

Chapter 1

Disproportionate Minority Confinement (DMC)

This book is based on the view that the effects of race on justice system decision making are variable—dependent on time, macrosocial factors (e.g., racial composition of communities), the characteristics of the court in question (e.g., degree of bureaucratization), and the presence and extent of racial stereotyping. The few quantitative contextual studies of juvenile justice decision making have emphasized the relationship between the characteristics of the community and the court, beliefs in punitive correctional responses to delinquency, and decision makers' perceptions of minorities as drug offenders with increased social control.

The research presented in these pages not only pursues this train of analytic thought but expands the inquiry beyond the rather narrow confines of punitiveness and racial stereotyping of African Americans as drug offenders.¹ The interrelationships between decision makers' adherence to varied correctional orientations (e.g., rehabilitation and accountability) and racial stereotyping involving crime, family, and respect for authority with the case processing and outcomes of youth are examined. A quantitative and qualitative examination of the social psychological processes involved in decision making—processes that may be influenced by historical, structural, and/or organizational factors—is conducted to better understand the presence of race effects in four relatively homogenous juvenile court settings in Iowa. The initial impetus for this research was the federal initiative that requires states to address the issue of disproportionate minority confinement or DMC.

THE DMC REQUIREMENT

The first iteration of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 contained three mandates: the deinstitutionalization of status

offenders, the removal of juveniles in adult jails, and the separation of juveniles from adults in institutions. The DMC requirement was included when the JJDP act was reauthorized in 1988, requiring states to study the extent minority youths are confined in secure detention facilities, secure correctional facilities, jails, and lockups, and at other points in the juvenile justice system (JJDP Act of 1974, as amended [Public Law 93-415], section 223[a][23]).

In 1992, Congress reauthorized the JJDP act and made DMC a “mandate” or a “core requirement.” Consequently, states participating in the Formula Grants Program have since been required to determine whether disproportionate minority confinement exists to identify the causes, and to develop and implement corrective strategies (Federal Register, 1991:22969).² States failing to make progress or at least to show a good-faith effort toward this endeavor risk losing one fourth of their Formula Grant funds for that year, with the remaining three fourths to be directed exclusively toward achieving compliance.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) recognized that the extent of DMC and possible cause(s) vary by state and that there is variability in the availability of resources and the data needed to understand and address DMC. Therefore, officials at OJJDP believed it would be more beneficial for individual states to design their own approaches to meet the DMC mandate (Coalition for Juvenile Justice, 1993: 12; Leiber, 2002). In this regard, the DMC mandate differs significantly from the other three mandates: the number of juveniles in adult jails, the number of status offenders confined, and the number of juveniles in sight or sound of adult incarcerated offenders can be easily counted. Should the number of youth in any of those circumstances exceed the maximum limit dictated by regulation, legislative and public policy changes can be used to correct the situation, and progress can be measured by returning to the facilities and taking count again. The DMC initiative is much more complex than the first three mandates (Church, 1994; Feyerherm, 1995).

Although states are allowed considerable freedom in addressing DMC, they must indicate in their application for formula grants funds how they are progressing on this issue within the context of three interrelated phases or stages: the identification phase, the assessment phase, and the intervention phase (DMC Technical Assistance Manual, 1990, 2000; Hamparian and Leiber, 1997). While not formal “phases,” evaluation and monitoring are also considered essential components of the DMC initiative (DMC Technical Assistance Manual, 2000). The identification phase is descriptive and involves ascertaining the number and proportion of minority youth in secure detention facilities, secure correctional facilities, jails, and lockups.³

If the identification phase determines that disproportionate minority representation exists, the state must conduct an assessment that investigates the specific reasons or causes for the situation. Assessments should, at a minimum, identify and explain differences between whites and minorities in arrest, diver-

sion, adjudication, court disposition, admission to detention and correctional facilities, and waiver to adult court. In essence, the assessment phase requires an examination of minority youth involvement at justice system stages beyond incarceration and a search for why overrepresentation exists. The assessments should include information for each county in which minority youth represent 1 percent or more of the population.⁴

The third phase entails selecting and implementing the specific interventions to reduce minority overrepresentation. Depending upon the location(s) and causes of DMC that were identified in the earlier phases, appropriate intervention activities may include developing or revising policies and procedures, decision-making criteria, and/or legislation; establishing services and programs; providing training and staffing; and improving information systems. OJJDP views evaluation of the intervention strategies as a central component of a state's DMC efforts.

States are also encouraged to develop methods to monitor DMC. The underlying premise driving the concern for monitoring is that minority overrepresentation is an ongoing issue and requires continuous and systematic tracking over time. Ideally, DMC monitoring is coordinated with monitoring for other initiatives, such as the deinstitutionalization of status offenders, the separation of youth from adults in institutions, and the removal of youth from adult jails and lockups.⁵

In short, states are to develop a comprehensive approach that includes the identification of the existence and extent of DMC, a determination of its causes, and the development and implementation of solutions to reduce it. Progress toward compliance with the requirements of section 223(a)(23) is reported by each state and territory in their Comprehensive JJDP Three-Year Plans and annual Plan Updates that are reviewed by OJJDP to determine the status of compliance.

Because of its focus on differences in outcomes between minority and white youth, the DMC effort is an initiative that focuses on decision making within the juvenile justice system. A number of events and factors influenced and shaped this systems-oriented approach to DMC.

EQUITABLE USE OF CONFINEMENT

Minority youth are overrepresented in terms of both arrests and their presence in the juvenile justice system (Miller, 1996; Bilchik, 1999). Although differential offending could be one explanation for these occurrences (e.g., Hindelang, 1978; McNeely and Pope, 1978; Hindelang et al., 1981; Mann, 1993; Farrington et al., 1996; Sampson and Lauritsen, 1997; Hawkins et al., 1998; Pope and Snyder, 2003), for a number of reasons, those involved in bringing attention to minority youth overrepresentation in the system focused on selection

bias or on the equitable usage of confinement for whites and minorities. That is, the focus of the DMC initiative is on decision making by juvenile justice and law enforcement personnel.

A number of legislative, organizational, and individual actors, including Congress, the Coalition for Juvenile Justice, the National Council of Juvenile and Family Court Judges, Ira Schwartz of the Center for the Study of Youth Policy, and Barry Krisberg of the National Council on Crime and Delinquency set the stage for a systems focus and pushed the issue of disproportionate minority youth confinement as both a national and a state issue (Feyerherm, 1995). For example, at a hearing before the House Subcommittee on Human Resources, a member of Congress stated that “minority juveniles are disproportionately incarcerated and we need to determine if a dual juvenile justice system is emerging” (Tauke, 1987: 3).

In their third and fourth annual reports, *An Act of Empowerment* (1987) and *The Delicate Balance* (1989), as well as at their 1988 spring conference, the Coalition for Juvenile Justice (CJJ) addressed issues concerned with minority youth in confinement and the differential processing of children of color. The theme of selection bias is also found in the title of the coalition’s ninth annual report, *Pursuing the Promise* (1993) and in the text of the report, “Consistent with the mandates of the Juvenile Justice and Delinquency Prevention Act, the Coalition is primarily concerned with problems directly related to the juvenile justice system itself and, in this case, its potential for ‘selection bias’” (CJJ, 1993:9).

The adoption of a systems perspective also grew out information provided by the Children in Custody (CIC) census of juvenile detention, correctional, and shelter facilities (Krisberg et al., 1987; see also, Snyder et al., 1995). CIC data revealed not only the presence of minority youth overrepresentation but that it had been increasing since the late 1970s. Barry Krisberg and his colleagues, for example, were among the first to show that the proportion of minority youth in public correctional facilities increased by 26 percent from 1979 to 1982 even though the number of minority youth arrested declined during these same years. They also found that African American males were almost four times more likely than white males to be incarcerated in detention centers and training schools during this time (1987: 184).

Furthermore, between 1985 and 1989, there were pronounced increases in minority overrepresentation in delinquency referrals to juvenile court, petitioned cases, adjudicated delinquency cases, and delinquency cases placed outside of the home (e.g., McGarrell, 1993). During this period, the proportion of African American and Hispanic youth detained increased by 9 percent and 4 percent respectively, while the proportion of white youth detained *declined* by 13 percent (Krisberg et al., 1992:2).

The increase in minority overrepresentation in the system continued into the mid-1990s. African American youth represented 41 percent of those held

in detention, 46 percent of those placed in public long-term facilities, and 52 percent waived to adult court (Snyder and Sickmund, 1995:91). In 1995, minorities made up 68 percent of the detention population compared to 65 percent in 1991 and 53 percent in 1983 (Sickmund et al., 1997:42). The minority population in public long-term facilities (i.e., training schools) in 1995 was 68 percent compared to 69 percent in 1991 and 56 percent in 1983 (Sickmund et al., 1997:42). Minority youth outnumber white youth in public facilities by more than 2 to 1. In private facilities, however, white youth slightly outnumber minority youth (42). Keep in mind that minority youth make up 30 percent of the general juvenile population age 10 to 17, with African Americans representing 15 percent, Hispanics 12 percent, Native Americans 1.2 percent, and Asians 3.3 percent.

Recent data indicate a decline in African American youth overrepresentation at most decision points in the juvenile justice system (Snyder and Sickmund, 1999). However, African Americans are still disproportionately represented in the system. Figure 1.1 presents a breakdown of African American overrepresentation within the juvenile justice system for the years 1990–1991 and 1996–1997.

The work of David Huizinga and Delbert Elliott (1987) and Carl Pope and William Feyerherm (1990a,b, 1992) were influential in shaping the direction of the DMC mandate. Huizinga and Elliott used six waves of data from the National Youth Survey covering the years 1976 to 1983 and information from arrest records to assess the relationship between race, offending patterns, and the likelihood of arrest.

In an earlier study (Elliott and Ageton, 1980) involving the first year (1976) of the data, African Americans were found to be disproportionately represented among the high-frequency offenders. With the exception of that year, Huizinga and Elliott found few consistent differences between delinquency involvement and racial groups for the years 1977 to 1980. Furthermore, African Americans were apprehended and charged with more serious offenses than whites involved in the same kinds of offenses. In their conclusion, the authors state:

... a summary of the findings would suggest that differences in incarceration rates among racial groups cannot be explained by differences in offense behavior. . . . The assertion that differential incarceration rates stem directly from differences in delinquency involvement is not supported by these analyses. There is some indication of differential arrest rates for serious crimes among the racial groups, but further investigation of the relationship of race to arrest and juvenile justice system processing is required if reasons underlying the differences in incarceration rates are to be more fully understood (1987:221).

FIG. 1.1.
 African American Overrepresentation in the Juvenile Justice System,
 Comparison between 1990–1991 and 1996–1997

U.S. population ages 10–17 _____ 15%		<i>1990-1991</i>	<i>1996-1997</i>	<i>% change</i>
Delinquency referrals to juvenile court _____	32%	30%	-2	
Detained delinquency cases _____	41	45	+4	
Petitioned delinquency cases _____	37	33	-4	
Adjudicated delinquency cases _____	36	32	-4	
Delinquency case out-of-home placements _____	43	36	-7	
Juveniles in public long-term institutions _____	46	40	-6	
Cases judicially waived to criminal court _____	52	46	-6	

Source: Adapted from Snyder and Sickmund (1999:192). *Juvenile Offenders and Victims: A National Report*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

These findings were referred to by both Ira Schwartz (1986) and Barry Krisberg (1988) in their testimony before Congress prior to the passage of the DMC mandate in 1988.

In 1988, Carl Pope and William Feyerherm received funding from OJJDP to conduct a literature review of research on the influence of race on case processing and outcomes within juvenile courts. For the years 1970 through 1988, Pope and Feyerherm (1990, 1992) found that roughly two-thirds of the studies reported that minority youth, primarily African Americans, received the more severe outcomes relative to white youth. They found evidence in the more sophisticated research of both direct and indirect race effects. There was also evidence that minor racial differences can accumulate and become more pronounced as minority youth penetrate further into the system. The influence of race on decision making was not always present across the entire system or more or less pronounced at one particular stage in the juvenile justice system. However, a substantial body of research showed that the greatest disparity between racial groups occurred at intake and detention.

The Children in Custody Data and the research by Elliott and colleagues and by Pope and Feyerherm set the stage and agenda for addressing DMC within the context of the equitable usage of secure confinement for minority youth. Although the DMC mandate centers on secure confinement, the intent of the mandate is to focus on decision making at *all* stages in the system (Feyerherm, 1995). The emphasis on fairness in case processing and outcomes for minority youth decreased the concern as to why minority youth get to the system and therefore, made the issue of minority criminality an unnecessary controversy (Feyerherm, 1996).

THE EXTENT OF DMC IN IOWA

In the early 1990s, minority youth overrepresentation existed in Iowa's secure facilities (Moore and Kuker, 1993). Minority youth comprised 37 percent of juveniles held in jail/lockups, 32 percent of those placed in detention, and 28 percent of the admissions to the State Training School (Moore and Kuker, 1993). African Americans were the most overrepresented minority group in the system. For example, they accounted for 21 percent of the State Training School population (Kuker, 1991). Minority youth and especially African Americans also spent on average longer periods in both jail/lockup and detention than whites (Moore and Kuker, 1993). Minority youth comprised 4.8 percent of the total population of Iowa, and up to 10 percent or more of some cities (Bureau of the Census, 1990). In the city of Waterloo, located in Black Hawk County in the northern part of Iowa, African American youth made up just over 19 percent of all youth.

Minority overrepresentation was also present in the adult corrections system in the early 1990s, and research yielded evidence of racial bias (Equality in the Courts Task Force, 1993). As noted earlier in the preface, minority overrepresentation still exists in both Iowa's adult and juvenile corrections systems (Division of Criminal and Juvenile Justice Planning and Statistical Analysis, 2000). In fact, a study by the Sentencing Project (2000) indicates that Iowa's proportion of African Americans incarcerated is the highest in the nation.

As previously discussed in the identification phase of the DMC initiative, documentation is required that indicates the extent minority youth are disproportionately arrested, confined in secure detention or correctional facilities, jails and lockups, and transfers to criminal court. States calculate an index value of disproportionality to assess the extent of over-/under-representation for each of these outcomes (DMC Technical Assistance Manual, 1990, 2000; Hamparian and Leiber, 1997). The index value is arrived at by dividing the percentage of minority juveniles represented at each point by the percentage of minority juveniles in the state's total juvenile population at risk for secure confinement. An index value over 1.00 indicates that minorities are overrepresented. For example, an index value of 2.00 would mean that minority youth are represented at a rate twice their representation in the total at-risk population (usually defined as age 10 to 17, but some states, such as Iowa, use ages 0 to 18).

The greater the index number, the greater the amount of disproportionate representation. Conversely, an index under 1.00 indicates that minorities are underrepresented. Data could not be located representing youth minority overrepresentation in Iowa in the form of the index values for the early 1990s. Instead, index values are used for the first half of 2000 and are presented in table 1.1.

As can be seen in table 1.1, minority youth are disproportionately arrested and confined in secure detention, secure correctional facilities, and adult jails

TABLE 1.1.
 Identification of Youth Minority Overrepresentation in Iowa (January to July 2000)

	<i>Total Number of All Youth</i>	<i>Total Number of Minority Youth</i>	<i>Percent Minority</i>	<i>Index Value¹</i>
Population at risk (ages 0 through 18)	5,968	39,389	7	N/A
Juveniles arrested ²	24,670	3,273	13	1.86
Juveniles confined in secure juvenile detention facilities	5,243	1,625	31	4.43
Juveniles confined in secure juvenile correctional facilities	299	123	41	5.86
Juveniles confined in adult jails ³	330	131	43	6.14
Juvenile confined in adult lockups	41	18	44	6.29
Total	5,888	1,897	32	4.57

Source: Division of Criminal and Juvenile Justice Planning and Statistical Analysis (2000).

1. The index value is arrived at by dividing the percentage of minority juveniles represented at each point by the percentage of minority juveniles in the state's total juvenile population at risk for secure confinement. An index value over 1.00 indicates that minorities are overrepresented.
2. Hispanic ethnicity was not factored into these figures.
3. Race/ethnicity was only reported on 305 youth.

and lockups. The index values for lockups, jails, and secure correctional facilities are most disturbing. Minority youth are represented at a rate three times their representation in the total at-risk population. Minority youth overrepresentation is no better, if not worse, than it was in the early 1990s (Moore and Kuker, 1993). The extent of the overrepresentation of minority youth in secure facilities also parallels nationwide findings (Hamparian and Leiber, 1997; Leiber, 2002).⁶

SUMMARY

The DMC requirement asks states to examine the extent of minority overrepresentation at all juvenile justice decision points, to assess its causes, and to develop and implement strategies to reduce it. The primary focus of the initiative is on the equitable usage of confinement for youth, instead of the causes of delinquent behavior and solutions to reduce delinquency (Pope and Leiber, 2003).

In 1991, OJJDP issued a Request for Proposals seeking the participation of states to analyze disproportionate minority confinement and to develop model programs to address its causes (Roscoe and Morton, 1994). OJJDP

awarded funding to five states on a competitive basis to see how these states would implement the phases as stipulated by the *Disproportionate Minority Technical Assistance Manual* (1990). The five pilot states were Arizona, Florida, North Carolina, Oregon, and Iowa (Pope and Feyerherm, 1993). The purpose of this book is to provide a detailed examination of the causes of DMC in Iowa by assessing the contexts of decision making, especially the relationship between the correctional philosophy of the court and, at the individual level, racial stereotyping.⁷