Examining institutional response, race, and violence can be a controversial and difficult topic, yet it is crucial to an understanding and implementation of racially just and bias-free decision making. In exploring how institutions respond to violence, it is necessary to acknowledge several external factors. Racial stereotypes that portray people of color as violent often impact an understanding of the issues. Additionally, scholarly research, insightful practitioners, neutral observers, and well-intentioned responders can find it difficult to identify where their decision making may be racially biased. Media coverage and representation of high-profile cases involving people of color can often inflame emotions, making just and racially unbiased decision making more difficult. 

The result is that people of color, particularly African Americans, are disproportionately impacted by many of the institutions that respond to child maltreatment, juvenile delinquency, and intimate partner violence. These institutions implement practices that can result in excessive numbers of children of color being removed from their homes, languishing in foster care, and being incarcerated as juveniles and adults. Some of these practices also create tremendous barriers for women of color experiencing intimate partner violence as they seek justice and assistance. Additionally, overrepresentation in the institutions of foster care, residential facilities, halfway houses, prisons, and jails evokes a historical legacy of racism, distrust, and alienation for communities of color.

There are many decision points along the intervention continuum, both judicial and non-judicial, where racial bias may be introduced. Whether it is a serious child maltreatment case, restraining order hearing, or criminal sentencing, race may play a factor throughout the decision-making process.

This article summarizes some of the data sources implicating racially biased policies, practices, and decision making.

**ABSTRACT**

A number of State and Federal surveys show that communities of color are involved with the domestic violence, child welfare, and juvenile justice systems at rates that are disproportionately higher than their population size. As courts are responsible for decisions that could propel families into these systems, it has become increasingly critical that judges become aware of these trends. This article will provide an overview of the current statistics on the disproportionate representation of communities of color in the domestic violence, child welfare, and juvenile justice systems. It will discuss the factors that are contributing to these trends and present preliminary recommendations for judicial leadership and decision making.
sion making in the institutions that respond to violence in the home and community; examines the institutional practices and patterns that promote disproportionate representation and the societal and judicial implications of these patterns; and offers recommendations for judges to maximize their capacity for racially just and bias-free neutrality.

Overview of the Data
Child Maltreatment

In 2001, an estimated 903,000 children were victims of substantiated child maltreatment.\(^3\) Although African Americans account for less than 13% of the national population (and their children a slightly higher percentage), African American children comprised 25% of substantiated child maltreatment victims.\(^4\),\(^5\)

While individual states may vary greatly in the number and proportion of African American children in the child welfare system, some states have extremely high rates of racial disproportionality in their child welfare caseload.\(^6\) For example, in 1998 and 1999, African American children in New Jersey were overrepresented at a rate of more than 300% higher than their population statistics.\(^7\) Delaware had an overrepresentation rate of nearly 200%, Illinois a rate slightly over 200%, Michigan a rate of approximately 235%, Ohio a rate of 200%, and Texas a rate of approximately 200%. The problem in Minnesota also appears extremely troublesome with an overrepresentation rate of 675% (i.e., 4% of the population and 27% of the child maltreatment victims).\(^8\)

Even states with very small percentages of African Americans had substantial overrepresentation issues in their child welfare system. In Iowa, African Americans comprise less than 3% of the population but 8% of their child welfare cases, resulting in an overrepresentation rate of 267%.\(^9\)

This pattern does not appear to be exclusive to African American children. In at least three states, Native American children were disproportionately represented in substantiated child maltreatment cases at rates ranging from 185% to 400 %.\(^10\) Yet despite these disturbing statistics, one earlier national study found no racial differences in the incidence of child maltreatment.\(^11\)

Ards, Myers et al., have argued that estimates of racial disproportionality in child welfare are not accurate and are due primarily to “aggregation” bias. Specifically, they argue that because children of welfare recipients are overrepresented in child maltreatment cases, and that African American children have a greater probability than white children to be on welfare, any racial disproportionality disappears when controlling for welfare dependency.\(^12\)

This analysis may provide solid statistical findings, but begs a key conceptual point. Many African Americans who receive welfare live in high-density inner cities, where racially biased economic and social policy choices may have been made, thus creating fewer economic options for inner-city residents. The aggregation analysis, albeit focused on various types of biases within the child welfare system, does not examine the conditions of welfare and non-welfare recipients, thus creating some concern about an overly simplified relationship between poverty, race, child maltreatment, and the child welfare system.\(^13\)

Dorothy Roberts, in her book *Shattered Bonds: The Color of Child Welfare*, elucidates the problems overrepresentation creates, most notably reinforcing “racial inequities.”\(^14\) She notes historical and contemporary problems which current child welfare practice creates and re-creates. Roberts argues that child welfare practices, racially biased decision making, and the criminal justice system all coalesce to create devastating impacts on communities of color and society. Many of these impacts include economic, political, social, spiritual, as well as racial harm to African Americans as a collective group.\(^15\)

Roberts argues that many of the stereotypes about black women on welfare, their parenting skills, and absentee black fathers continue to infiltrate child welfare workers’ decision making today, resulting in a greater willingness to remove black children from their families.\(^16\) In fact, a significant concern for women of color whose children may be victims of maltreatment is that once their children are in the child welfare system, their children will stay in the system, and eventually they will lose their parental rights.

That concern is well founded. A correlated consequence of the overrepresentation of African American children is how long they stay in the system, particularly in cases involving termination of parent rights, foster care, and adoption. A recent study examined adoption trends by race and other factors and found that African American children were also overrepresented in foster care and remained in foster care the longest.\(^17\)

Supporting the concern about the effect that poten-
tially racially biased decision making can have on families of color is a study by Glisson et al., that examined 700 children entering state custody in Tennessee’s child welfare population. According to the study, the two most potent factors identified in determining the probability of a child leaving state custody (either for reunification or for adoption) were whether the child came from a rural county and the child’s race. After controlling for behavioral problems, family characteristics, services provided, and the reason they entered the child welfare system, African American children were 42% less likely to leave state custody. With nearly one million African Americans comprising 16% of the state’s population, this study suggests that many black children are staying in foster care longer than other children.

Juvenile Justice

Children subject to high levels of violence are at significant risk of becoming adolescent victims or perpetrators. For adolescents of color, the effects of community violence, witnessing domestic violence, and the combined impacts of violence and poverty culminate in their overrepresentation in the juvenile justice system.

As many researchers have noted, children who are exposed to high levels of violence (community and domestic violence) are at risk for a variety of psychological problems as well as victimization. Mitchell and Finkelhor’s 2001 study found that children living in homes with domestic violence were 158% more likely to be victims of a violent crime, than children living in nonabusive homes. Additionally, they found that children in domestic violence homes were at a greater risk than children exposed to community violence.

Duckworth et al.’s 2000 study of violence and children’s psychological response documented very high levels of secondary victimization in an African-American community. In a low-income, predominantly black community, 67% percent of boys between age 11 and 15 and 78% of girls the same age had witnessed domestic violence.

Children and adolescents of color, particularly those in low-income, highly populated communities and those exposed to years of family violence, are at risk for their own victimization and/or perpetration.

Research shows that black men are more likely to be victims of violence than any other group, including black women. Young black men (age 15-24) are nearly eight times more likely to be homicide victims than their white counterparts, and black women are also at much greater risk for homicide than white women. In addition to being overrepresented as victims, juveniles of color are overrepresented as perpetrators throughout the justice system. Of the nearly three million juveniles arrested nationwide in 1997, 26% of those were African American adolescents.

This racial disproportionality continues from the arrest phase to the juvenile court phase. Thirty percent of delinquency cases in 1996 involved African American youths. In the nation’s 40 largest urban counties, nearly two-thirds of juveniles charged with a felony offense were African American (62%). Additionally, nearly 90% of juveniles charged with a felony drug offense were African American juveniles.

Racial disproportionality is also evident in the residential placement of juvenile offenders. In 1999, children of color constituted two-thirds of those committed to public facilities. The problem became so widespread that for several years states were required to conduct studies and implement policies designed to reduce “disproportionate minority confinement.”

A recent trend, affecting judges in particular, is that of the waiving or transferring juveniles from a juvenile court to jurisdiction in adult criminal court. Many states have lowered the age at which juveniles can be prosecuted as adults, while other states have specified new criteria or expanded the criteria for juvenile/adult trials. One impact of this trend is the increasing number of juveniles admitted to adult prisons. In 1997, nearly three-fourths of the adolescents admitted to adult prisons were African American or Latino. In 1998, African American youths were 55% of the juveniles in adult prisons.

Feiler and Sheley found that the public’s willingness to transfer juvenile offenders to criminal court was based on both logical and illogical factors such as the seriousness of the offense committed and the offender’s age. Yet, the offender’s prior criminal record did not have a bearing on whether the public believed the offender should be transferred to adult criminal court. Consistent with other studies, it was found that the public had a greater willingness to transfer a child to adult court if the offender was black.

Another study found that youths of color were eight times more likely to be imprisoned than white youths. The study found that Latino youths were six times more likely, and African American youths 12 times
more likely, than white youths to be transferred to adult
criminal court.33

A study by Johnson-Reid and Barth examined the
relationships between maltreated children, child welfare
response, and later involvement with the juvenile justice
system.34 Although African American children represented
a small percentage of the child welfare sample (14%),
they had the highest rate of juvenile incarceration.35

It is conceivable that some of these young people in
the juvenile justice system were either child maltreat-
ment victims, children who witnessed years of intimate
partner violence, or adolescents who intervened in child
maltreatment or domestic violence cases, trying to pro-
tect their sibling(s) and/or non-offending parent.

Although pinpointing racially biased decision mak-
ing can be difficult, it is clear that there are significant
numbers of juveniles of color in the juvenile justice sys-
tem. The correlation between race, childhood victimiza-
tion, delinquent behavior, and institutional response war-
tants greater consideration.

**Domestic Violence**

Several studies document that women of color may
experience higher rates of intimate partner violence than
do white women. The National Crime Victimization
Survey (NCVS) reported that from 1993 to 1998 African
American women experienced intimate partner violence
at rates of 10% to 50% higher than white women.36 The
same study also reported that Native American women
were at the greatest risk of such violence, at a rate twice
as high as African American women, affecting one out of
every nine Native American women.37

According to the National Violence Against Women
(NVAW) survey conducted in 1995-96, 61.9% of women
who reported being raped were raped by an intimate
partner (e.g., current or former spouse, boyfriend, date,
etc.).38 The NVAW survey also found that African
American women, Native-American women, and women
of mixed race reported higher rates of rape than white
women.39 Because there is often a co-occurrence
between domestic violence and sexual assault, women
are left susceptible to repeated events of one or both.

Despite these differences in victimization rates, evi-
dence suggests that there is an even greater racial dis-
proportionality in the arrest, prosecution, incarceration,
and length of sentence for crimes of domestic violence
and sexual assault.

A California study examined domestic violence
arrests between 1988 and 1999, specifically examining
the impact of a 1995 mandatory arrest policy.40 Between
1988 and 1998, whites were the majority of the state’s
population, and in 1988 constituted the majority of
domestic violence arrests.41 By 1998, Latinos were 40%
of the domestic violence arrests, whites 34%, African
Americans 19.2%, and other races 6%.42

African Americans in California had by far the high-
est rate of arrests for domestic violence per capita. In
1988, African Americans were arrested for domestic vio-
lence at a rate of 345.1 per 100,000 (200% higher than
Latino offenders and 400% higher than white offend-
ers).43 By 1998, after the mandatory arrest policy was
implemented, the rate of arrest increased for African
Americans, even though they constituted a smaller per-
centage of statewide domestic violence arrests than in
1988.44 In 1998, African Americans were arrested for
intimate partner violence at a rate of 472.6 per
100,000.45 This rate was again 200% higher than Latinos
and more than 400% higher than whites.46

Another study of police response to domestic vio-
lence found that between 1989 and 1998, African
American and Native American women were over-repre-
sented as domestic violence victims, at rates respective-
ly double and triple their population statistics.47 The
same study found that African American and Native
American men were the suspects in domestic violence
cases at three times their population presence.48

Finally, national arrest data suggests that African
American men are arrested at disproportionate rates for
rape than men of other races. In 1998, according to one
study, more than 8,000 law enforcement agencies
reported 18,716 arrests nationally for forcible rape.49
African Americans, who comprised approximately 13%
of the population, accounted for 28.6% of all arrests.50
The study indicated that African Americans were 36.2%
of all arrests for forcible rape and arrested for forcible
rape at a rate nearly three times their population.51
White men accounted for 69.0% of all arrests, yet
accounted for only 61.5% of rape arrests.52

Historically, the criminal justice system has punished
quite harshly African Americans convicted of rape.
Between 1930 and 1967, more than 400 African American
men were executed for rape, compared to 48 white
men.53 The ratio of nine to one does not include lynch-
ings, which were “informal” executions of black men
overwhelmingly for alleged sex offenses against white
women. Although not condoned, such history may pro-
vide a context to understanding another barrier for African Americans in reporting sexual assault crimes. This research also highlights that men of color are punished more often and more harshly than white offenders.

There are other concerns regarding this data because women of color may not report crimes of domestic violence and/or sexual assault at the same rate as white women, leading to an underreporting of such crimes for communities of color. More research is needed to determine how much of the difference in domestic violence prevalence rates among diverse racial and ethnic groups is a result of the victim’s willingness to disclose such violence, or how much social, demographic, and environmental factors influence disclosure. Racial stereotyping, pathologizing, and biased decision making may deter communities of color from disclosing violence and other socially unacceptable forms of behavior. This reluctance to disclose may manifest itself in what is often called “racial loyalty,” which pits loyalty to one's race against loyalty to one's gender.

Many perpetrators will use racial loyalty to dissuade women of color from reporting sexual assault or domestic violence. Coupled with historical and contemporary patterns of excessive institutionalization of offenders of color, these factors may contribute to a victim of color’s refusal to report crimes of domestic violence or sexual assault or engage in interventions.

Given the above, it is imperative for decision makers to continually assess for racial bias and its role in decision making when dealing with offenders and victims.

**Implications of Racially Biased Policies, Practices, and Decision Making**

Racially biased policies, practices, and decision making that focus on criminalization and institutionalization continue to affect disproportionately people of color. Because of such impact, there are very tangible costs in our current response to violence within communities of color. These tangible costs include more people of color being incarcerated, which results in more children having at least one parent in prison, more children of color being removed from their homes, and increasing financial costs to society, which disproportionately impact families of color.

According to several studies, poverty has been recognized as the single best predictor of child removal and placement outside of the home. The majority of children in foster care are from single-parent and low-income households. There is disproportionate poverty among African Americans, who represent 12.9% of the population, yet they represent 22.1% of the impoverished in this country. This does not suggest that low-income families abuse their children at greater rates. However, it does suggest that middle- and upper-income families have the resources to keep their children from system involvement. Physicians may tend to attribute injury to abuse in lower-income families, while being more likely to believe a parent from a middle- or upper-income family who reports that the child’s injuries were the result of an accident.

According to the Annie E. Casey Foundation, a child in poverty is:

- 26 times more likely to drop out of school;
- 160 times more likely to give birth as a teen;
- 18 times more likely to be killed by gunfire;
- 60 times more likely to suffer reportable abuse or neglect; and
- 46 times more likely to be placed in foster care.

The Adoption and Safe Families Act of 1997 (ASFA) was enacted with the intent to move children to permanency faster, as opposed to allowing them to languish in the child welfare system. One major change under ASFA is that if a child is in out-of-home placement for 15 of the most recent 22 months, the parental rights to that child can be terminated. Because children of color tend to stay in the child welfare system longer, this is an issue faced by many families of color. The reasons for children of color languishing in the system are multiple, including:

- Poverty; i.e., many families of color do not have the financial resources to comply with rehabilitative plans established by the courts in order to be reunited with their children; and
- African Americans tend to receive longer prison sentences compared to whites, a fact that ASFA does not necessarily take into account.

One study indicates that African American children are nearly nine times more likely to have an incarcerated parent in prison than white children, and Latino children are three times as likely as white children to have a parent in prison.

In 2002, people of color constituted 62% of the incarcerated population. African American men, who
Disproportionate Representation

comprise approximately 6% of the national population, are 41% of the nation’s prisoners. Nearly 13% of African American men between the ages of 25 and 29 are currently in prison. One federal government study estimates that one out of every four African American men will go to prison at some point in their lifetime.

Although incarceration alone cannot serve as a basis for terminating parental rights in most jurisdictions, it is very difficult to provide financial or emotional support for a child while incarcerated. Many people of color who are incarcerated, especially African Americans, are from urban areas, and most prisons are in rural areas. Because of poverty and the logistics of prison visits with children, long periods of time can elapse where there is no contact between the incarcerated parent and his/her minor children. As a result, if a parent has not had substantial contact with the child, and has failed to provide adequate financial or emotional support to the child for a period of six months (in most jurisdictions), the parental rights to that child can be terminated based on abandonment. Because of these factors and the shortened time lines required under ASFA, the impact of ASFA can be devastating, especially on families and children of color. Nevertheless, this negative impact still has to be measured against the need of a child to have a permanent, safe, and nurturing home.

A recent court case, In re: Nicholson, et al, 181 F.Supp.2d 182 (E.D.N.Y. 2002), has raised major implications for the child welfare and judicial systems and the domestic violence arena. Nicholson involved poor women, disproportionately women of color, whose children were removed from their custody on the grounds of failure to protect for the sole reason that these women were victims of domestic violence. In Nicholson, a class action lawsuit filed in the State of New York, the court held that the child welfare system did not assist the mothers in leaving their abusive situations, and the children were placed in foster care without just cause. In issuing a preliminary injunction, the court held that the written policy of the Administration for Children’s Services encouraged improper conduct by child protective workers, citing violations of the Fourth, Ninth, Thirteenth, and Fourteenth Amendments for blatant disregard of the plaintiffs’ due process rights. The court also found that the court-appointed counsel for many of these women were poorly and inadequately trained. This case could lead to sweeping systemic reform on a national basis, inasmuch as it is one of first impression, and to the extent that it addresses these issues with such condemnation of the practices engaged in by the state’s child welfare agency.

There are also significant intangible costs to reliance on criminalization and institutionalization of families of color. Most notably, biased policies, practices, and decision making run the risk of polarizing communities of color and the justice system. If child welfare, juvenile justice, and adult prison systems continue to appear to be racially biased, communities of color may become more reticent and avoidant of the criminal justice system, even in cases involving violence.

Biased policies, practices, and decision making may also make it more difficult for families of color to trust that systems are being fair and responsive. As a result, it is incumbent upon all intervening professionals to continually identify, assess, and reassess their practices for racially-biased decisions. Given the central role judges play in cases of child maltreatment, juvenile justice, domestic violence, and sanctioning offenders, their neutrality and education is crucial.

Judicial Recommendations

Judges, through their decisions, can impact and change the appearance of racial bias. Because judges work closely with other systems and agencies to ensure just outcomes for families experiencing violence, their leadership in the courtroom and in the decision-making process also reflects their community’s perception of fairness and racial justice. Judges often are viewed as the final and ultimate legal authority in the judicial system, and failure to handle cases appropriately results in minimizing the impact they have on the disproportionate representation of families of color in the different systems.

The judge sets the tone in the courtroom and makes crucial decisions affecting the lives of victims, perpetrators, and children. It should be the mission of the judiciary to enhance the safety of battered women and their children, and to hold batterers accountable for their conduct—without perpetuating racial injustice. This can be accomplished through education as to how judicial decisions play such a critical role in preventing domestic violence injuries and deaths and promoting justice and fairness.

Recognizing that victim safety is the primary consideration, judges can facilitate safety, justice, and fairness in their courtroom by being aware of the following:
- **Organizational culture:** Set the tone that racial bias is unacceptable through the appropriate use of orders, decision making, and sentencing.

- **Differential response:** Recognize that cookie-cutter responses will not serve the best interest of children or their families and that responses should be culturally appropriate and tailored to meet the needs of each individual family.

- **Collaboration:** Coordinate with other courts and agencies to the extent ethically possible, while taking a more active approach in learning information about the specific abusers and their victims who appear in court.

- **Complex and multifaceted issues:** Recognize that the families who come before the bench may be experiencing more than one issue, (i.e., there may be substance abuse involved, health and mental health issues, poverty issues) which can be compounded if the family is also having to deal with racial bias in the different systems.

- **Appropriateness of service response:** Direct perpetrators and victims into the appropriate programs with an emphasis on programs that target the specific needs of people of color.

- **Culturally competent staff:** Ensure that court staff are culturally competent as well as other system players and service providers in the child welfare, juvenile justice, domestic violence, and criminal justice systems.

- **Compliance:** Monitor the defendant’s/perpetrator’s progress with court orders and rehabilitation plans through compliance review hearings.

- **Impact of poverty and other issues on court orders:** Have an understanding that poverty in large part contributes to victims remaining in abusive situations, and that the victim’s reliance upon the abuser’s financial support may contribute to the request to discontinue protection orders. Take extra precautions to make sure that the victim understands all of the ramifications in the dismissal of a protection order and that there is a safety plan in place. Use well-trained advocates to work with victims. To offset poverty implications, be diligent about ordering abusers to pay child support. Understand how ASFA requirements may disproportionately impact families of color.

Judges should also take the lead in the following areas:

- Make sure victims have informed, competent, and affordable counsel. This can be accomplished in part by leading efforts to make sure that court-appointed counsel are paid a fair hourly fee for their services, which will attract more experienced attorneys to handle cases.

- Be sure that the court system is user friendly for pro se victims.

- Take the lead in identifying and developing resources for victims and perpetrators that are lacking in your jurisdiction, with special emphasis on services for victims and perpetrators of color.

- Be a leader for prevention and early intervention services due to the causal connection of being an abused child, a juvenile delinquent, and a perpetrator or victim of domestic violence.

The above are not intended to be exhaustive lists of recommendations, and judges should remember that the paramount consideration is victim safety. As families, and in particular families of color, are propelled into the child welfare, juvenile justice, and criminal justice systems, it is becoming increasingly critical for judges to be aware of the disparities and underlying causes of disproportionate representation of people of color in these systems. The burden of understanding racism and how it may impact institutional response can no longer be left only to people of color to identify and address.

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END NOTES

6. Id., pt. IV at 181. (The child and CPS population statistics for 1998 and 1999 were averaged to arrive at these numbers).
7. Id. (Minnesota has assessed and implemented programs and approaches to reduce the impact of racial disproportionality). See also Minn. Dep’t of Health & Human Services, Children’s Services: Study of Outcomes for African American Children in Minnesota’s Child Protection System, Report to the 2002 Legislature (2002).
8. Id. (Those states reviewed were Alaska, Montana, and Washington State).
18. Id. at 150.
20. Id. at 40, tbl. 7.
33 Id. at 5.
35 Id.
37 Id.
39 Id. at 22.
41 Id. at 10-11.
42 Id. at 10.
43 Id. at 11.
44 Id.
45 Id.
46 Id.
48 Id.
50 Id.
51 Id.
52 Id.
60 Id.
63 The case has since been certified to the New York Court of Appeals to answer questions regarding state law, specifically regarding whether or to what extent witnessing domestic violence constitutes child neglect. See, Nicholson v. Scopetta, 344 F3d 154, 2003 WL 22130666 (2nd Cir. (N.Y.), Sept. 16, 2003).