legal and socially acceptable (see Bell et al., 2008, for a history of the treatment of minority youth in the juvenile justice system). Racial/ethnic stereotypes and biases continue to permeate our culture and reinforce the existing social structure. For example, the media disproportionately report stories about violent crime, particularly crimes perpetrated by juveniles, and even more so crimes perpetrated by African American youth against whites (Soler and Garry 2009; Feld 2003). This type of reporting contributes to stereotypes of young African Americans as a population to be

feared and treated harshly, and may unconsciously influence the perceptions of decision-makers in the juvenile justice system (regardless of their own race), and contribute to differential treatment and outcomes.

The complexity of these issues becomes even more evident when one widens the lens to include the broader social context. Some factors that are associated with crime are also associated with race/ethnicity. For example, minority youth are more likely than white youth to be poor and poor youth are more likely to engage in certain types of criminal behavior. The direct (causal) factor is poverty, but race has an indirect effect on crime because of its association with poverty.

Despite the complex nature of explanations for DMC, OJJDP's *DMC Technical Assistance Manual* provides a succinct list of contributors to DMC (Leiber et al. 2009):

- **Differential Behavior** – If minority youth are more likely to commit more serious offenses than white youth, initiate criminal behavior at an earlier age, commit more offenses, and/or be involved in the social welfare system, average differences in behaviors across groups may at least in part account for the over-representation of minorities in the juvenile justice system.
- **Mobility Effects** – DMC may be apparent or inflated if minority youth are “seasonally mobile,” spending part of the year in a community other than that of their primary residence, or if minority youth spend time visiting an “attractive nuisance” (e.g., shopping mall or amusement park) in a different community and adjustments are not made for the influx of non-residents into these areas. Similar effects may be seen in jurisdictions where a residential facility for juvenile offenders is located which houses youth from other locations.
- **Indirect Effects** – A host of risk factors associated with delinquent/criminal behaviors are also associated with race/ethnicity. For example, lower socio-economic status, poor school performance, father's unemployment, single parent family, and neighborhood decay are associated with both race and criminal behavior.
- **Differential Opportunities for Prevention and Treatment** – Just as there are risk factors associated with criminal behavior, so too are there “protective factors” that can reduce the propensity for criminal behavior. If minority youth are less likely to have access to prevention and treatment programs, or if they are less likely to complete such programs, this may contribute to DMC.
- **Differential Processing or Inappropriate Decision-Making** – As previously noted, the juvenile justice system can be thought of as a series of decision points at which police, prosecutors, judges, probation officers and others determine the opportunities or

sanctions of apprehended juveniles. These decisions may be influenced by stereotypes and/or the appearance and demeanor of youth. Minorities may be more likely than whites to be perceived as belonging to a gang, judging from attire or neighborhood of residence; minorities may not be given an opportunity to enter a diversion program because they are less willing than whites to admit guilt because of a greater distrust of the system and fear of the potential consequences of admitting guilt.

- **Justice by Geography** – The juvenile justice system does not operate in the same way across jurisdictions, and by virtue of place of residence white and minority youth may have different odds of being drawn into the system. For example, urban jurisdictions, where minorities tend to reside, treat offenders more harshly than rural or suburban areas (Armour and Hammond 2009). Thus, sentences for the same type of offense and offender history may differ simply by virtue of jurisdiction.
- **Legislation, Policies, and Legal Factors with Disproportionate Impact** – Seemingly race-neutral laws, policies and procedures may have a disparate impact on different minority groups. “Zero tolerance” policies, designed to discourage guns in and around schools, may have differential impacts because schools located in predominately minority neighborhoods are more likely to have such policies, leading to higher arrest rates among minority violators. Similarly, policies that stipulate that juvenile offenders can be released only to a guardian at home has a disparate impact on minority youth who are more likely than white youth to have a single parent who is employed rather than at home. Vastly disparate federal sentences for using and selling crack cocaine (more typical of minorities) versus using and selling powdered cocaine (more typical of whites) is often cited as contributing to DMC (*The Sentencing Project*, cited by Gies et. al 2009). Compounding this issue are “automatic transfer laws” which automatically transfer juveniles accused of certain crimes (including many drug crimes) to adult court. These laws, initiated to “get tough on crime,” have disproportionately affected minorities.<sup>1</sup>
- **Accumulated Disadvantage** – In some jurisdictions, the effects of DMC increase as youth move through the juvenile justice system, with seemingly small disadvantages at earlier stages resulting in larger overall differences. For example, minority youth are more likely than white youth to be detained prior to adjudication, independent of offense type and criminal history. Pre-adjudication detention increases the likelihood of a harsher outcome, presumably because offenders who were detained are viewed as more dangerous than those who were released. Thus, differential treatment at an earlier stage compounds, contributing to a harsher outcome at a later stage (Rodriguez 2010; Armstrong and Rodriguez 2007).

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<sup>1</sup> See Feld (1999, p. 17) for a discussion of this “fundamental cultural and legal reconceptualization of youth from innocent and dependent children to responsible and autonomous adult-like offenders.”

These factors can and often do operate simultaneously, and vary across jurisdictions and across time. They are complex, interrelated, and may contain multiple levels.

## **Summary of Empirical Research**

Detailing the many studies of the effects of race/ethnicity on outcomes in the juvenile justice system would be prohibitive. Instead, several reviews of literature are described, followed by some individual studies that provide examples of how differential treatment in the juvenile justice system may occur and how decisions at one point in the system may affect those at a later point. Research designed to identify the potential effects of different factors on DMC typically uses statistical techniques to determine whether race continues to exert an effect on outcomes in the juvenile justice system after taking into account the effects of “legitimate” factors. Researchers generally recognize that so-called legitimate factors may themselves reflect bias, thereby underestimating any effects of race/ethnicity. On balance, the inability to control for the effects of certain legitimate factors will overestimate the effects of race/ethnicity.

**Reviews of Literature** - Now somewhat dated, two early reviews of DMC literature deserve mention for their comprehensiveness and foundational nature. The first analyzed 46 articles published between 1969 and 1989 and concluded that minority and white youth experienced the juvenile justice system differently (Pope and Feyerherm 1995; 1990). Approximately two-thirds of the studies included in the review found that racial differences could not be attributed solely to differences in offending patterns or other legitimate characteristics (half found consistent results and half found mixed results—that is, race exerted a significant effect at some decision points, but not others). Findings were unrelated to type of research design. Pope and Feyerherm (1995, p. 5) stated that “while the research literature is far from conclusive with regard to the effect that race or ethnicity may play in influencing the differences in the handling of minority youth within the juvenile justice system, it does suggest that racial or ethnic status may be a factor that influences decisions in certain jurisdictions, at particular decision points, during certain time periods, and in response to specific behaviors.”

A second major review of DMC literature by Pope et al. (2002) examined 34 articles published between 1989 and 2001. Consistent with Pope and Feyerherm’s earlier review, Pope et al. found that the majority of studies concluded that race played a significant role in juvenile justice processing. However, the researchers found less evidence of cumulative disadvantage as minority youth moved through the system, which may reflect the increasing sophistication of DMC research, as the authors noted.

A more recent analysis of 125 studies by Engen et al. (2002) concluded that race effects were largest at earlier stages in the juvenile justice system, for African American youth (relative to white youth), and for studies that examined the cumulative effects of dispositional severity. The authors also found that a direct effect of race on outcomes was less likely among studies that controlled for criminal history, but controlling for seriousness of offense did not reduce the effects of race.

Huizinga et al. (2007) conducted a smaller review of eleven quantitative studies that included specific control variables and dated from 1994 onward. They concluded that DMC exists in the juvenile justice system; African American and Hispanic youth are most likely to have contact throughout the system; and after controlling for other explanatory variables, such as type of charge and criminal history, the effects of race were reduced and in some studies yielded mixed results.

**Additional Studies** - Leiber and Fox (2005) examined the effect of race on detention, and the extent that race and pre-adjudication detention influenced later judicial dispositions in one juvenile court jurisdiction during a 20-year period. After controlling for a variety of factors, including type of offense and prior referrals, the researchers found that African American youth were more likely than whites to be detained prior to adjudication, particularly when charged with drug offenses, and that pre-adjudication detention increased the odds of further court proceedings and subsequent detention, and decreased the likelihood of a diversion referral among African American youth. Whether youth are detained prior to a court appearance is important not only for the potential consequences of the detention experience on the youth and families involved, but because youth who are detained initially are more likely to be detained after adjudication (Rodriguez 2010; Mendel 2009; Armstrong and Rodriguez 2007; Holman and Zeidenberg 2006).<sup>2</sup>

Armstrong and Rodriguez (2007) examined factors affecting pre-adjudication decisions in 65 counties in a northeastern state, and found that minority youth were consistently more likely to be detained after taking into account characteristics of juveniles. Leiber and Johnson (2008) found that black male youth were more likely to be referred to juvenile court than white male youth, after controlling for a variety of relevant factors. The researchers found that the greatest racial disparities appeared to occur at intake (more so than at judicial disposition), with black youth being less likely to participate in diversion.

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<sup>2</sup> Mendel (2009) and Holman and Zeidenberg (2006) discuss the negative consequences of detention which include deleterious effects on mental and physical well-being, education and employment/earnings, and increased involvement in delinquent behavior, as well as the financial costs to communities of securely detaining youth, which may not result in safer communities.

Rodriguez (2010) examined racial/ethnic effects on diversion, petition, detention, adjudication, and disposition decisions for a sample of youth in Arizona. She concluded that black, Latino and Native American youth were treated more harshly than comparable white youth. In addition, youth detained prior to adjudication (disproportionately minorities) were more likely to have a petition filed, less likely to have a petition dismissed, and more likely to be placed outside of their home at disposition. Studies by Rodriguez (2010) and Armstrong and Rodriguez (2007) also found that youth living in areas with higher minority populations were more likely to be detained independent of their race/ethnicity. Moak et al. (2012) found a similar contextual effect on pre-adjudication decisions for minorities living in communities characterized by structural disadvantage.

Examining cases waived to adult court in the 40 largest jurisdictions in the country, Juszkiwicz (2007) found that 83 percent of cases filed in adult court involved minority youth. Drug cases were filed against black youth at almost five times the rate of filings against white youth, a particularly troubling finding since national studies of self-reported behavior by the National Institute on Drug Abuse and the National Household Survey on Drug Abuse found that white youth use and sell drugs at higher rates than black youth (cited in Hoytt et al. 2001). Most youth waived to adult court were not charged with violent offenses, and more than 40 percent of black youth prosecuted in adult court were not convicted, suggesting that the cases against them were weak.<sup>3</sup>

In a groundbreaking study, Bridges and Steen (1998) examined the written court records of probation officers to assess the role of racial stereotypes on characteristics attributed to youth. They found that officers were more likely to attribute the delinquent behavior of black youth to personality traits and negative attitudes—that is, to individual failings—while the delinquent behavior of white youth was more likely to be attributed to external causes such as social conditions. As a consequence, black youth were viewed as more dangerous and likely to reoffend, and probation officers recommended longer sentences relative to white youth with similar offense records.

Much of the empirical research on DMC is grounded in the “symbolic threat” perspective which theorizes that emotions and stereotypes contribute to a view of minorities as “threatening”—whether real or symbolic, as in the case of lifestyles that threaten white middle class values. Tittle (1994, p. 41; cited in Leiber and Johnson 2008), proposed that “symbolically driven

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<sup>3</sup> Similar to the effects of detention, processing juveniles in adult court also increases the likelihood of negative experiences and outcomes, including an increased likelihood of recidivism (Soler 2010; Bishop 2000).

emotions rooted in identification and fear heavily influence the way individuals react to people and events. The less the identification and the greater the fear, the more likely is social control to be attempted.” Consensus theory, an alternate though less popular view, posits that juvenile justice systems operate solely in response to legal and other pertinent factors. Any racial bias is minimal and random (Tracy 2002).

### **Federal Efforts to Reduce Disproportionate Minority Contact**

In 1988, the Coalition for Juvenile Justice brought DMC in the juvenile justice system to national attention with the publication of its annual report to Congress, *A Delicate Balance*. As a consequence of this report, the 1988 Amendments to Section 223(a)22 of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) required states to address DMC in their state plans. At the time, DMC referred to Disproportionate Minority *Confinement*. Thus, states’ efforts were to focus on reducing the proportion of minority youth detained in secure facilities when the proportion exceeded that of racial/ethnic minority groups in the general population. OJJDP began offering technical assistance, and in 1990 published its first *DMC Technical Assistance Manual*.

In the 1992 Amendments to the JJDP Act, DMC became a core requirement, with a portion of future Formula Grants funding eligibility tied to a state’s compliance. The JJDP Act was again amended in 2002, and the DMC component was modified to require states participating in the Formula Grants Program to “address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come in contact with the juvenile justice system.” Importantly, this changed the concept of DMC from confinement to contact, recognizing that the juvenile justice system can best be conceptualized as a process and that DMC can occur at various decision points in the system.

As part of the federal mandate pertaining to DMC reduction, states participating in the Formula Grants program must carry out five phases or core strategies: *Identification* of the extent of DMC, *Assessment* of the causes of any identified DMC, *Interventions* designed to reduce DMC, *Evaluation* of these intervention strategies, and continued *Monitoring* of DMC. The Identification phase involves data collection and completion of online data matrices which automatically calculate a Relative Rate Index (RRI). The RRI compares the representation of youth of different racial/ethnic minority groups at different points in the juvenile justice system to the at-risk population within each group, and compares minority groups’ representation to



that of white youth.<sup>4</sup> For example, an arrest RRI of 2.4 for black youth means that black youth are arrested at 2.4 times the rate of white youth.<sup>5</sup>

Responding to changes in federal mandates, OJJDP increased its technical assistance—revising its *DMC Technical Assistance Manual* (now in its fourth edition and available on-line), offering workshops, conferences, publications and serving as a clearinghouse for consulting and best practices (see Coleman, no date, for a more detailed summary of DMC's history vis-à-vis OJJDP).

### **Other Initiatives**

As OJJDP strengthened its mandates and support of states' efforts to reduce DMC, private initiatives were also underway. The Annie E. Casey Foundation's **Juvenile Detention Alternative Initiative (JDAI)** began in the 1990s in response to the unprecedented increase in the number of youth in secure detention—a 72 percent increase between 1985 and 1995. The JDAI is predicated on the assumption that the detention experience is inherently harmful, and should be used only for youth who pose a risk to society. In addition to reducing the use of detention through reform strategies, goals of the JDAI include reducing the number of youth who fail to appear or reoffend, and improving the conditions of confinement. These efforts have dramatically reduced the number of detention facilities and the number of youth detained. The JDAI is credited by some as the most significant juvenile justice reform to date. Although the initiative was not specifically designed to reduce DMC, a decline in the use of detention has had the effect of reducing DMC in some jurisdictions. In 2005, the Annie E. Casey Foundation formally added DMC reduction to the initiative (Mendel, 2009).

The **MacArthur Foundation's Models for Change** began in 2004 and focused on juvenile justice reforms in four states (Illinois, Louisiana, Pennsylvania and Washington). The initiative added 12 Action Network states in 2007, where reform efforts have focused specifically on DMC reduction. Specific strategies include "regular collection and reporting of juvenile justice data to

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<sup>4</sup> Identifying the race/ethnicity of juveniles is critical to DMC identification, but fraught with problems. Sociologists have long recognized that race is a social construct rather than a biological characteristic. An observer (e.g., police officer) may identify a youth as belonging to a particular racial/ethnic group, but this may differ from the group with which the youth identifies. Identification is also complicated because Hispanic/Latino is an ethnicity (or more correctly, the aggregation of multiple ethnicities), and Latinos can be of any race. Thus, identification of Latinos should occur separate from racial identification, but Latinos should not be double counted by being included a racial category (see Kempf-Leonard 2007 and Cintron 2006 for a discussion of these and other issues).

<sup>5</sup> The RRI for a contact point, such as referrals to juvenile court, is calculated by dividing the number of referrals for white youth by the number of white youth in the at-risk population of 10-17 year olds (arrestees, or, more appropriately, all police contacts) and multiplying by 1,000, and dividing referrals for a particular racial/ethnic minority group (or all combined) by the number of minority youth in the at-risk population and multiplying by 1,000. Dividing the rate for minority youth by the rate for white youth yields the Relative Rate Index. For arrests, the at-risk population is the general population. For subsequent contact points, the at-risk population includes youth at the previous stage. For example, the at-risk population for referrals to juvenile court is juveniles arrested (or who had contact with police that did not culminate in an arrest, data that are typically not available).

identify needed policy and practice reforms and monitor impact of DMC reduction strategies at key system decision; creating or modifying system programs and services to increase cultural competence and ensure that system services are responsive to community and family needs; implementing new detention alternatives and increasing use of alternatives for youth of color, and reducing detention utilization for post-disposition youth through use of graduated sanctions and reward systems and expediting post-disposition placements. Jurisdictions are reporting improvements in DMC as the result of these efforts to identify the extent and sources of DMC and to implement strategies appropriate to a particular locale” (Models for Change, 2009).

The nonprofit **W. Haywood Burns Institute** has established itself as a leader in DMC reduction efforts, and offers a range of consulting and training services (many of the JDAI sites also work with the Burns Institute). The Burns Institute’s approach is data-driven and works to establish consensus and “buy-in” among traditional and nontraditional stakeholders to assure that jurisdictions build capacity and maintain the momentum required to develop and carry out appropriate strategies that will reduce DMC (Burns Institute 2012; see also Bell et al. 2009 and Bell et al. 2008).

**Building Blocks for Youth**, a Youth Law Center initiative which operated from 2000 to 2005, also deserves mention. The goals of the initiative were to “reduce the overrepresentation and disparate treatment of youth of color in the justice system and to promote fair and effective juvenile justice policies” (Soler 2005, p. 2). Efforts focused on new research, DMC reduction site-based work, advocating for youth of color, building constituencies, and building effective communication strategies among constituents and between constituents, the media and the public. Building Blocks for Youth issued ten major reports, the last of which highlighted strategies around the country that have been effective at reducing DMC (Building Blocks for Youth 2005).

The emphasis on evidence-based results and shared information is a common thread among these private initiatives. OJJDP too now offers a searchable DMC Reduction Best Practices Database on its website. A critical element to implementing effective strategies is to understand the causes of DMC in a particular location.

## **EFFECTIVE STRATEGIES FOR REDUCING DMC**

The *Disproportionate Minority Contact Technical Assistance Manual* and the DMC Reduction Best Practices Database organize intervention strategies into three broad categories: **Direct Services, Training and Technical Assistance, and System Change** (Gies et al. 2009; see also Leiber and Rodriguez, 2012, Cabaniss et al. 2007; Nellis 2005). Importantly, each category has

different intervention targets. Since DMC typically operates at multiple points in the juvenile justice system and factors that contribute to DMC are often inter-related, multiple intervention strategies are likely be needed.

**Direct services** try to reduce or eliminate the effects on DMC of differential offending; differential opportunities for prevention and intervention; indirect effects; and accumulated disadvantage. These services target youth, families and communities, and include programs focused on prevention and intervention, diversion, restorative justice and advocacy, and alternatives to detention/prison.

- **Prevention programs** are designed to increase protective factors among at-risk youth, for example by addressing educational deficits or addictive behaviors, and/or building skills and personal resources (e.g., self-confidence, coping mechanisms and interpersonal skills).
- **Intervention programs** assist youth who have already had contact with the juvenile justice system by breaking destructive behavior patterns and otherwise reducing the risk of continued involvement.
- **Diversion and restorative justice programs** attempt to keep low-level offenders out of the juvenile justice system, both for their own benefit and that of an often overburdened juvenile justice system, while still holding offenders accountable.
- **Detention alternatives** recognize that if detention is the only available option, it will likely be used for low-risk youth and those in need of social services. Youth would be better served within the community rather than in secure confinement, provided that offenders do not pose a threat or are otherwise at high risk of reoffending or failing to appear in court.
- **Advocacy programs** can help youth and their families navigate the juvenile justice system and access appropriate services, and assure that their interests and needs are represented.

**Training and Technical Assistance** targets law enforcement and workers in the juvenile justice system and attempts to mitigate the effects of differential opportunities for prevention and intervention on DMC; differential handling; legislative policy, and legal factors; justice by geography; and accumulated disadvantage. Although intentional and overt racism can occur, the greater problem is unintentional bias that can influence the perceptions, interactions and decisions of individuals, and the routine operations of organizations and other social constructs, resulting in systemic disadvantages for minority youth.

Cultural competency training is a common technique designed to increase understanding of how human behavior can differ across social groups. Greater understanding of the history,

belief systems, customs, interaction patterns (e.g., body language, demeanor), values and other aspects of a group's culture can increase sensitivities to how dominant cultures and social structures may disadvantage members of minority groups, thereby reducing stereotypes, and overt and inadvertent bias. Designing culturally-appropriate programs and services, assessing the impact on minority groups of policies and procedures, having bilingual staff members available, providing printed materials in languages that reflect the surrounding community, and hiring interpreters and translators to accompany non-English speakers to court hearings are all mechanisms that can reduce structural disadvantages faced by minority youth and their families.

**System Change** refers to making alterations to laws, policies, procedures and other social operations that routinely disadvantage minority youth and contribute to DMC. System changes attempt to reduce DMC caused by differential opportunities for prevention and intervention; differential handling; legislative, policy, and legal factors; indirect effects; and accumulated disadvantage. This approach can involve examining the impact of elements of the juvenile justice system such as sentencing guidelines, detention risk assessment, and guidelines for diversion to determine whether they have a differential impact on white and minority youth.<sup>6</sup>

An effective mechanism for reducing DMC through system change is the use of risk assessment instruments. Empirically-based, standardized risk assessment instruments can reduce the subjectivity inherent to decision-making. Instruments may be developed to assess a youth's risk of reoffending or a youth's risk of failing to appear in court. The results of the risk assessment can then guide decisions such as whether detention is needed or a less restrictive arrangement will suffice.

Largely due to OJJDP's initial emphasis on disproportionality in the confinement of minorities and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, more than 100 jurisdictions now use risk assessment instruments in detention decision-making (Mendel 2009). Despite this progress, Mulvey and Iselin (2008) indicate that structured decision-making instruments are far more widely used in other fields, and that juvenile justice professionals "make decisions mainly on their intuition about whether the adolescent before them is more likely to harm the community or to use justice system services to turn his life around" (p. 35). They recommend using risk assessment instruments in decision-making surrounding intake, detention, and probation, and to chart the progress of youth in placement.

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<sup>6</sup> Iowa led the nation in enacting a Minority Impact Statement Bill (HF 2393) which requires that all pending legislation be reviewed for any potential disparate impacts on minorities (Nellis and Richardson 2010).

## **SUCCESS STORIES**

Despite the rather pessimistic perspective that some have taken toward DMC reduction efforts, progress is evident in some states and some counties. Several examples are highlighted here.

**Multnomah County: Reducing DMC in Detention** - Oregon was one of five states to pilot a DMC reduction site through a competitive federal grants program in the 1990s (Devine et al. 1998). Multnomah County, a racially/ethnically diverse area that includes Portland, was also selected as an initial Annie E. Casey JDAI site. A broad range of stakeholders within the county worked long and hard at DMC reduction efforts, and although reform was slow in coming, Multnomah County is now recognized as a leader in DMC reduction efforts (Lotke and Schiraldi 2005; Hoytt et al. 2001). In 1994, Multnomah County's annual detention admissions totaled nearly 3,000, with an average daily population of close to 100 youth. By 2003, the annual number of detention admissions had declined to 348, with an average daily population of 33. Initially, minority youth were much more likely than white youth to be detained—twice as likely for Latinos and four times as likely for Native Americans. As detention alternatives were developed and other mechanisms put in place, not only did overall detention rates decline dramatically, so too did the over-representation of minority youth. By 1998 white and minority youth arrestees had the same chance of being detained.

Multnomah County's DMC reduction group recognized that their focus needed to be system-wide, with data collected for each point in the system, and that DMC must be an expressed goal. The group also agreed that detention should be used for "high-risk youth" rather than "high-need youth," that objective screening tools were important to reducing subjectivity in distinguishing between these groups, and that other mechanisms for meeting low-risk youths' needs must be available. Positions were created in the public defender's office to work on the non-legal aspects of cases. Efforts were made to reduce probation violations among youth by increasing communication with offenders and their families (including by reducing language and other cultural barriers); reduce the number of youth sent to detention by judicial orders which previously had bypassed the risk assessment screening tool; and institute an objective screening instrument for probation violations to address variation across probation officers and communities in the sanctions associated with various probation violations.

**Illinois: Repealing Automatic Transfer Law** - Legislators and advocacy groups succeeded in challenged Illinois' automatic transfer laws, deemed "among the most racially inequitable laws in the country" (Youth Law Center, 2005, p. 2). In 1985, Illinois instituted automatic transfers to adult court for youth aged 15 and 16 accused of engaging in drug crimes within 1,000 feet of a school or a public housing site. The law was implemented to stem the rapidly rising numbers of

drug crimes among teenagers, particularly those associated with gangs. A study by Northeastern University's Children and Family Justice Center in the early 1990s determined that 25 percent of youth automatically transferred were charged with low-level drug crimes, and that *all* were youth of color. Although a Cook County judge found the 1,000 foot transfer statute unconstitutional, this ruling was later overturned by the Illinois Supreme Court.

Advocates for change compiled data showing not only that nearly all youth transferred for drug offenses were minorities, but that 60 percent had no prior dealings with juvenile court, nearly 40 percent of cases transferred to adult court were dismissed, and that three-quarters of those convicted received probation. In addition to these and other statistics, advocates publicized information on the consequences of drug convictions in adult court, which include the inability to apply for federal financial aid for college and the inability to be cared for by a foster parent. Through the efforts of many constituents, including legislators, youth groups, legislative advocacy groups, national juvenile justice groups, and the media, the law was modified in 2002 to exclude all but non-class X drug offenders to request a reverse waiver hearing to return youth to juvenile court; and several years later the law was repealed altogether (Kooy 2005).

**Seattle: Reducing Disproportionate Minority Detention** – In 2000, African Americans comprised nine percent of Seattle's juvenile population, but 39 percent of its detention population. The City of Seattle became a pilot intervention site for the newly-formed W. Haywood Burns Institute. The Burns Institute builds on the JDAI model, adding an intentional focus on DMC reduction and the engagement of non-traditional stakeholders. Initially, even traditional stakeholders were reluctant to become involved in the highly-charged issue of race in the juvenile justice system. The Burns Institute's approach was (and continues to be) to compile and use data to begin the reform process. In time, a group of both traditional and non-traditional stakeholders convened, working together to identify problem areas and appropriate intervention strategies, and making decisions solely through consensus. A DMC coordinator was also hired to collect and analyze data and otherwise facilitate the project.

The group implemented a number of system changes, including a requirement that police must call a detention screener prior to detaining a youth; both probation and Juvenile Court expanded their use of detention alternatives; and data on race/ethnicity at key decision points in the juvenile justice system was made readily available to decision makers. These changes helped to reduce the percentage of African American youth in detention approximately 37 percent by 2003. Subsequently, an objective risk assessment instrument for detention was developed and the Burns Institute model has now been institutionalized, which will likely contribute to further reductions in DMC (Bell et al. 2005).

Many jurisdictions across the country have successfully used these and other strategies to reduce DMC. Perhaps the most effective strategy is a tenacious commitment to achieving this goal.

## **DMC IN VERMONT**

Since 2002, Vermont's Juvenile Justice Specialist Theresa Lay-Sleeper has annually compiled data matrices documenting the numbers of white and minority youth who come in contact with various points in the juvenile justice system.<sup>7</sup> If a minority group comprises one percent of the population aged 10-17, it is analyzed separately; otherwise, minority groups are aggregated. In addition to a statewide matrix, data for Chittenden, Rutland and Bennington Counties are also collected (a fourth county, Windham, was recently added since its population has become more diverse, but is not included in the current assessment). Data are entered on-line at OJJDP's website where Relative Rate Indices and tests of statistical significance are calculated automatically.

The most recent **Vermont DMC Report to the Office of Juvenile Justice and Delinquency Prevention**, submitted by Ms. Lay-Sleeper in 2012, includes data from fiscal years 2009-2011 in its DMC matrices and discussion. Data show that black youth were nearly two and a half times more likely to be arrested than white youth (RRI of 2.43), and one and a half times more likely to have charges filed in adult court (RRI of 1.5).<sup>8</sup> Black youth were also nearly twice as likely to be securely detained (RRI of 1.89). Conversely, black youth were less likely than white youth to be referred to juvenile court (RRI of .70) and diversion (RRI of .62).

Importantly, the amount of missing race/ethnicity data for juvenile court referrals is sizable (57 percent), making identification of DMC in referrals to juvenile court unreliable—a consistent problem since Vermont began monitoring DMC. The DMC Identification matrices include referrals to diversion by the courts, but thus far have not included pre-charge referrals to Community Justice Centers (typically by law enforcement), omitting a critical point where the paths of white and minority youth may diverge.<sup>9</sup>

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<sup>7</sup> In Vermont, the contact points for youth aged 10-17 include arrests, referrals to juvenile court, cases diverted, cases involving secure detention, cases petitioned, cases resulting in delinquent findings, cases resulting in probation, and cases transferred/filed in adult court.

<sup>8</sup> The much lower arrest rates for Latinos, Asians and "other/mixed" youth also achieved statistical significance, with RRIs of .23, .29 and .60, respectively.

<sup>9</sup> Data reflecting these pre-charge referrals are now being collected annually.

**Chittenden County** is Vermont's most populated and diverse county. The DMC matrix for fiscal years 2009-2011 for Chittenden County shows significantly higher rates of arrest, secure detention and adult court filings for black youth relative to whites, with RRIs of 2.82, 1.34 and 1.49, respectively. Black youth had a slightly lower rate of petitions in juvenile court, but the RRI of .88 does achieve statistical significance. As previously noted, a substantial amount of race/ethnicity data is missing for juvenile court referrals and petitions. In addition, U.S. Census data was used as the base population data, which may not accurately reflect the current racial/ethnic composition of Chittenden County.

The DMC matrix for **Rutland County** for the three-year period shows a significant arrest RRI of 2.97 for black youth, indicating that black youth were nearly three times more likely to be arrested than white youth. No other RRIs achieved statistical significance. Notably, not a single minority youth was referred to diversion during the three-year period, although some youth of "unknown" race/ethnicity could be minorities.

The three-year DMC matrix for **Bennington County** reveals little because numbers are too small to calculate RRIs. The arrest rate for black youth is higher than for white youth (RRI of 1.59), but does not achieve statistical significance. Also of note is a referral rate to adult court that is more than three times higher for black youth than for white youth, but again numbers are too small to calculate an RRI.

## **VERMONT DMC ASSESSMENTS**

Excluding the current DMC assessment, VCJR has conducted three DMC assessments. The first examined **DMC in admissions from Chittenden County to Woodside Juvenile Detention Center** (Vermont's only juvenile detention center) for the period October 1, 2000 - September 30, 2002. These admissions included 13 minority youth, representing 25 admissions, and 22 white youth, representing 41 admissions. The assessment examined data from Social and Rehabilitation Services (SRS), juvenile court, and adult court to identify the decision-making points at which the DMC occurred and any differences in behavior and histories that might help explain racial differences in confinement rates. The Assessment concluded that "DMC in detention does not appear to be the result of greater delinquent or criminal behavior on the part of minorities, or the actions of judges. Rather, it appears to stem from SRS decision-making."

Minority youth—particularly female minority youth—were much more likely than white youth to be administratively admitted or admitted by flexible orders. It was the admissions of female minority youth that were largely responsible for the DMC. These admissions were implemented primarily for running away and intoxication, and for the most part the length of



stay was quite short—one night at most. The report's author concluded that detention likely served as a place to keep youth safe until a crisis situation was resolved or a more suitable placement could be arranged. Why SRS was more likely to respond to minority females in this way more so than to white females (and all males) could not be determined from available data (Bellas 2004).

A second DMC Assessment examined **DMC in juvenile arrests in four municipalities**—Burlington and South Burlington (Chittenden County), Barre (Washington County) and Bennington (Bennington County). These municipalities are the largest in their respective counties. The arrests included in the study occurred between October 1, 2002 and September 30, 2004. Analyses showed that minority arrestees were more likely to be male (with the exception of Bennington in 2004), and tended to be younger than white arrestees. Minority youth in Bennington, and to a lesser extent in Barre, were more likely than whites to be arrested for violent offenses. In Burlington and South Burlington, however, minority youth were less likely than whites to be arrested for violent offenses, but were far more likely to be arrested for property offenses, primarily retail theft. Although this difference may be due to a greater propensity to shoplift on the part of minority youth, it may also be due to racial profiling by retail personnel.

The greater visibility of minority youth in predominantly white communities may contribute to higher arrest rates for minority youth for other types of offenses as well. Minority youth may be more likely to be noticed by white adults and therefore to be identified as suspects. Racial stereotypes may also contribute to a reduced tolerance or a greater sense of threat among adults when minority youth misbehave. This can lead to calls to the police for public order offenses, such as unlawful mischief or disorderly conduct, while adults may tolerate similar behavior on the part of white youth. Greater numbers of calls to the police within certain neighborhoods may also lead police to increase patrols in these areas, which may then contribute to more arrests of minority youth. Although there is not a consistent pattern of greater minority arrests for public order offenses across communities and fiscal years, it was apparent in several of the analyses (Bellas 2005).

The third DMC Assessment focused on **DMC in juvenile arrests in Burlington** between October 1, 2004 and September 30, 2006. Using U.S. Census data, the RRIs for arrests of black youth during fiscal year 2005 and 2006 were 4.4 and 6.0, respectively, and 3.9 for Asian youth in fiscal year 2005 (the number of arrests of Asian youth were insufficient for RRI calculations in fiscal year 2006). Because Burlington's population is becoming increasingly diverse, RRIs were recalculated using school population data and the disproportionality in arrests disappeared. The RRIs dropped to less than one, indicating that black and Asian youth were arrested at lower

rates than whites, although these differences were not statistically significant. Arrest data do not, of course, reflect contacts with the police that do not lead to a formal arrest, and racial/ethnic differences may exist at this critical entry point into the juvenile justice system (Bellas 2007).

While understanding differences in offending patterns across racial/ethnic groups is critical to designing appropriate prevention and intervention strategies, it is clear that differential behavior does not account for the overrepresentation of minorities in the juvenile justice system. According to the Annie E. Casey Foundation (2009), racial and ethnic disparities in the juvenile justice system have created a “serious crisis of legitimacy,” undermining perceptions of fairness and effectiveness, adding to costs borne by states and the system, extending delinquent and criminal behavior, and jeopardizing public safety. Consequently, and despite the challenges, DMC reduction efforts must continue to assure that all youth receive fair and equitable treatment in the juvenile justice system regardless of race/ethnicity.

## **STATE AND LOCAL DMC DELINQUENCY PREVENTION AND SYSTEMS IMPROVEMENT STRATEGIES**

**Vermont's Juvenile Justice System** - Vermont's Juvenile/Family Courts have jurisdiction over youth aged 10-18 who have committed a delinquent act (i.e., an act that would be a crime if committed by an adult, with the exception of motor vehicle and snow mobile offenses which may not be considered delinquent acts). Those charged with more serious offenses can be tried as adults. Juvenile court jurisdiction may be extended to children under age 10 in cases of murder, and up to age 22 for “youthful offenders”—youth who are charged in adult court but whom the juvenile court determines would be better-suited to juvenile court proceedings.

Vermont's state's attorneys have typically prosecuted 16-17 years olds in adult court regardless of the offense. Griffin et al. (2007), consultants hired to conduct a jurisdictional study in Vermont, indicated that this approach is unusual among states, gives state's attorneys tremendous discretionary power, and as a result “the proportion of juvenile-age offenders who actually benefit from Vermont's juvenile justice system is unusually small” (p. vii). Griffin et al. (2007, p. 82) observe that 16-17 year old offenders are “handled in the same manner as adult criminals, and receive sanctions that do not take into account their developmental status or their developmental needs.” And, of course, the consequences of having a criminal record are more severe than for a delinquency record.

Griffin et al. (2007) reported that about half of cases against 16 year olds were filed in juvenile court, but among 17 year olds, only one in 12 cases was filed in that court. However, 16-17 years olds charged in adult court were twice as likely as those charged in juvenile court to be

diverted. Vermont's practice of processing so many juveniles in adult court is of particular relevance to DMC reduction efforts since black youth in Vermont are more likely than white youth to be charged in adult court, and are, conversely, less likely than white youth to be referred to juvenile court and court diversion.

**Children and Family Council for Prevention Programs** - Vermont has not yet implemented targeted intervention strategies to reduce DMC other than making jurisdictions aware of annual data matrices and any apparent disproportionality at particular contact points, as well as sharing the findings of previous DMC assessments. However, Vermont's Children and Family Council for Prevention Programs (CFCPP), whose members are appointed by the Governor, is charged with advising the legislature on issues relating to juvenile justice, delinquency and primary prevention (V.S.A. 33: 33), and adhering to the OJJP Act's core requirements which include DMC monitoring and reduction.

The CFCPP has long been concerned with the amount of missing data in juvenile court records. Substantial amounts of missing data make identification of DMC unreliable at this critical decision point and threaten the State's compliance with the DMC requirement of the JJDP Act. In 2012, the CFCPP, Vermont's juvenile justice specialist, state's attorneys and juvenile court personnel agreed on two strategies to reduce the amount of missing race/ethnicity data: first, to revise forms for court data entry to include race and ethnicity of youths charged; and second, to ask the Family Court Rules Committee to require race/ethnicity data in all delinquency cases filed (CFCPP 2012). The Committee approved this request in August 2013.

To address delinquency prevention and intervention generally, the CFCPP awards and monitors grants each year in a variety of areas. In 2012, the CFCPP made grants totaling \$1,253,000 to agencies and programs in the following areas: support to parents and families, education and school readiness; child and youth academic, social, arts, health and violence prevention; mentoring programs; statewide practice improvement and jurisdiction change for youth with delinquent offenses; workforce training; and restorative family group conferencing (CFCPP 2012). The extent to which these agencies/programs serve minority youth and their potential impact on DMC is unknown.

**Act 159** - A priority for the CFCPP has been to reduce the number of juveniles charged in adult court. With the endorsement of Vermont's state's attorneys, Defender General, Department for Children and Families and court diversion, Act 159 was implemented by the Vermont Legislature on July 1, 2012. This Act changed Vermont's statutes related to jurisdiction of delinquency proceeding (33 V.S.A. 5103), making less harsh the State's dealings with 16- and particularly 17-year olds, and bringing relevant statutes more in line with those of other states.

Act 159 allows juvenile courts to have jurisdiction over children up to age 18 ½ when offenses are non-violent misdemeanors and the child was 17 when the offense was committed.<sup>10</sup> Children now have the opportunity to undergo risk and needs assessments prior to a preliminary hearing, and courts may refer low-risk offenders to community-based providers at disposition. Providers include Community Justice Centers (CJC) and Balanced and Restorative Justice Program (BARJ), effectively streamlining the juvenile courts' approach to low-risk offenders and reducing the number of referrals to juvenile court.

Act 159 also allows state's attorneys to move to transfer a case from juvenile to adult court if the juvenile was 16-17 at the time of the offense and is not charged with any of the 12 most serious charges identified in Section 4 of 33 V.S. A. 5204 which are more appropriately filed in adult court initially (e.g., murder, assault and robbery with a dangerous weapon, kidnapping). This change was made to encourage state's attorneys to file more cases in juvenile court by addressing their concerns that if additional information about a case indicates that it is more appropriate for adult court a mechanism would be in place to move for a transfer. Whether these statutory changes will reduce DMC in referrals to adult court remains to be seen, but they will most certainly reduce the number of juveniles referred overall. The number of 16-17 year olds referred to adult court showed a decline in 2011, even before Act 159 took effect. The CFCPP credits this change to a reduction in crime, greater use of community justice resolution options, and increased awareness of the developmental differences between teens and adults (CFCPP 2012).

**Diversion Enhancement Assessment Project (DEAP)** - The CFCPP has for the past three years funded a statewide Diversion Enhancement Assessment Project. This project includes implementation of a Youth Assessment Screening Instrument (YASI) to inform state's attorneys decisions about whether a referral to Juvenile or adult court is merited, whether diversion is appropriate and which diversion options are available; a large workforce training component for diversion workers, law enforcement and others involved in the court system; improved diversion case management and interventions; and county-level collaborations around interventions for low-risk youth (CFCPP 2012).

In most counties, BARJ programs conduct these risk assessments. In Chittenden County, for example, Transitional Services for Youth and Families (TSYF) notifies all youth under age 18, whose cases have been sent to the state's attorney, of the opportunity to participate in a risk assessment and the benefits of doing so. TSYF conducts the risk assessment and provides the results to the state's attorney, along with their recommendations for disposition of the charges

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<sup>10</sup> A survey of state's attorneys found that termination of Family Court jurisdiction at age 18 was the primary barrier to filing cases involving older youth in Family Court (Vermont Juvenile Defender, 2012).

(Protocol for Implementing Risk Assessment Screening 2012). Youth who screen at low-moderate risk can be adjudicated delinquent and referred by a state's attorney to a BARJ or to a CJC if there is one in the county.

**Target Contact Points and Sites** - In the decade that Vermont has monitored DMC, it has collected data annually for the OJJDP matrices. These matrices include data entry fields for youth aged 10-17 identified as belonging to one of the following categories: whites, blacks, Hispanics/Latinos, Asians, Hawaiian/Pacific Islanders, American Indian/Alaska Native, and Other/Mixed, as well as all minorities combined. Only groups representing at least one percent of a state's population need be included.<sup>11</sup>

The OJJDP matrices use U.S. Census data as the base or "at-risk" population. The number of juveniles within each applicable racial/ethnic group is entered for each of the following decision points: juvenile arrests; referral to juvenile court; cases diverted; cases involving secure detention, cases petitioned (charges filed in juvenile court); cases resulting in delinquent findings; cases resulting in probation placement; cases resulting in confinement in secure juvenile correctional facilities; and cases originating in or transferred to adult court. Rates of contact are automatically calculated for racial/ethnic groups when numbers meet minimal thresholds. The matrices also calculate Relative Rate Indices (RRIs) and test for statistical significance. RRIs compare the contact of minority youth to white youth, but states have the ability to change the reference group if another group is more appropriate. States are mandated to collect and report data for the three counties with the largest proportion of minority youth.

Although OJJDP developed the matrices' decision points, states have the ability to modify the matrices to better fit their particular juvenile justice system or when data are unavailable. For example, Oregon does not report juvenile arrest data because it is not consistently available and is not available for Hispanic youth at all. Consequently, population data is used as the at-risk population for referrals to juvenile court (Feyerherm 2012).

Dr. William Feyerherm, a nationally-recognized expert and consultant on DMC, developed a customized matrix for Vermont. The matrix separates referrals to juvenile and adult court, and separates referrals to diversion in juvenile court from diversion completed in adult court. The matrix also adds convictions in adult court, and relaxes the number of cases and target events required to calculate RRIs to one and five, respectively, rather than five and 30, as in OJJDP's matrices. Consequently, more RRIs are calculated, and the likelihood of achieving statistical

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<sup>11</sup> Vermont's matrices have evolved to include three categories for missing race/ethnicity data: unknown, an entry made by police; not reported, a category used by court clerks to indicate that police did not include this information on the arrest/custody report; and blank, meaning that the courts did not enter the information although it may have been provided by police.

significance is increased. Thus far the modified matrix is used internally and not reported to OJJDP.

## **GOALS OF CURRENT ASSESSMENT**

The primary goal of the current assessment was to explore whether DMC is indicated at three points in the juvenile/criminal justice system—referrals to juvenile court, referrals to adult court, and referrals to diversion (including to the extent possible pre-charge referrals to Community Justice Centers) in Bennington, Chittenden, and Rutland Counties. Should DMC be apparent at any of these points in any of the three counties, the assessment attempted to identify the mechanisms responsible for the disproportionality.

The major strategies of the study were to:

1. Reduce the amount of missing race/ethnicity data in the juvenile court database;
2. Rely primarily on quantitative analyses to determine the strength, direction, and relationships between independent (explanatory and control) and dependent variables (i.e., types of referrals);
3. Use DMC literature, OJJDP resources, and the expertise of practitioners in Vermont's juvenile justice system and Dr. William Feyerherm, DMC subject matter expert, to inform data analyses, interpretation of the findings, and recommendations for intervention strategies.

## **RESEARCH DESIGN AND METHODS**

The primary components of the research design were as follows:

1. Obtain missing race/ethnicity data for youth whose cases were filed between July 1, 2008 and June 30, 2011 (this applies primarily to juvenile court; missing race/ethnicity is infrequent in adult court data).

This task first entailed identifying youth with missing race/ethnicity data in the quarterly juvenile court extracts which VCJR receives from the Court Administrator's Office. A research assistant then manually accessed cases with missing race/ethnicity data by docket number in the Vermont Court Access System (VCAS) to obtain the name, birth date, arresting agency and filing date of each individual.

With permission from relevant police agencies, the research assistant then checked these cases in the police database at the Department of Public Safety (DPS) for race/ethnicity data. Burlington Police Department data for 2011 is not available via DPS, so a VCJR research assistant went to the Burlington Police Department to collect the data. This method reduced the missing race/ethnicity information in the juvenile court data for the three counties of interest from 24 percent to seven percent.<sup>12</sup> Race/ethnicity data was missing from some police data, but the larger problem was that name and date of birth could not be retrieved from the VCAS system for cases that had been expunged since we received the court extracts.

2. Obtain individual-level pre-charge referral information from CJs in Chittenden and Rutland Counties (Bennington does not have a CJC that accepts direct referrals from law enforcement). Only one of seven CJs (Essex, in Chittenden County) was unwilling to share information (this CJC also does not collect race/ethnicity data). Some CJs were not in existence long enough to provide data for the three years of interest. The South Burlington CJC was operated by volunteers during this time period who did not compile data.
3. Obtain individual-level diversion referral information from juvenile and adult court extracts.
4. Construct juvenile and adult court histories for defendants in the database.

We constructed histories using criminal records from the Vermont Crime Information Center for cases that were referred to adult court. The juvenile court database does not contain personal identifiers, so we used the county specific Defendant ID number contained in court extracts to identify any juvenile court referrals for the subject during the years prior to the study period. We also obtained juvenile court histories for those juveniles charged in adult court.<sup>13</sup>

5. Construct an individual-level database with variables known to or hypothesized to be associated with a decision to refer youth to juvenile court, adult court, or diversion.

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<sup>12</sup> A surprising amount of juvenile court cases were also missing sex of the defendant. We accessed court records for each of these cases, and for names that are commonly male or female, assigned a sex.

<sup>13</sup> When a case was transferred from one court to the other and data from both courts could be identified, data from the original filing was retained and data pertaining to the recipient court deleted. Potential duplicates could not be identified in 15 cases because the juvenile case was expunged from VCAS so a link to an adult court case could not be established. Given that cases are not expunged until two years after completion of successful diversion and that the database covers a period of only three years, it is likely that fewer than 15 cases are duplicated (thus, 30 cases total) among the nearly 2,000 cases in the database.

6. Conduct descriptive and regression analyses to determine whether any apparent effects of minority status on the probability of being referred to juvenile court, adult court or diversion are explained by differences between white and minority youth other than race/ethnicity.

The dichotomous dependent variables in the logistic regression models consisted of the decision points of interest (i.e., referred to adult court, yes/no, referred to juvenile court, yes/no, referred to diversion, yes/no, as well as referred to a CJC, yes/no, and referred to some type of diversion, which combined court diversion and CJs, yes/no). Independent variables for the analyses included characteristics of the juvenile (race/ethnicity, age and sex), ranking of the most serious offense (scale of seriousness), number of charges, and county of court filing, and measures of prior juvenile/criminal history. Although available data from the two courts and CJs is not collected in a consistent manner, we created new variables to bridge these data sources.

These efforts yielded the following juvenile and criminal history variables: number of prior juvenile dockets, number of prior adult dockets, number of total prior dockets (both courts), number of prior delinquencies, number of prior adult misdemeanor convictions, number of prior adult felony convictions, number of total adult convictions, number of total delinquencies/convictions (both courts).

7. Meet with stakeholders in counties where DMC is evident to discuss findings and explore possible explanations and interventions if merited (this took place in Chittenden County only).

## **ASSESSMENT/STUDY FINDINGS**

### **Distribution of Minority Youth in Vermont's Population and Juvenile Justice System**

Table 1 shows the percentages of youth aged 10-17 by racial/ethnic categories for Bennington, Chittenden and Rutland Counties for the years 2009-2011. White youth comprise 91.9 percent of the population in these three counties, and minority youth, 8 percent (black, 3; Hispanic/Latino, 2.1; Asian, 2.6; and Native American, 0.3). Referral data show that minority youth (all categories combined) were somewhat over-represented relative to their representation in the population (9.7 versus 8 percent) while white youth were slightly under-represented (90.3 versus 91.9). The over-representation of minority youth is greatest among black youth, who comprised 7.1 percent of youth referred but 3 percent of the juvenile



population in the three counties combined.<sup>14</sup> Note that these referral statistics include all referrals and thus may count the same individuals more than once if they had contact with the juvenile justice system multiple times during the study period.

**Table 1: Race/Ethnicity of Youth in Population and Among Those Referred to Juvenile Court, Adult Court or a Community Justice Center, July 1, 2008-June 30, 2011: Total and by County.**

<b>TOTAL</b>	<b>Census Data</b>	<b>Justice System</b>	<b>Valid %</b>
<b>White</b>	91.9%	<b>1671</b>	90.3%
<b>Minority</b>	8.0%	<b>180</b>	9.7%
<b>Black</b>	3.0%	132	7.1%
<b>Hispanic/Latino</b>	2.1%	16	0.9%
<b>Asian</b>	2.6%	26	1.4%
<b>Pacific Islander</b>	0.0%	0	0.0%
<b>Native American</b>	0.3%	1	0.1%
<b>Other</b>	0.0%	5	0.3%
<b>Race Missing</b>		<b>141</b>	
<b>Total Youth</b>		<b>1992</b>	
<b>BENNINGTON</b>			
<b>White</b>	94.2%	<b>496</b>	95.6%
<b>Minority</b>	5.7%	<b>23</b>	4.4%
<b>Black</b>	1.6%	18	3.5%
<b>Hispanic/Latino</b>	2.8%	2	0.4%
<b>Asian</b>	1.1%	3	0.6%
<b>Native American</b>	0.2%	0	0.0%
<b>Pacific Islander</b>	0.0%	0	0.0%
<b>Other</b>	0.0%	0	0.0%
<b>Race Missing</b>		<b>9</b>	
<b>Total Youth</b>		<b>528</b>	
<b>CHITTENDEN</b>			
<b>White</b>	89.8%	<b>790</b>	85.5%
<b>Minority</b>	10.7%	<b>134</b>	14.5%
<b>Black</b>	4.6%	102	11.0%
<b>Hispanic/Latino</b>	2.1%	6	0.6%
<b>Asian</b>	3.7%	21	2.3%
<b>Pacific Islander</b>	0.0%	0	0.0%
<b>Native American</b>	0.3%	0	0.0%
<b>Other</b>	0.0%	5	0.5%
<b>Race Missing</b>		<b>104</b>	
<b>Total Youth</b>		<b>1028</b>	

<sup>14</sup> Chittenden County's population (particularly Burlington's) has become increasingly diverse. School data provided by the Vermont Department of Education for 2006-2009 shows a minority population of 11.7 percent. Recent data provided by Burlington's public school district reflects a minority population of 33 percent.

<b>RUTLAND</b>			
<b>White</b>	96.0%	<b>385</b>	94.4%
<b>Minority</b>	4.0%	<b>23</b>	5.6%
<b>Black</b>	1.2%	12	2.9%
<b>Hispanic/Latino</b>	1.4%	8	2.0%
<b>Asian</b>	0.9%	2	3.4%
<b>Pacific Islander</b>	0.0%	0	0.0%
<b>Native American</b>	0.5%	1	0.2%
<b>Other</b>	0.0%	0	0.0%
<b>Race Missing</b>		<b>28</b>	
<b>Total Youth</b>		<b>436</b>	

*Percentages may not total to 100 due to rounding.*

*Valid percentage is calculated using only cases with race data.*

*Population data are for youth aged 10-17 for 2009-2012, combined.*

*Source: EZ Access to Juvenile Population (<http://www.ojdp.ncjrs.org/ojstatbb/ezapop>).*

The over-representation of minority youth, particularly of black youth, relative to their representations in the population is evident in all three counties. Disparities are smallest in Bennington County, where minorities comprised 4.4 percent of referrals and 5.7 percent of the population, and largest in Chittenden County, where minorities comprise 14.5 percent of referrals and 10.7 percent of the population.

### **Descriptive Statistics for Individual-Level Referral Data**

Referrals to juvenile court, adult court or to a Community Justice Center between June 1, 2008 and June 30, 2011 in Bennington, Chittenden and Rutland Counties totaled 1,992 individuals and 2,622 charges (this difference reflects multiple referrals and multiple charges for some youth). Referrals were distributed across the counties of interest as follows: Bennington: 528 individuals and 704 charges; Chittenden: 1,028 individuals and 1,331 charges and Rutland: 436 individuals and 587 charges. Only 180 referrals involved minority youth, with black youth comprising nearly three-quarters of all minority referrals. Due to the smaller representations of other minority youth, black youth are combined with Hispanic/Latino, Asian, Native American, "Other" youth into one "minority" category (no Native Hawaiian/Pacific Islanders are represented in the data).

**Table 2A: Numbers of Individuals by Decision Point and County, July 1, 2008-June 30, 2011: All Youth, and White and Minority Youth Separately.**

	Total	Cases with Race	White	Valid %	Minority	Valid %	Sig.
<b>TOTAL</b>	1992	1851	1671	100.0%	180	100.0%	
<b>Juvenile Court</b>	1283	1182	1103	66.0%	79	43.9%	***
<b>Adult Court</b>	456	427	371	22.2%	56	31.1%	**
<b>CJC</b>	253	242	197	11.8%	45	25.0%	***
<b>Court Diversion</b>	493	449	425	25.4%	24	13.3%	***
<b>All Diversion</b>	747	691	622	37.2%	69	38.3%	n.s.
<b>BENNINGTON COUNTY</b>							
<b>Juvenile Court</b>	344	343	333	67.1%	10	43.5%	*
<b>Adult Court</b>	184	176	163	32.9%	13	56.5%	*
<b>CJC</b>	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Court Diversion</b>	175	172	167	33.7%	5	21.7%	n.s.
<b>All Diversion</b>	175	172	167	33.7%	5	21.7%	n.s.
<b>CHITTENDEN COUNTY</b>							
<b>Juvenile Court</b>	617	545	486	61.5%	59	44.0%	***
<b>Adult Court</b>	186	165	133	16.8%	32	23.9%	*
<b>CJC</b>	225	214	171	21.6%	43	32.1%	*
<b>Court Diversion</b>	180	156	141	17.8%	15	11.2%	+
<b>All Diversion</b>	405	370	312	39.5%	58	43.3%	n.s.
<b>RUTLAND COUNTY</b>							
<b>Juvenile Court</b>	322	294	284	73.8%	10	43.5%	**
<b>Adult Court</b>	86	86	75	19.5%	11	47.8%	**
<b>CJC</b>	28	28	26	6.8%	2	8.7%	n.s.
<b>Court Diversion</b>	139	121	117	30.4%	4	17.4%	n.s.
<b>All Diversion</b>	167	149	143	37.1%	6	26.1%	n.s.

Valid percentage is calculated using only cases with race data.

Bennington County does not have a CJC that accepts direct police referrals.

Chittenden County includes data from the following CJCs: Burlington, 7/1/08-6/30/11;

Williston, 5/5/10-6/30/11; Winooski, 5/30/10-6/30/11; Rutland, 7/1/08-6/30/11)

(Essex did not provide data and S. Burlington did not collect data during the time period.

Fisher's Exact Test (two-tailed): \*\*\* < .001; \*\* < .01; \* < .05; + < .1; ++ < .15

Racial/ethnic differences in referral patterns evident in the individual-level data are consistent with those found in the aggregate-level DMC matrices compiled by Vermont's juvenile justice Specialist. As Table 2A shows, minority youth were less likely than white youth to be referred to

juvenile court, but more likely to be referred to adult court. Sixty-six percent of white youth were referred to juvenile court compared to 43.9 percent of minority youth. In contrast, 22.2 percent of white youth and 31.1 percent of minority youth were referred to adult court. White youth were more likely than minority youth to be referred to court diversion (25.4 versus 13.3 percent), but minority youth were more likely to be referred to a Community Justice Center (25 and 11.8 percent, respectively). Thus differences in court diversion and CJC referral patterns cancel each other out when combined, with slightly more than one-third of both groups being referred to some type of diversion.

Table 2A also shows the numbers and percentages of referrals by county. Minority youth were significantly less likely to be referred to juvenile court and more likely to be referred to adult court than white youth in all three counties. The pattern of fewer referrals to court diversion and more referrals to CJCs among minority youth held for Chittenden County only (note that Bennington County does not have a CJC that accepts referrals directly from law enforcement).

Table 2B shows the same referrals, but for charges rather than for individuals. The patterns remain the same, although the strength of the significance varies in some cases. Only one difference becomes (marginally) insignificant—referrals to adult court in Chittenden County, where 26.2 percent of charges among minority youth and 20.4 percent of charges among white youth were referred to adult court.

Although this assessment examines whether differential behavior accounts for the disproportionate representation of minority youth in Vermont's juvenile justice system, it is important to recognize that referral data does not include youth who allegedly committed an offense but were not charged or cited. If law enforcement officers are more likely to let white youth off with an informal warning or members of the public are less likely to call the police when white youth engage in disruptive or illegal behavior, these differences could contribute to the disproportionate representation of minority youth in the juvenile justice system. Similarly, white youth may be less likely than minority youth to be caught (even when the incidence of behavior is the same) if they are less likely to be noticed and less likely to be under surveillance than minority youth (e.g., by retail store personnel or police). White youth may also be less likely than minority youth to engage in illegal activities in public settings and be less likely to do so in groups.

In a similar vein, so-called "legitimate" or seemingly neutral variables representing differential behavior between groups may themselves incorporate bias. These variables (which sociologists sometimes refer to as "tainted" variables) may include charge rank and number of charges if, for example, minority youth are more likely to be charged with a more serious offense or are charged with more offenses than a white youth exhibiting similar behavior. Thus, controlling for

the effects of these variables will under-estimate any effects of minority status on referral outcome by essentially giving the “benefit of the doubt” to a presumption that official records and processing are accurate and unbiased.

**Table 2B: Numbers of Juveniles and Charges by Referral Type and County, July 1, 2008-June 30, 2011: All Youth, and White and Minority Youth Separately.**

	Total w/Race		Whites		Minority		Sig.
	Total	Data	N	Valid %	N	Valid %	
<b>TOTAL</b>	<b>2622</b>	<b>2441</b>	<b>2217</b>	<b>90.8%</b>	<b>224</b>	<b>9.2%</b>	n/a
Juvenile Court	1663	1528	1431	64.5%	97	43.3%	***
Adult Court	663	631	558	25.2%	73	32.6%	*
CJC	296	282	228	10.3%	54	24.1%	***
Court Diversion	579	525	498	22.5%	27	12.1%	***
All Diversion	875	807	726	32.7%	81	36.2%	n.s.
<b>BENNINGTON COUNTY</b>	<b>704</b>	<b>693</b>	<b>667</b>	<b>96.2%</b>	<b>26</b>	<b>3.8%</b>	n/a
Juvenile Court	437	435	423	63.4%	12	46.2%	+
Adult Court	267	258	244	36.6%	14	53.8%	+
CJC	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Court Diversion	190	187	182	27.3%	5	19.2%	n.s.
All Diversion	190	187	182	27.3%	5	19.2%	n.s.
<b>CHITTENDEN COUNTY</b>	<b>1331</b>	<b>1201</b>	<b>1029</b>	<b>85.7%</b>	<b>172</b>	<b>14.3%</b>	n/a
Juvenile Court	785	692	617	60.0%	75	43.6%	***
Adult Court	278	255	210	20.4%	45	26.2%	++
CJC	268	254	202	19.6%	52	30.2%	**
Court Diversion	210	185	167	16.2%	18	10.5%	+
All Diversion	478	439	369	35.9%	70	40.7%	n.s.
<b>RUTLAND COUNTY</b>	<b>587</b>	<b>547</b>	<b>521</b>	<b>95.2%</b>	<b>26</b>	<b>4.8%</b>	n/a
Juvenile Court	441	401	391	75.0%	10	38.5%	***
Adult Court	118	118	104	20.0%	14	53.8%	***
CJC	28	28	26	5.0%	2	7.7%	n.s.
Court Diversion	179	153	149	28.6%	4	15.4%	n.s.
All Diversion	207	181	175	33.6%	6	23.1%	n.s.

Valid percentage is calculated using only cases with race data.

Bennington County does not have a CJC that accepts direct police referrals.

Chittenden County includes data from the following CJCs: Burlington, 7/1/08-6/30/11;

Williston, 5/5/10-6/30/11; Winooski, 5/30/10-6/30/11; Rutland, 7/1/08-6/30/11)

(Essex did not provide data and S. Burlington did not collect data during the time period

Fisher's Exact Test (two-tailed): \*\*\* < .001; \*\* < .01; \* < .05; + < .1; ++ < .15

### **Unique Individuals versus Repeat Offenders**

It is important to recognize that youth who are referred to court multiple times are included in the analyses multiple times. In jurisdictions with small numbers of cases, a single minority youth who is referred to court repeatedly could actually account for any apparent DMC.

Table 3 shows the breakdown of number of referrals to juvenile and adult courts all youth and for white and minority youth separately for each county. For example, among all youth in Chittenden County, the 400 referrals to juvenile court represent 294 unique individuals (excluding 145 CHINS-C cases).<sup>15</sup> Of these 400 individuals, 220 (approximately 75 percent) were referred to juvenile court only once during the three-year period under study. The maximum number of referrals was seven, and the average number of referrals for all youth was 1.9.

Among white youth in Chittenden County, 266 individuals were referred to juvenile court a total of 358 times (excluding 128 CHINS-C cases). Seventy-six percent of white youth were referred to juvenile court only once during the three years, the maximum number of referrals was seven, and the average number of referrals was 1.8. Twenty-eight minority youth were referred a total of 42 times in Chittenden County (excluding 17 CHINS-C referrals). Among minority youth, 60 percent were referred to juvenile court only once, the maximum number of referrals was three, and the average number of referrals was 2.1.

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<sup>15</sup> CHINS-C (Children In Need of Supervision) refers to cases where the child is without or beyond the control of his/her parent(s), guardian(s), or other custodian(s).

**Table 3: Number of Times Same Individual Referred to Juvenile and Adult Court, July 1, 2008-June 30, 2011: All Youth, and White and Minority Youth Separately by County.**

Bennington County Juvenile Court				Bennington County Adult Court			
# of Referrals	All	White	Minority	# of Referrals	All	White	Minority
1	163 (76.8%)	158 (77%)	5 (71.4%)	1	79 (73.1%)	75 (73.5%)	4 (66.7%)
2	30 (14.2%)	28 (13.7%)	2 (28.6%)	2	15 (13.9%)	14 (13.7%)	1 (16.7%)
3	11 (5.1%)	11 (5.4%)	0 (0%)	3	4 (3.7%)	4 (3.9%)	0 (0%)
4	4 (1.9%)	4 (2%)	0 (0%)	4	4 (3.7%)	4 (3.9%)	0 (0%)
5	2 (1%)	2 (1%)	0 (0%)	5	2 (1.9%)	2 (2%)	0 (0%)
6	0 (0%)	0 (0%)	0 (0%)	6	1 (.9%)	1 (1%)	0 (0%)
7	1 (.5%)	1 (.5%)	0 (0%)	7	1 (.9%)	0 (0%)	1 (16.7%)
8	1 (.5%)	1 (.5%)	0 (0%)	8	2 (1.9%)	2 (2%)	0 (0%)
<b>Individuals</b>	<b>212</b>	<b>205</b>	<b>7</b>	<b>Individuals</b>	<b>108</b>	<b>102</b>	<b>6</b>
<b>Total Non-CHINS-C Referrals</b>	<b>297</b>	<b>288</b>	<b>9</b>	<b>Total Referrals</b>	<b>176</b>	<b>163</b>	<b>13</b>
<b>CHINS-C cases</b>	<b>46</b>	<b>45</b>	<b>1</b>	<b>Average</b>	<b>1.6</b>	<b>1.6</b>	<b>2.2</b>
<b>Total Referrals</b>	<b>343</b>	<b>333</b>	<b>10</b>				
<b>Average</b>	<b>1.6</b>	<b>1.6</b>	<b>1.4</b>				
Chittenden County Juvenile Court				Chittenden County Adult Court			
# of Referrals	All	White	Minority	# of Referrals	All	White	Minority
1	220 (74.8%)	203 (76.3%)	17 (60.7%)	1	110 (83.3%)	100 (87.7%)	10 (55.6%)
2	53 (18%)	45 (16.9%)	8 (28.6%)	2	16 (12.1%)	11 (9.6%)	5 (27.8%)
3	14 (4.8%)	11 (4.1%)	3 (10.7%)	3	4 (3%)	2 (1.8%)	2 (11.1%)
4	5 (1.7%)	5 (1.9%)	0 (0%)	4	0 (0%)	0 (0%)	0 (0%)
5	1 (.3%)	1 (.4%)	0 (0%)	5	1 (.8%)	1 (.9%)	0 (0%)
6	0 (0%)	0 (0%)	0 (0%)	6	1 (.8%)	0 (0%)	1 (16.7%)
7	1 (.3%)	1 (.4%)	0 (0%)	7	0 (0%)	0 (0%)	0 (0%)
8	0 (0%)	0 (0%)	0 (0%)	8	0 (0%)	0 (0%)	0 (0%)
<b>Individuals</b>	<b>294</b>	<b>266</b>	<b>28</b>	<b>Individuals</b>	<b>132</b>	<b>114</b>	<b>18</b>
<b>Total Non-CHINS-C Referrals</b>	<b>400</b>	<b>358</b>	<b>42</b>	<b>Total Referrals</b>	<b>165</b>	<b>133</b>	<b>32</b>
<b>CHINS-C cases</b>	<b>145</b>	<b>128</b>	<b>17</b>	<b>Average</b>	<b>1.3</b>	<b>1.2</b>	<b>1.8</b>
<b>Total Referrals</b>	<b>545</b>	<b>486</b>	<b>59</b>				
<b>Average</b>	<b>1.9</b>	<b>1.8</b>	<b>2.1</b>				

Rutland County Juvenile Court				Rutland County Adult Court			
# of Referrals	All	White	Minority	# of Referrals	All	White	Minority
1	136 (83.4%)	134 (83.8%)	2 (66.7%)	1	66 (89.2%)	62 (91.2%)	4 (66.7%)
2	18 (11%)	18 (11.3%)	0 (0%)	2	6 (8.1%)	5 (7.4%)	1 (16.7%)
3	1 (.6%)	1 (.6%)	0 (0%)	3	1 (1.4%)	1 (1.5%)	0 (0%)
4	4 (2.5%)	4 (2.5%)	1 (33.3%)	4	0 (0%)	0 (0%)	0 (0%)
5	1 (.6%)	1 (.6%)	0 (0%)	5	1 (1.4%)	0 (0%)	1 (16.7%)
6	1 (.6%)	1 (.6%)	0 (0%)	6	0 (0%)	0 (0%)	0 (0%)
7	1 (.6%)	1 (.6%)	0 (0%)	7	0 (0%)	0 (0%)	0 (0%)
8	0 (0%)	0 (0%)	0 (0%)	8	0 (0%)	0 (0%)	0 (0%)
<b>Individuals</b>	<b>163</b>	<b>160</b>	<b>3</b>	<b>Individuals</b>	<b>74</b>	<b>68</b>	<b>6</b>
<b>Total Non-CHINS-C Referrals</b>	<b>213</b>	<b>207</b>	<b>6</b>				
<b>CHINS-C cases</b>	<b>81</b>	<b>77</b>	<b>4</b>				
<b>Total Referrals</b>	<b>294</b>	<b>284</b>	<b>10</b>	<b>Total Referrals</b>	<b>86</b>	<b>75</b>	<b>11</b>
<b>Average</b>	<b>1.8</b>	<b>1.8</b>	<b>3.3</b>	<b>Average</b>	<b>1.2</b>	<b>1.1</b>	<b>1.8</b>

### Characteristics of White and Minority Youth

Conceivably, the overrepresentation of minority youth among referrals to adult court and CJs, and the under-representation of minority youth among referrals to juvenile court and court diversion may be due to differences in the characteristics of white and minority youth—age, number and seriousness of charge(s), and prior history in the juvenile justice system, for example. Table 4 shows averages and ranges for a variety of characteristics of all youth, and for white and minority youth separately.



**Table 4: Characteristics of White and Minority Youth Referred to Juvenile Court, Adult Court or Community Justice Centers, July 1, 2008-June 30, 2011.**

Characteristics	All	Range	Whites	Minorities	T-test Sig.
Age at referral	15.5	10-18	15.5	15.7	+
Sex (1=female)	0.32	0-1	0.31	0.33	n.s.
Average number of charges per docket	1.32	1-14	1.3	1.2	n.s.
Average ranking of most serious charge (scale of 5 = CHINS up to 90 = homicide)	34.5	5-90	33.9	36.9	++
Average number of prior juvenile dockets	0.3	0-18	0.32	0.18	*
Average number of prior delinquencies	0.2	0-11	0.21	0.08	**
Average number of prior adult dockets	0.02	0-6	0.02	0.02	n.s.
Average number of prior misdemeanor convictions (adult court only)	0.02	0-5	0.02	0.04	n.s.
Average number of prior felony convictions (adult court only)	0.01	0-3	0.01	0.01	n.s.
Average number of all prior adult court convictions	0.03	0-6	0.03	0.06	n.s.
Average number of total prior dockets (Juvenile and adult courts)	0.32	0-18	0.34	0.2	*
Average number of prior Juvenile and adult court convictions	0.23	0-11	0.24	0.14	+

*T-Test of Difference in Means (two-tailed): \*\*\* < .001; \*\* < .01; \* < .05; + < .1; ++ < .15*

The average age of youth was 15.5 years old. Sixty-eight percent of youth were male and 32 percent were female. The average number of charges per docket was 1.32 (range, 1-14). The average ranking for the most serious charge was 34.5 (range, 5-90).<sup>16</sup> On average, youth had .3 prior juvenile dockets (range, 0-18) and .2 delinquencies (range, 0-11); .02 prior adult dockets (range, 0-6) and .03 prior adult convictions (range, 0-6). Youth had more prior adult court misdemeanor convictions than felony convictions (.02, range of 0-5 and .01, range of 0-3, respectively). When delinquencies and convictions in adult court were combined, youth averaged .32 prior dockets (range, 0-18) and .23 prior convictions (range, 0-11).

Table 4 also shows averages for white and minority youth separately, and whether any differences achieve statistical significance. Minority youth were slightly older than white youth (15.7 and 15.5 years, respectively—a marginally significant difference). Minority youth also had a slightly higher ranking for their most serious charge (36.9 versus 33.9), although the

<sup>16</sup> Rankings: 5=CHINS; 10=fish and game; 15=public order; 20=other motor vehicle (not reckless or DUI); 30=drugs; 40=fraud; 50=theft; 53=motor vehicle-reckless; 55=DUI; 60=arson; 65=assault; 67=Violation of Abuse Prevention Order; 70=robbery; 75=domestic assault; 80=sex offense; 90=homicide (scale developed by William Clements of the Vermont Center for Justice Research in 1993, building on the work of Rossi et al. 1974).

difference did not quite achieve statistical significance. On average, minority youth had fewer prior juvenile dockets and fewer prior delinquencies than white youth (.18 versus .32, and .08 and .21, respectively). Although the two groups did not differ significantly in measures of prior contact with adult court, when measures for the two courts were combined, minority youth averaged significantly fewer total prior dockets than white youth (.20 and .34, respectively) and fewer total prior convictions (.14 and .24, respectively).

Differences in the types of offenses with which white and minority youth were charged may at least partly explain differences in referral patterns. One would expect, for example, that youth charged with more serious offenses would be referred to adult court and this may in part account for the higher referral rates of minority youth to adult court. If the charges for minority youth also tend to cluster among less serious offense, this may help explain the higher rates of referrals to CJs among minority relative to white youth.

Table 5A shows the frequency of offenses across categories representing rank on a scale of offense seriousness/type (most serious charge) for white and minority youth. The scale ranges from "5" for a CHINS-C case and "10" for fish and game offense to "80" for a sex offense and "90" for homicide. Theft was the most serious charge for 28.2 percent of minority youth and 21.9 percent of white youth. Minority youth were also more likely to be charged with assault (16.4 versus 13.3 percent), but less likely to be charged with public order violations (27.7 percent versus 31.5 percent). Other differences are smaller, but the overall pattern of charges for white and minority youth is significantly different.

**Table 5A: Rank/Type of Most Serious Charge by Minority Status.**

Rank	Offense Type	White	%	Minority	%
5	CHINS-C	251	15.1%	22	12.4%
10	Fish & Game	3	.2%	0	0.0%
15	Public Order	527	31.5%	49	27.7%
20	Other Motor Vehicle	43	2.6%	2	1.1%
30	Drugs	107	6.4%	14	7.9%
40	Fraud	2	.1%	0	0.0%
50	Theft	364	21.9%	50	28.2%
53	Motor Vehicle - Reckless	4	.2%	0	0.0%
55	DUI	21	1.3%	0	0.0%
60	Arson	6	.4%	0	0.0%
65	Assault	222	13.3%	29	16.4%
67	Violation of Abuse Prevention	6	.4	2	1.1%
70	Robbery	2	.1%	0	0.0%
75	Domestic Assault	57	3.4%	6	3.4%
80	Sex Offense	48	2.9%	2	1.1%
90	Homicide	1	.1%	1	.6%
	Total	1664	100.0%	177	100.0%

*Chi Square test of significance = .053+*

*Significance Level: + < .1*

Since referrals to a CJC typically occur *instead of* a referral to juvenile or adult court, data for these three categories are mutually exclusive (the court diversion decision occurs only among youth referred to juvenile or adult court). It is therefore instructive to examine offense patterns across the three mutually-exclusive decision points of referral to juvenile court, adult court or a CJC. Table 5B shows outcomes for white and minority youth within particular charge categories (rows in Table 5B total across). Since all but one CHINS-C case was referred to juvenile court, these cases were eliminated from Table 5B and subsequent analyses, along with offense categories with fewer than ten cases.

**Table 5B: Rank/Type of Most Serious Charge by Decision Point and Minority Status.\***

Rank	Offense Type	Juvenile Court		Adult Court		CJC		Number of Youth	
		White	Minority	White	Minority	White	Minority	White	Minority
15	Public Order	65.7%	30.6%	21.8%	46.9%	12.5%	22.5%	527	49
20	Other Motor Vehicle	44.2%	50.0%	39.5%	0.0%	16.3%	50.0%	43	2
30	Drugs	42.1%	28.6%	45.8%	57.1%	12.1%	14.3%	107	14
50	Theft	56.3%	28.0%	20.3%	22.0%	23.4%	50.0%	364	50
55	DUI	23.8%	0.0%	76.2%	0.0%	0.0%	100.0%	21	0
65	Assault	61.7%	58.6%	28.4%	20.7%	9.9%	20.7%	222	29
75	Domestic Assault	86.0%	66.7%	12.3%	33.3%	1.7%	0.0%	57	6
80	Sex Offense	87.5%	100.0%	10.4%	0.0%	2.1%	0.0%	48	2
Total								1,389	152

\*Excludes CHINS-C cases, offense categories with fewer than ten cases and cases where race is missing.

Among youth charged with public order offenses, 65.7 percent of white youth and 30.6 percent of minority youth were referred to juvenile court; 21.8 percent of white youth were referred to adult court compared to 46.9 percent of minority youth; and 12.5 percent of white youth and 22.4 percent of minority youth were referred to a CJC. Among those for whom theft was their most serious charge, 56.3 percent of white youth and 28 percent of minority youth were referred to juvenile court; 20.3 percent of white youth and 22 percent of minority youth were referred to adult court, and 23.4 percent of white youth and 50 percent of minority youth were referred to a CJC.

Although differences are evident in referral patterns for white and minority youth within the some rank/offense categories, differences in other characteristics may account for these patterns (e.g., number of charges, prior juvenile or criminal records). Moreover, offense categories themselves could mask differences—for example, in the value of property stolen or differences in amounts and types of drugs or whether a drug charge is for possession or sale.

**Logistic Regression Analyses**

The assessment next involved constructing logistic regression models predicting the three decision points of interest: referral to juvenile court, referral to adult court, and referral to diversion (court and Community Justice Centers, combined). Since different patterns in referrals to court diversion and CJCs are evident for minority and white youth (seen previously in Tables 2A and 2B), logistic regression models also predicted referral to court diversion and referral to a CJC separately. Each model has a dichotomous or binary dependent variable with two possible outcomes, yes or no. Data for youth with a particular decision or referral outcome are included in the “yes” category; data for all other youth are included in the “no” category. The regression models try to determine whether any significant differences in the referral patterns of white

and minority youth remain after taking into account factors thought to influence referral decisions.

Logistic regression is a more appropriate technique for predicting a dichotomous dependent variable than linear regression, which is better-suited to predicting a continuous dependent variable. As with linear regression, logistic regression still predicts the effects of independent (explanatory/control) variables on a dependent variable after controlling for the effects of other variables in the model. However, with logistic regression, any direct effect of an independent variable is calculated as an odds ratio and discussed as a probability—that is, as an increase/decrease/no change in the probability of a particular event or outcome occurring with a change in the independent variable.

The primary independent variable of interest is minority status. If, after controlling for the effects of other variables in the model, minority status exerts a significant direct effect on referral decision, this means that other variables in the model do *not* account for any apparent relationship between being a minority and that referral decision. If minority status does not exert a significant direct effect on referral decision, other variables in the model *do* account for any apparent relationship between being a minority and a particular referral decision.

All five regression models included the following independent (explanatory or control) variables:

- being minority (relative to being white)
- being female (relative to being male)
- age
- being charged or cited in Chittenden County (relative to Bennington County)
- being charged or cited in Rutland County (relative to Bennington County)
- rank of most serious charge (a slightly modified scale reflecting 10-point increments ranging from 10-90)
- number of charges

Juvenile/criminal history variables included:

- total number of prior juvenile dockets
- total number of prior juvenile delinquencies
- total number of prior criminal dockets
- total number of prior criminal convictions
- total number of prior misdemeanor convictions in adult court
- total number of prior felony convictions in adult court
- total number of juvenile delinquencies and criminal convictions combined

Many of the juvenile/criminal history variables are highly correlated. For example, the number of prior juvenile dockets varies almost lockstep with the number of delinquencies.

Consequently, we included only those history variables in each regression model that were logical and resulted in a higher explained variance for the model. Note, however, that any differences in effects on explained variance are quite small among highly correlated variables.

**Referrals to Juvenile Court** - Logistic regression results predicting referral to juvenile court are shown in Table 6. The significance level indicates whether a particular variable had a statistically significant direct effect on the dependent variable. Note that although all independent variables in a regression model do not exert a significant direct effect on a dependent variable, they are included to control for any indirect effects they may have on the relationship of interest (whether minority status appears to affect referral decisions).

This regression model examined whether the probability of being referred to juvenile court differed for minority and white youth after taking into account or “holding constant” any effects of sex, county, rank of most serious charge, number of charges, and total number of prior juvenile dockets. Controlling for the effects of these variables or characteristics essentially eliminates them as explanations for differences between white and minority youth in the probability of being referred to juvenile court.

<b>Variables in the Equation</b>	<b>Odds Ratio</b>	<b>Standard Error</b>	<b>p</b>	<b>Sig. Level</b>
Minority (compared to white)	.512	.196	.001	**
Age	.608	.046	.000	***
Female (compared to male)	1.166	.125	.220	n.s.
Chittenden (compared to Bennington)	.529	.135	.000	***
Rutland (compared to Bennington)	.988	.166	.943	n.s.
Charge rank (most serious)	1.066	.027	.017	*
Number of charges	1.003	.057	.952	n.s.
Total prior juvenile dockets	1.233	.055	.000	***
Constant	3850.533	.756	.000	***

*N = 1,505; Nagelkerke R2 = .172*

*Excludes CHINS-C cases and cases where most serious offense category had fewer than ten cases.*

*Significance levels of p: \*\*\* < .001; \*\* < .01; \* < .05*

After controlling for the effects of other variables in the regression model, minority youth were 48.8 percent less likely than white youth to be referred to juvenile court.<sup>17</sup> Before entering control variables into the regression, minority youth were 56.2 percent less likely to be referred to juvenile court. Thus, the control or explanatory variables reduced the referral gap by 7.4 percentage points or approximately 13.2 percent of the original gap between the probability of being referred to juvenile court for minority and white youth.

The probability of being referred to juvenile court was also lower for youth in Chittenden County compared to youth in Bennington County, decreased with age and charge rank (seriousness), and increased as number of total prior juvenile dockets increased.

Using the same model for each county separately showed that results for Chittenden County closely mirrored those for the three counties combined. This is not surprising since Chittenden County contributed the largest number of cases to the analysis. The probability of being referred to juvenile court in Chittenden County was 53.3 percent lower for minority youth than for similar white youth— (see Table A-1 in Appendix A). Minority status did not significantly affect the probability of a referral to juvenile court in Bennington and Rutland Counties.

**Referrals to Adult Court**—The logistic regression model predicting referrals to adult court includes the same independent variables as the model predicting referrals to juvenile court except that we replaced the variable representing total prior juvenile dockets with two variables: total prior delinquencies and total adult convictions (see Table 7).

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<sup>17</sup> The change in probability associated with a change in the independent variable is calculated as follows: (Odds Ratio \* 100) – 100. Thus, the probability of being referred to juvenile court is  $(.512 * 100) - 100 = 48.8$  percent lower for minority youth than for white youth. The odds ratio also can be interpreted more generally. If the odds ratio is equal to one, the probability of being referred to juvenile court is the same relative to the comparison group for dichotomous independent variables (e.g., minorities and whites; females and males; Chittenden County relative to Bennington County). For continuous independent variables (those that change systematically, such as number of charges), the probability remains the same for each one unit change in the independent variable (e.g., one additional charge). If the odds ratio is greater than one (and significant), the probability of referral to juvenile court is *higher* than for the comparison group (or for a one unit increase in a continuous variable). If the odds ratio is less than one (and significant), the probability of referral to juvenile court is *lower* than for the reference group (or for a one unit increase in a continuous variable).

**Table 7: Logistic Regression Predicting the Probability of being Referred to Adult Court.**

Variables in the Equation	Odds Ratio	S.E.	p	Sig. Level
Minority (compared to white)	1.259	.256	.364	n.s.
Age	4.694	.108	.000	***
Female (compared to male)	1.696	.174	.002	**
Chittenden (compared to Bennington)	.459	.173	.000	***
Rutland (compared to Bennington)	.711	.207	.089	+
Charge rank (most serious)	.994	.003	.090	+
Number of charges	1.070	.069	.344	n.s.
Total prior delinquencies	.924	.074	.275	n.s.
Total prior adult convictions	1.235E8	4089.121	.996	n.s.
Constant	.000	1.778	.000	***

*N = 1,505; Nagelkerke R2 = .451*

*Excludes CHINS-C cases and cases where most serious offense category had fewer than ten cases.*

*Significance levels: of p \*\*\* < .001; \*\* < .01; \* < .05; + < .1*

Minority status did not exert a significant direct effect on the probability of being referred to adult court after controlling for other variables in the model. In other words, the higher probability of a referral to adult court among minority youth is explained by other variables in the regression model, some of which exert direct effects on the probability of referral. As age increased, the probability of being referred to adult court also increased. Females had a higher probability of being referred to adult court than males after controlling for other factors. Youth in both Chittenden and Rutland p had lower probabilities of referrals to adult court than those in Bennington County. The more serious the charge category, the more likely was a referral to adult court. Regression results for the three counties separately did not show a significant effect of minority status on referrals to adult court in any county.

**Referrals to Diversion (Court Diversion and Community Justice Centers Combined)** – Results from the logistic regression model predicting both types of diversion combined showed no significant effect of minority status after taking into account other factors (see Table 8).



**Table 8: Logistic Regression Predicting Probability of Being Referred to Some Type of Diversion (Court Diversion or Community Justice Center).**

Variables in the Equation	Odds Ratio	S.E.	p	Sig. Level
Minority (compared to white)	.937	.195	.736	n.s.
Age	.975	.039	.505	n.s.
Female (compared to male)	.580	.123	.000	***
Chittenden (compared to Bennington)	1.713	.135	.000	***
Rutland (compared to Bennington)	1.411	.162	.033	*
Charge rank (most serious)	.860	.027	.000	***
Number of charges	.579	.099	.000	***
Total prior dockets (juvenile and adult)	.426	.134	.000	***
Constant	5.526	.644	.007	**

*N* = 1,505; Nagelkerke *R*<sup>2</sup> = .197

*Excludes CHINS-C cases and cases where most serious offense category had fewer than ten cases.*

*Significance levels of p: \*\*\* < .001; \*\* < .01; \* < .05*

All other variables in the model except age exerted a significant direct effect on a diversion referral. Factors associated with a higher probability of referral to diversion were being charged with a less serious offense, charged with fewer offenses, and having fewer total prior delinquencies and adult court convictions. Being female was associated with a lower probability of being referred to diversion. Youth in both Chittenden and Rutland Counties had a higher probability of being referred to some type of diversion than those in Bennington County. Although Bennington County does not have a Community Justice Center that accepts direct referrals from law enforcement, it does have a court diversion program so was included in this analysis.

Individual regression models for the three counties did not show a significant effect of minority status on referrals to the combined diversion measure. Of note, however, is that females in Chittenden County were 50 percent less likely to be referred to some type of diversion than comparable males (results not shown).

**Referrals to Court Diversion** – Although minority status did not affect referrals to diversion when court diversion and CJC referrals combined, doing so masks different referral patterns for the two types of diversion. Results from the logistic regression model predicting referrals to court diversion show that minority status exerts a direct effect on referral to court diversion after controlling for the effects of other factors (see Table 9). The probability of a minority

youth being referred to court diversion was 53.3 percent less than for a similarly-situated white youth. Prior to entering the control variables into the regression, the gap between white and minority youth in the probability of a referral to court diversion was 57.4 percent. Thus, the control variables reduced the gap only 4.1 percentage points, or 2.35 percent of the original gap.

**Table 9: Logistic Regression Predicting Probability of Being Referred to Court Diversion.**

Variables in the Equation	Odds Ratio	S.E.	p	Sig. Level
Minority (compared to white)	.467	.254	.003	**
Age	1.163	.041	.000	***
Female (compared to male)	.864	.131	.266	n.s.
Chittenden (compared to Bennington)	.486	.140	.000	***
Rutland (compared to Bennington)	1.022	.160	.891	n.s.
Charge rank (most serious)	.860	.029	.000	***
Number of charges	.671	.103	.000	***
Total prior dockets (juvenile & adult)	.599	.106	.000	***
Constant	.206	.675	.028	*

*N = 1,505; Nagelkerke R2 = .156*

*Excludes CHINS-C cases and cases where most serious offense category had fewer than ten cases.*

*Significance levels of p: \*\*\* < .001; \*\* < .01; \* < .05*

Other variables associated with a higher probability of a referral to court diversion include being older, charged with a less-serious offense, charged with fewer offenses, and having fewer total prior dockets (Juvenile and Adult courts combined). Youth in Chittenden County were also less likely to be referred to court diversion than similar youth in Bennington County.

The gap in referrals to court diversion by minority status may in part be due to the higher probability of a CJC referral among minority youth. However, when those referred to a CJC (rather than to court) are removed from the regression model predicting referral to court diversion, minority youth were still 49.7 percent less likely to be referred to court diversion than comparable white youth.

The same logistic regression model for each county separately found that in Rutland County minority youth were significantly less likely to be referred to court diversion than comparable white youth, an effect that held even when the analysis was restricted only to youth who had been referred to court (see Table B-1 in Appendix B). Findings for Bennington County were consistent with those for Rutland, but did not quite achieve statistical significance (p = .158)

Minority youth were also less likely to be referred to court diversion than comparable white youth in Chittenden County (see Table A-2 in Appendix A), but this relationship became insignificant when youth who had been referred to a CJC were omitted from the analysis.

**Referrals to Community Justice Centers** – Although minority youth were less likely than white youth to be referred to court diversion, they were more likely to be referred to CJs. Results from the logistic regression model predicting whether youth were referred to a CJC are shown in Table 10.

<b>Variables in the Equation</b>	<b>Odds Ratio</b>	<b>S.E.</b>	<b>p</b>	<b>Sig. Level</b>
Minority (compared to white)	1.865	.234	.007	**
Age	.767	.053	.000	***
Female (compared to male)	.446	.170	.000	***
Chittenden (compared to Rutland)	.226	.226	.000	***
Charge rank (most serious)	.946	.040	.164	n.s.
Number of charges	.559	.175	.001	**
Total prior dockets (juvenile & adult)	.000	1417.554	.990	n.s.
Constant	106.962	.858	.000	***

*N = 1,057; Nagelkerke R2 = .272*

*Significance levels of p: \*\*\* < .001; \*\* < .01; \* < .05; + < .1*

*Excludes Bennington County data (CJC does not accept direct referrals from law enforcement so is not comparable to CJs in Chittenden and Rutland Counties).*

*Excludes CHINS-C cases and cases where most serious offense category had fewer than ten cases.*

Controlling for the effects of other variables in the model, minority youth were 86.5 percent more likely than a similarly-situated white youth to be referred to a CJC. Other variables associated with a higher probability of a CJC referral included being younger, in Chittenden County (relative to Rutland County) and having fewer charges. Being female is associated with a lower probability of being referred to a CJC. Prior to entering the control/explanatory variables into the regression, the gap in referrals between minority and white youth was larger—minority youth were 114.7 percent more likely to be referred to a CJC than white youth. The control variables reduced the gap by 28.2 percentage points (24.6 percent of the original gap).

Findings for Chittenden County are consistent with those for the three counties combined. Being a minority in Chittenden County increased the probability of being referred to a CJC by 83

percent (see Table A-3 in Appendix A). Younger youth and those with fewer charges were also more likely to be referred to a CJC in Chittenden County. Females were less likely to be referred to a CJC than comparable males. Minority status did not directly affect a CJC referral in Rutland County, although being younger increased the probability of being referred to a CJC and being females reduced the probability of this referral. This analysis was not conducted for Bennington County since that county does not have a CJC that accepts referrals directly from law enforcement.

### **Summary**

Aggregate-level juvenile justice referral data for the period of July 1, 2008 – June 30, 2011 for Bennington, Chittenden and Rutland Counties combined show that minority youth were significantly less likely than white youth to be referred to juvenile court, but significantly more likely to be referred to adult court. No difference between the groups in referrals to some type of diversion is evident when referrals to court diversion and referrals to a CJC are combined. When examined separately, however, minority youth were significantly less likely to be referred to court diversion, but significantly more likely to be referred to a CJC.

Differences in the characteristics of minority and white youth account for some differences in aggregate-level referral patterns. A series of logistic regression models predicted each referral outcome to control for the potential effects of an array of variables on type of referral: juvenile court, adult court, and diversion (court and CJC, combined and separately). Each dependent variable has only two outcomes—“yes” or “no.” For example, for the regression model predicting referral to juvenile court, youth referred to juvenile court were in the “yes” group and those referred elsewhere were in the “no” group.

Findings show that after controlling for other variables in the model minority youth were 48.8 percent less likely than comparable white youth to be referred to juvenile court. No effect of being a minority on referrals to adult court is evident, meaning that other differences between minority and white youth account for any apparent differences between white and minority youth in referrals to adult court.

No differences between white and minority youth in the likelihood of a referral to some type of diversion are evident when both types of diversion were combined. However, regressions predicting referrals to court diversion and CJCs separately show that being a minority youth was associated with a 53.3 percent lower probability of being referred to court diversion, but an 86.5 percent greater likelihood of being referred to a CJC after controlling for other factors.

Although not the primary relationship of interest in this assessment, the analyses show some effects of being female on referral outcome. Being female increased the probability of a referral to adult court relative to comparable males, and reduced the probability to being referred to

diversion (both types combined) and to a CJC. Being female did not affect referrals to juvenile court or to court diversion.

**Chittenden County** – Findings for Chittenden County, the largest contributor of cases to the database, were consistent with those for the three counties combined. Minority youth were 53.3 percent less likely to be referred to juvenile court than comparable white youth, 44.1 percent less likely to be referred to court diversion, and 83 percent more likely to be referred to a CJC. Consistent with results for the three counties combined, minority status did not affect the probability of being referred to adult court or being referred to diversion when both types of diversion are combined.<sup>18</sup>

**Rutland County** – Being a minority youth reduced the likelihood of being referred to court diversion by 81.7 percent relative to comparable white youth in Rutland County. An effect of minority status held even when the analysis included only youth referred to court.

**Bennington County** – Minority status did not significantly affect any of the referral outcomes among youth in Bennington County. However, the effect of minority status on court diversion nearly achieves significance ( $p = .158$ ). Statistical tests are sensitive to numbers of cases, and significance would likely have been achieved if the county had more cases (results would be consistent with those for Rutland County).

## DISCUSSION

This assessment identified three decision points in Vermont's juvenile justice system where DMC is evident after other explanations for these decisions are taken into account:

- 1) Minority youth were *less* likely than comparable white youth to be referred to juvenile court;

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<sup>18</sup> South Burlington's CJC did not have data for the years under study. Consequently, nearly all of the 225 CJC referrals in Chittenden County were referrals to Burlington's CJC (Winooski contributed 33 cases, four of which were minority youth, and Williston contributed 22 cases, one a minority youth). More recent data from South Burlington were examined to see what effect it might have on the results of the regression predicting the probability of being referred to a CJC. When CJC data for South Burlington only was included in the regression, minority status did not influence referral decision. Adding the 129 South Burlington cases (13 minority youth) to data for other Chittenden County CJs, had the effect of reducing or diluting the effect of minority status on a CJC referral from an 83 percent higher probability of a CJC referral for minority youth to a 44.8 percent higher probability—still a highly significant effect.

- 2) Minority youth were *less* likely than comparable white youth to be referred to court diversion;
- 3) Minority youth were *more* likely than comparable white youth to be referred to a CJC.

The primary reason that minority youth were less likely than comparable white youth to be referred to juvenile court was their greater likelihood of being referred to a CJC, something driven largely by referrals to Burlington's CJC.

The effect of minority status on referrals to court diversion holds even when the analysis was confined to youth who were referred to court (that is, it included only youth for whom a court diversion referral was a possibility), except in Chittenden County where the effect of minority status became insignificant. This indicates that in Chittenden County minority youths' greater likelihood of a CJC referral accounts for their reduced likelihood of a referral to court diversion. This was not the case in Rutland County, however, where minority youth were less likely than comparable white youth to be referred to court diversion even when the analysis was confined to youth who were referred to court. Results for Bennington County are consistent with those for Rutland County, but the effect of minority status on referral to court diversion did not quite achieve statistical significance.

The decision to refer a defendant to court diversion rests with the juvenile prosecutor at the state's attorney's office (although law enforcement officers can make recommendations about diversion and which court to file a case in). If prosecutors have a great deal of discretion in recommending court diversion, this discretion could contribute to different referral patterns if race/ethnicity influences decision-making. According to Andrew Strauss, Chittenden County's juvenile prosecutor, defendants whose charges are filed in juvenile court do not appear in court if referred to diversion. Thus, prosecutors would not interact with the defendant directly, although race/ethnicity information may be available on forms submitted by law enforcement and/or might be assumed based on names.<sup>19</sup> Each state's attorney's office has different guidelines for juvenile prosecution, however, so to some extent "justice by geography" may operate in Vermont (as is certainly the case with CJC referrals). It is of course possible that the different patterns in referrals to court diversion may be explained by differences between white and minority youth that were not captured by the variables in the analyses.

The much higher probability of referral to a CJC among minority youth is contrary to usual DMC predictions and findings. As noted above for court diversion, it could be that factors which might explain this relationship were not available for analysis. Participants at the Chittenden

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<sup>19</sup> Form 101, introduced by DCF in 2013, is to be completed by law enforcement officers for all delinquency cases and includes a question about race/ethnicity of the juvenile. DCF developed this form to try to reduce the amount of missing race/ethnicity information in juvenile court data.

County stakeholders' meeting discussed this possibility. Examining in greater detail a sample of police cases of white and minority youth referred to court versus a CJC for the same broad offense category might be instructive even if to rule out the possibility that unmeasured factors are operating.

Approximately 85 percent of the CJC referrals included in this assessment were made by law enforcement. According to Burlington Police Chief Michael Schirling, all Burlington police officers do not refer youth to CJCs. Perhaps officers who make referrals to CJCs are more sympathetic to the disadvantages that minority youth face and/or are more likely to patrol areas with higher percentages of minorities. A propensity to give minority youth a break may also be more likely if minority youth are recent immigrants (Burlington is a federal immigrant relocation site). That all officers do not uniformly make referrals to CJCs merits attention since a CJC referral may depend to some extent on geography, timing and luck.

In years past, efforts were made by DCF, law enforcement, the Burlington CJC and others to keep minority youth out of the courts (perhaps in response to DMC monitoring and prior assessments). Conceivably an unofficial Affirmative Action program may have developed, whereby minority youth who commit offenses that are appropriate to a CJC referral are more likely to be referred than similar white youth. Since a CJC referral does not involve the state's attorney or the courts, it is perhaps an easier intervention point for those interested in reducing or preventing DMC.

Provided that an explanation for this finding is not forthcoming, it is in a sense a "good problem to have." The greater likelihood of a CJC referral for minority youth suggests that law enforcement, particularly in Burlington, may be sensitive to issues facing minority youth (e.g., racial profiling by retailers) and proactive in trying to divert minority youth from the traditional court system. Nonetheless, as with debates about Affirmative Action, some view interventions that appear to advantage minorities as being unfair to whites—not recognizing that our society has a long history of discrimination toward minorities and that social institutions were created and continue to operate in ways that routinely benefit whites. If law enforcement is compensating in some way for other disadvantages minority youth face, is an intervention merited? Perhaps, but perhaps the appropriate intervention is to assure that the CJC referral option is considered by all police officers when appropriate and done so as consistently as possible.

## **RECOMMENDATIONS**

Recommendations stemming from the process and outcomes of the study include:

- Advocate for the retention of expunged cases for research purposes. Such data would be available only to researchers with whom the courts have Memorandums of Understanding to assure that appropriate protocols are followed to preserve confidentiality.
- Share relevant findings with Rutland County's State's Attorney and Juvenile Prosecutor, and request information on protocols concerning referrals to court diversion (since the effect of minority status on court diversion referral nearly achieved significance in Bennington County, the same could be done for that county). Suggest too that the state-wide court diversion coordinator monitor race/ethnicity data by county if this is not already being done.
- Resources permitting, conduct an in-depth evaluation of a sample of Burlington police cases within one broad offense category where minority youth were more likely than white youth to be referred to a CJC (e.g., public order, theft). This may reveal whether differences not captured in the data account for the different referral patterns.
- Work with the Burlington police department (and other departments as well) to assure that all officers having contact with juveniles understand which cases are appropriate for a CJC referral, and that such referrals are made consistently.
- Discuss with Bennington County's CJC coordinator and police chief what would be required for that CJC to accept direct referrals for law enforcement.
- Advocate for new CJs, particularly in communities with higher minority representations.
- Consider whether interventions may be appropriate regarding the apparent disadvantage faced by females in the juvenile justice system, and share findings with other organizations having an interest in this issue (e.g., Vermont Works for Women).



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## **APPENDICES**

**APPENDIX A: LOGISTIC REGRESSION RESULTS FOR CHITTENDEN COUNTY**

**Table A-1: Chittenden County, Logistic Regression Predicting Whether Youth Were Referred to Juvenile Court.**

Variables in the Equation	Odds Ratio	S.E.	P	Sig. Level
Minority (compared to white)	.467	.239	.001	**
Age	.715	.057	.000	***
Female (compared to male)	1.642	.178	.005	**
Charge rank (most serious)	1.034	.038	.383	n.s.
Number of charges	1.041	.097	.678	n.s.
Total prior juvenile dockets	10.329	.504	.000	***
Constant	113.458	.893	.000	***

*N = 743; Nagelkerke R2 = .243*

*Excludes CHINS-C cases and cases where most serious offense category had fewer than ten cases.*

*Significance levels of p \*\*\* < .001; \*\* < .01; \* < .05; + < .1*

**Table A-2: Chittenden County, Logistic Regression Predicting Whether Youth Were Referred to a Court Diversion.**

Variables in the Equation	Odds Ratio	S.E.	p	Sig. Level
Minority (compared to white)	.559	.308	.059	+
Age	1.107	.065	.121	n.s.
Female (compared to male)	.990	.203	.962	n.s.
Charge rank (most serious)	.840	.046	.000	***
Number of charges	.651	.184	.020	*
Total prior dockets (juvenile & adult)	.678	.167	.020	*
Constant	.219	1.060	.152	n.s.

*N = 743; Nagelkerke R2 = .086*

*Excludes CHINS-C cases and cases where most serious offense category had fewer than ten cases.*

*Significance levels of p \*\*\* < .001; \*\* < .01; \* < .05; + < .1*



<b>Variables in the Equation</b>	<b>Odds Ratio</b>	<b>S.E.</b>	<b>p</b>	<b>Sig. Level</b>
Minority (compared to white)	1.830	.238	.011	*
Age	.810	.058	.000	***
Female (compared to male)	.459	.185	.000	***
Charge rank (most serious)	.939	.043	.143	n.s
Number of charges	.631	.176	.009	**
Total prior dockets (juvenile & adult)	.000	1757.641	.992	n.s
Constant	40.407	.933	.000	***

*N = 743; Nagelkerke R2 = .224*

*Excludes CHINS-C cases and cases where most serious offense category had fewer than ten cases.*

*Significance levels of p \*\*\* < .001; \*\* < .01; \* < .05; + < .1*

**APPENDIX B: LOGISTIC REGRESSION RESULTS FOR RUTLAND COUNTY**

**Table B-1: Rutland County, Logistic Regression Predicting Whether Youth Were Referred to Court Diversion.**

Variables in the Equation	Odds Ratio	S.E.	p	Sig. Level
Minority (compared to white)	.183	.803	.034	*
Age	1.376	.092	.000	***
Female (compared to male)	.530	.269	.018	*
Charge rank (most serious)	.951	.060	.396	n.s.
Number of charges	.826	.127	.132	n.s.
Total prior dockets (juvenile & adult)	.691	.275	.151	n.s.
Constant	.011	1.427	.002	**

*N* = 314; Nagelkerke *R*<sup>2</sup> = .122

*Excludes CHINS-C cases and cases where most serious offense category had fewer than ten cases.*

*Significance levels of p: \*\*\* < .001; \*\* < .01; \* < .05; + < .1*