

Disproportionate  
Minority  
Contact

*A Missouri Juvenile Justice Advisory Group, Department of Public Safety supported project conducted in close collaboration with Missouri Juvenile Justice Association and communities across Missouri.*

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# Recommendations for Reducing Disproportionality and Disparity in Missouri Certification Decisions

Certification Research Brief #5  
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The previous Certification Briefs #1, 2, and 3 have demonstrated racial *disproportionality*. For both felony allegations and mandatory felony allegations, African Americans had a higher percentage of more serious felonies, particularly the mandatory person offenses. They also had higher risk levels. While the nature of the offense and risk levels may help to explain why more African American youth are certified, this information

does not explain the *disproportionality* that exists when one compares the percentage of Caucasian and African American youth who are certified by level of offense, kind of offense, offense type etc. A higher percentage of African American youth at all felony levels were certified. A higher percentage of African American youth were certified for the two kinds of offenses (person and drug) that resulted in certification. Even with the most serious allegation, homicide, African American youth were *disproportionately* certified. Finally, a higher percentage of youth held in secure detention were certified. Certification Brief #4 indicates the possibility of racial and gender disparity in the certification decision in Missouri's juvenile justice system, although they were not the most significant factors.

The findings above indicate that one of the possible causes of racial *disparity* is what Office of Juvenile Justice and Delinquency Prevention (OJJDP) has labeled "justice by geography," or differences in localities may exist because of court referrals, case processing, and outcomes that result in differences across the state (OJJDP Disproportionate Minority Contact Technical Assistance Manual, 2009, p. 2-14). Jurisdictions do have a wide variation in the rates of certification, and the geographic distribution of minority youth populations correlates with the rates of certification, particularly with mandatory charges. Eighty-one percent of the African American youth charged with a mandatory allegation were processed in the 16<sup>th</sup> (Jackson County), 21<sup>st</sup> (St. Louis County) or 22<sup>nd</sup> (St. Louis city).

The purpose of this research brief is to provide a list of recommendations so that people concerned with this issue can take steps to address the racial *disproportionality* and racial *disparity* in the certification court contact point in the state of Missouri.

## RECOMMENDATIONS

### *POTENTIAL CHANGES TO CURRENT LEGISLATION*

The research found variation across the state in the interpretation of the juvenile certification legislation. The research findings suggest that clarification on several topics could potentially reduce disparate treatment.

1. Clarification is needed on the explicit meaning of "two or more prior unrelated offenses" and, specifically, the word "*unrelated*". Some juvenile offices require that the third felony has to be unrelated

to the previous two, while the first and second felonies may be related. Others require that all three felonies must be unrelated. And more specifically, what does unrelated mean? Did not occur at the same date, time and place?

2. Clarification is needed on whether or not a youth's prior felonies must be adjudicated (processed formally through the court system). Some juvenile offices only include previously adjudicated felonies before the third felony allegation requires a mandatory certification hearing. However, other juvenile offices include informally processed felonies.

3. Clarification on whether or not legislation should *require* that, after a mandatory allegation is screened for legal sufficiency, a petition will be filed and a mandatory certification hearing shall be held. Currently, inconsistency exists, because the law states that, **if a petition** alleges that a youth committed one of the mandatory allegations, then a certification hearing must be held.<sup>1</sup> In other words, if a petition was not filed, then a mandatory certification hearing is not required. The findings show an over thirty percentage point discrepancy in formal processing of African American and Caucasian youth charged with a mandatory allegation. Requiring a mandatory certification hearing for all youth charged with a mandatory charge does not require that a youth be certified, but it will require that all youth charged with such an offense receive consistent processing regardless of race/ethnicity. Alternatively, removing the requirement of a mandatory certification hearing for all youth is another option to consider.

4. Clarification on what constitutes a certification hearing is needed. Some courts do not hold a formal court hearing for mandatory cases and do not receive a written social summary if the juvenile office does not recommend certification.

5. Clarification is needed on whether it is necessary to change legislation to require the risk and needs assessments be completed on all youth prior to the certification hearing and include the results of the assessment as one of the considerations when making the decision to certify. Currently, risk and needs assessments are not required. The risk assessment manual clearly states, "Risk Assessments **should not** be used to determine whether a case should proceed informal/formal, nor should it be used to determine whether certification is appropriate" (Office of State Courts Administrator, 2005, p 2-1). As reported in Certification Brief #3, less than half of the youth who were certified and had a risk assessment, scored at the high-risk level. This finding raises questions about the benefit of certifying unassessed or low risk youth from a public safety standpoint because the likelihood of recidivating is unknown or may not be very great.

Clarifications to the legislation regarding certifications may increase the consistency in practices across the state.

## DATA QUALITY IMPROVEMENTS

A second recommendation is for improved tracking of certification cases. Several issues need to be addressed.

1. OSCA has not had the ability to reliably track whether a certification hearing has been held, the reason for the certification hearing (mandatory allegation, 3<sup>rd</sup> felony, or JO's discretion), and the reason why the motion for certification was or was not granted. Adding codes to the Justice Information System

(JIS) to track this information will ensure that the law is being followed in terms of holding certification hearings and facilitate the reporting requirements of statute 211.141.5, requiring OSCA to produce a report to the legislature biennially to the legislature regarding racial disparity in the certification decision. Tracking this information would be helpful to establish whether or not race matters in these decisions. This could also provide more data to understand why certifications to adult court were not pursued. OSCA is currently working on these changes.

2. More training for frontline juvenile office staff and data entry staff is needed to ensure the major allegation on the referral is entered first. Exception reports for certification cases and periodic audits would help to ensure the validity of the data.

3. The ability to track juvenile cases into the adult system is also necessary to be able to determine if there is any racial disparity through this process. Currently, there is not an easy way to track the outcomes of certified cases. It would be useful to track sentencing outcomes to determine if a disparity exists.

## RESEARCH

A final recommendation is the need for more research on the issue of certification and racial disparity. The following topics would be fruitful avenues for research.

1. What policies and procedures lead to a higher percentage of African American youth being formally processed? The discrepancy between the rates of formal processing is likely to be one of the causal mechanisms that produces differential outcomes for youth of color. Due to the larger volume in metro area courts, is the reason for the higher percentage of African American youth certified a result of the use of more bureaucratic procedures and less case by case discretion in those courts?

2. Because several studies have shown that African American youth are not more likely to *commit* certain crimes but rather are more likely to be *charged* with certain crimes (Fagan, J., Slaughter, E., & Hartstone, E., 1987 and Pope, C. & Snyder, H., 2003), more research is necessary to understand why African American youth are more likely to be charged with certain offenses. Robbery is a very good example, because almost 33 percent of the African Americans were certified for this offense, while only 7 percent of Caucasian youth were certified. What role do policing practices have in influencing who is charged with an offense? Given that robbery has the second highest percentage of cases certified behind homicides, how does this contribute to the over-representation of African American certified youth?

3. Are African American youth more likely to be represented by public defenders than private attorneys? If so, how does type of legal representation impact who gets certified? The high percentage of African Americans certified, particularly low-risk African American youth, suggests that more research into case processing factors is needed.

4. More research is also needed to understand why a youth's involvement with the juvenile justice system and child welfare system increases the likelihood of certification. Research suggests that a scared straight approach does not decrease recidivism. Contemporary research shows a relationship between child maltreatment and delinquency (Dannerbeck and Yan, 2011).

5. More research is needed to determine if one of the causal factors that contribute to the certification of youth is lack of attention to trauma in the child welfare system and the juvenile justice system. Recent attention (Child Welfare Information Gateway, 2011) has focused on the importance of a trauma-informed practice within the juvenile justice system. If a trauma-informed protocol was put in place to allow the juvenile justice system and the child welfare system to screen youth for trauma, and, more importantly, to provide the youth and his/her family with the necessary resources to address this trauma, perhaps the link between involvement with the juvenile justice system and the child welfare system would diminish rather than accelerate a youth's involvement with one or both of these systems. Ultimately, this could lead to individualized treatment plans that address the root cause of a youth's trauma, which, if unaddressed, can lead to delinquency and, potentially, certification.

## CONCLUSION

In conclusion, potential changes in legislation, changes in the ability to track cases involving certification, and more research will enable us to better understand the reasons for *racial disparity* in Missouri's juvenile justice system and to identify ways to reduce it thereby ensuring that all youth receive equal treatment under the law.

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## ENDNOTES

<sup>1</sup> 211.071 RSMo states, "If a petition alleges that a child between the ages of twelve and seventeen has committed an offense which would be considered a felony if committed by an adult, the court may, upon its own motion or upon motion by the juvenile officer, the child or the child's custodian, order a hearing and may, in its discretion, dismiss the petition and such child may be transferred to the court of general jurisdiction and prosecuted under the general law; except that if a petition alleges that any child has committed an offense which would be considered first degree murder under section 565.020, second degree murder under section 565.021, first degree assault under section 565.050, forcible rape under section 566.030, forcible sodomy under section 566.060, first degree robbery under section 569.020, or distribution of drugs under section 195.211, or has committed two or more prior unrelated offenses which would be felonies if committed by an adult, the court shall order a hearing, and may in its discretion, dismiss the petition and transfer the child to a court of general jurisdiction for prosecution under the general law."

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