

**Addressing Disproportionate Minority Contact (DMC) in
Juvenile Delinquency Court**

**Office of the Juvenile Defender
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Youth of Color in Juvenile Court: Introduction

Research indicates that youth of color are disproportionately represented in the juvenile justice system.¹ This problem has been termed “disproportionate minority contact” (“DMC”). In an effort to help defense counsel better understand the experiences of youth of color, this document provides a compilation of recent research regarding youth of color in the juvenile justice system, and suggests strategies for defense counsel to utilize to address DMC.

Youth of Color in Juvenile Court: A Brief Overview of National Data

As youth of color move from one point in the juvenile justice system to another, they suffer a cumulative disadvantage compared to White youth.² For instance, a study completed by the National Council of Crime and Delinquency, in 2007, found that youth of color are disproportionately arrested and are more likely to go further in the system than White youth for the same offense.³ Moreover, although nearly half of the drug cases involving White youth resulted in formal processing, over three-quarters of those cases involving youth of color, specifically African American youth, resulted in formal processing, and thereafter involvement in the justice system.⁴ Similarly, youth of color are also more likely to be transferred to adult court,⁵ be incarcerated in state facilities,⁶ and spend more time incarcerated than White youth, with this disparate treatment resulting in DMC.⁷

Youth of Color in Juvenile Court: An Overview of State Data

In recent years, the Governor’s Crime Commission Division of the North Carolina Department of Crime Control and Public Safety (GCC) has compiled and analyzed data to determine at which stages of delinquency proceedings DMC occurred. In its research, the GCC utilized the “Relative Rate Index” (RRI) to examine DMC. The RRI compares the percentage of youth of color at one stage of the juvenile justice system to the percentage of youth of color at the previous stage.⁸ As an example, a study evaluating the confinement rates of African American youth as compared to White youth with a RRI of one at the confinement stage would indicate that African American youth are just as likely as White youth to be confined.⁹ Similarly, a RRI of two indicates that African American youth are twice as likely as White youth to be confined, and a RRI of one-half indicates that African American youth are half as likely to be confined as White youth.¹⁰

¹ Mark Soler, *Missed Opportunity: Waiver, Race, Data, and Policy Reform*, 71 LA. L. REV. 17, at 23 (2010).

² *Id.*

³ *Id.* at 24. See CHRISTOPHER HARTNEY & FABIANA SILVIA, NAT’L COUNCIL ON CRIME & DELINQ., AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM (2007), 1, available at http://www.nccd-crc.org/nccd/pubs/2007jan_justice_for_some.pdf (last visited June 20, 2011).

⁴ HARTNEY ET AL., *supra* note 3, at 1.

⁵ *Id.*

⁶ *Id.*

⁷ Soler, *supra* note 1, at 23.

⁸ Devon J. Green, et al., *Realizing the Promise of Electricity Deregulation: Empirical Study: The Faces Within: An Examination of the Disparate Treatment of Minority Youth Throughout the North Carolina Juvenile Justice System*, 40 WAKE FOREST L. REV. 727, 730 (2005).

⁹ *Id.* at 730-731.

¹⁰ *Id.*

As indicated in the table below, over the last three fiscal years, DMC occurred as youth of color were referred to juvenile court, placed in secure detention, and confined in secure juvenile correctional facilities.¹¹

DATA ITEMS	RELATIVE RATE INDEX (2007-2008)	RELATIVE RATE INDEX (2008-2009)	RELATIVE RATE INDEX (2009-2010)
CASES REFERRED TO JUVENILE COURT	2.39	2.45	2.46
CASES DIVERTED	0.88	0.91	0.88
CASES INVOLVING SECURE DETENTION	1.67	1.62	1.65
CASES PETITIONED (CHARGES FILED)	1.08	1.06	1.09
CASES RESULTING IN DELINQUENT FINDINGS	0.94	0.95	0.92
CASES RESULTING IN PROBATION PLACEMENT	1.01	1.02	0.98
CASES RESULTING IN CONFINEMENT IN SECURE JUVENILE CORRECTIONAL FACILITIES	4.17	3.31	2.95
CASES TRANSFERRED TO ADULT COURT	Insufficient number of cases for analysis		

More specific data revealed that from 2007 to 2008, African American youth were nearly three times more likely (with an RRI of 2.97) to be referred to juvenile court than White youth; nearly two times more likely (with an RRI of 1.75) to be placed in secure detention than White youth; nearly five times more likely (with an RRI of 4.48) to be confined in a secure correctional facility than White youth;¹² and nearly nine times more likely (with an RRI of 8.55) to be transferred to adult court than White youth¹³ (see Table 1 of the Appendix). Similarly, during this time period, American Indian or Alaska Native youth were nearly one and half times more likely (with an RRI of 1.58) to be referred to juvenile court than White youth; nearly two times more likely (with an RRI of 1.85) to be placed in secure detention than White youth; and three times more likely (with an RRI of 3.07) to be confined in a secure correctional facility than White youth.¹⁴ Data also indicated that Hispanic or Latino youth were over one a half times more likely (with an RRI of 1.55) to be confined in a secure correctional facility than White youth.¹⁵

¹¹ Email from Brandy Dolby, North Carolina Department of Crime Control & Public Safety, to Brandi Clemmons, Assistant Juvenile Defender, Office of the Juvenile Defender, May 10, 2011, (on file with the Office of the Juvenile Defender).

¹² *Id.*

¹³ Email from Megan Howell, North Carolina Department of Juvenile Justice & Delinquency Prevention, to Brandi Clemmons, Assistant Juvenile Defender, Office of the Juvenile Defender, May 10, 2011, (on file with the Office of the Juvenile Defender).

¹⁴ Email from Brandy Dolby, *supra* note 11.

¹⁵ *Id.*

Between 2008 and 2009, the DMC trend continued (see Table 2 of the Appendix).¹⁶ African American youth, specifically, were nearly three times more likely (with an RRI of 2.88) to be referred to juvenile court than White youth; nearly two times more likely (with an RRI of 1.70) to be placed in secure detention than White youth; nearly four times more likely (with an RRI of 3.70) to be confined in a secure juvenile correctional facility than White youth;¹⁷ and nearly three times more likely (with an RRI of 2.94) to be transferred to adult court than White youth.¹⁸ By the same token, American Indian or Alaska Native youth were slightly over two times more likely (with an RRI of 2.09) to be referred to juvenile court than White youth; a little more likely (with an RRI of 1.28) to be placed in secure custody than White youth; and nearly two times more likely (with an RRI of 1.84) to be confined in a juvenile correctional facility than White youth.¹⁹ It should also be noted that Hispanic or Latino youth were over one and a half times more likely (with an RRI of 1.60) to be confined in a secure juvenile correctional facility than White youth²⁰ and five times more likely (with an RRI of 5.06) to be transferred to adult court than White youth.²¹ The data also indicated that Asian youth were slightly more likely (with an RRI of 1.29) to be placed in secure detention than White youth.²²

In the same manner, the DMC trend continued between 2009 and 2010 (see Table 3 of the Appendix).²³ African American youth were nearly three times more likely (with an RRI of 2.84) to be referred to juvenile court than White youth; nearly two times more likely (with an RRI of 1.76) to be placed in secure detention than White youth; over three times more likely (with an RRI of 3.26) to be confined in a secure juvenile correctional facility than White youth;²⁴ and over three times more likely (with a RRI of 3.26) to be transferred to adult court than White youth.²⁵ Moreover, American Indian or Alaska Native youth were nearly two times more likely (with an RRI of 1.77) to be referred to juvenile court than White youth; slightly more likely (with an RRI of 1.37) to be placed in secure custody than White youth; and nearly two times more likely (with an RRI of 1.82) to be confined in a juvenile correctional facility than White youth.²⁶ Hispanic or Latino youth also experienced DMC during this time period as Hispanic or Latino youth were nearly one and a half times more likely (with an RRI of 1.40) to be referred to juvenile court than White youth; over one and a half times more likely (with an RRI of 1.54) to be confined in a secure juvenile correctional facility than White youth;²⁷ and nearly 15 times more likely (with an RRI of 14.77) to be transferred to adult court than White youth.²⁸

Given the disparate treatment that continues to impact youth of color, it is essential that defense counsel work to address DMC when possible. Understanding the possible causes of DMC, and the consequences associated with entering the juvenile justice system is essential to reducing DMC and improving the juvenile justice system.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Email from Megan Howell, *supra* note 13

¹⁹ Email from Brandy Dolby, *supra* note 11.

²⁰ *Id.*

²¹ Email from Megan Howell, *supra* note 13.

²² Email from Brandy Dolby, *supra* note 11.

²³ *Id.*

²⁴ *Id.*

²⁵ Email from Megan Howell, *supra* note 13.

²⁶ Email from Brandy Dolby, *supra* note 11.

²⁷ *Id.*

²⁸ Email from Megan Howell, *supra* note 13.

Youth of Color in Juvenile Court: Potential Causes & Consequences of DMC

In recent years, researchers, policymakers, and juvenile justice stakeholders throughout the United States have researched and speculated over the causes of DMC. Some of the possible explanations include the following.

- ❖ **Differential Offending:** Some researchers assert that youth of color are disproportionately involved in criminal activity, and that this tendency results in DMC.²⁹ Those positing this explanation point toward statistics regarding the number of youth of color involved in gang activity or serious crimes in some studies.³⁰
- ❖ **Differential Opportunities for Prevention and Treatment:** Other research indicates that DMC exists because youth of color have less access to prevention and treatment programs than White youth, and are therefore, more vulnerable to risk factors associated with juvenile delinquency.³¹ Alternatively, those youth with more opportunities for prevention and treatment programs are less likely to offend and enter the juvenile justice system.³²
- ❖ **Differential Handling:** Another explanation for DMC is that youth of color are more likely to enter the juvenile justice system due to differential treatment.³³ For instance, differential arrest rates in specific communities of color may account for DMC in some jurisdictions.³⁴ Some research suggests that differential handling of cases occurs because youth of color are seen as violent, sexual, and undisciplined more frequently than White youth. In essence, “White juvenile offenders may avoid transfer to adult court or confinement because they are viewed by decision makers as ‘troubled youth,’ whereas minority offenders are viewed as ‘troublemakers, gangbangers, or predators.’”³⁵
- ❖ **Indirect Effects:** Research also points out that DMC may be a result of indirect effects between race and crime.³⁶ Indirect effects are defined as “those factors that contribute to presence in the system because of their coexistence with other factors.”³⁷ One example of an indirect effect is family socioeconomic status as those who live in poor areas are more likely to have fewer protective factors, and therefore more risk factors for criminal activity.³⁸ In North Carolina, many judges believe that cultural barriers are detrimental to youth’s representation.³⁹ For instance, at times, there may be a misunderstanding due to language barriers, or cultural norms and mannerisms may be different.⁴⁰ For instance, avoiding direct eye contact is considered respectful in some

²⁹ASHLEY NELLIS, JUVENILE JUSTICE EVALUATION CENTER, SEVEN STEPS TO DEVELOP AND EVALUATE STRATEGIES TO REDUCE DISPROPORTIONATE MINORITY CONTACT (DMC), JUV. JUST. GUIDEBOOK SERIES, 14 (2005), available at <http://www.jrsa.org/pubs/juv-justice/dmc-guidebook.pdf> (last visited June 20, 2011).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Devon J. Green et al., *supra* note 8, at 789.

³⁶ *Id.*

³⁷ *Id.*

³⁸ ASHLEY NELLIS, *supra* note 29, at 15.

³⁹ Devon J. Green et al., *supra* note 8, at 789.

⁴⁰ *Id.*

cultures; however, it can be viewed as a sign of either dishonesty or disrespect by many judges, district attorneys, and other court officers.⁴¹ Therefore, family socioeconomic status, cultural barriers, and similar indirect effects may explain DMC in some cases.

- ❖ **Legislative Changes, Administrative Policies, and Legal Factors:** DMC may also be a result of legislation, policies, and legal factors that inadvertently affect youth of color.⁴² For instance, in some states with “three strikes” legislation and mandatory waiver, youth of color are likely to be disproportionately represented in the juvenile justice system.⁴³ Similarly, administrative policies such as those allowing youth in custody to only be released to guardians who are home may inadvertently discriminate against youth of color given that single parent households with a working parent are more common in communities of color.⁴⁴ Researchers also identify school zero tolerance policies as another factor that may inadvertently cause DMC as these types of policies have been empirically shown to result in disproportionate treatment of youth of color.⁴⁵ Furthermore, the use of legal factors, such as number of prior arrests to determine a youth’s disposition, can disproportionately affect youth of color if they have already experienced differential opportunities or treatment in the juvenile justice system.⁴⁶

Despite which explanation one thinks best articulates the cause for DMC, research indicates that involvement in the juvenile justice system, specifically, detention and incarceration negatively affects youth.⁴⁷ Detention disrupts education, family connections, and services, and subjects youth to potential physical assault and psychological stress.⁴⁸ Research shows that once detention interrupts education, some youth have a difficult time returning to school.⁴⁹ One researcher found that most incarcerated youth in the ninth grade returned to school following incarceration, but within a year of re-enrolling, between two-thirds to three-fourths of them had either withdrawn or dropped out of school.⁵⁰ After four years, less than 15% of those previously incarcerated youth had completed their education.⁵¹ Research also showed that youth who left detention and did not return to school faced consequences such as less financial stability, higher unemployment, and poor health in some cases.⁵²

Furthermore, involvement in the juvenile justice system, specifically, detention exacerbates difficulties for youth with pre-existing mental health problems.⁵³ Detention makes mentally ill youth worse because the setting and the conditions of confinement create an unhealthy

⁴¹ *Id.* at 747-748.

⁴² ASHLEY NELLIS, *supra* note 29, at 16.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Mark Soler, *supra* note 1, at 25.

⁴⁸ *Id.*

⁴⁹ BARRY HOLMAN & JASON ZIEDENBERG, JUVENILE JUSTICE POLICY INSTITUTE, THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES, 9, available at http://www.justicepolicy.org/uploads/justicepolicy/documents/dangers_of_detention.pdf (last visited June 20, 2011).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Mark Soler, *supra* note 1, at 25.

environment.⁵⁴ For instance, researchers recently found that close to a third of the detention centers in the U.S. were overcrowded, often leading to more violence and chaos.⁵⁵ Therefore, a great deal of youth with behavior or mental health problems simply got worse in detention.⁵⁶ Moreover, research also showed that for a number of incarcerated youth the onset of depression began after they were incarcerated.⁵⁷ Consequently, detention increased the likelihood that those with mental health problems would experience more severe problems, and that those without a previous history of mental health problems would begin to experience such problems.⁵⁸ Detention also put youth at a greater risk of physical harm, including self-harm such as suicidal behavior according to some researchers.⁵⁹

In addition to negatively affecting education and mental and physical health, studies indicate that youth who are incarcerated are more likely to recidivate than youth who are supervised in a community-based program, or youth not detained at all.⁶⁰ Previously detained youth face lasting consequences that impact their future behavior and opportunities.⁶¹ For instance, researchers have shown that incarcerating youth may interrupt and delay the typical pattern of “aging out” of certain behaviors since detention disrupts engagement with families, school, work, and extracurricular activities.⁶² Therefore, incarceration as a youth could lead to a greater likelihood of experiencing involvement in the adult criminal system.⁶³ Moreover, previously detained youth have reduced success in the labor market as some research indicated that young people between the ages of 14 and 24 who spent some time incarcerated in a youth facility experienced three weeks less work a year, with African American youth receiving five weeks less work, compared to youth without a history of incarceration.⁶⁴ Thus, involvement in the juvenile justice system, specifically detention and incarceration, can have lasting consequences for youth, particularly youth of color since those youth are disproportionately represented in the juvenile justice system.

Youth of Color in Juvenile Court: Strategies for Defense Counsel

In order to address DMC, defense counsel should work to become culturally competent and socially sensitive to issues of race and ethnicity.⁶⁵ Given the complexity associated with DMC, the best strategy to begin addressing DMC coupled with cultural competence and racial sensitivity may be zealous advocacy as follows.

⁵⁴ BARRY HOLMAN & JASON ZIEDENBERG, *supra* note 49, at 8.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 9.

⁶⁰ BARRY HOLMAN & JASON ZIEDENBERG, *supra* note 49, at 6.; See KAREN CALHOUN ET AL., NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, JUVENILE RECIDIVISM STUDY: FY 2006-07 JUVENILE SAMPLE, 40 (2011), available at http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/recidivismreportR_2008.pdf (last visited June 20, 2011).

⁶¹ BARRY HOLMAN ET AL., *supra* note 49, at 7.

⁶² *Id.*

⁶³ KAREN CALHOUN ET AL., *supra* note 60, at 40.

⁶⁴ *Id.*

⁶⁵ Philip Penn, *Illusion and Reality: The Myth of the Post Racial Society: Disproportionate Minority Representation and Juvenile Injustice: How Do Advocates and Juvenile Defenders Play a Role in Addressing It?*, Presented at the North Carolina Bar Association Juvenile Justice & Children Rights Section Annual Meeting (March 26, 2010).

- ❖ **Client Interviews:** Consult with the youth as early as possible and prior to any court appearances out of the presence of his or her parents/guardians.⁶⁶ Be sure to provide materials and information packets for youth who speak foreign languages as their primary language.⁶⁷ When necessary, ensure that an interpreter is provided for the youth.⁶⁸
 - Provide an overview of juvenile court, the purpose of the interview, confidentiality laws, attorney-client privilege, the right to remain silent, and expressed interest advocacy.⁶⁹ Also explain your role to the youth’s parents/guardians to prevent any future misunderstandings.⁷⁰
 - Ask the youth about school and any activities he or she participates in that could be affected by the filing of a petition.⁷¹ Also, ensure that the youth is aware that the school may be notified of the alleged offense.⁷² If you learn during the interview that the youth has been suspended or expelled from school because of the alleged offense, ask the youth whether arrangements have been made for him or her to continue his or her education such as attendance at an alternative school.⁷³ If there are no arrangements in place and you are knowledgeable of education law, consider assisting the youth with this matter. At the least, inform the youth of organizations that can assist with school discipline matters such as Advocates for Children’s Services of Legal Aid of North Carolina, Inc.
 - If the youth was detained, communicate with the youth to determine if he or she was harassed or mistreated while in detention.⁷⁴
 - Ask the youth whether he or she feels safe at home, and if not, begin considering alternative placements as directed by the youth.⁷⁵ Also, research alternative placements when the youth’s parents/guardians do not wish for him or her to return home.⁷⁶
 - Provide contact information and explain how the youth can contact you if any questions arise after the interview.⁷⁷

⁶⁶ NATIONAL JUVENILE DEFENDER CENTER, TEN PRINCIPLES FOR PROVIDING EFFECTIVE DEFENSE ADVOCACY AT JUVENILE DETENTION HEARINGS, 2, available at http://www.njdc.info/pdf/njdc_tools/NJDC_Detention_Tools.pdf (last visited June 20, 2011).

⁶⁷ Philip Penn, *supra* note 65.

⁶⁸ *Id.*

⁶⁹ NATIONAL JUVENILE DEFENDER CENTER, *supra* note 66, at 2. For further explanation of “expressed interest advocacy,” see N.C. COMMISSION ON INDIGENT DEFENSE SERVICES PERFORMANCE GUIDELINES FOR APPOINTED COUNSEL IN JUV. DELINQ. PROCEEDINGS AT THE TRIAL LEVEL (Adopted Dec. 14, 2007), available at http://www.ncids.org/Rules%20&%20Procedures/Performance%20Guidelines/Juv_Del_perf_guides_1-08.pdf (last visited June 20, 2011). The guidelines define expressed interests as “the stated desires of the juvenile client about the direction and objectives of the case.”

⁷⁰ NATIONAL JUVENILE DEFENDER CENTER, ACHIEVING EXCELLENCE IN DETENTION ADVOCACY: A CHECKLIST TO EVALUATE DEFENSE REPRESENTATION AT DETENTION HEARINGS, 3, available at http://www.njdc.info/pdf/njdc_tools/Checklist.pdf (last visited June 20, 2011).

⁷¹ See Philip Penn, *supra* note 65.

⁷² See *id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ NATIONAL JUVENILE DEFENDER CENTER, *supra* note 70, at 7.

⁷⁶ *Id.* at 8.

⁷⁷ *Id.* at 4.

- ❖ **Referrals and Charging Decisions:** When it comes to referrals and charging decisions, defense counsel should be aware of the disparate treatment of youth of color, and therefore, when appropriate, collaborate with prosecutors and court counselors to divert, dismiss, and mediate cases.⁷⁸
 - Upon being appointed, speak with the youth immediately to determine if the case is a good candidate for diversion, dismissal, or mediation. If so, speak with the court counselor and prosecutor prior to court.⁷⁹
 - Facilitate communication between the youth and parents/guardians and the court counselor to ensure that the court counselor is aware of difficulties the family may be facing such as lack of transportation or language barriers.
 - Ask the youth about any Individualized Education Plans (IEPs) at school, community involvement, and mental health treatment and gather information in an effort to research alternatives to court involvement (e.g., educational programs, substance abuse treatment, and mental health treatment as well as community programs or youth treatment courts) and provide those for consideration.⁸⁰ If the youth is involved in such programs, reach out to those professionals for assistance, as the prosecutor and court counselor may be willing to consider such alternatives.
 - Educate the parents on the alternatives to court and why they may be more desirable. Also, communicate with the youth's parents/guardians the importance of attending court proceedings.⁸¹ If appropriate, inform the parents/guardians that reluctance to attend hearings or provide information could result in formal charges where a diversion would have been appropriate.
 - When appropriate, make other juvenile justice stakeholders, including the court when appropriate, aware of research that indicates indirect effects such as family socioeconomic status could lead youth, specifically youth of color, into the juvenile justice system.⁸²
- ❖ **Detention Hearings:** As youth of color are disproportionately detained, it is critical that defense counsel communicate to youth that his or her jeopardy of detention can be reduced by appearing in court as scheduled.⁸³ Defense counsel should also consider communicating with the youth's parents/guardians the importance of attending court proceedings.⁸⁴ If the parents/guardians do not attend, consider calling them to ascertain why they are not attending such proceedings.⁸⁵
 - Prior to the hearing, conduct a thorough investigation of the youth's social history by obtaining school records, mental health records, records of delinquent and

⁷⁸ Philip Penn, *supra* note 65.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ NATIONAL JUVENILE DEFENDER CENTER, *supra* note 70, at 8.

⁸² ASHLEY NELLIS, *supra* note 29, at 15.

⁸³ MARK SOLER & LISA GARRY, DMC TECHNICAL ASSISTANCE MANUAL, CHAPTER 3: PREPARATION AT THE LOCAL LEVEL (4TH ED.), 3-23-3-24, available at http://www.ncjrs.gov/html/ojjdp/dmc_ta_manual/dmcch3.pdf (last visited June 20, 2011).

⁸⁴ NATIONAL JUVENILE DEFENDER CENTER, *supra* note 70, at 8.

⁸⁵ *Id.*

undisciplined behavior, including police reports, and screening tools such as risk and needs assessments.⁸⁶

- Communicate with the youth's parents/guardians, teachers, and other relevant adults who may also be able to provide essential information about the youth.⁸⁷ Inform the parents/guardians that the court may ask their input at the hearing.⁸⁸
- Communicate with the youth prior to the hearing to determine his or her expressed interest regarding alternatives to detention.⁸⁹ Once aware of the youth's expressed interest, collaborate with prosecutors and court counselors toward that outcome.⁹⁰ If the youth has expressed an interest in alternatives to detention:
 - Research and recommend community-based programs to the court;⁹¹
 - Argue the harmful effects of detention, and any deficiencies you may be aware of at local facilities;⁹²
 - Provide information to the court that could mitigate against detention such as age, special needs, health concerns, or mental health issues;⁹³
 - Challenge any decision to detain based upon a lack of community resources, and argue that detention should always be a last resort; and⁹⁴
 - Inform the court of the advantages of staying on release, such as involvement with family, school, and other positive factors in the youth's life.⁹⁵
- If possible, advocate for the hearings to be recorded or transcribed.⁹⁶ Additionally, ensure that detention orders are in writing with any special needs of the youth provided.⁹⁷ Review orders to ensure that information is accurate.⁹⁸
- Explain the outcome of the proceeding to the youth and his or her parents/guardians.⁹⁹ If the youth is released, ensure that he or she understands the conditions of release and receives the services as specified by the court.¹⁰⁰ If the youth is detained, seek opportunities for release by filing motions for review when appropriate.¹⁰¹

⁸⁶ *Id.* at 3

⁸⁷ *Id.* at 2.

⁸⁸ *Id.* at 8.

⁸⁹ *Id.*

⁹⁰ *Id.* at 3.

⁹¹ *Id.*

⁹² *Id.* at 4.

⁹³ *Id.*

⁹⁴ *Id.* at 4-5.

⁹⁵ *Id.* at 5.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

- ❖ **Transfer:** Defense counsel should ensure that the youth understands the pros and cons of transfer to adult court and advocate against transfer where appropriate.¹⁰²
 - Explain the collateral consequences of an adult criminal record to the youth, and compare those with a juvenile adjudication.¹⁰³
- ❖ **Disposition and Commitment to a Youth Development Center (YDC):** To create the most appropriate recommendations, defense counsel should communicate with the youth, ensure that the youth understands what is occurring at the proceeding, and advocate against any probation or placements that will be harmful.¹⁰⁴
 - When appropriate, request evaluations or expert witnesses to prepare for the disposition hearing and to provide testimony against any harmful recommendations.¹⁰⁵ Utilize experts, and if necessary interpreters, who are culturally competent and who are able to communicate with youth in their language.¹⁰⁶ Be aware of cultural biases and language barriers that may affect the youth's case or his or her ability to understand the proceeding.¹⁰⁷ When appropriate, in an effort to address cultural biases and to educate the court system actors, defense counsel should consider using a community leader as a culture expert.¹⁰⁸
 - File motions to dismiss and suppress evidence when necessary.¹⁰⁹ Given recent research challenging the reliability of eyewitness identifications, use this as a vehicle to educate court system actors about DMC-related issues.¹¹⁰
 - Ensure that the youth understands all possible disposition options and determine which services he or she feels would be most beneficial.¹¹¹
 - Argue for the least restrictive placement possible, specifically when commitment to a YDC is authorized. Be knowledgeable of community-based programs, and recommend them to the court.¹¹²
 - Explain the collateral consequences of an adjudication, as well as commitment to a YDC, to the youth.¹¹³
- ❖ **Post-Disposition:** Similar to many other jurisdictions, in North Carolina, defense counsel's appointment ends at disposition, and as a result, youth are not afforded a right to counsel post-disposition. Given that there is no post-disposition representation at this time, it is even more critical that defense counsel appointed to represent a youth on a probation violation work thoroughly to investigate and defend against the allegations.
 - At the motion for review hearing defense counsel should prepare to the same degree they would prepare for an adjudicatory hearing, including investigating the

¹⁰² Philip Penn, *supra* note 65.

¹⁰³ *Id.*

¹⁰⁴ Philip Penn, *supra* note 65.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Robin Walker Sterling, *Raising Race*, THE CHAMPION, 29 (2011).

¹⁰⁹ Philip Penn, *supra* note 65.

¹¹⁰ Robin Walker Sterling, *supra* note 108, at 28.

¹¹¹ Philip Penn, *supra* note 65.

¹¹² *Id.*

¹¹³ *Id.*

allegations, determining if the violation was willful or if a lawful excuse exists, and preparing alternatives for disposition sensitive to the youth's needs if he or she is found to be in violation.

- Defense counsel can also make the youth aware of community-based programs that help youth re-enter society following incarceration in an effort to reduce the chance for recidivism.¹¹⁴

Youth of Color in Juvenile Court: Conclusion

Youth of color are disproportionately represented in the juvenile justice system. Although DMC represents a complex issue, cultural competency and racial sensitivity coupled with the use of zealous advocacy that provides more comprehensive client interviews, more appropriate charging and detention decisions, as well as more effective dispositions and services may be beneficial in reducing DMC at key points of the juvenile justice system.

¹¹⁴ *Id.*

APPENDIX

TABLE 1: RELATIVE RATE INDEX (2007-2008)

DATA ITEMS	RELATIVE RATE INDEX (2007-2008)			
	African American	American Indian or Alaska Native	Asian	Hispanic or Latino
CASES REFERRED TO JUVENILE COURT	2.97	1.58	0.41	1.09
CASES DIVERTED	0.87	0.76	0.76	1.04
CASES INVOLVING SECURE DETENTION	1.75	1.85	0.92	0.94
CASES PETITIONED (CHARGE FILED)	1.09	1.17	1.17	0.97
CASES RESULTING IN DELINQUENT FINDINGS	0.94	1.05	0.67	0.94
CASES RESULTING IN PROBATION PLACEMENT	1.01	1.01	0.94	1.02
CASES RESULTING IN CONFINEMENT IN SECURE JUVENILE CORRECTIONAL FACILITIES	4.48	3.07	Insufficient number of cases for analysis	1.55
CASES TRANSFERRED TO ADULT COURT	8.55 ¹¹⁵	Insufficient number of cases for analysis		

TABLE 2: RELATIVE RATE INDEX (2008-2009)

DATA ITEMS	RELATIVE RATE INDEX (2008-2009)			
	African American	American Indian or Alaska Native	Asian	Hispanic or Latino
CASES REFERRED TO JUVENILE COURT	2.88	2.09	0.32	1.18
CASES DIVERTED	0.92	0.80	0.93	0.89
CASES INVOLVING SECURE DETENTION	1.70	1.28	1.29	1.17
CASES PETITIONED (CHARGE FILED)	1.06	1.13	1.05	1.06
CASES RESULTING IN DELINQUENT FINDINGS	0.94	1.07	0.75	0.92
CASES RESULTING IN PROBATION PLACEMENT	1.02	1.01	0.98	1.00
CASES RESULTING IN CONFINEMENT IN SECURE JUVENILE CORRECTIONAL FACILITIES	3.70	1.84	Insufficient number of cases for analysis	1.60
CASES TRANSFERRED TO ADULT COURT	2.94	Insufficient number of cases for analysis		5.06

TABLE 3 RELATIVE RATE INDEX (2009-2010)

DATA ITEMS	RELATIVE RATE INDEX (2009-2010)			
	African American	American Indian or Alaska Native	Asian	Hispanic or Latino
CASES REFERRED TO JUVENILE COURT	2.84	1.77	0.31	1.40
CASES DIVERTED	0.89	0.73	1.04	0.85
CASES INVOLVING SECURE DETENTION	1.76	1.37	1.05	1.06
CASES PETITIONED (CHARGE FILED)	1.08	1.21	0.97	1.10
CASES RESULTING IN DELINQUENT FINDINGS	0.94	1.20	0.82	0.75
CASES RESULTING IN PROBATION PLACEMENT	0.97	0.86	0.81	1.04
CASES RESULTING IN CONFINEMENT IN SECURE JUVENILE CORRECTIONAL FACILITIES	3.26	1.82	Insufficient number of cases for analysis	1.54
CASES TRANSFERRED TO ADULT COURT	3.26	Insufficient number of cases for analysis		14.77