



# Mitigating Racial and Ethnic Disparities in the Criminal Justice System

LINKING RESEARCH WITH POLICY

HOSTED BY The WestEd Justice & Prevention Research Center  
and The Center for Evidence-Based Crime Policy

## Mitigating Racial and Ethnic Disparities in Juvenile Justice

### Danny Torres:

Hello, everyone. Welcome to the second session of our online conversation series, Mitigating Racial and Ethnic Disparities in the Criminal Justice System, Linking and Research with Policy. Today's topic, Mitigating Racial and Ethnic Disparities in Juvenile Justice. Thank you all very much for joining us to speak about this very important topic. My name is Danny Torres, I serve as WestEd Senior Manager of Publications and Dissemination. Now, before we move into the conversation, I'd like to take a brief moment to introduce WestEd.

WestEd is a national nonprofit, nonpartisan research, development, and service agency. At WestEd, we operate at the intersection of research, policy, and practice. Every day we partner with communities across the country to improve outcomes for youth and adults of all ages. Today's conversation is one really important facet of the work that we do at WestEd, and I encourage you to visit us at [WestEd.org](http://WestEd.org) to learn more. Now I'd like to introduce Cynthia Lum, Director of the Center for Evidence-Based Crime Policy at George Mason University. She'll be moderating the session today. Cynthia, take it away.

### Cynthia Lum:

Thank you, Danny, so much, and good afternoon, everyone. Welcome to the second in WestEd and CEBCP's conversation series on mitigating racial and ethnic disparities in the criminal justice system. My name is Cynthia Lum, and I am the Director of the Center for Evidence-Based Crime Policy and professor here at George Mason University in Fairfax, Virginia. And on behalf of our Executive Director, David Weisberg and all of us here at CEBCP, I'd like to welcome everyone to this very special series. I'm so pleased to be collaborating on this series with my good friend and colleague, Dr. Anthony Petrosino, who is the Director of the WestEd Justice and Prevention Research Center.

Many of you are very familiar with WestEd and also Anthony's excellent work in criminal justice research and evaluation. Both Anthony and I and also our two organizations strongly share commitment to not just conducting high quality research, but also translating, improving receptivity to, and institutionalizing research into practice. And it's from this commitment to research and also the social justice protests of the summer 2020 after Floyd was killed that we developed this conversation series.

While there have been many discussions and also research about the disparities that exist in our justice system, both in terms of differential treatment and also outcomes, we really wanted to focus on what research can tell us about what might work to mitigate disparities in the system. There is much less knowledge and very little evaluation research that tests what types of practices, policies, laws, and actions can be taken to alleviate or to reduce such disparities, and also to understand the consequences of such efforts. So, we hope that our conversation series sparks some ideas for research, practice, policymaking, and leadership in this space.

Some of you may have attended our first session, which asks the question of whether various types of police training could impact disparities in justice. Today we're gonna shift gears and focus more on young people and our juvenile justice system. What do we currently know and where are some areas that we need to understand better? Before kicking this off to Anthony, I'd just like to say a special thanks to Danny Torres from WestEd who works behind the scenes to make these wonderful webinars happen. Thank you very much, Danny. And without further ado, I pass the baton to Dr. Anthony Petrosino. Anthony.

**Anthony Petrosino:** Well, thank you so much, Cynthia, for your kind introduction. I can only say on behalf of folks here at WestEd and our Justice and Prevention Research Center that we very much appreciate the opportunity to collaborate with you on this series. And I thank you, not only for the collaboration but also your leadership and your vision for this. So, it's been very exciting, and we really appreciate the opportunity to do this. I'm gonna make three points before introducing the speakers and then turning it over to Cynthia for this, really this great panel that we've been able to convene here today. The first point I wanna make is that the juvenile justice system is experiencing quite a transformation.

We are experiencing a very steep decrease in the number of young people held in juvenile facilities. So, if you look at federal data from the Department of Justice, it indicates it's been about a 60% drop in the number of young people in facilities over the last 20 years. Now, we have seen states actually close their juvenile justice institutions. At last count, since the year 2000 over 1300 juvenile facilities have now been closed across the United States. It'd be hard pressed to find people who don't like this, and it's been fueled by a number of factors. I'm sure people on the panel are some of those who have contributed to this in terms of our research.

There's been a historic drop in crime, at least until recently. There's also been surprisingly bipartisan support for different aspects of juvenile justice reform. There's research that shows if you're looking at it from the human factor and the research-based factor, that all things being equal, it's better for juveniles, for their families, and society to remain out of institutions and to really emphasize community-based solutions for handling justice involved youth. There's an economic factor as well. There's all kinds of estimates, but all of them are not good. The Justice Policy Institute estimates that the annual cost of one year of a youth locked up is now up to \$214,000. And if you're talking about inflation, that's quite a bit higher than it was seven years ago when they estimated the cost at \$100,000. So, that's the first piece of data.

We're in this historic decline in juvenile justice involved youth in terms of facilities. Now, the second piece of data that catches your eye is that the racial and ethnic disparities that we were concerned about 20 years ago, 30 years ago, they've persisted. Every so often we do a census, the government does a census of who's actually in juvenile justice facilities. They've been doing this for a long time. And surprisingly, the rate has remained pretty constant. Native and Indigenous youth are about twice as high and Black youth four times as high as White youth to be involved or be living in a juvenile justice facility. The rate of Hispanic youth is about 42% higher than for White youth.

Now that these disparities persist across decades, across the system, is one thing, but they also persist in systems outside of juvenile justice. I'll talk about education and school discipline. This is of grave concern because, and our panel will be talking about this, that the use of out-of-school suspension and other punishments has been found by researchers to be associated with a series of negative outcomes, including more involvement and more contact with the justice system. Now, again, when you look at the federal data, it's encouraging in one aspect, suspensions are dropping, at least for the, it's not as dramatic as juvenile justice, but it is dropping. That's encouraging. But racial and ethnic disparities continue to persist.

Just taking a small sample of these data, but the recent data show, again, Black children, Native and Indigenous children are expelled at three times the rate of White students. Black girls, for example, four times more likely than White girls to be suspended. And these disparities start very early, federal data on preschool. This is before age six. This is before kindergarten. That again, suspensions and expulsions are dropping but the disparities persist. Black boys, for example, make up 18% of the male preschool enrollment but 41% of male preschool suspensions. Black girls make up 19% of female preschool enrollment but 53% of female suspensions.

Now a third issue besides the drop in juvenile justice, youth that are confined in juvenile justice facilities, the persistence of disparities, the third issue I just wanna quickly raise is it comes not from data but from the literature on what works. And what I take from that literature is that we need a lot more careful evaluation to understand what are we doing about disparities and whether any of it is working. And that's really the motivation for this panel. But let me just take one example that's bothered me for many, many decades. Way back when I was a state government worker in two different states as a researcher, the US Department of Justice provided funding to jurisdictions to address minority, what they call disproportionate minority confinement, disparities.

Those grants have been around for decades, millions of dollars for states and territories to address those disparities. Now looking, and we've only done a cursory review of this literature, but is going to be a very painful and very elusive process to come up with a sturdy response to the question, did this work? And I think those are the kinds of lessons that we need to draw out more from all that we're doing to address disparities and to mitigate disparities. And so, as Cynthia noted, our panel was motivated by a desire to shed more light on what can we do about disparities in the system. And that leads me to the panel today.

Our first panelist, Sean Darling-Hammond is a researcher who has been on the front lines conducting studies designed to address disparities in school discipline. Sean is an owner of a consulting firm called BIT Justice, and I love his company's motto which says, "Helping do gooders do good." And we're also happy by the way that Sean works with us at WestEd from time to time on these very issues. We're also honored to have Dr. Nancy Rodriguez join the panel to talk about more broadly what should we do to address disparities in the juvenile justice system. Nancy is a professor in the Department of Criminology, Law and Society at the University of California at Irvine. She's been a leader in research on inequality in justice. And because of her evidence, or because of her influence and reputation in the field, in 2014 President Obama appointed her to serve as the Director of the National Institute of Justice.

Now, finally, there are many who would say that an intervention here, a strategy there is not gonna be enough to turn around decades or more of entrenched disparities. So, we're really excited to have David Mohammad talking with us about system-wide policy initiatives undertaken to reform juvenile justice. David's been on the front lines of that as the Executive Director of the National Institute of Criminal Justice Reform, a not-for-profit organization that works to transform justice systems. So, with that, let me turn it back to Cynthia to moderate our panel today.

**Cynthia Lum:**

Okay, thank you very much, Anthony, for that great set up. And I'd like to start with Mr. Darling-Hammond and your research on school systems. Since we know that schools are places where kids might not only be identified as high risk, but also where they might end up entering the juvenile justice system and where disparities can start. Can you share with us some of your research and thoughts about what school systems can do to effectively reduce disparities in juvenile justice?

**Sean Darling-Hammond:**

Absolutely. And Cynthia, thank you so much for teeing that up in a way that really gets us into the topic. So, Cynthia mentioned, I really want us to start upstream of racial disparities in juvenile courts and think about some of the drivers, the systemic drivers or risk regulators in schools that might be the reasons we see these disparities. And obviously, as Cynthia mentioned, schools have an important function in creating the conditions that encourage students to engage in the kinds of behavior that might lead to juvenile confinement and actually getting them in court systems to begin with. So, you see from Daniel Losen's work, if you look at the bars on the right, that students who are suspended even one time are seven times more likely to be in juvenile confinement relative to students who have not been suspended.

And they are seven times more likely to experience adult confinement as well in addition to other educational outcomes. And correlation is not causation, but even the most advanced econometric causal work demonstrates that students who are sort of randomly and more disciplinary in school districts experience negative educational and carceral outcomes later in life. So, we should be very concerned about racial disparities in discipline. So, one thing we should then ask is what drives these racial disparities in discipline? You

know, does teacher bias play a role or is this really just a function of student behavior?

And I'll just point to one thing here because I know this came up in some of the questions that were teed up to the panel. So, there been a series of experiments conducted by a couple of my coauthors, Jason Okonofua and Jennifer Eberhardt. Their seminal work was in 2015 and it found that even when you hold student behavior constant and the only thing that varies is the race of the student, teachers respond more negatively to a Black student engaging in the exact same conduct in the exact same situation. And that's partially because teachers are more likely to perceive Black students who misbehave as troublemakers, sort of give them this label that then informs the way that they respond to these students over time.

And this can create the kind of negative cycles, the negative dyadic cycles between teachers and students that accrue to sort of negative pathology, psychologies, negative reactions, and eventually to students engaging the kind of conduct that lands them in juvenile courts. So, teacher bias does seem to play a role, and what can we do systemically to respond to this sort of a progression from student misbehavior to teacher biased response to negative relationship to juvenile confinement. So what can we do? Well, there's been a lot of really exciting work recently about the potential of restorative practices to bridge racial disparities in student discipline.

And on this note, I had the pleasure of heading up a WestEd summary of all quantitative evidence of restorative practices, which was published last year. And we found that among a number of other positive benefits of restorative practices, one was that in many cases schools that utilize restorative practices saw a bridging of racial disparities in discipline. So, the Black and White discipline rates tended to both fall but the Black history falls faster. And so you saw this bridging of the discipline rate, or the discipline gap, I should say. But what are restorative practices? So, in broad strokes, instead of excluding a student when they misbehave, restorative practices and paradigms try to reengage them by improving and repairing relationships.

So, if a student has made a mistake, you'll be a process by which the community will help the student understand the harm that that mistake caused, try to think about steps they can take to repair that harm, and then take steps to avoid making the same mistake in the future. Proactively, in addition, restorative paradigms try to help nurture social and emotional skills that allow students to manage conflict when it comes up so it doesn't escalate to the point where there needs to be a systemic response. So, it's both a proactive and a reactive posture to really improving relationships and avoiding misbehavior in the first place.

We can talk more about that later if folks are interested in the nuts and bolts of restorative practices. But one thing that still is unclear is whether restorative practices are causally related to a reduction in the discipline gap. But hot off the presses for you all, I recently conducted research on millions of California students over the course of the last two school years that are reliable, which is 2017-18 and 18-19. 2019-20 is kind of a COVID year, so you can't really evaluate it and compare it. But in those two school years, students who had more exposure to restorative practices saw a decline in

their likelihood of exposure to negative disciplinary experiences, and results were stronger for Black students than White students indicating that more exposure to restorative practices should help bridge the Black-White discipline gap.

And what we're seeing in this chart here, the solid line is the relationship between exposure to restorative practices and out-of-school suspension for Black students. And the dash line is the same for White students. So in both cases, more exposure to restorative practices, less discipline. But because the Black student experience is more powerful, the Black student effect is more powerful, more exposure also means a smaller discipline gap. So, this may indicate that restorative practices are indeed a powerful palliative for the racial discipline gap in exclusionary discipline and may also therefore help reduce gaps in juvenile courts.

One concern that many opponents of restorative practices point to is the possibility of negative spillover effects. So, if schools utilize restorative practices, will that have negative academic externalities for Black and White students? And in my research, I don't see that at all. In fact, both Black and White students who see more exposure to restorative practices see improvement in their performance on the Smarter Balanced California tests, which are a sort of standardized metric of academic achievement. And in the same way that more exposure has an even better effect for Black students and White students, we see the same for that phenomenon on math achievement.

So, Black students see a slightly better improvement than White students meaning that more exposure to restorative practices helps bridge academic achievement gaps in addition to bridging disciplinary achievement gaps. So, you might be wondering given that restorative practices are these powerful palliative, why do we still have such stark racial discipline disparities and achievement gaps as well? And you know, one short answer is that access to restorative practices is not universal. And in fact, it's differential by race. So, precisely the students that we are concerned about having negative disciplinary experiences, so Black students, LatinX students, and low-income students, precisely those students are the ones who are less likely to have exposure to these practices in the most recent years for which data is available.

So, you know, to the extent we're thinking that restorative practices might be short of a panacea but a really powerful policy tool, a powerful lever to try to bridge these disparities, we should be concerned about this differential exposure and differential access. And the question then becomes what can we do to increase access to restorative practices so students of all backgrounds have access to this tool that can reduce their likelihood of having negative disciplinary experiences and increase their engagement and eventual academic performance? I'll offer two suggestions. One, we can obviously make sure that more schools that serve Black and low-income students get access to training so teachers are able to use these practices at the beginning of school year.

But two, just as important, we need to make sure that that utilization of practice is sustained, not just over one year but over many years so that the

culture of the school can be improved over time. And that requires coaching and professional development for teachers so that they can continue to work on these very difficult relational skills and make them part of their sort of modus operandi and make it part of the way they teach. And two, we have to make sure teachers are supported so they don't leave schools that serve Black and low-income students right after they've been trained.

One of the big problems in many of the RCTs on restorative practices is as soon as teachers get trained, they leave the next year, and so this sort of core of professionally developed teachers that now have access to these practices has gone off and is teaching somewhere else. So, we have to make sure that these practices are sustained over time. So, I just wanted to sort of tee y'all up with some ideas on this, and I look forward to speaking more about it over the course of the session.

**Cynthia Lum:**

Okay, thank you so much, Sean. And thanks for giving us something to think about beyond just thinking about SROs or training. I think there's a great deal to talk about at the end of, when we come out at the other end of this session. Professor Rodriguez, let me turn to you. You've had just such a great deal of experience, both as a criminologist and as the Director of the National Institute of Justice, focusing on both existing and also needed research related to disparities in juvenile courts and detention. I realize this is a large area of research to cover in a few minutes, but can you tell us a few things that you'd like to highlight about what we do know from rigorous research about how disparities in the systems can be evaded?

**Nancy Rodriguez:**

Well, thank you, Cynthia. Let me begin by, of course, first thanking you and Anthony for your willingness to include youth justice into this broader national discussion on disparities and inequality. It's certainly a pleasure to be on a panel with Sean and David. So, yeah, my comments really come from over 28 years of working alongside justice officials, studying the decisions that they make about youth in juvenile court. And I'd like to maybe situate my comments about the science in this area with two points. First, violence prevention in science, studies of delinquency and offending, and juvenile justice court research are all different bodies of scientific research.

And second, within those areas of studies, we have scholars from different disciplines, like Sean from education and law, scholars of social work, psychology and criminologists like myself conducting work on children and youth wellbeing. Now I preface with these two points because in order to reduce disparities and improve outcomes for children and youth, we really need insight from all of these disciplines and the will of officials and policy makers to access and use that knowledge. So with that, there are three points to your question that I think I'd like to make about what we know and the gaps in juvenile justice disparities.

So, the first is on the metrics of race and ethnicity in the studies of juvenile justice. It's important to begin by noting that most of the studies that we have compare the outcomes of Black and White youth. Now, although Latino youth represent 25% of the total US youth population between the ages of 10 and 17, we have no population estimates of Latinos in the justice system. Now this is due in large part because criminal justice data management systems fail to capture ethnicity routinely and classify Latinos as White. I certainly

want to call attention to a recent report by UCLA's Latino Policy and Politics Initiative and Alianza for Youth that outlines the invisibility of Latino youth in criminal justice data and the implications for broader criminal justice reform.

Now, for Native youth who are concentrated in certain geographic areas in the US and who have experienced generations of historical trauma, they may actually be processed in three distinct justice systems, the federal, the state, and the tribal system. Now scholars of Indigenous rights have raised awareness on how these multiple legal jurisdictions really problematize effectively responding to the needs of tribal youth. We need a better understanding of these pathways for Native youth once in these three different systems, which is information we've a lot. Now, among the few studies that have included these racial and ethnic groups and their analysis of juvenile court outcomes, studies show that Latinos and Native youth are treated more severely than their similarly situated White counterparts.

Without a doubt, we need data and far more research on the experiences of these two sub-populations in juvenile justice. So, my second point is on why we might see these racial disparities. Now to answer that we need to consider the ecosystems of youth. We've heard Sean talked about schools, but we also need to consider communities and families and how they might influence the offending and victimization pathways and also the justice system involvement and contact for youth. So, my work is really centered on the perceptions and attitudes of court officials, in particular, the attributions that officials may use to inform their decisions.

I'd like to briefly describe the internal and external attributions within this framework. So, in terms of internal attributions, although distinct stereotypes and histories of oppression characterize Black and Latino and Native American youth, the same perceptions about the causes of their delinquency may exist. That is, that youth possess these negative moral attitudes and personality traits, which, similar to what Sean described, teachers may utilize in school settings. So, for example, youth who do not admit guilt or responsibility convey no remorse for their offenses or are uncooperative with justice officials may be perceived as more likely to re-offend and in need of formal system intervention.

Now, external attributes are these environmental and social factors, like families, schools, and peer influences that may be seen as contributing to delinquent behavior. So, my work with colleagues over the years has found that Black, Latino and Native youth are more likely to be associated with these negative internal attributions. We have also found that these negative internal attributions actually decrease the likelihood of receiving diversion or avoiding formal system involvement. Our work has also shown that official's accounts and perceptions of family characteristics like family dysfunction or having a parent who has a history of imprisonment are associated with out-of-home placement.

These are factors in life circumstances that disproportionately impact families of color. So, my third point is on the critical role of few adjudication detention and why it matters so much. Now the science here is clear. Disparities are more pronounced in the front end than the back end of the system. We see youth of color are less likely to be informally processed and more likely to be



detained. And youth who are detained are more likely to receive more severe or punitive outcomes as they progress through the system. Most scholars often refer to this as this cumulative disadvantage, these small disparities that accumulate over time from one decision to another resulting in increasing inequality.

We have sentencing scholars like Megan Kurlychek and Brian Johnson who've recently called on more studies of this cumulative disadvantage in the criminal justice system. Interestingly, a 2021 piece by Stephen Zane and colleagues analyzed 14 different pathways of the processing in the juvenile justice systems across four states to examine this cumulative disadvantage. And they found no evidence of this cumulative disadvantage. Instead, the authors found that youth experienced two central pathways of processing. Those who are detained and those who are not. They also found that the disparities were more pronounced for detention pathways than non-detention pathways.

But simply, outcomes in the front end like detention can lead to harmful unintended consequences for youth. I would also like to bring attention to research in other areas that I see as relevant to our discussion, like Amanda Geller's work on police contact as a potential adverse childhood experience and a driver of health disparities among children and adolescents, as well as Christina Campbell's work on juvenile risk assessments and the contribution of race and gender in predicting recidivism and a focus on a more strength-based juvenile assessment. I find these work particularly useful and understanding how disparities come to exist very early in system contact as well as how to mitigate them once youth enter the juvenile justice system. So, I certainly look forward to having a more discussion on all of these issues throughout our panel. Thank you.

**Cynthia Lum:**

Thank you, Nancy. You've given us a lot to think about. Let me just say to the participants of this webinar that afterwards we'll have a website that has the webinar itself, but also many of the resources that Dr. Rodriguez had mentioned in her opening remarks. And Nancy, I'll come back to you in the second round of Q&A, but I will be curious to know what kinds of innovations can help to stop people from acting on their implicit biases or in many ways kind of curtail this cumulative disadvantage at the very early stages. But we'll come back to that soon.

Mr. Mohammad, thank you very much for joining us today. You've spent your life in the practice and policymaking of juvenile justice and have really seen the realities of the disparities in our system, as well as both ineffective and effective strategies that could be used or that have been used. And the panelists, in particular when Nancy was speaking, really suggests that this is much a broader challenge that encompasses not just schools and courts and juvenile detention, but also activities assessing risk, policing, issues related to families and social services and the like, and I'd like to get your thoughts on all of this, and also whether you think there are alternatives or innovations that might exist that we should consider and think about researching today.

**David Mohammad:**

Thank you very much, Cynthia. Thank you for, all of you and Anthony for hosting us and the panelists for the wonderful discussion thus far. I think it's been a rich amount of information shared, and I really just wanna kind of

build on on some of the points made. Just a couple of foundational points. I think obvious to us in the field, but just to get some context and some norming. You know, the juvenile justice system was created in 1899 by primarily four women led by Jane Adams in Cook County, Illinois. And for the purpose of being different from the adult system.

Prior to 1899 there was just one system. Although there were facilities that were focused on youth, there was just one system. And in Cook County, they created the Juvenile Court to understand that children are children and need to be treated as children and treated in a way that's not just punitive and deficit-based like the adult system. And so, the juvenile court was created, and from that the juvenile system was created. Unfortunately, nearly from the beginning, it started to mimic its adult parent and became deficit-based, punitive, and remained that way in some aspects till this day. Certainly have been extraordinary reform movements and campaigns and initiatives around the country, and we've experienced in the last 15 years a pretty remarkable reduction in juvenile incarceration.

And while we celebrate that, and we should, it's just down from a pandemic level of massive incarceration of youth in this country, very unnecessarily so. And so, how the system has viewed young people is what is wrong with you? How can we fix you? Or what did you do wrong, how can we punish you? Rather than building on the strengths and the assets of young people, helping young people and their families and the community prosper and develop. And so, what I've called positive youth development in the field of positive youth justice has had a lot of movement in say child welfare and then just the youth development field, but still early on in the juvenile justice field we still approach young people in a way to fix them or to punish them far too often in this country.

And that has been rife with racial disparities. And although we have seen the number of young people in detention go from 100,000 to about 40,000, a little above 40,000 in this country, which is a massive reduction, we've actually seen increased disparity. And so now, I always say if you had 2000 young people locked up and 1500 of them were Black and now you have 500 people locked up and 400 of them are Black, I'll take that. Now, that's actually greater disparity. But I'll take far fewer Black youth locked up. Now, we can't stop there, but I'll take it and point out that, because that is what happened.

So, there's far less young people locked up and far young people of color locked up, yet the disparities are greater. And that's mostly because White youth tend to receive the alternatives, the diversions more at greater rates. You know, I think to understand the disparity, one of the the best stats that's true for youth and adults is several studies have shown that all people use drugs at about the same rate. There's no disparity in the rate of drug use among race and ethnicity, yet Black and Latino youth are significantly overrepresented in the drug possession, arrest, charge, conviction and sentence, showing that it's not about behavior.

Some people wanna say, oh, we need to address the behavior. This is clearly system reform that needs to happen. So, if we're talking about system reform, there are those pieces that have reduced the size of the system. Some of them themselves are challenging, like risk assessments. But when

we're talking about only detaining young people who have evidence shown that there is some high likelihood of offense during the time that they're going to be outgoing to court for that a new offense, which is extremely small number, or they have evidence that they may not show up to their court hearing. Again, extremely small number.

If we employ those practices and policies, and then if we also employ the practice and policies of only using custodial sanctions, if you will, for young people and really it should never be punishing young people, it should be helping with development. If we only look at young people who need to be in a program in a out-of-the-community, which is extremely small number of young people who reached this highest level of risk to public safety, if we did all that we would have a much smaller system, even much smaller than we have now, even though we've made a lot of progress. And what I like to call reduce, improve, and re-invest. Reduce the size of the system significantly.

Improve what is left, 'cause we can't just say smaller but they're gonna stay in these horrible facilities. I visited a few facilities in Florida a few months ago with about four masks on. And quite honestly it was startling. You can be lulled asleep in some California places. In some other places around the country, it was startling to see young people in horrible facilities for the most minor of offenses for far too long. We still have a lot of work to do in this country. But reduce the size of the system, improve the system.

A couple of last points. So, in Missouri, which is known as some of having the best state facilities, when I was in DC, working in the system, we replicated that model to have, you know, as much, as much, as much, as much as possible young people should not be in facilities. The small number of young people who need to be, they should be in facilities that are therapeutic and education-focused, rehabilitation-focused, positive youth development-focused with staff who care and have passion, who are well-trained, and they have a bunch of opportunities and services available to them, with serious planning to transition them to the community as soon as possible. And then reinvest. We spend a lot of money. And so, I think somebody mentioned earlier the JPI study around the cost of incarceration, about \$150,000 a year, is now higher.

California, the numbers are astronomical. You're talking about 1/2 a million dollars per year per bed in the county where I'm from, Oakland, Alameda County. If we could reinvest that type of investment, it's money in community development, in the youth and their families, in their homes, in their families, in the communities, then we would have much, much greater outcomes. And so, I'll stop with this, repeating this notion, of reduce the size of the system, improve the quality with a focus on positive youth development, and reinvest the funds that we were willing to use to incarcerate in a punitive deficit approach into communities and families.

**Cynthia Lum:**

Thank you. Thank you so much, David. As I listened to all of the three of you speak, just two questions come to mind that I just wanna pose to anyone who wants to answer them. But the first is this issue of perceptions. It seems like a lot of times perceptions drives the behavior of police officers or probation officers, judges, teachers, and social services that are linking with families. And so, understanding that is important, how do we, aside from training on,

like, you have these perceptions? How do we actually change the way folks are acting on those perceptions, either in schools or in the courts or juvenile justice. And I don't know if there's a lot of research in this area, but Nancy, maybe we could start with you on this. I don't know if you have any thoughts on this.

**Nancy Rodriguez:** No, I think that's a great question. And I mean, I often begin when I'm interacting with justice officials and trying to convey that, again, these are some of the reasons we see the over-representation of minority youth. I often begin with conveying no youth who enter this detention center or this juvenile court is really monolithic. I mean, you have these different subgroups of young people with very different risks and very different strengths, chances are. And what are you doing to actually look at these differences? Because the interventions that you have available and try to rely upon, for example, a girl who's been trafficked, are going to be very different from those interventions and those support systems, hopefully, that you rely on for someone who's being referred to for a school referral, or an assault or a drug offense.

So, I think it's really, really important to begin with placing these offenses, these delinquent acts that bring young people into the system, and then begin to understand how you make decisions about them. What are those systems that that information that you rely on to actually make the decisions that you make? And it's often much more difficult because, at the front end, because you're gonna have less information. So, you're relying more on these biases, on your own perceptions, because this young person may not necessarily, you might not have detailed, comprehensive information on this young person versus when this young person reaches adjudication, for example, and you have now an assessment from, you know, a police officer, a probation officer, someone's recommendation on what this judge should do.

So, I think again, you know, it's really not assuming that all youth are similar. And I think identifying their different risks and strengths, I often say, or protective factors, whichever term you prefer, but then begin to really unpack how you make decisions about them. And I think that becomes really, really informative because again, our own biases in our perceptions, whether internal or external factors that we bring in are then focused on this young person. And then I think you are able to maybe make a closer link into the behavior or those drivers that brought that young person into the system, which I think is really important, and often lacking.

**Cynthia Lum:** Yeah, it's certainly harder to slow down our thinking than to make decisions quickly. Sean, you were gonna say something, I know you often speak of protective factors.

**Sean Darling-Hammond:**

Yeah, yeah. So, I just wanted to say Nancy is spot on. You know, so we've been doing causal experiments to try to identify what might mitigate the impact of bias in teacher's decisions and in juvenile probation officer's decisions. And a really important driver is the extent to which people have individuating information. And Nancy, you phrase it exactly right. Our biases

are sort of these gap-filling mechanisms. So, when we have limited information about an individual, we rely on the biases that we have, the sort of assumptions you make about the social groups they belong to, to fill in the gaps about this person.

So, when I was a juvenile, when I worked in juvenile courts and defended special ed rights of low-income minority students, one thing I noticed was there was very little opportunity for judges to get that kind of individuating information about a given juvenile defendant. So, something that we can all do is try to make sure we provide judges with the kind of information, at first impression and throughout, that would allow them to make an individuated assessment of any individual student, any individual kid. And same for teachers, make sure that they can see people as people rather than as an amalgam of sort of stereotypes and perceptions about social groups.

And that is indeed like the most powerful, psychologically defensible mechanism we can leverage for trying to mitigate the consequences of bias and the disparities that flow from it.

**Cynthia Lum:**

Thank you, Sean. David, I don't know if you wanted to add something?

**David Muhammad:**

I just wanted to give, to try to give an example of trying to implement policy to address this, because if you can't change the way people actually think and feel, which is difficult, in trying to implement policy to mitigate the biases. And so, you know, for instance in Oakland when I ran the probation department, this was true kind of everywhere I've worked, but people say, oh, it's not our fault. You know, the police arrest who they arrest, they just bring them to us, the courts and place people on probation. We don't have anything to do with that.

And so, city of, I mean Alameda County where Oakland is is about, matches kind of national stats. About 13% of the county is Black, but 50% of everybody on probation, both juvenile and adult, but in this instance, juvenile probation is Black. So pretty extraordinary disproportionality there. But 75% of everyone who the probation officers were submitting violations of probation on were Black. And so, first showing them their own data that using the relative rate index, that this is, you all are exacerbating the disparity. Now, let's implement policies so that, one, an individual PO does not have the authority to violate a young person.

I learned from, at that time, my colleague who's recently passed, who was the chief probation officer of San Francisco, who said to me, a lot of young people get locked up for "poo poo", pissed off probation officers, who bring their own biases and challenges to the job and take it out on youth. So, taking that authority away and creating certain supervisory requirements, reviews. Also implementing a graduated response matrices, where you have graduated rewards and graduated sanctions, having violation that results in incarceration as a very last resort, all the way up to removing incarceration as an option for technical violations, meaning because you violated a rule of probation that shouldn't mean you get incarcerated.

And so, implementing, and there's a number of policies that we can talk about that... The one that was most effective was just making it harder. You

know, you got to fill out forms in triplicate and get three supervisor sign offs, and that stopped POs from even wanting to do it. But you know, it's not...

**Cynthia Lum:**

Yeah, I was gonna say, David, there are so many webinars and discussions that I've been in this year and last year, it's amazing how supervision, structured discretion, and accountability infrastructure are so important. And yet there are the, almost the three weakest areas in criminal justice and policing is the area that I work in and in the courts or probation. I'm gonna turn this over, thank you all for those comments. I know that was a hard question, but I'm gonna turn this over to Anthony. Anthony, I know we have a few questions from the audience, and I just want to give them a chance to have their voice heard, and maybe you can share some of their questions and we can have the panels address them.

**Anthony Petrosino:**

Sure, thank you, Cynthia. And some of the comments actually have come in. I'll reiterate what Cynthia said. We will be making the recording available. People have asked about that, and then we'll have some resources at the website, folks have asked about that as well. But I'll pose this first one to Nancy. There's been a couple of questions about risk assessment. And I know that there's some controversy. Some have talked about it as a way of reducing bias, 'cause now you have this validated instrument instead of somebody's clinical judgment, but racism and other disparities may be baked into that instrument. What do you suggest for jurisdictions, Nancy, in terms of best practices with these instruments?

**Nancy Rodriguez:**

Now, well, that's a loaded question. I'm not gonna say how I feel about risk, what I will say is what the science tells us. And so I will certainly make available, Christina Campbell's work on this, because I think it could be really insightful because she really is tackling this. She is saying, here we have these assessments that in some way are over-predicting risk for minority youth. And at the same time, they are under-reporting or not capturing the strengths of racial and ethnic groups. So, how is it that we can maybe identify the constructs of a tool that really are strength-based and are moving also, not just strictly on a focus on youth but also the family system, which is really important?

And I think, you know, so I can certainly make that research available, but I do think that it does require us to think about how these tools are having these differential impacts for different subgroups, first and foremost. I will say that the issue of surveillance, to me, is an important one, and one that really resonates, given again, that youth who enter the justice system, the presumption is you need to have a level of supervision that is deemed appropriate and whatever that may mean. And that can certainly have these unintended consequences for youth of color who may be perceived as lacking that level of supervision or adequate level of supervision and guidance in the home.

So, I think when we think about these tools that often incorporate a family-level supervision that is desirable, what does that mean? When you use that and when you click that on a risk assessment, what does it mean for certain racial and ethnic groups? I mean, I think those are two things that I would certainly recommend we consider. But I think the debate regarding the use or non-use or modifications of risk assessments will continue. For my

colleagues in the juvenile justice system, I would say we have scholars who are going there and saying we need to acknowledge them and still use them, but in a way that certainly doesn't penalize and harm youth of color.

**David Muhammad:** If I can say one quick thing, Nancy covered it very well. This debate is gonna be before or after and long, but I echo really everything Nancy said on the key points of, you know, even as you said, Anthony, they were, for the most part, developed, supposedly to address the individual biases of decision makers. And they, baked into them is bias and really the institutional racism that exists. Yet there are, depending upon what you're using them for, which is a huge question and a huge clarity that's needed. The other huge part that is conflicting with kind of the best ones and how it's used is to get strengths, to get deeper into understanding, I've also found in reality when you're having POs fill them out, the more questions, the problems you have.

And so, when you have POs who have not received adequate training, who are overworked and sometimes disgruntled, and then you ask them to fill out a 50 to 100 questionnaire or the risk assessment, it just doesn't work. And there are three or four questions that really are genuinely predictive. Now, they might be predictive of racism. But they're predictive. And so, we've got to struggle with that. It might be predictive of patterns of patrol that are racist in nature, but they are predictive. And so, we've got to sit with that. It's a longer discussion.

We could have a whole panel about... the point being is, who is filling them out, what is the purpose, and separating out those purposes. Because the other point I just wanna make is too many risk assessments have needs in them. And so, you are taking people that have high need and low risk and giving them a high score, and to Nancy's point, what they get for that is more meetings and more home searches by their PO, not what you really need to be giving them. And we need to separate out need and risk and strength, but we need each of those.

**Anthony Petrosino:** Thanks, David. I think you hit on our next topic. Cynthia, I don't know. Did you take a note of that? The next event... Sean, a couple of questions came in before and then during about the, what do you think the potential and what the research says about there's a big push to bring in more educators and more administrators in education from different backgrounds. What role will that have in dealing with implicit bias that you mentioned in terms of discipline?

**Sean Darling-Hammond:**

Yeah, so before I answer that, I just wanna piggyback on what David was saying about sort of how we can think about risk assessment in a more sophisticated way. One other thing we might think about is what happens before people make a risk assessment? Do they get deep individuating information about the person about whom they're making risk assessments? So, in psychology, we call that perspective getting and we see that there is a differential effect where if you're getting perspective from a Black youth, you're less likely to go as deep. Whereas if you're getting perspective from a White youth, you'll go deep, you'll get to know them more.

You'll get the kind of individuating information that would whip its way into a 100-question risk assessment. And so, it may not just be that the questions themselves are problematic. It may be that the human processes underlying the data generation are still being undervalued. And that tends to be the case in any data generation process. We forget human beings are still driving the ship. We're not yet in 2030, 2050, whatever, when machines will run the world. So, but to the question about, will it be helpful to bring in educators with different backgrounds? I mean, certainly there's always promise in trying to get different perspectives.

I think it depends on how those perspectives are being leveraged. And that gets to sort of the structural context of a school. So, schools are places where teachers can really interact with each other, learn from each other, build on each other's strengths in the way that they approach youth, develop the kinds of social and emotional skills that allow them to be fallible and vulnerable and create deeper relationships with students. Then yes, having lots of teachers of different backgrounds will be incredibly generative and fruitful, but that requires that the social structure of the school empowers that kind of engagement and collaboration.

Restorative schools generally have that kind of culture and ethos. And I think that's a large part of why they're able to generate the powerful results that I demonstrated before. But that's not the MO, it's not the typical way that schools are operationalized. It's about sort of making sure that students are hitting certain academic targets by whatever state testing or county testing date. So, we need sort of shift away from that and think about the relevance of social and emotional development and empowerment for teachers and students so we can create the kinds of cultures that realize these relational benefits, but then down the stream, academic and disciplinary and carceral benefits as well.

**Anthony Petrosino:** Thank you, Sean. And David, a couple of questions have come in about, is really about system-wide collaboration, it's kind of a tough one, but somebody brought up the issue of like what happens in a setting, in a justice setting where people are just at loggerheads. You mentioned about the services provided to juveniles at the facility. What if some of the stakeholders in that setting are abolitionists, and so they don't wanna invest in services because they wanna dismantle the entire system. How do you bring together these groups in your reform work?

**David Muhammad:** Oh, yeah. That has happened and is happening. This started off many years ago when kind of conditions reformers and condition litigation started to get frustrated by saying, we need to stop focusing on conditions and start focusing on getting people the heck outta here. And that's, you know, I would just say we need to do both. And we are not close at any time being eliminating facilities all together. I agree with that as a goal without question. How we get to that goal, there might be nuance disagreement with that. But in terms of we don't wanna live in a world where there's no incarceration. Absolutely.

And so, but I think the way we agree is one, there's a lot of work to do. So, we all can do the pieces that we're most passionate about or more experienced or knowledgeable about. There needs to be a lot of work of



reducing the size, reducing the number of people who are incarcerated. We've made massive reductions in the country around youth detention, but we have a lot of work to do. Quick piece on that, when I started doing this work in the mid 90s, there were 10,000 youth in the California Youth Authority which was the State Juvenile Justice System in California, now called Department Juvenile Justice, and there were another, we never talk about this part, another 10,000 on state parole.

Today state parole for youth doesn't exist. So there's zero, and there are 700 youth in the facility. So from 20,000, 10,000 and 10,000, to zero and 700, this is extraordinary. That being said, we still have work to do, but we just have to just do our victory lap and then keep working. And so, we need to acknowledge that massive amount of progress can be made, and we still can't say, well, just because of that, we're going to let the facilities be hard. These facilities I was in in Florida a few months ago were horrific, and any normal person would go in there and their immediate response would be, these kids need to be out of here, but also, we need to change these conditions.

We have to be able to do both and everybody with the goal of they shouldn't exist. But I think we bring people together with we work both and with that ultimate goal in mind.

**Anthony Petrosino:** Thank you, David. Well, like entertainers say, you should leave the audience wanting more. And I see we're up against the end of our time here. So, I'm gonna turn it back to my good friend and colleague, Cynthia, to wrap up our event today. Thank you very much.

**Cynthia Lum:** Thank you, Anthony. And I agree, this is, we wanna be respectful of everyone's time, but I hope we've given everyone kind of a shot in the arm of some really good ideas and some thinking around this area and some innovations around this area. There are a couple of things that I definitely learned about that I didn't know about at all in this conversation. So, thank you to the three panelists, Nancy, Sean, and David. And I encourage all of the participants to take a look at the work that each of these folks are doing. I mean, they are really leaders in our area and in juvenile justice, but in criminal justice more generally and their organizations as well.

And can I also encourage everybody to take a look at the website when we finish putting it up with the presentation and also the follow-up resources. And finally, I just wanna remind everyone that Danny has asked everyone to answer a very short survey at the end. We'd love to get your feedback on how our webinars are. And again, thank you so much, everyone and I look forward to when we get to see you in-person next year at the CEBCP symposium. So, thanks everyone, again. And I turn it back to Danny.

**Danny Torres:** Thank you very much, Cynthia, Anthony and to all our panelists for a great session. And thank you to all of you who participated and joined us today. We really appreciate you being here. For those of you interested in learning more about the Center for Evidence-Based Crime Policy, visit the center website at [cebcp.org](http://cebcp.org). And if you're interested in learning more about WestEd's Justice & Prevention Research Center, information is available online at [jprc.WestEd.org](http://jprc.WestEd.org). Finally, feel free to reach out to Cynthia and

Anthony via email if you have questions. I'll leave the slide up for about a minute or so, so you can jot down their email address. With that, thank you all very, very much for joining us. Be well, and until next time.