

**COMMENTARY**

# THE NATIONAL CHALLENGE TO BREAK THE PIPELINE TO PRISON

Black Youth's Disproportionate Representation in the Juvenile Justice System

by Vanessa M. Cross, J.D., LL.M.



In a March 2011 address to the National Association of Counties Legislative Conference (NACLC), U.S. Attorney General Eric Holder made the following statement about the juvenile justice system:

*“I have seen the long-term consequences of a system that – all too often – does not work. Now, this is not my opinion. This is a fact. The evidence on our nation’s juvenile justice system is in – and it demonstrates that change is needed. The current system does not spend resources as wisely as it should. And it does not improve as many lives as it could.”<sup>1</sup>*

Holder's statement holds an alarming truth for black youth in the U.S. whose confinement in the juvenile justice system is disproportionately higher than their representation in the general population. Is the juvenile justice system part of the pipeline to prison for black youth? The statistics certainly suggest that this is true. Disproportionate racial impact is echoed at each stage of their contact with the juvenile justice system. Blacks represent 16 percent of the U.S. youth population between the ages of 10-17, according to an 2006 Office of Juvenile Justice and Delinquency Prevention (OJJDP) report.<sup>2</sup> This starkly contrasts with their accounting for 28 percent of police arrests, 30 percent of juvenile delinquency adjudications, 37 percent of confinement in privately and publicly run detention centers, and 58 percent of the youth serving state prison sentences.<sup>3</sup>

## Juvenile Justice and Delinquency Prevention Act

Federal efforts under the Juvenile Justice and Delinquency Prevention Act (JJDP) was an important step towards addressing the racial disparities in the juvenile justice system.<sup>4</sup> In 1974, the U.S. Congress enacted the JJDP as a state mandate to address the disproportionately high rate of confinement among minority juvenile populations across the nation. By 1992, the JJDP was amended to include disproportionate racial impact as one of four review components tied to states receiving federal juvenile justice funding through the Formula Grants Program. States risk losing one-fourth of this funding for each requirement they fail to meet and are required to report statistics related to progress on matters such as deinstitutionalizing status offenders.

By 2002, the JJDP's statutory language relating to racial disparities was changed from “confinement” to “contact” to capture statistical information along the continuum of crucial stages prior to state confinement, i.e., law enforcement, prosecution and judiciary contacts. All of these contacts have been acknowledged as areas where a high level of discretion may impact disparities if aggravated by cultural biases.

## Access to Counsel

Youth access to legal counsel in juvenile proceedings is an area that raises concern and should be of particular interest to those engaged in addressing racial disparities in the juvenile justice system. Attorney General Holder noted an OJJDP Survey Youth in Residential Placement report which shows that only half of the youth in juvenile detention facilities were represented by legal counsel. The criminal defense bar, prosecutors and the judiciary stand complicit in devaluing federal and state constitutions when they fail to enforce the right to counsel in juvenile court proceedings that can result in confinement. Holder stated that “[i]n far too many jurisdictions, youth are

1 U.S. Department of Justice: Attorney General Eric Holder's Full March 7, 2010 Speech (Online access: <http://www.justice.gov/iso/opa/ag/speeches/2011/ag-speech-110307.html>)

2 Snyder, Howard N., and Sickmund, Melissa. 2006. Juvenile Offenders and Victims: 2006 National Report. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (Online access: <http://www.ojjdp.gov/ojstatbb/nr2006/downloads/nr2006.pdf>)

3 *Ibid.* at 2.

4 Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 (Online access: <http://www.ojjdp.gov/about/ojjjact.txt>)

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encouraged – whether explicitly or implicitly – to waive their right to counsel, and even when they do not, court-appointed lawyers often enter the picture too late.”

In 2009, the so-called “cash for kids” scandal, which resulted in racketeering convictions of ex-judges Mark A. Ciavarella Jr. and Michael T. Conahan, revealed how justice lay vulnerable to corruption when high incidents of juvenile convictions are handed out without defense counsel.<sup>5</sup> There were some notable recommendations made by Pennsylvania's Interbranch Commission on Juvenile Justice (ICJJ) after it investigated thousands of Luzerne County, PA cases where Ciavarella and Conahan ordered juvenile detention in privately owned facilities where they received monetary kick-backs. ICJJ recommendations included creating a presumption of indigence for juveniles that provides easier access to legal counsel.<sup>6</sup> The ICJJ also suggests formalizing the guilty plea procedure in juvenile court and requiring judges to provide detailed findings of fact and legal conclusions when ordering juvenile detention placements.

## Community Partnerships to Reduce Disparities

Programs have been developed and instituted in many communities across the nation to combat juvenile justice racial disparities. For example, the Civil Citation program in Miami-Dade County refers certain juvenile misdemeanors to social service oriented intervention programs as an alternative to institutionalizing juveniles. This has resulted in reductions in juvenile arrests and recidivism in Miami-Dade County.<sup>7</sup>

A similar model is advocated by the Juvenile Detention Alternatives Initiative (JDAI), funded by the

Annie E. Casey Foundation. In many of the state and local jurisdictions participating in JDAI, the size of the juvenile detention population reports 30 to 40 percent decreases after implementation. Average overall juvenile detention time reductions after JDAI implementations are 10 to 20 percent.<sup>8</sup>

The W. Haywood Burns Institute (BI) is another organization that offers innovative ways to mobilize stakeholders to reduce juvenile justice racial disparities. BI works with state and county officials to create partnerships between juveniles, parents, law enforcement, prosecutors, public defenders, judges, probation officers, social service providers, educators, medical professionals, political leaders and community groups.

## Conclusion

Attorney General Holder wisely noted that we “must transition from a prosecution-and-punishment model to a prevention-and-intervention paradigm.” Statutes such as the JJDPAs have helped to foster transparency and encourage states to address the problem of racial disparities in the U.S. juvenile justice system. Unfortunately, the confinement of black youth in disproportionate numbers only scratches the surface of the crisis. They also give us a glimpse into the disproportionate numbers of black youth impacted as victims of juvenile crimes.

There are no easy solutions. Government and private initiatives addressed here are the start. Defense counsel and prosecutors must play more active roles in creating solutions. This crisis of community requires a high level of confrontation. All the stakeholders must come to the table to create aggressive social and institutional changes. I am afraid that if we fail, we all will suffer dearly for generations to come.

5 United States of America v. Michael T. Conahan and Mark A. Ciavarella, Jr., Case No. 09-CR-272, United States District Court for the Middle District of Pennsylvania: 09/09/09; Indictment: (Online access: <http://www.jlc.org/files/luzernecounty/INDICTMENT.pdf>)

6 Interbranch commission on Juvenile Justice: Public Hearing (Online access: <http://www.aopc.org/NR/rdonlyres/1407BFC8-6299-4616-9582-96972A547B52/0/ICJJ2110.pdf>)

7 Miami-Dade.gov: Civil Citation Program (Online access: [http://www.miamidade.gov/jsd/civil\\_citation.asp](http://www.miamidade.gov/jsd/civil_citation.asp))

8 Juvenile Detention Alternatives Initiative: Reducing Racial Disparities (Online access: <http://jdaihelpdesk.org/reducingracial/Pages/default.aspx>)