Delinquent by Color: Reforming Juvenile Court Intake Officer Discretion to Reduce Disproportionate Minority Contact in Iowa's Juvenile Courts

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I. INTRODUCTION

It is beyond any serious doubt that racial injustice is deeply woven into the framework of our nation's social, political, and legal institutions. In fact, one need not go any further than America's criminal justice system to encounter the unfairness of our legal institutions. In 2019, non-Hispanic Black adults were imprisoned at a rate five times greater than white adults, and Hispanic adults were imprisoned at almost three times the rate of white adults.[1]

Unfortunately, America's criminalization of people of color begins much sooner than adulthood, as evidenced by the disproportionate representation of minority youth in our juvenile *justice* systems. In 2014, Black youth were 3.1 times more likely to be referred to juvenile court for an alleged delinquent offense than white youth.[2] Referred youth are then left at a crossroads, with court decisionmakers typically having broad discretion to determine how to process the juvenile. Upon referral, Black youth are significantly more likely to have their case petitioned—the juvenile equivalent of having charges filed—and less likely to be diverted to informal rehabilitation systems.[3] The resulting disproportionate minority contact[4] ("DMC") forces youth of color deeper into the formal juvenile justice system, with potentially long-term consequences. The question arises: are Black youth that much more delinquent, or is a juvenile court decisionmaker's broad intake discretion a corner piece of the systematic racism puzzle? This Note asserts the latter and considers how to reduce the disproportionate contact with youth of color during intake.

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[1] E. ANN CARSON, U.S. DEP'T JUST. BUREAU JUST. STAT., PRISONERS IN 2019, at 10 (2020).

[2] *Racial/Ethnic Fairness: Monitoring Methods*, JUV. JUST. GEOGRAPHY, POL'Y, PRAC. & STATS., http://www.jjgps.org/racial-fairness#monitoring-methods [https://perma.cc/KE8K-G88M] [hereinafter *Racial/Ethnic Fairness: Monitoring Methods*].

[3] *Id.*

[4] The Office of Juvenile Justice and Delinquency Prevention has used the term "DMC" to refer to "racial and ethnic disparities in the juvenile justice system." OFF. JUV. JUST. & DELINQ. PREVENTION, LITERATURE REVIEW: A PRODUCT OF THE MODEL PROGRAMS GUIDE 1 (2014),),https://www.ojjdp.gov/mpg/litreviews/Disproportionate_Minority_Contact.pdf [https://perma.cc/V6CM-5DBC] [hereinafter A PRODUCT OF THE MODEL PROGRAMS GUIDE] (identifying the specific points of contact states must track).

This Note focuses on Iowa's juvenile justice system and argues the broad discretion afforded to juvenile court intake officers contributes to the significant rates of DMC throughout the State. Part II of this Note begins by illustrating the history and structure of juvenile justice systems, as well as potential consequences of pushing youth deeper into the formal system. This Note then explores the intake processes and level of discretion afforded to juvenile court decisionmakers in various jurisdictions. Part II then discusses the potential causes and significance of DMC before concluding with a survey of DMC rates throughout the United States. After Part II sets the stage, Part III of this Note argues that the broad discretion afforded to juvenile court intake officers contributes to Iowa's significant rates of DMC. Finally, this Note recommends that Iowa should amend the language of Iowa Code Section 232 to narrow the scope of intake officer discretion, thereby reducing the potential for disproportionately pushing youth of color deeper into the formal justice system.

II. BACKGROUND

The juvenile justice system has come to reflect the procedures and objectives of the adult system, while also retaining its emphasis on informal methods to address antisocial juvenile behavior. Throughout its existence however, the juvenile system has undoubtedly contributed to or preserved a perpetually unfair treatment of youth of color. Black youth are especially disproportionately represented at every stage of the juvenile justice process, but the larger question remains: why? After exploring the juvenile system's purpose and basic structure, this Note identifies a few of the common explanations for what causes DMC in the juveniles system and highlights the rates of DMC throughout the United States.

A. History, Purpose, and Structure of the Juvenile Justice System

Because states generally oversee the operation of their own juvenile justice systems, jurisdictions vary as to the upper age for juvenile delinquency, the type of offenses for which juveniles can be "charged," and the process of rehabilitating juveniles. Moreover, states structure their systems differently: some centralize their juvenile services on a state-wide level while others allow them to be locally operated.[5] Even so, all juvenile systems are perhaps best understood as pursuing more than mere offender accountability, thanks to

[5] *Juvenile Justice Services: Basic Services 2017*, JUV. JUST. GEOGRAPHY, POL'Y, PRAC. & STATS., http://www.jjgps.org/juvenile-justice-services [https://perma.cc/X3CP-3CT5].

the unique collaboration between many stakeholders tasked with rehabilitating a delinquent youth.[6]

1. Juvenile Justice History and Purpose

At common law, children younger than seven were presumed incapable of committing crime.[7] Children between seven and fourteen were also presumed incapable—although this was rebuttable—while youth fourteen and older were presumed capable of committing crime.[8] Despite some states statutorily changing the age boundaries for delinquency,[9] the underpinnings of juvenile corrections have remained relatively unchanged for nearly two-hundred years. When the New York House of Refuge eventually opened in 1825, it sought to "avoid[] . . . [the] harsh criminal penalties for unfortunate children, segregat[e] 'predelinquent' children from hardened delinquents, provid[e] 'proper' moral, ethical, political, and social values and role models for deprived children, and treat[] such children as victims rather than offenders."[10] Juvenile rehabilitation remained incredibly informal for several decades. The first formal juvenile court finally sprung up in Illinois in 1899 and the federal government enacted the first federal juvenile court act in 1938.[11]

The seventy years following the creation of the first juvenile court have been described as a period of socialized juvenile justice, in which a state would operate as a pseudo-parent to rehabilitate the juvenile.[12] The socialized system "embraced five pivotal philosophical elements" that recognized the delinquency of a juvenile as distinct from adult criminals, and preferred

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[6] Elizabeth N. Jones, *Disproportionate Representation of Minority Youth in the Juvenile Justice System: A Lack of Clarity and Too Much Disparity Among States "Addressing" the Issue*, 16 U.C. DAVIS J. JUV. L. & POL'Y 155, 157 (2012).

[7] Allen v. United States, 150 U.S. 551, 558 (1893).

[8] *Id.*

[9] For a survey of state delinquency age boundaries over time, see *Jurisdictional Boundaries: Delinquency Age Boundaries*, JUV. JUST. GEOGRAPHY, POL'Y, PRAC. & STATS., http://www.jjgps.org/jurisdictional-boundaries#delinquency-age-boundaries [https://perma.cc/4JF5-F3BE].

[10] Victor L. Streib, *The Informal Juvenile Justice System: A Need for Procedural Fairness and Reduced Discretion*, 10 J. MARSHALL J. PRAC. & PROC. 41, 42–43 (1976).

[11] *Id.* at 43. Before the Federal Juvenile Delinquency Act was passed in 1938, no federal legislation existed to treat juveniles as unique from adult offenders. *Juvenile Delinquency Prosecution—Introduction*, DEP'T OF JUST. ARCHIVES, https://www.justice.gov/archives/jm/criminal-resource-manual-116-juvenile-delinquency-prosecution-introduction#:~:text=In%201938%2C%20the%20Federal%20Juvenile,the%20age%20of%20twenty%2Done [https://perma.cc/6UXB-JBMT]. The legislation pursued several objectives, including to keep juveniles separate from adult criminals, ensure they were not sentenced beyond the age of twenty-one, and require that only the Attorney General use their discretion to prosecute a juvenile as delinquent. *Id.*

[12] Streib, *supra* note 10, at 44.

informal procedures with a corrective, nonpunitive purpose.[13] Eventually, the formal system was "constitutionalized" in 1967 by the Supreme Court decision *In re Gault*, which marked the beginning of several decisions granting juveniles many of the same constitutional rights applicable to adult criminal justice proceedings.[14] Aside from the legal procedures *Gault* and its progeny demanded, the constitutionalized and socialized systems functioned similarly.[15] Most notably, rehabilitation has remained the primary goal of both systems.[16]

Contemporary informal systems embody the attitude of the early socialized system and play an arguably larger role in juvenile rehabilitation than the post-*Gault* formal system.[17] Community agencies, counselors, and probation officers that operate informally to correct delinquent youth are the backbone to the informal system.[18] And although a juvenile is not "formally adjudged to be a delinquent," the rehabilitative efforts a juvenile may encounter in the informal system are comparable to those of the formal system—save for the prosecutors and judges.[19]

Today, almost all states have statutory purpose clauses that clarify the intention of their modern juvenile justice systems.[20] Purpose clauses have experienced four major shifts as perceptions of the juvenile system evolved. During the early socialized era, juvenile systems adopted a *parens patriae* approach (meaning "father of the nation") which emphasized the best

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[13] *Id.* at 44–45 (identifying these elements as (1) the state's superior rights over the rights of a child and their parents; (2) individually tailored justice for each child; (3) delinquency as less serious than and different from adult criminal status; (4) a preference for "[i]nformal, non-criminal procedure"; and (5) an emphasize on prevention and rehabilitation rather than punishment).

[14] *Id.* at 46. *See generally*, *In re* Gault, 387 U.S. 1 (1967) (holding that delinquency adjudication hearings must conform with due process when they may result in committing the juvenile to an institution and restricting their freedom), *abrogated on other grounds by* Allen v. Illinois, 478 U.S. 364 (1986).

[15] Streib, *supra* note 10, at 45.

[16] *See id.* at 51.

[17] *Id.* at 52.

[18] *Id.* at 53.

[19] *Id.*

[20] *Juvenile Court: Purpose Clauses 2016*, JUV. JUST. GEOGRAPHY, POL'Y, PRAC. & STATS., http://www.jjgps.org/juvenile-court#purpose-clause [https://perma.cc/34SB-Q6EK] [hereinafter *Juvenile Court: Purpose Clauses 2016*].

interests of the state and youth.[21] The due process era, which occurred from the 1960s through the early 80s, was marked by a shift in purpose to protect the public safety and recognize the formal due process rights of juveniles following *In re Gault* and its progeny.[22] The Balanced and Restorative Justice ("BARJ") model was introduced in the later years of the twentieth century in response to the tough-on-crime approach many states began taking after the due process era.[23] BARJ sought to achieve three main objectives: public safety, accountability to victims, and skill competency for juveniles to become productive citizens.[24] Most recently, since 2013 the Developmental Approach has emphasized structuring juvenile justice reform by balancing traditional purposes of the legal system with contemporary scientific research on juvenile brain development.[25]

Many states have embraced the different philosophies of these eras in declaring their approach to juvenile justice.[26] The BARJ model is most common and is reflected in twenty-nine state purpose clauses as of 2016.[27] However, Iowa has maintained a more traditional stance to its juvenile justice purpose. The juvenile justice chapter of the Iowa Code begins by providing that the statute "shall be liberally construed to the end that each child under the jurisdiction of the court shall receive, preferably in the child's own home, the care, guidance and control that will best serve the child's welfare and the best interest of the state."[28] This clause is modeled closely after The Standard Juvenile Court Act of the 1950's—the most common purpose clause of the early *parens patriae* era.[29]

2. Juvenile Intake as a Crucial Point of System Contact

Today, the overarching juvenile justice system can be thought of as a series of "decision points," or moments when youth may encounter the

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[21] *State Juvenile Justice Purpose Clause Evolution*, JUV. JUST. GEOGRAPHY, POL'Y, PRAC. & STATS., http://www.jjgps.org/about/juvenile-court/more-details-and-resources [https://perma.cc/B8D7-TWR7] [hereinafter *State Juvenile Justice Purpose Clause Evolution*].

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.* (identifying the seven primary characteristics of the approach: "[a]ccountability without criminalization, [a]lternatives to justice system involvement, [i]ndividualized response based on assessment of needs and risks, [c]onfinement only when necessary for public safety, [g]enuine commitment to fairness, [s]ensitivity to disparate treatment, [and] [f]amily engagement. . . .").

[26] *Id.*

[27] *State Juvenile Justice Purpose Clause Evolution*, *supra* note 21.

[28] IOWA CODE § 232.1 (2022).

[29] *See Juvenile Court: Purpose Clauses 2016*, *supra* note 20.

juvenile system. The Juvenile Justice and Delinquency Prevention Act[30] requires states to track data about race and ethnicity at nine decision points: arrest, court referral, diversion, secure detention, petition (charges filed), adjudication (delinquency), probation, secure confinement, and transfer to adult court.[31] This Note focuses primarily on juvenile intake, or the decision-making process that occurs after a juvenile has been referred to the court. Intake serves as the screening function of the juvenile court.[32]

a. Juvenile intake authority: who holds the power?

Although state juvenile codes differ, the intake process is generally designed to assess the alleged delinquency of the juvenile, and—if delinquency is sufficiently likely—whether it is in the best interests of the juvenile and the public to handle the matter through the formal court system or informal community institutions and services.[33] An authorized agent of the court typically decides whether to dismiss the juvenile's case, divert the juvenile's case to informal handling, or file a petition (charges) with the court.[34] Thus, the decision whether to seek diversion or petition of a juvenile's case essentially marks the bifurcation of juvenile justice system into its informal and formal procedures.

The National Center for Juvenile Justice[35] identifies four intake decision-making structures states use when screening a juvenile's case to determine whether to file a petition or divert the youth to an informal program to address the behavior.[36] As of 2016, ten states delegated the diversion and petition decision-making authority to state prosecutors.[37] Fifteen states

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[30] For further discussion on the JJDPA, see *infra* Part II.B.2.

[31] Juvenile Justice and Delinquency Prevention Act, 34 U.S.C. § 11133(a)(15)(B) (2018). *See also* A PRODUCT OF THE MODEL PROGRAMS GUIDE, *supra* note 4, at 2 (identifying the specific points of contact states must track).

[32] Tamar R. Birckhead, *Closing the Widening Net: The Rights of Juveniles at Intake*, 46 TEX. TECH L. REV. 157, 162 (2013).

[33] *Id.*; *see also* Streib, *supra* note 10, at 51 (rehabilitation of a juvenile "serves the two masters of the formal juvenile justice system: the best interests of the child and the best interests of society.").

[34] Birckhead, *supra* note 32, at 162.

[35] The National Center for Juvenile Justice is a branch of the National Council of Juvenile and Family Court Judges tasked with conducting research to improve the efficacy of the juvenile and family justice systems.

[36] *Juvenile Court: Intake and Diversion 2016*, JUV. JUST. GEOGRAPHY, POL'Y, PRAC. & STATS. http://www.jjgps.org/juvenile-court#intake-diversion [https://perma.cc/M8L4-VKWZ] [hereinafter *Juvenile Court: Intake and Diversion 2016*].

[37] *Id.*

granted this authority to juvenile court intake officers ("JCIO")—often probation officers.[38] Eleven states opted to use a hybrid model which divides the decision-making authority between prosecutors and JCIOs in varying capacities.[39] Finally, the remaining fifteen states structured the decision-making process based upon the juvenile's alleged offense.[40] Despite states generally falling into one of these four categories, the way they ultimately implement the decision-making process can vary significantly from one another.[41]

No matter the gatekeeper of the juvenile court, some level of intake discretion is necessary to ensure the system can respond appropriately to the needs of a referred child.[42] Serving as the preliminary inquiry of a juvenile's delinquency, intake should generally begin—and sometimes end—with determining legal sufficiency of the referral.[43] This would include finding jurisdiction based on the child's age[44] and place of offense, and the evidentiary sufficiency for the alleged delinquency.[45] Presumably, if one of these elements were found insufficient, the juvenile's case should be dismissed.[46] However, intake also typically weighs social factors, such as interfamily relationships, parental attitudes, and other characteristics of the youth, which decisionmakers may emphasize over the legal facts of the case.[47]

Thus, intake is—on its face—a holistic inquiry to determine whether diversion or petition is most appropriate. The juvenile's alleged delinquency plus their extralegal characteristics influences the decisionmakers judgments

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[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *See infra* Part II.A.3–4.

[42] *See* Charles W. Thomas & W. Anthony Fitch, *The Exercise of Discretion in the Juvenile Justice System*, 32 JUV. & FAM. CT. J. 31, 31–32 (1981) (explaining that "the peculiar juvenile court 'intake stage' . . . continues to reinforce the tradition of discretionary processing of children in trouble . . ." and that "any debate over whether there should or should not be discretionary powers is certain to be little more than a sterile academic exercise.").

[43] Birckhead, *supra* note 32, at 175.

[44] The upper and lower ages for delinquency jurisdiction in juvenile court vary among states. As of 2018, most states did not specify the lowest age for delinquency but specified seventeen as the upper age for jurisdiction. *Statistical Briefing Book: Juvenile Justice System Structure & Process*, OFF. JUV. JUST. & DELINQ. PREVENTION, https://www.ojjdp.gov/ojstatbb/structure_process/qa04102.asp?qaDate=2018&text=no&maplink=link2 [https://perma.cc/S77X-3T6A].

[45] Birckhead, *supra* note 32, at 175.

[46] *Id.*

[47] H. Ted Rubin, *The Emerging Prosecutor Dominance of the Juvenile Court Intake Process*, 26 CRIME & DELINQ. 299, 304 (1980) (explaining prosecutors to be more competent to evaluate legal factors, such as facts of the offense, the offense record, and any prior dispositions, which may be relevant to the case, while intake officers are more fit to assess relevant social factors of the juvenile).

as to what services will likely achieve juvenile rehabilitation and ensure public safety. These choices cannot be made in a vacuum and require that decisionmakers have the capacity to respond appropriately to each child. The issue begins to present itself: how much and what kind of discretion is appropriate to achieve these objectives of the juvenile justice system?

b. Diversion: a less punitive approach to rehabilitation

A progeny of the socialized system, diversion provides youth with the opportunity to consent to informal rehabilitation programs in place of formal court procedure. Diversion has been linked to reduced recidivism, with research suggesting that community involvement in rehabilitating the juvenile is more effective than "scared-straight" deterrence programs.[48] Proponents argue that providing juveniles with informal services avoids the criminogenic effects that accompany deeper involvement with the formal justice system, which ultimately reduces the likelihood of criminal behavior.[49] This concept is typically predicated on two related theoretical rationales—the labeling theory and the differential association theory.[50]

The labeling theory suggests that processing youth through the formal juvenile system stigmatizes them as delinquent or deviant.[51] The theory urges that these labels not only cause society to perceive such youth as more deviant, but also impact how youth perceive themselves, "thus influencing their future behaviors and dictating the social roles they can assume."[52] Publicly highlighting the juvenile's immoral character suddenly drives criminal stereotypes "to the forefront of the person's life," and shapes their reputation in the community.[53] Related to the issues of labeling, the differential association theory contends that formally processed youth are

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[48] *See* Birckhead, *supra* note 32, at 163. For an example analysis of diversion efficacy and recidivism rates, see *e.g.,* OMNI INST., DCJ JUVENILE DIVERSION EVALUATION: YOUTH SERVED FY 15-17 (2018) https://cdpsdocs.state.co.us/oajja/Diversion/2018_JuvenileDiversionDataReport.pdf [https://perma.cc/ZS58-L84Q] (finding one in ten youth recidivated in the year after successfully completing a diversion program).

[49] OFF. JUV. JUST. & DELINQ. PREVENTION, LITERATURE REVIEW: DIVERSION FROM FORMAL JUVENILE COURT PROCESSING 1 (2017), https://www.ojjdp.gov/mpg/litreviews/diversion_programs.pdf [https://perma.cc/V6SJ-TVWH] [hereinafter DIVERSION FROM FORMAL JUVENILE COURT PROCESSING].

[50] *Id.* at 2.

[51] *Id.*

[52] *Id.*

[53] Jón Gunnar Bernburg et al., *Official Labeling, Criminal Embeddedness, and Subsequent Delinquency: A Longitudinal Test of Labeling Theory*, 43 J. RSCH. CRIME & DELINQ. 67, 69 (2006).

more likely to develop antisocial behaviors because of their exposure to and association with "more advanced delinquent youths."[54] Thus, diverting a child to informal community programs can help the child avoid this delinquent "label" that accompanies the formal system, as well as further contact with other delinquent juveniles.

Diversion is not without its critics. Some studies suggest diverted youth may nonetheless experience the labeling phenomenon even when not processed through the formal system.[55] Additionally, law enforcement and juvenile probation officers contend that "diversion trivializes the seriousness of law breaking" because a juvenile may not be required to formally acknowledge their wrongdoing.[56] Finally, diversion critics argue that diversion "widens the net" by bringing more youth into contact with the juvenile justice system—even if informally—than would otherwise typically be processed if these cases were simply dismissed.[57] Despite these contentions, diversion remains fundamental to the juvenile justice system.

Notwithstanding the benefits and critiques of diversion, the intake officer or prosecutor's decision to divert may very well depend significantly upon the extralegal factors of the youth.[58] Thus, a youth's life circumstances can become all but dispositive of whether they will be offered diversion.[59] For instance, decisionmakers may weigh the juvenile's family structure as significant when deciding whether to offer diversion or seek formal adjudication.[60] Perceptions of "broken homes," inadequate parental supervision, and parental unwillingness to cooperate with the court system, have all been shown to influence intake and often result in decisions to handle such cases formally.[61] Additionally, some have defended "selective prosecution of poor" youth as enabling access to services through court orders that would otherwise be unattainable for these families.[62] In contrast,

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[54] DIVERSION FROM FORMAL JUVENILE COURT PROCESSING, *supra* note 49, at 2.

[55] Birckhead, *supra* note 32, at 163.

[56] *Id.* at 164.

[57] *Id.* at 163. For a sharp critique of the "widening the net" theory, see Arnold Binder & Gilbert Geis, *Ad Populum Argumentation in Criminology: Juvenile Diversion as Rhetoric*, 30 CRIME & DELINQ. 624, 630–31 (1984) (arguing that terms such as "widening the net" intend to evoke emotional responses of social control when this social control is simply part of typical cultural and interpersonal relations).

[58] *See supra* Part II.A.2.a.

[59] *See* Donna M. Bishop, *The Role of Race and Ethnicity in Juvenile Justice Processing*, *in* OUR CHILDREN, THEIR CHILDREN: CONFRONTING RACIAL AND ETHNIC DIFFERENCES IN AMERICAN JUVENILE JUSTICE 23, 47 (Darnell F. Hawkins & Kimberly Kempf-Leonard eds., 2005) (ebook).

[60] *Id.* at 49.

[61] *Id.* at 50.

[62] *Id.*

middle-class youth whose families can afford private services may be more likely to be diverted in lieu of the formal system.[63]

Overall, diversion serves an invaluable purpose by providing alternative resolutions to delinquent matters. By rehabilitating youth through community programs and services, the informal system intends to avoid the pseudo-criminal procedures and potential long-term consequences of the juvenile court. Perhaps most importantly, informal program outcomes appear to be a promising method of reducing recidivism among young offenders, even beyond what the formal system can achieve. Nonetheless, juvenile court still serves an important function in the overall system, especially for higher-risk youth and repeat offenders. Thus, this Note acknowledges that intake officials require some discretion to screen for cases that may truly need intervention by the court.

3. Iowa's Juvenile Intake Process

Iowa's juvenile diversion programs are organized efforts to provide allegedly delinquent juveniles with services that result in "dismissal of a complaint" or "informally proceeding without a complaint being filed against the child, and which does not result in an informal adjustment agreement involving juvenile court services or the filing of a delinquency petition."[64] Thus, diversion in Iowa can be broadly understood to include informal adjustments,[65] referrals to other agencies, and dismissals, among others.[66] Informal adjustments were the primary form of diverting youth from the formal justice system in 2017.[67]

While "[a]ny person having knowledge of the facts [of an alleged delinquent act] may file a complaint with the court or its designee,"[68] these complaints come primarily from law enforcement.[69] The complaint is the point of court referral where the court directs complaints to a juvenile intake

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[63] *Id.*

[64] IOWA CODE § 232.2(32A).

[65] Iowa defines informal adjustment as "the disposition of a complaint without the filing of a petition" that typically leads to an alternative handling of the juvenile's alleged delinquency by an agency unaffiliated with the court. IOWA CODE § 232.2(24).

[66] IOWA DEP'T HUM. RTS., JUVENILE JUSTICE SYSTEM PLANNING DATA: STATEWIDE REPORT 2017, at 17 (2018), https://humanrights.iowa.gov/sites/default/files/media/2018%20Statewide%20Data%20Report.pdf [https://perma.cc/98BV-F24W] [hereinafter STATEWIDE REPORT 2017].

[67] *Id.*

[68] IOWA CODE § 232.28(1).

[69] STATEWIDE REPORT 2017, *supra* note 66, at 11.

officer who is responsible for "conduct[ing] a preliminary inquiry to determine" the next appropriate steps for the youth.[70] During the inquiry, the intake officer is permitted—but not required—to investigate various pertinent information that may be relevant to the alleged delinquency and the extralegal characteristics of the child.[71] In addition, intake officers use the Iowa Delinquency Assessment, a state-wide and evidence-based tool, to assist with screening the juvenile.[72] After screening the complaint for legal sufficiency that could support a petition, the officer then must "determine whether the interests of the child and the public will best be served by the dismissal of the complaint, the informal adjustment of the complaint, or the filing of a petition."[73]

The intake officer shall dismiss a complaint when they determine "the complaint is not legally sufficient for the filing of a petition or that further proceedings are not in the best interests of the child or public."[74] If the complaint is legally sufficient and the officer determines "an informal adjustment of the complaint is in the best interests of the child and the community, the officer may" proceed to handle the juvenile's case informally.[75] Otherwise, when an officer determines that filing a petition for a legally sufficient complaint "is in the best interests of the child and the public, the officer shall request the county attorney to file a petition."[76] Pertinently, a youth must admit their involvement in the alleged delinquent act to be eligible for diversion to an informal adjustment.[77]

While juvenile intake officers have incredible investigatory discretion, it is nonetheless subject to two limitations. First, if the county attorney decides to deny the request to file a petition, this determination is final.[78] Second, if the officer decides not to request the filing of a petition, the complainant is entitled to have the county attorney review the complaint.[79] If the complainant submits the complaint for further review, the county attorney's decision becomes final; if not, the intake officer's decision remains final.[80]

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[70] IOWA CODE § 232.28(2).

[71] *Id.* § 232.28(3).

[72] *Iowa Juvenile Justice Services*, JUV. JUST. GEOGRAPHY, POL'Y, PRAC. & STATS. http://www.jjgps.org/juvenile-justice-services/iowa [https://perma.cc/P5FH-YV93].

[73] IOWA CODE § 232.28(6).

[74] *Id.* § 232.28(7).

[75] *Id.* § 232.28(8).

[76] *Id.* § 232.28(9).

[77] *Id.* § 232.29(1)(a).

[78] *Id.*§ 232.35(2).

[79] IOWA CODE § 232.35(3).

[80] *Id.*

4. Other State Juvenile Intake Processes

States vary significantly in how different points of the juvenile justice system intend to operate. This is especially true at the point of intake. Thus, placing Iowa's system in context with other state systems helps to reconcile and distinguish how juveniles may progress through different intake procedures. It is crucial to recognize that the following jurisdictions this Note discusses are not comprehensive but serve to explore a few of the methods states employ to address delinquent behavior. This Note focuses on six states: California, Utah, West Virginia, Michigan, Oregon, and Georgia.

The National Center for Juvenile Justice classifies California's intake process as determining decisionmakers according to the alleged offense.[81] California provides probation officers with relatively broad discretion to discern whether to proceed with certain juvenile matters in court. Upon receiving an affidavit alleging a minor committed an offense that subjects them to the jurisdiction of the court, a "probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced."[82]

If the probation officer determines a petition should be filed against a juvenile who is alleged to have violated the law, the officer must refer the case to the prosecuting attorney.[83] Additionally, a probation officer must refer cases to the prosecuting attorney which allege the minor has committed various serious offenses, thus removing them immediately from the officer's discretion.[84] A probation officer must also "make a diligent effort to proceed" with programs of supervision in lieu of filing a petition or requesting the prosecuting attorney to file a petition against a minor when the officer believes "the interest of the minor and the community can be protected."[85] Thus, while probation officers must refer certain matters to a prosecuting attorney, they still retain incredible discretion in most instances to determine if diverting the youth would serve the interests of the public and youth.

Like Iowa, Utah's intake process is driven primarily by juvenile court intake officers.[86] The court's probation department must conduct a

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[81] *Juvenile Court: Intake and Diversion 2016*, *supra* note 36.

[82] CAL. WELF. & INST. CODE § 653.5(a) (West 2022).

[83] *Id.* § 653.55(b).

[84] *Id.* § 653.55(c).

[85] *Id.* § 654.

[86] *Juvenile Court: Intake and Diversion 2016*, *supra* note 36.

preliminary inquiry upon receiving a referral for a minor alleged to have committed qualifying delinquent acts.[87] In conducting the preliminary inquiry, "the juvenile probation officer shall offer a nonjudicial adjustment to a minor" so long as the minor was referred for a "misdemeanor, infraction, or status offense; has no more than two prior adjudications; and has no more than three prior unsuccessful nonjudicial adjustment attempts."[88] This authority is subject to an exception: where the minor was alleged to have committed the offense before the age of twelve, "the juvenile probation officer shall offer a nonjudicial adjustment to the individual, unless the referral includes an [enumerated felony] offense . . . ."[89] Otherwise, the probation department has near boundless discretion to pursue nonjudicial adjustment, so long as the minor was not alleged to have committed certain serious offenses or has a current suspended order for custody.[90] In the case of serious offenses, the probation department must "request that a prosecuting attorney review [the] referral,"[91] who may then recommend another attempt for nonjudicial adjustment or file a petition against the minor.[92]

In West Virginia, prosecutors possess considerable discretion to decide whether a juvenile's case should be considered for diversion if they were alleged to have committed a nonviolent misdemeanor[93] offense.[94] Generally, "the prosecutor shall determine whether the case can be resolved informally through a diversion program without the filing of a petition. If the prosecutor determines that a diversion program is appropriate, it shall refer the matter . . . [to] develop a diversion program."[95] While this provision uses absolute language—"the prosecutor shall"—it appears entirely subject to the DA's initial determination that diversion is appropriate in the first instance.[96] When a petition is ultimately filed against a juvenile alleged to have committed a nonviolent misdemeanor, the court or prosecuting attorney may nonetheless divert the juvenile to a restorative justice program prior to

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[87] UTAH CODE ANN. § 80-6-304(1) (West 2021).

[88] *Id.* § 80-6-304(5)(a).

[89] *Id.*

[90] *Id.* § 80-6-304(5)(d).

[91] *Id.* § 80-6-304(3)(a)(ii).

[92] *Id.* § 80-6-304(9).

[93] For the definition of a "nonviolent misdemeanor offense," *see* W. VA. CODE § 49-1-206 (2022).

[94] *Id.* § 49-4-702(c).

[95] *Id.*

[96] *Id.*

adjudication.[97] Upon successful completion of the program, the court dismisses the petition against the juvenile.[98]

The National Center for Juvenile Justice considers West Virginia to operate on an offense-based intake system.[99] Intake authority does in fact depend upon whether the juvenile is a status offender or a juvenile delinquent, and prosecutors must refer status and truancy offenses to probation officers.[100] Because this Note focuses on juvenile delinquency however, the prosecutor's authority is most pertinent to this discussion.

Michigan delegates intake authority to court intake officers.[101] Diverting a minor occurs when a law enforcement official or court intake staff member decides to terminate the investigation and release the minor into the custody of a guardian or form an agreement with the minor and their guardian to resolve the issue with the assistance of a public or private organization or agency.[102] Pertinently, law enforcement officials and court intake workers must examine several factors before deciding to divert a minor. These factors include "[t]he nature of the alleged offense" and problem that led to the offense; the minor's age, character, conduct, and behavior in various social settings; and "[a]ny prior diversion decisions made concerning the minor and the nature of the minor's compliance with the diversion agreement."[103] For most offenses, only a prosecuting attorney has the authority to file a petition to request formal jurisdiction over a juvenile if diversion is not appropriate; the court must then determine whether formal jurisdiction is appropriate.[104]

Authorized diversions in Oregon include "youth court, mediation program[s], crime prevention or chemical substance abuse education program[s] or other program[s] established for the purpose of providing consequences and reformation and preventing future delinquent acts."[105] A youth may be referred to such diversion programs if, "[f]ollowing a review of a police report and other relevant information, a county juvenile department [finds] . . . the youth is eligible to enter into a formal accountability

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[97] *Id.* § 49-4-725(a).

[98] *Id.* § 49-4-725(c).

[99] *Juvenile Court: Intake and Diversion 2016*, *supra* note 36.

[100] W. VA. CODE § 49-4-702.

[101] *Juvenile Court: Intake and Diversion 2016*, *supra* note 36.

[102] Juvenile Diversion Act, MICH. COMP. LAWS § 722.823(1) (2022).

[103] *Id.* § 722.824.

[104] *Id.* § 712A.11(2).

[105] OR. REV. STAT. § 419C.225(2) (2022).

agreement."[106] Unless a district attorney authorizes otherwise, a juvenile is ineligible for a formal accountability agreement if they are alleged to have committed a felony sex offense or an offense involving firearms or destructive devices, or if the juvenile "is being referred . . . for a second or subsequent time for commission of an act that if committed by an adult would constitute a felony."[107] In cases where a juvenile is not eligible to enter a formal accountability agreement or the juvenile department does not offer the option, the district attorney may file a petition or authorize a juvenile department counselor to file a petition against the youth.[108]

Upon a receiving a delinquency complaint that may be eligible for diversion, Georgia's juvenile court intake officers may proceed with an informal adjustment of the complaint they believe "[c]ounsel and advice without an adjudication would be in the best interests of the public and a child . . . ."[109] When making this determination, the intake officer must consider at least several factors, including; the character of the alleged offense, the juvenile's age and personal circumstances, any prior record, whether the complainant or victim has recommended informal adjustment, and whether community programs may more effectively meet the juvenile's needs.[110] If the intake officer ultimately determines informal adjustment would not be appropriate, the officer shall refer the matter to a prosecutor who shall file a petition.[111] Informal adjustment is not available when it is alleged that a juvenile committed a class A or class B felony, unless the district attorney consents to the adjustment.[112]

B. Disproportionate Minority Contact Within the Juvenile Justice System

An unfortunate reality of state juvenile justice systems is the disproportionate representation of minority youth at every point of contact.[113] Commonly known as disproportionate minority contact ("DMC"), minority juveniles are more likely to be arrested and referred to juvenile agencies, and more likely to be escorted deeper into the system than similarly situated white youth. This disparate contact is often at its worst prior to formal court procedure, especially at juvenile intake.[114]

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[106] *Id.* § 419C.225(1).

[107] *Id.* § 419C.230(2).

[108] *Id.* § 419C.250.

[109] GA. CODE ANN. § 15-11-515(a)(2) (West 2022).

[110] *Id.*

[111] *Id.* § 15-11-510(d).

[112] *Id.* § 15-11-515(d).

[113] For the points of contact, *see* A PRODUCT OF THE MODEL PROGRAMS GUIDE, *supra* note 4, at 2.

[114] Michael J. Leiber & Joseph D. Johnson, *Being Young and Black: What Are Their Effects on Juvenile Justice Decision Making?*, 54 CRIME & DELINQ. 560, 563 (2008).

DMC is a primary concern of The Office of Juvenile Justice and Delinquency Prevention ("OJJDP")—a branch of The Office of Justice Programs within the United States Department of Justice. Its mission is to "support[] the efforts of states, tribes, and communities to develop and implement effective and equitable juvenile justice systems that enhance public safety, ensure youth are held appropriately accountable to both crime victims and communities, and empower youth to live productive, law-abiding lives."[115] OJJDP describes DMC as the "rates of contact with the juvenile justice system among juveniles of a specific minority group that are significantly different from rates of contact for white non-Hispanic juveniles."[116]

The relative rate index ("RRI") is typically used to measure the prevalence of DMC at any given point of contact with the system .[117] The relative rate is equivalent to a minority group's rate of occurrence at a specific point of contact, divided by the white rate at the same point of contact.[118] An RRI above one indicates that the minority group is overrepresented for that decision point as compared to white youth, and an RRI less than one indicates the minority group is underrepresented for that decision point.

Overrepresentation and underrepresentation can both be cause for concern. For instance, Black youth are often underrepresented when comparing their diversion rate to white youth and overrepresented among juvenile cases that get petitioned to the court. The national RRI values for intake decisions in 2014 reflect this disparate impact. Black youth had an RRI of 0.6 for juvenile diversions and an RRI of 1.2 for petitions.[119] This means Black youth were forty percent less likely than white youth to be diverted to informal handling of their case and 1.2 times more likely to be petitioned to the formal system. DMC exists at virtually all points of the juvenile justice system. Unfortunately, relative rates only indicate the extent of DMC a

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115 *About OJJDP,* OFF. JUV. JUST. & DELINQ. PREVENTION, https://ojjdp.ojp.gov/about [https://perma.cc/KL48-JZXK].

116 A PRODUCT OF THE MODEL PROGRAMS GUIDE, *supra* note 4, at 1.

117 *Id.* at 6. For a detailed description of the relative rate index, see William Feyerherm, *Measuring DMC: The Origins and Use of the Relative Rate Index*, *in* DISPROPORTIONATE MINORITY CONTACT: CURRENT ISSUES AND POLICIES 45 (Nicolle Parsons-Pollard ed., N.C. Press 2d ed. 2017).

118 LAUREN VESSELS, NAT'L CTR. FOR JUV. JUST., RACIAL AND ETHNIC FAIRNESS IN JUVENILE JUSTICE: AVAILABILITY OF STATE DATA 2 (2015) http://www.ncjj.org/pdf/JJGPS%20StateScan/JJGPS_Racial_and_Ethnic_Fairness_in_Juvenile_Justice_2015_7.pdf [https://perma.cc/FY5D-H75T].

119 *Racial/Ethnic Fairness: Monitoring Methods*, *supra* note 2.

particular minority group may be experiencing relative to white youth. On their own, the numbers do not explain why these disparities may exist.

1. Theoretical Explanations for DMC within the Juvenile System

The adult and juvenile justice systems are similar in that both are reactive to offenders' actions. Accordingly, the systems necessarily must account for the individual circumstances of each offender and their offense to respond in ways the system considers appropriate. This becomes a dance between the unique characteristics of the offender and how the justice system weighs these characteristics. It is no surprise then that the differential offending theory and the differential treatment theory are the two most prominent explanations for disproportionate minority contact in the juvenile justice system.[120]

Also known as differential involvement, the differential offending framework contends that disproportionate minority contact is caused by extralegal attributes of the juvenile.[121] Risk factors, such as economic disadvantage, unstable communities, low-performing institutions, delinquent peers, family dynamics, and exposure to violence ultimately influence or contribute to a juvenile's likelihood of offending.[122] Accordingly, "[t]he totality of these risk factors is such that minority youth are born into and raised in severely compromised familial, community, and educational environments that set the stage for a range of adverse behaviors and outcomes, including problems in school, relationships, and engaging in prosocial behavior."[123] In other words, these risk factors, which relate strongly to race and ethnicity, ultimately influence minority youth to disproportionately engage in delinquent behaviors.[124] Under the differential offending perspective, DMC is simply the consequence of youth of color being more likely to offend than white youth.

Conversely, the differential treatment or selection framework emphasizes the justice system's structure and decision-making processes[125] as the primary contributor to the disparate treatment of minority youth.[126] This perspective urges that disparate treatment of youth of color still exists after

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[120] Cherie Dawson-Edwards et al., *The Causes and Pervasiveness of DMC: Stakeholder Perceptions of Disproportionate Minority Contact in the Juvenile Justice System*, 10 RACE & JUST. 223, 224 (2020).

[121] A PRODUCT OF THE MODEL PROGRAMS GUIDE, *supra* note 4, at 3.

[122] *Id.*

[123] NAT'L RSCH. COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 224 (Richard J. Bonnie et al. eds., 2013).

[124] Dawson-Edwards et al., *supra* note 120, at 226.

[125] For discussion on the decision-making process, see *supra* Part II.A.2.

[126] A PRODUCT OF THE MODEL PROGRAMS GUIDE, *supra* note 4, at 3.

controlling for both extralegal and legal factors.[127] Differential treatment theory asserts that disparate enforcement against youth of color causes them to be referred to the juvenile system more often, and disparate processing within the juvenile justice system leads to more adjudications than that of white youth.[128] Further forms of bias may contribute further to this differential treatment, as evidenced by the racial threat theory, which argues minority youth are perceived as threatening to public safety; attribution theory, which contends decisionmakers attribute delinquency to factors they perceive to cause adverse behavior; and labeling theory.[129]

While quantitative data, such as relative rate indices, illuminates the magnitude of DMC, it fails to express how communities perceive the issue.[130] Understanding how stakeholders—the individuals who comprise the juvenile justice system—understand DMC can help to address this gap and further illustrate the relationship between differential offending and treatment. For instance, even though stakeholders recognize that systematic biases may exist, they more often consider community factors to drive DMC.[131] In fact, a recent study of a Midwest juvenile system found that most stakeholders adamantly denied prejudice as causing DMC, although many suggested bias may be relevant.[132] Stakeholders also commonly implied that the disproportionate representation of Black youth was logical.[133] They may actually expect DMC because law enforcement spends more time in poor or high-crime communities—which are often communities of color—and therefore tend to perceive law enforcement's contact with youth of color as legitimate.[134] When viewed this way, stakeholders rationalize DMC by explaining "*Black kids are just more likely to commit crime*."[135] This in itself illustrates tension between the differential treatment and offending theories. Stakeholders seem to perceive DMC as a differential offending issue, although their responses suggest bias is influencing these perceptions. This

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[127] *Id.* (stating legal factors include those such as any prior record and the severity of the crime).

[128] NAT'L RSCH. COUNCIL., *supra* note 123, at 225.

[129] A PRODUCT OF THE MODEL PROGRAMS GUIDE, *supra* note 4, at 4.

[130] Suman Kakar, *Understanding the Causes of Disproportionate Minority Contact: Results of Focus Group Discussions*, 34 J. CRIM. JUST. 369, 370 (2006).

[131] *Id.* at 378.

[132] Dawson-Edwards et al., *supra* note 120, at 231.

[133] *Id.* at 232.

[134] *Id.* at 233; *see also* Kakar, *supra* note 130, at 378.

[135] Dawson-Edwards et al., *supra* note 120, at 232.

may prime those who operate the juvenile system to inadvertently treat youth of color differently than white youth.

The importance of recognizing differential offending and treatment both as probable influences on DMC in the juvenile justice system cannot be overstated. In 2013, the National Research Council recognized the complex causes of disparate impact on youth of color, stating,

> [w]e know that racial/ethnic disparities are not reducible to either differential offending or differential selection. Many other factors affect disproportionality of minority youth in the juvenile justice system, including the troubling entrenched patterns of poverty, segregation, gaps in educational achievement, and residential instability. DMC exists in the broader context of a "racialized society" in which many public policies, institutional practices, and cultural representations operate to produce and maintain racial inequities. . . . However, the current body of research suggests that poverty, social disadvantage, neighborhood disorganization, constricted opportunities, and other structural inequalities—which are strongly correlated with race/ethnicity—contribute to both differential offending and differential selection, especially at the front end of juvenile justice decision making.[136]

Thus, this Note concedes there are countless variables that may ultimately contribute to a youth's likelihood of contact with the juvenile justice system. Additionally, this Note does not suggest that DMC is attributable primarily to differential treatment within the juvenile justice system. Rather, the inherent limitations in observing and exploring DMC justify confining the scope of this Note to only a subset of the potentially influential differential treatment factors—intake decision-making and its impact on disparate diversion and petition rates among youth of color.

2. JJDPA and Addressing DMC as a Core Requirement

In 1974, Congress enacted the Juvenile Justice and Delinquency Prevention Act ("JJDPA").[137] One purpose of JJDPA was to stipulate "state plan" requirements for states to be eligible for awards under the Title II Formula Grant Program.[138] Program funding supports state efforts to improve "education, training, research, prevention, diversion, treatment, and

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[136] NAT'L RSCH. COUNCIL, *supra* note 123, at 239.

[137] Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, § 1, 88 Stat. 1109 (codified as amended at 42 U.S.C. §§ 5601–5672).

[138] 34 U.S.C. § 11133 (2018).

rehabilitation programs, as well as justice system improvement efforts."[139] Today, state plans must satisfy thirty-three requirements to receive an annual award,[140] with four of these considered "core requirements."[141] For each core requirement a state fails to comply with, its award for that year is reduced by twenty percent.[142]

It was not until 1988 that the fourth core requirement was added to encourage states to address disproportionate representation of youth of color in their juvenile justice systems. The 1988 JJDPA amendment encouraged states to "address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population."[143] In 2002, Congress broadened the provision's scope beyond confinement to instead "address juvenile delinquency prevention efforts and system improvement efforts designed to reduce . . . the disproportionate number of juvenile members of minority groups, who come into *contact* with the juvenile justice system."[144] Most recently, the Juvenile Justice Reform Act ("JJRA") of 2018 substantially amended JJDPA to impose greater obligations upon states' responsibility to address disproportionate minority contact. Today, states must "implement policy, practice, and system improvement strategies . . . to identify and reduce racial and ethnic disparities among youth who come into contact with the juvenile justice system . . . ."[145]

Given JJDPA specifies that states must identify and address disproportionate minority contact underscores the federal government's belief that race matters in the juvenile justice system.[146] In fiscal year 2019,

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[139] OFF. JUV. JUST. & DELINQ. PREVENTION, OJJDP FY 2020 TITLE II FORMULA GRANTS PROGRAM 4 (2019), https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/OJJDP-2020-16612.pdf [https://perma.cc/27BA-3TR9].

[140] 34 U.S.C. § 11133(a).

[141] *Id.* § 11103(30).

[142] *Id.* § 11133(c)(1)(A).

[143] 42 U.S.C. § 5633(a)(23) (1988) (current version at 34 U.S.C. § 11133(a)(15)).

[144] 42 U.S.C. § 5633(a)(23) (2002) (current version at 34 U.S.C. § 11133(a)(15)) (emphasis added).

[145] 34 U.S.C. § 11133(a)(15).

[146] Elizabeth N. Jones, *Disproportionate Representation of Minority Youth in the Juvenile Justice System: A Lack of Clarity and Too Much Disparity Among States Addressing the Issue,* 16 U.C. DAVIS J. JUV. L. & POL'Y 155, 160 (2012).

forty-five state plans were compliant with this requirement.[147] Despite the honorable objectives of JJDPA and states' compliance on paper, functionally "addressing" disproportionate minority contact has proved quite elusive.

3. Identifying DMC Within State Juvenile Systems

Although collecting information on disproportionate minority contact is a core requirement of state plans, states are not obligated to release this data to the public. Fortunately, many states voluntarily disclose DMC information. At the same time, this data can be incredibly difficult to locate and state disclosures are largely inconsistent: most states do not report data annually and have not released new data in several years. Despite these limitations, what data is available makes clear that DMC is still incredibly severe across the nation.

a. Iowa

In 2017, there were nearly 330,000 children age ten through seventeen in Iowa, or children considered at risk of delinquency.[148] That same year, six percent of Iowa's youth were Black and all youth of color accounted for 18.5 percent of Iowa's youth population.[149] The RRI for all Iowa minority youth cases that were diverted was .84.[150] This means Iowa's minority youth, overall, were sixteen percent less likely to have their cases diverted than Iowa's white youth. Conversely, the RRI of minority youth cases that were petitioned was 1.50, meaning children of color were 1.5 times more likely to be handled by the formal juvenile system.[151] Significantly, Black youth were most disproportionately affected, with an RRI of .79 and 1.63 for diversions and case petitions, respectively.[152] In addition to the most recent 2017 RRI data, the Iowa Department of Human Rights released a three-year juvenile justice plan in 2015.[153] This plan contains diversion and petition relative rates from 2011 to 2014.[154]

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147 OFF. JUV. JUST. & DELINQ. PREVENTION, FY2019 ELIGIBILITY AND COMPLIANCE STATUS 1–2 (2019), https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/FY2019-Funding-Reductions-for-Noncompliance.pdf [https://perma.cc/5P9G-DHNX].

148 STATEWIDE REPORT 2017, *supra* note 66, at 22.

149 *Id.*

150 *Id.* at 27.

151 *Id.*

152 *Id.*

153 *See* IOWA DEP'T OF HUM. RTS. DIV., CRIM. & JUV. JUST. PLAN., JUVENILE JUSTICE SYSTEM PLANNING DATA 3 (2015), https://humanrights.iowa.gov/sites/default/files/media/2015_3_Year_Plan.pdf [https://perma.cc/5QRV-S82J].

154 *Id.* at 17–18.

b. DMC among other states

Exploring DMC among other states helps to better understand the extent of Iowa's DMC. Given the considerable inconsistencies among state data collection and analysis, this Note is limited to exploring states that have provided publicly accessible DMC data. Among these states, this Note considered jurisdictions that use clearly articulable relative rate indices. Within this subgroup, this Note focuses on various states that fared noticeably better or worse than Iowa's outcomes.[155] Concededly, the reporting years of publicly available DMC data ranges among states.[156]

California's most recent Title II state plan provided RRI data from 2015.[157] In this year, Black youth were forty-seven percent less likely to be diverted than white youth, with an RRI of 0.53.[158] Additionally, all youth of color were similarly disadvantaged, being thirty-five percent less likely to be diverted—an RRI of 0.65.[159] Black youth were also 1.37 times more likely to have their case petitioned, while all youth of color were 1.26 times more likely.[160]

In fiscal year 2016, Black youth in Utah were forty percent less likely to have their case diverted, while all minority youth were twenty-five percent less likely to be diverted—with RRIs of 0.6 and 0.75, respectively.[161] Additionally, Black youth were 1.32 times more likely to have their case petitioned than white youth, while all youth of color were 1.2 times more likely to have their case petitioned.[162] Notably, Utah stopped identifying RRI values for petitioned youth after fiscal year 2016, and has even more recently stopped using RRI values altogether, instead opting for a different calculation method.

West Virginia has reported significant DMC as compared to many other states. In 2016, Black youth were thirty-nine percent less likely to be diverted

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155 *See* Appendix A.

156 *See id.*

157 BD. ST. & CMTY. CORR., CALIFORNIA REDUCING RACIAL AND ETHNIC DISPARITY: TITLE II 2018-2021 PLAN 4 (2018) https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/CA-FY18-DMC-PLAN_508.pdf [https://perma.cc/373A-9HMX].

158 *Id.*

159 *Id.*

160 *Id.*

161 UTAH BD. JUV. JUST., DMC SUMMARY 2017, at 3 (2017), https://justice.utah.gov/Juvenile/DMC/2017/2017%20DMC%20DATA.pdf [https://perma.cc/2V2L-DCFF].

162 *Id.*

from the formal juvenile system, with an RRI of 0.61.[163] Overall, minority youth had an RRI of 0.62, thus being thirty-eight percent less likely than white youth to be diverted.[164] Conversely, cases against youth of color were significantly more likely to be petitioned, with an RRI of 1.71.[165] As with diversion, Black youth were even more disproportionately represented than all youth of color, being 1.79 times more likely to have their case petitioned.[166]

Michigan has historically experienced relatively consistent diversion and petition rates. In fiscal year 2016, youth of color were seven percent less likely to be diverted—with an RRI of 0.93—and 1.12 times more likely to have their case petitioned.[167] Black youth experienced a diversion RRI also of 0.93, but were slightly more likely to be petitioned, with an RRI of 1.15.[168] Michigan has most recently released data for fiscal years 2017–19, which indicate far better diversion rates for Black youth and all youth of color.[169]

In Oregon, the RRI for minority youth's cases diverted was 0.98 in 2011.[170] In other words, youth of color were two percent less likely to be diverted from the juvenile justice system. Conversely, all youth of color were 1.06 times more likely to have their case petitioned.[171] Interestingly, Black youth were more likely to be diverted than both white youth and all youth of color, with an RRI of 1.07. Additionally, Black youths' RRI for cases petitioned was .77, meaning they were significantly less likely to proceed through the formal juvenile system.[172]

In 2016, Georgia experienced almost proportionate rates of diversion; Black youth were two percent less likely to be diverted but all youth of color

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[163] DOUGLAS SPENCE, MEASURING DISPROPORTIONATE MINORITY CONTACT IN WEST VIRGINIA'S JUVENILE JUSTICE SYSTEM 5 (2018), https://www.jrsa.org/awards/winners/18-stat-wv.pdf [https://perma.cc/V959-QTHR].

[164] *Id.*

[165] *Id.*

[166] *Id.*

[167] *Michigan Racial and Ethnic Disparities Data*, MICH. COMM. ON JUV. JUST. ST. ADVISORY GRP. https://michigancommitteeonjuvenilejustice.com/michigan-data/socio-demographic-data.html [https://perma.cc/LDD9-LMFK] (click "Michigan" under the Fiscal Year 2016 heading to download a Microsoft Excel document; then navigate to "Standard Display" to view RRI's for this reporting period).

[168] *Id.*

[169] *See* Appendix C for RRI values spanning fiscal years 2016 through 2019.

[170] OR. COMM'N ON CHILD. & FAM., DISPROPORTIONATE MINORITY CONTACT IN OREGON'S JUVENILE JUSTICE SYSTEM: IDENTIFICATION AND ASSESSMENT REPORT 7 (2012), https://olis.oregonlegislature.gov/liz/2013R1/Downloads/CommitteeMeetingDocument/4211 [https://perma.cc/Y5FK-9KW3].

[171] *Id.*

[172] *Id.*

were 1.03 times *more likely* to be diverted than white youth, overall.[173] DMC was more prevalent among petitions however, with Black youth 1.24 times more likely and all youth of color 1.22 times more likely to be forwarded to the formal system than white youth.[174]

III. ANALYSIS

As it currently exists, Iowa's juvenile intake procedure affords incredible discretion to JCIOs. Concededly, discretion serves a crucial function in allowing for flexible decision-making to address the individual needs of each juvenile. However, with some of the most severe reported disproportionate minority contact rates in the nation, this discretion may go too far. In addition, requiring juveniles to admit delinquency to be eligible for diversion may impose an additional barrier for youth to receive informal services. It is especially unclear what purpose this requirement intends to serve for Iowa's youth and broader juvenile justice system. Therefore, amending Iowa Code Section 232 to impose more concrete guidance for JCIOs and eliminate the delinquency admission requirement may help decrease future DMC at juvenile intake. In addition, eliminating the admission of guilt requirement for diversion would further reduce barriers to diversion for youth who may otherwise be eligible for informal services.

A. Iowa's Current Approach Provides Too Much JCIO Discretion

It bears repeating that there is no catchall solution to DMC; the factors that contribute to a youth's likelihood of encountering the justice system are invariably complex. A white teen raised in a broken home with few resources will most likely have incredibly different experiences than a Black teen in suburban Chicago who is on track to become a first-generation college student. As this example intends to illustrate, this Note does not suggest that race in and of itself is the primary driving force for DMC. Rather, this Note emphasizes the innumerable legal and extralegal factors that contribute to DMC, which youth of color are incredibly more likely to experience than their white peers. But when states provide too much discretion, they may in fact be inadvertently granting a license for decisionmakers to give greater weight to some factors than they otherwise should deserve.

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[173] PLAN FOR COMPLIANCE WITH THE DISPROPORTIONATE MINORITY CONTACT (DMC) CORE REQUIREMENT 25 (2018), https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/ga-fy18-dmc-plan_508.pdf [https://perma.cc/H6Y3-JDE8].

[174] *Id.*

1. DMC Severity Correlates to the Scope of Discretion

As the Iowa Code currently stands, it provides that,

> [i]f the intake officer determines that the complaint is legally sufficient to support the filing of a petition, the officer shall determine *whether the interests of the child and the public will best be served* by the dismissal of the complaint, the informal adjustment of the complaint, or the filing of a petition.[175]

When making this determination, "the intake officer *may*" interview those with knowledge of the alleged offense, review court and public records, examine relevant physical evidence, and interview those deemed necessary to the intake officer's decision.[176] In its entirety, Iowa's intake process entrusts intake officers with incredible discretion with loose investigative recommendations. Concededly, the Iowa Delinquency Assessment probably provides JCIOs with an efficient screening procedure to conduct preliminary juvenile inquiries. However, as the statue makes clear, much of the intake assessment's scope is left to their discretion.

Alarmingly, Iowa's DMC at intake slightly worsened between 2011 and 2017. All youth of color were 1.43 times more likely to be petitioned than white youth in 2011: this increased to 1.5 times more likely in 2017.[177] Black juveniles' petition likelihood similarly increased from 1.57 to 1.63 times more likely than white juveniles.[178] DMC at diversion also experienced a negative trend, with Black juveniles increasing from sixteen to twenty-one percent less likely, and all minority youth increasing from twelve to sixteen percent less likely than white youth to be diverted. Figure 1 illustrates these trends.

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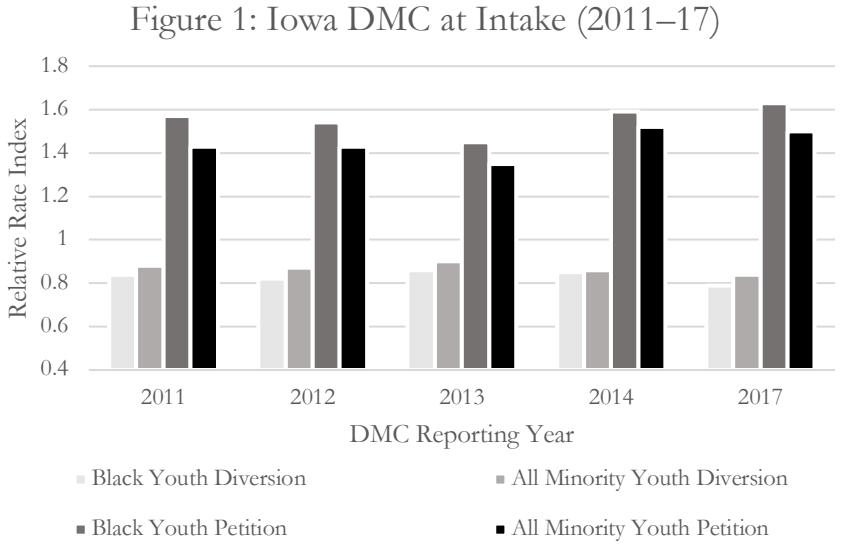
[175] IOWA CODE § 232.28(6) (emphasis added).

[176] *Id.* § 232.28(3) (emphasis added).

[177] *See* Appendix B.

[178] *See* Appendix B.

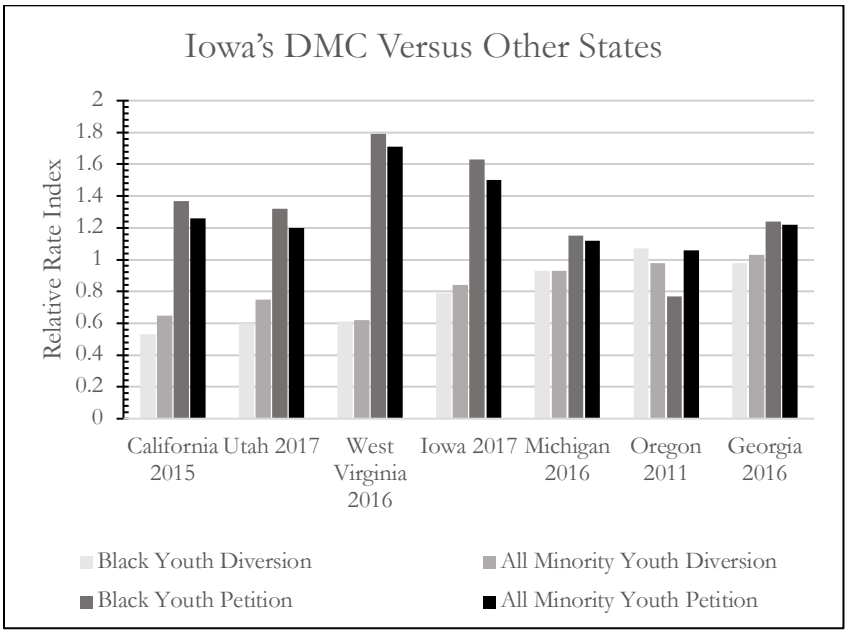
Figure 1:



Iowa also appears to experience high levels of DMC as compared to many other states.[179] In fact, of the data that this Note was able to collect from twenty-two states, Iowa's disproportionate petitions against youth of color was second only to West Virginia. Interestingly though, Iowa's DMC for diversions was roughly average. Figure 2 shows Iowa's rate of DMC compared to the other several states this Note has focused on. As this figure shows, Iowa is not an anomaly; no state has appeared to successfully eliminate all DMC at intake.

[179] *See* Appendix A.

Figure 2:



Juxtaposing DMC rates among states is no simple task: differences in state demographics, agency practices, and countless other factors can create the impression that this Note is weighing different intake procedures within a vacuum. On the contrary, recognizing intake differences is a crucial part of understanding how states can continue to innovate their juvenile systems, despite other influences that may contribute to DMC. The state data in this Note demonstrate intake discretion as a spectrum: the challenge is finding the point at which discretion is most effective and just.

California and West Virginia's juvenile intake procedures have among the least structured guidance for decisionmakers in this Note. Probation officers in California must "make a diligent effort to proceed" with diversion when they believe "the interest of the minor and the community can be protected."[180] In West Virginia, "the prosecutor shall determine whether the case can be resolved informally through a diversion program without the filing of a petition."[181] Recall both states reported significant rates of DMC, even as compared to Iowa. Youth of color in California were thirty-five percent less likely to be diverted and 1.26 times more likely to be petitioned than white youth.[182] West Virginia's youth of color were thirty-eight percent

[180] CAL. WELF. & INST. CODE § 654(a) (West 2022).

[181] W. VA. CODE § 49-4-702(c).

[182] *See* Appendix A.

less likely to be diverted and 1.71 times more likely to be petitioned than white youth.[183] Even though Iowa has experienced better diversion outcomes—0.84 RRI for all youth of color in 2017—this is not necessarily surprising given that Iowa provides at least some discretionary guidance for intake officers compared to California and West Virginia's nebulous public interest standards. Concededly, this discretionary language can even be found in states that report considerably lower rates of DMC, such as Oregon, which experienced far better diversion and petition outcomes than Iowa in 2011.[184]

Provisions that allow decisionmakers to proceed according to what will simply satisfy "the interests of the child and the public" are not uncommon. For instance, Pennsylvania allows juvenile probation offers to seek diversion when they believe "counsel and advice without adjudication would be in the best interest of the public and the child."[185] In New Hampshire, an arresting agency or prosecutor must simply "identify why diversion was not an appropriate disposition" in lieu of a petition: after a petition is filed, diversion is only appropriate if it "is in the best interest of the public and the minor."[186] Without sufficient guidance, intake officers and prosecutors may instead balance these interests how they prefer.

The impact of broad intake authority is especially apparent when compared to jurisdictions that appear to unambiguously regulate the discretionary scope. Consider Michigan, where the circumstances surrounding the offense; the character of the offense; the minor's age, character and conduct, and behavior in social settings; and any other former diversion decisions concerning the minor, *must* be considered.[187] Michigan's youth of color were seven percent less likely to be diverted and 1.12 times more likely to be petitioned than white youth, whereas Iowa's youth of color were sixteen percent less likely to be diverted and 1.5 times more likely to be petitioned that same period.[188] Similarly, intake officers in Georgia *must* account for the character of the alleged offense, the juvenile's age and personal circumstances, any prior record, and, pertinently, whether the complainant or victim has recommended informal adjustment or if community programs may simply be more effective.[189] Black youth and all

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[183] *Id.*

[184] *See supra* Parts II.A.4, II.B.3.

[185] 42 PA. CONS. STAT. § 6323(b)(1) (2022).

[186] N.H. REV. STAT. ANN. § 169-B:10 (2022).

[187] Juvenile Diversion Act, MICH. COMP. LAWS § 722.824.

[188] *See* Appendix A.

[189] GA. CODE ANN. § 15-11-515(a)(2) (West 2022).

youth of color were nearly as likely to be diverted as white youth, despite still being around 1.22 times more likely to be petitioned in 2016. Overall, these figures demonstrate considerably less DMC than Iowa and suggest that requiring the holistic inquiry leads to better intake outcomes.

Striking the appropriate scope of discretionary judgment to account for relevant legal and extralegal factors is undoubtedly challenging. Utah's intake procedure is a prime example of this difficulty by attempting to walk the line between heavy regulation and officer discretion. Except for various serious offenses, the probation department "*shall offer*" diversion to juveniles referred for "misdemeanor, infraction, or status offenses" who have "no more than two prior adjudications" and "no more than three prior unsuccessful nonjudicial adjustment attempts."[190] Interestingly however, the probation department may nonetheless offer to divert a minor who fails to satisfy these requisites.[191] Even with the potential benefits of mandating diversion for most youth, Utah's code restricts its probation departments' initial ability to conduct a thorough assessment of the juvenile's needs. When the juvenile is found categorically ineligible, the probation department is suddenly afforded nearly untethered discretion to pick and choose those for whom it deems diversion is appropriate. Utah experienced very similar diversion and petition rates as California, despite its vastly different approach to determining diversion eligibility.

This Note's focus on reducing disproportionate minority contact within Iowa's juvenile intake system is not to suggest Iowa's system is failing. On the other hand, comparing Iowa's DMC to other states makes clear that essentially the entire nation must continue addressing disparate treatment in our juvenile courts. Several key trends emerge from the intake procedures surveyed above. First, states with overly malleable intake inquires, such as California and West Virginia, appear to have higher rates of DMC. These states' intake procedures seem characterized by amorphous requirements like ensuring the best interests of the child and community, or simply estimating the appropriateness of diversion.

In contrast, DMC appears less severe among states that enumerate categorical intake inquiry criteria. For instance, Michigan and Georgia both require intake officials to examine several factors, although these officials ultimately retain discretion to weigh these factors when deciding diversion eligibility. Finally, the relationship between Iowa's intake procedure and DMC supports these trends. Although Iowa enumerates intake criteria, intake officers appear to have discretion whether to even account for several of these factors. Thus, its intake procedure exists somewhere between the indistinct systems of California and West Virginia, and the more intelligible requirements of Michigan and Georgia. Iowa's observed levels of DMC also

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[190] UTAH CODE ANN. § 80-6-304(5)(a) (West 2021).

[191] *Id.* § 80-6-304(5)(d).

appear to fall between the latter and former systems, thereby suggesting that DMC correlates to the level of intake discretion.

2. Broad Discretion Welcomes Unintended Bias and Differential Treatment

As this Note has discussed, the differential offending theory stresses the significance of a juvenile's individual circumstances as bearing heavily upon their tendency to engage in delinquent behavior.[192] Concededly, research has demonstrated the merits of this perspective. For instance, youth of color tend to commit more serious crimes than white youth, such as crimes of violence.[193] Research also shows that these types of crimes are "more likely to be reported to the police, more likely to result in the offender's apprehension, and more likely to trigger severe juvenile and criminal justice sanctions."[194] However, this difference in serious offending has also been attributed to individual, familial, and environmental factors of offenders. Thus, the unfortunate reality of the situation becomes clearer: people of color are significantly more likely to come from economically disadvantaged communities that lack adequate social institutions and are more likely to be surrounded by poorer "social structural conditions . . . such as poverty, disorder, residential segregation, and neighborhood disadvantage."[195] Taken as a whole, these factors "tend to compound and accumulate in mainly minority communities," and, ultimately, contribute to a minority youth's likelihood of engaging in delinquent behavior.[196]

Regardless of the potential gravity of a youth's individual circumstances, the fact remains that America's justice system has a track record for bias and disparate treatment against minority populations. Pertinently, this Note does not equate bias with intentional or purposeful discrimination against youth of color. In fact, one would be hard-pressed to find a juvenile intake officer who readily admits to diverting or petitioning youth based upon race. At the same time, stakeholder perceptions of Black youth demonstrate the impact of bias on decision-making within the juvenile system.[197] When the community believes higher minority contact to be a rational consequence of youth offending and effective policing, they may not see the resulting DMC

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[192] *See supra* Part II.B.1.

[193] NAT'L RSCH. COUNCIL, *supra* note 123, at 223.

[194] *Id.* at 224.

[195] *Id.*

[196] *See id.*

[197] *See supra* Part II.B.1.

as a problem, but as an accurate representation of the typical juvenile offender.

The state laws this Note discusses make clear that intake typically allows or requires juvenile court officers to consider extralegal factors of the juvenile to determine diversion eligibility. Thus, the concerns of differential offending—which may very well have impacted the juvenile's delinquency—suddenly become integral to how decisionmakers may treat their case. When the scope of factors to consider in delinquency cases remains undefined or left to case-by-case judgment, decisionmakers may unwittingly rely on their internal biases to guide their intake analyses and recommendations. The result? The beliefs that a community holds about typical delinquent youth may translate into typical characteristics of delinquency. This especially impacts Black juveniles, who decisionmakers often perceive as more dangerous "and in need of greater social control than" their white peers.[198] Suddenly, differential treatment comes to fruition: the juvenile system becomes primed to anticipate delinquency by youth of color, who may already be disadvantaged by their extralegal characteristics that contribute to differential offending.

B. Iowa's Legislature Should Amend Section 232 to Improve Standard Intake Investigation Procedures

The complex influences of differential offending and treatment presumably apply to Iowa as with anywhere else in the nation. For instance, Iowa's proportion of minority youth may contribute to the various social and institutional factors that influence contact with and treatment in the justice system. As Iowa becomes more diverse, the need to address DMC will only grow as the juvenile system risks encountering more youth of color.[199] Thus, Iowa should seize the opportunity to address DMC by increasing intake standards for Juvenile Court Intake Officers.

Section 232.28 of the Iowa Code does go beyond a mere "interests of the child and public language" standard by providing for several factors that intake officers should consider. This is admittedly more than many other states enumerate. The current form of Section 232.28(3) is as follows:

> In the course of a preliminary inquiry, the intake officer *may*:

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[198] Leiber & Johnson, *supra* note 114, at 571 (finding that age may influence the decision to divert or make a court referral for white youth but is less influential for Black youth).

[199] In 1990, less than three percent of Iowans were Black, Asian, or American Indian, and only about one percent of Iowans were Hispanic. As of 2019, this has grown to more than eight percent and six percent of the total population, respectively. *See Easy Access to Juvenile Populations: 1990–2020*, NAT'L CTR. FOR JUV. JUST., https://www.ojjdp.gov/ojstatbb/ezapop/asp/profile_selection.asp [https://perma.cc/B5G4-VZNF] (under "Population Profiles" select Iowa, then set the Row Variable to "Year" and the Column Variable to "Race" before viewing the table. Repeat for "Ethnicity.").

> a. Interview the complainant, victim or witnesses of the alleged delinquent act.
>
> b. Check existing records of the court, law enforcement agencies, public records of other agencies, and child abuse records as provided in section 235A.15, subsection 2, paragraph "e".
>
> c. Hold conferences with the child and the child's parents, guardian or custodian for the purpose of interviewing them and discussing the disposition of the complaint in accordance with the requirements set forth in subsection 8.
>
> d. Examine any physical evidence pertinent to the complaint.
>
> e. Interview such persons as are necessary to determine whether the filing of a petition would be in the best interests of the child and the community as provided in section 232.35, subsections 2 and 3.[200]

While providing some guidance to JCIOs, a more robust intake inquiry that categorically accounts for juveniles' extralegal and legal factors in a fair manner may further reduce DMC. By requiring certain inquiries, intake officers will be obliged to consider the same factors for all juveniles rather than only those that they may consider relevant to any given case. Thus, this Note proposes the following language for Section 232.28 ("the Proposal"), which embodies other state approaches and attempts to curtail various concerns of the differential offending and treatment theories:

> 3. In the course of a preliminary inquiry, the intake officer:
>
> a. Shall consider the nature and circumstances of the alleged offense.[201] In doing so, the officer shall examine any physical evidence pertinent to the complaint and may interview the complainant, victim, or witnesses of the alleged delinquent act.
>
> b. Shall review existing records of the court, law enforcement agencies, public records of other agencies, and child abuse records as provided in section 235A.15, subsection 2, paragraph "e".

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[200] IOWA CODE § 232.28(3) (emphasis added).

[201] *Compare* the Proposal, *with* GA. CODE ANN. § 15-11-515(a)(2)(A) (West 2022) (probation officers must account for "[t]he nature of the alleged offense.").

> c. Shall account for the age and individual circumstances of the child. This may include the child's character and conduct, and behavior in school and other group settings.[202]
>
> d. May hold conferences with the child and the child's parents, guardian, or custodian for the purpose of interviewing them and discussing the disposition of the complaint in accordance with the requirements set forth in subsection 8.
>
> But the intake officer shall not consider the child's character and conduct during such conference or interview when determining the disposition of the complaint. This subsection shall not limit the intake officer's ability to account for the child's character and conduct as set forth in subsection (c).
>
> e. May interview such persons as are necessary to determine whether the filing of a petition would be in the best interests of the child and the community as provided in section 232.35, subsections 2 and 3.

The Proposal preserves the components set forth in Section 232.28, albeit with some additions and adjustments to the provision's force. The Proposal begins by requiring intake officers to account for several factors that are currently left to their discretion. For instance, Section (3)(a) of the Proposal expressly requires intake officers to "consider the nature and circumstances of the alleged offense." It further provides that any physical evidence must be examined. This maintains the spirit of Section 232.28(3)(d) but reforms it into a necessary factor of the inquiry. The provision goes on to incorporate the entirety of Section 232.28(3)(a) and preserves intake officers' ability to interview these individuals if they desire. The Proposal also modifies Section 232.28(3)(b) to become a mandatory intake inquiry. Essentially, pertinent physical evidence and other records that are relevant to the juvenile should always be considered when available, while intake officers should be able to weigh the relevance or usefulness of third persons. By emphasizing these factors, the Proposal contemplates that intake officers should focus on the legal sufficiency of the referral or complaint before considering the juvenile's extralegal factors.

The Proposal preserves the intake officers' discretion whether to interview other persons deemed necessary to the intake decision. Further, it allows officers to confer with a juvenile and their guardians for purposes of discussing the disposition of the complaint. Crucially, however, the Proposal

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[202] *Compare* the Proposal, *with* Juvenile Diversion Act, MICH. COMP. LAWS ANN. § 722.824 (West 2022) (requiring the juvenile's character and conduct, and behavior in social settings to be examined before offering to divert the juvenile).

qualifies this ability by explicitly denying officers the ability to account for a juvenile's character and conduct during such conferences when determining how to proceed with the complaint. This exception intends to mitigate against the possibility that an intake officer may unwittingly allow bias to cloud their judgement when meeting with the youth. For instance research suggests that "[y]ouths who are perceived as hostile and uncooperative are more likely to be arrested, charged with more serious offenses, referred to court, and detained."[203] Black and Hispanic youth may be perceived as less cooperative and more hostile than white youth, thus disadvantaging them at early stages of the justice process.[204] Thus, expressly restricting intake officers' ability to consider the juvenile's attitude or appearance during intake conferences aims to guard against potential underlying biases that may lead them to perceive youth of color as more threatening.

The Proposal's final modification nonetheless countervails this prohibition on accounting for the character and conduct of the youth during an officer's conference or interview with the youth. Specifically, the Proposal creates an entirely new obligation for intake officers to "account for the age and individual circumstances of the child" in Section 232.28(3)(c). This allows intake officers to consider the youth's general character, conduct, and behavior in typical group settings, such as at school. This addition is significant in several respects. First, a juvenile's "age and individual circumstances" are sufficiently broad to afford intake officers discretion to examine extralegal characteristics it finds most pertinent to the child. Each referred youth's background is unique and necessarily demands that intake officers can examine these differences when proceeding with the complaint. Second, a juvenile's character and conduct with peers, teachers, and others in the community is more likely representative of their typical behavior. Crucially, youth conduct in these settings provides intake officers a more accurate impression of the juvenile, especially as compared to the potentially hostile—from the child's perspective—interaction at a post-complaint conference.

The current form of Section 232.28 allows intake officers to pick and choose relevant factors when determining how to proceed with delinquency complaints. One officer may find a juvenile's extralegal circumstances—to the extent Section 232.28 provides—more pertinent to the inquiry, whereas another could, in all respects, disregard these factors as irrelevant. The Proposal intends to limit an imbalance of the scales by requiring intake officers to account for both the legal and extralegal history of the child, within

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[203] Bishop, *supra* note 59, at 45.

[204] *Id.*

reasonable limits, thus ensuring that juveniles will be examined holistically. Despite the Proposal's objectives, it does not intend to eliminate intake officers' discretion when making intake decisions based on the enumerated factors. Instead, it only establishes the officers' scope of investigatory discretion. By requiring intake officers to account for certain criteria, the Proposal ensures each juvenile's alleged delinquency is considered equally and fairly. Intake officers would still be able to exercise considerable discretionary authority when weighing the significance of these factors in relation to one another. In doing so, intake officers can continue to determine what will satisfy "the best interests of the child or the public."

C. Iowa's Legislature Should Amend Section 232 to No Longer Require Juveniles to Admit Delinquency for Diversion Eligibility

In addition to amending preliminary inquiry procedures, Iowa should also abolish the requirement that juveniles admit to delinquent behavior as a condition for diversion. Currently, informal adjustment is subject to nine conditions; the first of these conditions mandates that "[t]he child has admitted the child's involvement in a delinquent act."[205] It is not clear why Iowa requires juveniles to admit delinquency for diversion eligibility—perhaps to promote some form of accountability for their actions. Some critics of diversion urge that diversion already negates any "formal acknowledgement of wrongdoing,"[206] so allowing a juvenile to enter an informal adjustment without any admission of guilt would likely bolster this perspective.

The practical effects of requiring juveniles to admit delinquency outweigh any potential purpose it may purport to serve. Research has shown that white youth are more likely to admit guilt than youth of color.[207] On the other hand, Black youth are three times more likely to be referred for intake in the first place than white youth.[208] Unless Black youth are in fact engaging in delinquent behavior three times as often than white youth—another question of differential offending—it may instead be the case that they are more likely to be innocent.[209] In these instances, most would agree that it would be entirely reasonable for a child to deny their involvement in a delinquent act they did not commit. Otherwise, minority youth tendency to admit guilt less than white youth may simply be the result of greater distrust in the justice system.[210] Thus, it is by no means a stretch to suggest that a youth's initial contact with law enforcement, if that youth were distrusting of

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[205] IOWA CODE § 232.29(1)(a).

[206] Birckhead, *supra* note 32, at 164.

[207] Bishop, *supra* note 59, at 49.

[208] *Racial/Ethnic Fairness: Monitoring Methods*, *supra* note 2.

[209] *See* Bishop, *supra* note 59, at 49.

[210] *See id.*

law enforcement, would result in similar apprehension of later stages of the justice system, especially when asked to admit to delinquent behavior. Even so, intake officials tend to perceive an admission of guilt as willing to undergo the proposed diversion treatment; officials instead infer a reluctance to admit guilt as lacking remorse for the alleged behavior.[211] Thus, by mandating an admission of guilt for diversion, Iowa youth must choose between self-adjudication or risking their chances in the formal system.

Perhaps most importantly, requiring youth to admit guilt may in fact ultimately contribute to post-delinquency concerns that diversion is intended to avoid. The labeling theory is a prime example of this potential phenomenon. Recall that the labeling theory argues that labeling a juvenile as delinquent influences how they perceive their available social roles, as well as future behavior.[212] While Iowa's diversion system does allow youth to avoid deeper stages of the formal system, a juvenile is nonetheless required to *label themselves* as a delinquent individual. One of the very concerns of labeling theory—the stigma of delinquency impacting how a youth perceives oneself—comes to immediate fruition. It may be tempting to contend this hypothetical harm is self-inflicted by the youth and therefore does not carry the weight of formal adjudication. However, a juvenile may consider it indistinguishable whether they must face the prospect of adjudication or instead incriminate themselves to avoid such treatment; either way, they will wear "delinquent" on their sleeve.

In all, the foregoing reasons favor amending Iowa Code Section 232.29 to repeal the requirement that youth must admit their involvement in a delinquent act to be eligible for diversion. Even further, Iowa's purpose clause as it currently exists does not support such a mandate. It can hardly be said that "the interests of the child and the public" are better served by requiring an admission of guilt. Concededly, some youth may consider a mere admission a proper price to avoid the petition and adjudication process of the formal system. For others, however, admitting to an alleged delinquency may not only offend their perception of fairness, but also their perception of the self. As this Note has established, this may be especially true for youth of color who are often disadvantaged socially, economically, and institutionally. Diversion has little force if it comes with the baggage of forcing a young mind to embrace itself as guilty of wrongdoing.

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[211] *Id.*

[212] *See supra* Part II.A.2.b.

IV. CONCLUSION

Iowa's current juvenile delinquency laws contribute to disproportionate minority contact at the point of juvenile intake. Iowa juvenile court intake officers currently possess incredibly broad discretion when conducting intake assessments, which the state attempts to regulate by suggesting a few relevant factors officers may want to consider. When intake officers retain such discretion, the weight of these factors becomes a subjective investigative practice; each officer may perceive different factors as conclusive of a juvenile's delinquent tendency. Thus, as is the case in most states, Iowa risks allowing internal biases to influence intake decisions and, thus, disproportionate outcomes for youth of color.

To address its concerning levels of DMC, Iowa should amend Section 232.28 to further regulate intake officers' investigative scope and require that all juveniles be considered equally based upon their relevant legal and extralegal circumstances. This Note's Proposal provides a potential framework to increase this regulation and obligate intake officers to approach each delinquency case from a holistic perspective. Pertinently, amending Section 232.28 does not require stripping intake officers of all discretionary authority. Instead, officers would be able to continue exercising their judgment and weigh the relevant information.

Furthermore, Iowa should no longer require juveniles to admit involvement in the alleged delinquent act to be eligible for informal adjustment. This requirement imposes an inappropriate burden upon youth to label themselves as delinquent, thus risking the very concerns diversion often intends to avoid. Together, these amendments promote a more consistent decision-making process and ensure each youth is fairly considered for diversion. These amendments would mitigate the potential effects of differential treatment within Iowa's juvenile system and position the state to reduce disproportionate minority contact at juvenile intake.

V. APPENDICES

Appendix A

Juvenile Diversion and Petition Disproportionality Among States					
State	Reporting Year	Diversion RRI Black Youth	Diversion RRI All Minorities	Petition RRI Black Youth	Petition RRI All Minorities
Iowa[213]	2017	0.79	0.84	1.63	1.50
Arizona[214]	FY 2017	0.91	1.00	1.41	1.24
California[215]	2015	0.53	0.65	1.37	1.26
Florida[216]	FY 2020	0.70		1.20	
Georgia[217]	2016	0.98	1.03	1.24	1.22
Illinois[218]	2010	0.47	0.57	0.84	0.87
Indiana[219]	2019	0.84		1.34	

[213] STATEWIDE REPORT 2017, *supra* note 66, at 27.

[214] ARIZ. JUV. JUST. COMM'N, STATE OF ARIZONA FISCAL YEAR 2018 THREE-YEAR PLAN PROGRAM NARRATIVE 6–8 (2018) https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/AZ-FY18-State-Plan%20508.pdf [https://perma.cc/L2NL-47KR].

[215] BD. ST. & CMTY. CORR., *supra* note 157, at 4.

[216] *Disproportionate Minority Contact/Racial Ethnic Disparity Benchmark Report FY 2019–20*, FLA. DEP'T JUV. JUST., https://www.djj.state.fl.us/research/reports-and-data/interactive-data-reports/disproportionate-minority-contact-reports/dmc-red-profile-fy2019-20 [https://perma.cc/PZZ4-YJZL].

[217] PLAN FOR COMPLIANCE WITH THE DISPROPORTIONATE MINORITY CONTACT (DMC) CORE REQUIREMENT, *supra* note 173, at 25.

[218] ILL. JUV. JUST. COMM'N, DISPROPORTIONATE MINORITY CONTACT IN THE ILLINOIS JUVENILE JUSTICE SYSTEM 2010, at 77–78 (2013) http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/DMC%20in%20the%20IL%20Juvenile%20Justice%20System%20-%202010.pdf [https://perma.cc/NNY2-ZRZR].

[219] IND. CRIM. JUST. INST, EQUITY IN INDIANA'S JUVENILE JUSTICE SYSTEM 13 (2019), https://www.in.gov/cji/behavioral-health/files/DMC-Report-2019.pdf [https://perma.cc/C6X5-AQ8F].

Kansas[220]	FY 2011	0.78	0.86		
Maryland[221]	FY 2019		0.66		1.57
Michigan[222]	FY 2016	0.93	0.93	1.15	1.12
Minnesota[223]	2017			1.16	1.31
Missouri[224]	2013	0.90		1.45	
Montana[225]	2015	0.95	0.86	1.40	1.23
New Hampshire[226]	2011	0.69	0.41	1.25	1.00
Oregon[227]	2011	1.07	0.98	0.77	1.06
Pennsylvania[228]	2010	0.76	0.84	1.18	1.12
South Carolina[229]	2013	0.99	0.99	1.01	1.02

[220] OBJECTIVE ADVANTAGE, LLC, KANSAS STATE DMC ASSESSMENT 20 (2013) https://www.doc.ks.gov/publications/juvenile/dmc [https://perma.cc/H7FC-PV9U].

[221] MD. DEP'T JUV. SERVS., APPENDICES 230 https://djs.maryland.gov/Documents/DRG/Appendices.pdf [https://perma.cc/KGP2-4LN3].

[222] *Michigan Racial and Ethnic Disparities Data*, *supra* note 167.

[223] MINN. JUV. JUST. ADVISORY COMM., 2018 ANNUAL REPORT 22 (2018) https://dps.mn.gov/entity/jjac/publications/Documents/JJAC%20Annual%20Report%202018.pdf [https://perma.cc/JYU2-CNP6].

[224] MO. JUV. JUST. ASS'N, MISSOURI DMC DATA 3 (2011), https://mjja.org/images/resources/dmc/missouridata2011-13.pdf [https://perma.cc/WK9V-JMUM].

[225] *DMC/JDAI Site Reports*, MONT. BD. CRIME CONTROL, http://mbcc.mt.gov/Juvenile-Justice/Juvenile-Detention-Alternatives-Initiative/DMC-JDAI-Stie-Reports [https://perma.cc/N8ZB-9SEH] (follow link; then click "Current RRI" under the statewide subheading to download RRI data for 2015).

[226] *Disproportionate Minority Contact in New Hampshire: Juvenile Justice DMC Assessment*, N.H. CTR. FOR PUB. POL'Y STUD. 10 (2013), https://www.dhhs.nh.gov/djjs/documents/dmc-assessment-2013.pdf [https://perma.cc/P95R-8VBE].

[227] OR. COMM'N ON CHILD. & FAM., *supra* note 170, at 7.

[228] JAMES D. GRIFFITH ET AL., PENNSYLVANIA JUVENILE JUSTICE DISPROPORTIONATE MINORITY CONTACT (DMC) MONITORING, REDUCTION AND PREVENTION EFFORTS 18 (2012) https://www.pachiefprobationofficers.org/docs/Pennsylvania%20Juvenile%20Justice%20Statewide%20DMC%20Assessment.pdf [https://perma.cc/K6JD-VGFC].

[229] *Disproportionate Minority Contact in South Carolina*, S.C. DEP'T PUB. SAFETY, https://scdps.sc.gov/ohsjp/dmc [https://perma.cc/KA37-ZXUJ] (follow the link; then click the Statewide Date (sic) Resources link to download the Excel file).

Tennessee[230]	2011	2.12	2.01	0.86	0.88
Utah[231]	2017	0.60	0.75	1.32	1.20
Virginia[232]	2011	0.91	0.91	1.06	1.07
Washington[233]	2017	0.57	1.04	1.40	0.96
West Virginia[234]	2016	0.61	0.62	1.79	1.71

Appendix B

Juvenile Diversion and Petition Relative Rates: Iowa 2011–14[235] and 2017					
	2011	2012	2013	2014	2017
Diversion: All Youth of Color	0.88	0.87	0.90	0.86	0.84
Diversion: Black Youth	0.84	0.82	0.86	0.85	0.79
Petition: All Youth of Color	1.43	1.43	1.35	1.52	1.50
Petition: Black Youth	1.57	1.54	1.45	1.59	1.63

230 TENN. COMM'N ON CHILD. & YOUTH, STUDY OF DISPROPORTIONATE MINORITY CONTACT (DMC) IN THE TENNESSEE JUVENILE JUSTICE SYSTEM 83 (2012) https://www.tn.gov/content/dam/tn/tccy/documents/jj/dmc-rep12.pdf [https://perma.cc/DJY6-TQL7].

231 UTAH BD. JUV. JUST., *supra* note 161. For more current DMC data, *see* LANETA FITISEMANU & CUONG NGUYEN, UTAH BOARD JUV. JUST., DISPROPORTIONATE MINORITY CONTACT 2019 UTAH COMPLIANCE PLAN 6 (2019), https://justice.utah.gov/wp-content/uploads/Lanetas-2019-Report_Plan-1.pdf [https://perma.cc/XM9J-NJHL].

232 VA. DEP'T CRIM. JUST. SERV., VIRGINIA'S THREE-YEAR PLAN 2012-2014, at 9–10 (2013) https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/juvenile/virginias-three-year-plan-2012-2014-2013-update.pdf [https://perma.cc/KG36-E5E3].

233 OFF. JUV. JUST. DELINQ. PREVENTION, OJJDP FY 2019 TITLE II DMC DATA COLLECTION: STATE OF WASHINGTON 1 (2019), https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/wa-fy18-dmc-data_508.pdf [https://perma.cc/MLN9-AKUZ].

234 DOUGLAS SPENCE, DEP'T MIL. AFF. & PUB. SAFETY, MEASURING DISPROPORTIONATE MINORITY CONTACT IN WEST VIRGINIA'S JUVENILE JUSTICE SYSTEM 5 (2018), https://www.jrsa.org/awards/winners/18-stat-wv.pdf [https://perma.cc/F496-RPWR].

235 RRI values were calculated using Complaint, Diversion, and Petition Data. *See* IOWA DEP'T HUM. RTS. DIV., CRIM. & JUV. JUST. PLAN., *supra* note 153, at 13–18.

Appendix C

Juvenile Diversion and Petition Relative Rates: Michigan FY 2016–19[236]				
	2016	2017	2018	2019
Diversion: All Youth of Color	0.93	1.91	1.47	1.44
Diversion: Black Youth	0.93	1.92	1.53	1.41
Petition: All Youth of Color	1.12	1.13	1.07	1.13
Petition: Black Youth	1.15	1.16	1.08	1.16

[236] *Michigan Racial and Ethnic Disparities Data*, *supra* note 167 (click "Michigan" under the Fiscal Years 2016 through 2019 headings to download a Microsoft Excel document; then navigate to "Standard Display" to view RRI's for the respective reporting period).