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Race and Social Problems

ISSN 1867-1748

Race Soc Probl
DOI 10.1007/s12552-018-9248-y



Race and Social Problems

VOLUME 5 • NUMBER 3 • SEPTEMBER 2013

 Springer

12552 • ISSN 1867-1748
5(3) 147–238 (2013)

Available
online
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Opportunities Diverted: Intake Diversion and Institutionalized Racial Disadvantage in the Juvenile Justice System

Tony P. Love¹ · Edward W. Morris¹

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Abstract

The overrepresentation of youth of color in the juvenile justice system is well documented, but researchers know less about the mechanisms that produce these disparities. In this paper, we focus on an understudied point of contact between youth and the criminal justice system: intake diversion. Based on a multivariate analysis of court records, we find that racial disparities in diversion are strongly mediated by family structure. We suggest that assumptions about the role of family in the completion of diversion requirements create indirect disadvantages by race. Specifically, African American youths are denied diversion opportunities largely because they disproportionately live in alternative family arrangements. Importantly, however, our analysis also reveals that such assumptions about family are *incorrect*. Family structure in our data has no relationship to the successful completion of diversion. We conclude by discussing the implications of these findings for understanding institutionalized racial disadvantage in juvenile justice.

Keywords Systemic racism · Juvenile justice · Diversion · Discrimination

The overrepresentation of youth of color in the juvenile justice system is well documented (Bishop and Frazier 1996; Fader et al. 2014; Feld 2017; Leiber 2015; Puzzanchera and Hockenberry 2018; Sampson and Laub 1993). However, researchers know less about the mechanisms producing these disparities, particularly within the early stages of juvenile processing. In this paper, we examine racial disparity in an understudied point of contact between youth and the juvenile justice system: intake diversion. Diversion is an agreement between the youth and justice authorities through which the youth must complete an assigned program in lieu of a formal hearing. If the youth completes the program satisfactorily, the charges are dropped and there is no record that the youth was ever charged. Diversion is thus a key decision point at which leniency may be offered to youthful offenders. Based on a multivariate analysis of court records, we analyze the relationship between race, family structure, and diversion. Because African American youths in our data are more likely to live in alternative family arrangements, our analysis tests how family structure matters for diversion offers and

diversion program completion. As we discuss, our results point to a strong linkage between race and family structure in diversion opportunities, suggesting an indirect, institutionalized racial disadvantage.

In framing our findings, we draw from contemporary theories of racial discrimination. These theories endeavor to understand how racial inequalities persist in a seemingly neutral, “color-blind” racial milieu (Bonilla-Silva 2006; Pager and Shepherd 2008). We enhance this literature by detailing how the ostensibly race-neutral factor of family status may act as a powerful, but indirect, source of unequal opportunity in juvenile justice. The importance of family status falls under what Pager and Shepherd (2008, p. 2) term *disparate impact* modes of discrimination, or “decisions and processes that may not themselves have any explicit racial content but that have the consequence of producing or reinforcing racial disadvantage.” We contend that this indirect mode of racial inequality is particularly relevant in the juvenile justice system, where the state and the family intertwine. The state asserts authority within the family of origin, or assumes custodial authority from that family, depending on interpretations of the child’s best interest. We argue that this paternalistic approach paradoxically creates space for the reproduction of racial inequalities through family status.

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Explanations for Racial Disparity

Scholars have offered several explanations for minority overrepresentation in the juvenile justice system. A common explanation is simply that youth of color commit more delinquent acts, and these acts are more serious in nature (Lauritsen 2005). Critics of this explanation counter that policing focuses surveillance on minority neighborhoods, and profiles minority youth (young Black and Latino males, in particular) as dissolute troublemakers (Rios 2011). Moreover, while a higher proportion of minority youths are taken into the justice system, inequitable outcomes also occur as these youths move across institutional decision points. Research shows that, controlling for offense severity, minority offenders receive more severe punitive outcomes (Mitchell 2005). In juvenile justice, the impacts on minority offenders tend to accumulate as they circulate through the system, with greater rates of arrest, lower rates of diversion, higher rates of pre-trial detention, higher rates of formal processing, and so on (Leiber et al. 2009). Thus, it appears that differential behavior alone cannot account for the full scope of racial disparity in juvenile justice.

Critical theories of race and justice have emerged to explain disparities within juvenile justice processing. At their core, these perspectives posit that some form of decision-making bias occurs among justice officials such as judges, attorneys, and court case workers (Bishop and Frazier 1996; Bridges and Steen 1998; Clair and Winter 2016; Fader et al. 2014). In a landmark article, Bridges and Steen (1998) found that probation officers' interpretations of youths differed significantly by race with minority youths described as more threatening, less remorseful, and less respectful than White juveniles who had committed similar crimes. These evaluations led to assessments of higher risk for minority youths to reoffend. More recently, Fader et al. (2014, p. 126) found that juvenile court decision makers deploy a "racialized perceptual shorthand," attributing higher levels of responsibility, and lower possibility of reform, to youth of color.

It remains unclear why such decision-making biases might emerge. One influential perspective draws from psychological research on "implicit bias." This framework claims that people harbor subtle, unconscious, but powerful racial biases (Greenwald and Banaji 1995). These preconceptions concatenate through the process of child development, as children build deeper connections with family members likely to share their racial attributes and internalize messages about race from the social environment. Such biases are pre-conscious; they operate without the individual's knowledge and sometimes even against her or his stated intentions. However, they tend to result

in stereotypical associations, especially toward racial out-group members (Dovidio et al. 2002). These stereotypes lurk under the surface of consciousness until unwittingly activated, especially in circumstances of tension or ambiguity (Payne 2006). Situations occurring in realms of law and justice often provoke such biases, which can have grave consequences for people of color (Kang and Lane 2010). For example, Levinson and Young (2010) presented participants in a mock jury experiment with information about an armed robbery, and asked them to assess the perpetrator's guilt. In presenting this information to participants, the researchers altered the image of the perpetrators so some participants saw a light-skinned image and some saw a dark-skinned image. Participants viewing a dark-skinned image were significantly more likely than those viewing a light-skinned image to attribute guilt. According to Levinson and Young (2010), darker skin triggers deeply held stereotypes about criminal intent. Similarly, Johnson and King (2017, p. 520) reveal evidence of "facial profiling" where photographs of Black offenders (in interaction with other facial characteristics) were perceived by independent raters as significantly more threatening than White offenders when other facts of the cases were withheld.

We generally agree with the spirit of the implicit bias framework for understanding racial discrepant outcomes in the justice system. However, we contend that this approach, particularly in some applications, can have the adverse effect of over-individualizing racial inequality. Implicit bias, while accounting well for the subtle persistence of prejudice in a color-blind era, still places the locus of racial inequality primarily within the minds of individuals, not social structures. Implicit bias focuses on bias specifically and directly attached to race per se, and not symbols or categories that might act as proxies for race, such as social class or single-parent household. These seemingly non-racial proxies often provide cover for racially unequal treatment or thinking in a color-blind context (Bonilla-Silva 2006). Moreover, a strict concentration on the psychology of implicit bias can overlook other mechanisms of inequality, such as contextual discrimination, statistical discrimination, or racial threat (Crawford et al. 1998; Pager and Shepherd 2008). In this study, we highlight *institutional* discrimination in juvenile decision-making: how indirect, seemingly race-neutral institutional protocols perpetuate racial disadvantages. There are several examples of how ostensibly race-neutral policies and procedures can result in disparate impact in criminal justice. Alexander (2010) and Western (2006) show how putatively neutral policies couched in the War on Drugs and the War on Crime significantly magnified racial disparities in imprisonment. Specific examples include the stronger sentencing guidelines for crack cocaine as opposed to powder cocaine (Alexander 2010), and enhanced penalties for crimes considered gang-related (Rios 2011). Both policies can result in

harsher outcomes for Black and Latino urban residents without specifying race in any way. In this paper, we add to such findings by presenting a case study that indicates institutional discrimination in juvenile justice decisions regarding diversion. As we show, because living arrangement appears to be a key driver of decisions for diversion in the juvenile system, such decisions may have racialized impacts without appearing to be racially relevant in practice.

Intake Diversion and Family Status

Our analysis focuses on intake, an early point in the juvenile justice process.¹ Following arrest or non-police complaint, juveniles are referred to court staff for intake processing. Using a checklist protocol and other guidelines, a court staff member conducts a risk assessment of the juvenile. This risk assessment includes an evaluation of living arrangements and parent or caregiver supervision. In most situations, the staff member has the authority to determine whether the youth meets the criteria for a diversion agreement or whether the youth should be formally processed. In some situations, the results of this assessment are provided to the County Attorney who determines if the case should be forwarded for formal processing or offered a diversion option. It is also decided at this point of contact whether to detain the juvenile. Diversion means that the youth is released with certain conditions, such as the completion of community service, enrollment in a substance abuse program, enrollment in a behavioral rehabilitation program, or payment of restitution. Although diversion typically requires admission of guilt, this option is generally more lenient than the outcome of a formal trial, and does not appear on the juvenile's permanent record as a conviction.

Diversion is often characterized as a counterpoint to the "get tough" approaches to punishment that have pervaded the justice system, including at the juvenile level (Fader et al. 2014; Garland 2001; Patrick and Marsh 2005). Diversion reflects an ethos of rehabilitation and restorative justice rather than retribution. Avoiding a court hearing means that youth also avoids the possibility of acquiring a formal deviant label, which suggests that they may be less likely to reoffend (Lemert 1951). Evidence suggests that desistance is indeed higher among youths who are offered a diversion option, even when controlling for offense severity and other factors (Patrick and Marsh 2005; Wilson and Hoge 2013).

In most jurisdictions, there are a number of ways in which a juvenile might be offered a diversion agreement. In some

locations, the decision can come from an intake officer, at an initial appearance before a judge, or even during the probation period. In the county that is the focus of the current study, a juvenile might receive a diversion agreement at intake or once they face a juvenile judge for the first time, in essence occurring before the formal adjudication hearing. This kind of diversion is often called pre-trial or pre-hearing diversion.

In addition to diversion being offered at multiple stages of the juvenile justice process, multiple diversion options often exist. Some jurisdictions might offer diversions that range as widely as drug court, teen court, or gang deactivation to therapeutic horse farms, anger management, or hip hop dance classes. These vastly variant diversion programs may be differentially awarded based on the particulars of each juveniles' situation. In the county highlighted by the current study, the diversion programs are not quite as varied in terms of punitive severity. The options include citizenship lessons that focus on law, the legal process, and societal values; programs that aim to develop leadership skills and promote self-reliance; Community outreach programs in which juveniles create "I Care Kits," greeting cards, and food baskets, and carry out other projects to benefit senior citizens, disabled individuals, and other community causes; a 4-H program aimed at developing responsibility and self-esteem; a creative arts program where youth learn how to write, paint, act, sew, quilt, and other artistic skills; a community garden program that provides the opportunity to plant trees, shrubs, and perennials to benefit the community; and finally an ATV safety workshop that teaches how to safely operate all-terrain vehicles.

The limited studies on inequality in juvenile diversion indicate that youths of color, especially African Americans, are significantly less likely than Whites to be offered diversion (Bishop and Frazier 1996; Leiber and Mack 2003; Leiber and Stairs 1999). Leiber and Stairs (1999) discovered a significant racial disparity in diversion even when controlling for offense severity. These studies also suggest that a juvenile's family situation may influence diversion decisions. The juvenile justice system operates under the philosophy of *parens patriae*, meaning that state decision makers have authority to determine the best interest of the child. Juveniles are thus "protected" more than adult offenders, but such protection also means that decisions may be more ambiguous and less transparent. Officials may consider a host of factors beyond the infraction itself to determine the outcome of a juvenile case, especially at the point of intake (Leiber and Stairs 1999).

In diversion, the family situation of the juvenile is especially important because decision makers see the family as critical to supporting successful diversion programs. In interviews with juvenile justice officials, Bishop and Frazier (1996) found that officials denied diversion if the family

¹ Our data are from a Southeastern U.S. state, so we will specify this state's procedures. Other states might have slightly different guidelines.

could not be contacted, did not respond to office requests, or were perceived as uncooperative. Perceptions of family deficiency also intertwined with race in this analysis. Officials typically interpreted African American families as less cooperative and responsive, primarily because of single-parent or multi-generational structure. According to one State's Attorney interviewed by Bishop and Frazier (1996, p. 410), "minorities [offenders] don't go home because, unfortunately, their families are less able to control the kids." Justice officials are unlikely to offer community service, rehabilitation programs, or other lenient outcomes if they perceive lack of family support to fulfill such responsibilities.

The proposition that family structure relates to delinquency is not peculiar. Indeed, citing criminological research (e.g., Gottfredson and Hirschi 1990; Hirschi 1969), federal guidelines list items such as single-parent homes, large families, and foster care as risk factors for juvenile offending (Development Services Group 2015). The normalization of the nuclear, two-parent unit dates back to Parsons (1943), who argued that this kinship form is functional for late capitalist societies. This assumption has been widely critiqued by race and gender scholars, who argue that, among other deficiencies, it elides extended kin network support in African American communities (Allen 1995; Collins 1990; Stack 1974). Approximately 44% of African American family households are single-mother headed, indicating a strong relationship between race and family structure (U.S. Census Bureau 2016). However, while the linkage between family structure and juvenile offending has been debated (Mack et al. 2007; Wells and Rankin 1991), there is little scientific evidence that family structure affects the completion of diversion programs. Research on intake diversion among juveniles indicates that aggressive behavior, educational performance, and family tension have been linked to the failure to complete diversion programs (Loeb et al. 2015), but an effect of family structure on completion has not been established (nor systematically examined).

Building from the limited but important previous research on diversion, we explore the relationship between family structure, race, and juvenile decision-making by testing how family structure might mediate the effect of race on diversion decision-making. We believe that this strategy can best determine how racial disparities in juvenile justice might operate indirectly, through perceptions of family. Moreover, to enhance our analysis we couple this exploration of race and the family with an assessment of whether family structure actually matters for the successful completion of diversion requirements. Based on a comprehensive multivariate analysis of detailed court records, we pose the following hypotheses:

- 1) African American youths are less likely to receive diversion agreements than are White youths.

- 2) Living arrangement mediates the effect of race on the likelihood of receiving a diversion agreement.
- 3) Living arrangement has no effect on the likelihood of successful completion of diversion programs.

In sum, we predict that there is a disparity by race in the likelihood of receiving a diversion agreement, but this relationship is mediated by living arrangement. That is, although there appears to be a direct relationship between race and the likelihood of receiving a diversion agreement (White youth more likely), the true nature of the process is that race affects the likelihood that a youth is in a living arrangement that is in turn less likely to receive a diversion agreement. Thus, it is the living arrangement that is the true driver of racial disparities in diversion agreements. Statistically, a test of this relationship would show a statistically significant bivariate relationship between race and the likelihood of receiving a diversion agreement. Furthermore, once living arrangement is entered into the equation, the relationship between race and the likelihood of receiving a diversion agreement would be nullified while the relationship between living arrangement and the likelihood of receiving a diversion agreement would remain robust. Additionally, we hypothesize that the juveniles' living arrangement has no bearing on the likelihood that they will complete the diversion agreement successfully.

Data and Methods

The data come from 2 years (2013–2014) of juvenile county court data collected from an urban county in a Southeastern state of the United States of America. Overall, this county is classified as a metropolitan county with an estimated population of over 300,000 and is 75% White and 15% Black (U.S. Census Bureau 2017).

Sample and Variables

The total N for our sample is 3026. Of those 3026 juveniles, 2014 are male and 1012 are female. The sample includes 1163 White, non-Hispanic juveniles, and 1863 African American, non-Hispanic juveniles. The individuals included in this sample range from 9 to 17 years of age with a mean of 15.02 years of age. The number of subjects who received a diversion agreement is 1069 (35.3) and the number who did not is 1957 (64.7%). See Table 1 for more specific details.

There are two critical independent variables for the current study, race, and living arrangement. Race is a dichotomous variable capturing whether the subject is reported to be White or African American. In the analyses, the race variable is coded as African American = 1 and White = 0.

Table 1 Descriptive statistics ($N=3026$)

	<i>N</i>	%
Received diversion agreement		
Yes	1069	35.3
No	1957	64.7
Offender characteristics		
Male	2014	66.6
White	709	
African American	1305	
Female	1012	33.4
White	454	
African American	558	
White	1163	38.4
African American	1863	61.6
Age (range 9–17)	15.02 (1.48) ^a	
Living arrangement		
Two parents	664	21.9
One parent	1187	39.2
Other	1175	38.8
Delinquency		
Prior referral	1297	42.9
No prior referral	1729	57.1
Felony	595	19.7
Misdemeanor	1247	41.2
Other	1184	39.1
Complainant		
Law enforcement	1642	54.3
School	761	25.1
Other	623	20.6
Socioeconomic status		
Percent persons in poverty (range 0–52.7)	23.16 (13.0) ^a	

^aMean with standard deviation in parentheses

The variable is listed as African American in all reported output tables.

Living arrangement refers to the composition of the juvenile's home or other living circumstances. For the purposes of this study, and based on existing research and discussion on the effects of living arrangement on delinquency, we categorize living arrangement into three categories: living at home with two parents (any combination of biological, adopted, or step-parents), living at home with one parent (biological, adopted, or step), and all other arrangements. Other arrangements include living with non-parent relatives, living with non-parent adults who are not legal guardians, foster care arrangements, group homes, and orphanages.

There are two critical dependent variables of interest in this study, whether the juvenile receives a diversion agreement and whether the juvenile successfully completes the diversion program. Pre-trial diversion programs act as an

avenue through which offenders can be punished for their crimes without involving formal processing. We focus specifically on the opportunity for diversion because it represents a major decision point in an offender's pathway to judicial outcomes. Those who do not enter a diversion agreement, because they were deemed ineligible or otherwise, enter formal processing and, unless the charges are dropped by the judge at their adjudication hearing, officially own a juvenile criminal record. Furthermore, in this county, all of the potential diversion programs carry the same requirements for parental investment. This variable is dichotomous coded 1 if the subject received a diversion agreement and coded 0 if the subject did not receive a diversion agreement.

Successful diversion completion refers to whether the subject successfully completed the parameters of his or her diversion agreement. If an offender agrees to enter diversion and successfully completes the requirements of the program, his/her criminal charges are dismissed. This variable is dichotomous and coded 1 if the subject successfully completed his or her diversion agreement and 0 if the subject did not successfully complete his or her diversion agreement.

Other covariates included in the models represent relevant personal characteristics, delinquency characteristics, and complainant characteristics. Personal characteristics controlled for in the study include sex and age. Sex is a dichotomous variable coded as 1 for male and 0 for female. This variable is listed as male in the resulting tables. The majority of the subjects included in the data are African American males. Age is a continuous variable that represents the age at which the offense of record occurred. There is not a lot of variability in the age of the subjects. Although the range of ages spans from 9 years old to 17, the mean is 15, and the standard deviation is about 1.5 years.

Delinquency characteristics include whether there were prior referrals on the juvenile's record and the charge severity. Since the majority of the offenders did not have a prior referral, the prior referral measure is dichotomized as prior referral = 1 and no prior referral = 0. Charge severity is listed in Table 1 as felony, misdemeanor, or other in order to convey the nature of the data. The "other" offense category includes offenses labeled as "other" in the database. It also includes offenses labeled as "local ordinance," and "violation." In the analyses to come, however, the measure is dichotomized as felony = 1 and non-felony = 0 since there is no statistically significant difference between misdemeanors and other charges on the likelihood of entering a diversion program.

Complainant characteristics simply refer to the originator of the complaint against the juvenile offender. These were categorized as law enforcement, school personnel, or other. Law enforcement includes complaints issued by city, county, or state police, and federal departments (i.e., Department of Fish and Wildlife). The school personnel category includes

Table 2 Logistic regression results predicting placement in diversion ($N=3026$)

Variable	Model 1			Model 2		
	Coeff.	SE	Exp (B)	Coeff.	SE	Exp (B)
Personal characteristics						
African American	−0.193	0.095	0.825*	−0.075	0.106	0.927
Male	−0.391	0.094	0.677*	−0.479	0.104	0.619*
Age	−0.012	0.031	0.988	−0.005	0.034	0.995
Offense characteristics						
Felony	−1.500	0.108	0.223*	−1.649	0.120	0.192*
Priors	−2.477	0.114	0.084*	−2.373	0.122	0.093*
Complainant						
Other (reference category)						
Police	−0.325	0.127	0.722*	−0.146	0.136	0.864
School	0.537	0.132	1.712*	0.885	0.144	2.423*
Living arrangement						
Two parents (reference category)						
One parent				−0.254	0.119	0.776*
All other arrangements				−2.428	0.147	0.088*
Socioeconomic status						
Percent poverty estimate	0.003	0.004	1.003	0.006	0.004	1.006
Constant	1.530	0.477	4.620	2.015	0.535	7.498

* $p < .05$

truancy clerks, principals, teachers, and school security. Other complainants include parents, legal guardians, store security, victims, and an “other” category already existing in the data set.

As an additional control variable, and to address the alternative explanation that juvenile diversion programs are affected by the juvenile’s socioeconomic status or their neighborhood’s socioeconomic status, we have included information about neighborhood poverty from the 2014 American Community Survey. For each case, we matched the juvenile’s residence zip code to ACS estimates of the percent of people below the poverty line in that zip code. For all zip codes within the county, the mean percent of people estimated to be in poverty is 22.7%. We note here that this measure is a limitation of the study. Unfortunately, officials do not record better measures of socioeconomic status when they intake juveniles into the system.

Results

To test Hypothesis 1, binary logistic regression was employed to examine the nature of the relationship between race and the likelihood of assignment to a diversion program. Two models were constructed. See Table 2. Model 1 shows the effect of race, other personal characteristics, delinquency characteristics, complainant, and poverty. Living arrangement is omitted from this first model. Based on this evidence, there is a statistically significant negative effect of

being African American ($b = -.193$, $p < .05$). Additionally, being male has a significant independent effect ($b = -.391$, $p < .05$). Both of these effects take into account the other variables included in the model. Thus, for example, arguments that juveniles who are African Americans and/or male are less likely to receive diversion because they are more likely to have a more severe charge are baseless. Furthermore, offenders are less likely to receive diversion if they are referred to the juvenile justice system by the police as opposed to school or other referrers ($b = -.325$, $p < .05$). Our measure of socioeconomic status has no effect.

More specific findings through the use of exponentiated betas are that African American juveniles are 17.5% less likely than White juveniles to receive a diversion agreement, controlling for sex, charge class, prior referral, and complainant. Male juveniles are 32.3% less likely than female juveniles to receive a diversion agreement, controlling for race, charge class, prior referral, and complainant. Juveniles charged with a felony are 77.7% less likely than juveniles charged with a lesser crime to receive a diversion agreement, controlling for race, sex, prior referral, and complainant. Juvenile offenders with prior referrals are 91.6% less likely to receive a diversion agreement, controlling for race, sex, charge class, and complainant. If the complainant is a law enforcement agency, the juvenile is 27.8% less likely to receive a diversion agreement than those with other complainants (not school or law enforcement), controlling for race, sex, charge class, and prior referral. If the complainant is school personnel, the juvenile is 71.2% more likely to

Table 3 Race by living arrangement

	Two parents	One parent	Other	Total
White juveniles	30.3	36.5	33.3	
	352	424	387	1163
African American juveniles	16.7	41.0	42.3	
	312	763	788	1863
χ^2	78.340, $p < .001$			

% in bold

receive a diversion agreement than those with other complainants (that is, not school or law enforcement), controlling for race, sex, charge class, and prior referral.

Model 2 includes the living arrangement measures as a first step to testing Hypothesis 2. Offenders living with one parent are less likely than those living with two parents to receive diversion ($b = -.254$, $p < .05$), and those living in other arrangements are *much* less likely ($b = -2.428$, $p < .05$). The strength and the direction of the effect of the original covariates included in the model are largely unchanged with exception to race which is now an insignificant effect ($b = -.075$, $p > .05$). Being an African American youth does not have a statistically significant effect on the likelihood of diversion when controlling for living arrangement. This indicates that there could be mediation of the effect of race on diversion opportunities through living arrangement.

As a next step to testing Hypothesis 2, we assess the relationship between the race of juvenile offenders in our sample and living arrangement. Model 2 of Table 2 shows that the effect of race on diversion placement is eliminated by the inclusion of living arrangement, which is a statistically significant predictor of diversion placement. As such, we know that a link exists between living arrangement and diversion placement. In order to claim that mediation by living arrangement occurs in the relationship between race and diversion placement, we must indicate a relationship between race and living arrangement. See Table 3. In this sample, African American juveniles are more likely to have living arrangements in which less than two parents are present and less likely to have living arrangements in which two parents are present. This relationship is corroborated by a logistic regression model, not shown here, in which juveniles of color are 50% less likely than white juveniles to have a living arrangement that includes two parents, controlling for sex, age, offense severity, prior referral, complainant, and percent poverty in the zip code.

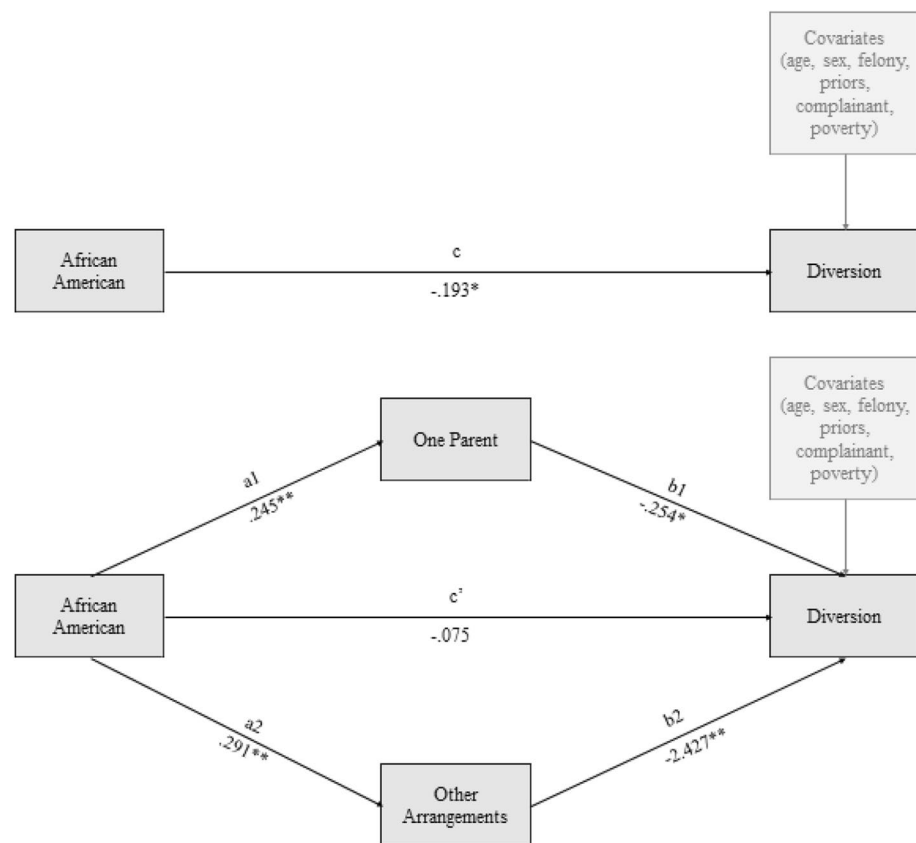
The next step to testing Hypothesis 2 is to more thoroughly estimate the mediation effects. While most social scientists readily recount the methods described by Baron and Kenny (1986) for modeling mediation, this procedure is not suitable for binary outcomes or categorical

mediators. Estimation of the mediation effects of categorical mediating variables on categorical outcome variables is complicated. It is especially complicated if the mediating variable has multiple categories but is not continuous. The mediating variable here, living arrangement, has three distinct categories: (1) living with two parents; (2) living with one parent; (3) living without parents in some other arrangement, but these categories are not sufficient to treat the variable as if it is a single continuous measurement. In order to deal with this issue in the mediation analysis, we treat the variables just as we have above in the logistic regression models presented in Table 2. The dichotomous representations of living with one parent and living with no parents (other arrangements) are included in the analyses. The effect of each variable and their cumulative mediation effect is discussed below.

To examine the mediation effect of living arrangement on the relationship between race and diversion opportunities, we employ STATA's binary mediation package (Ender 2010). This technique has been employed in a number of peer-reviewed publications (Glöckner and Engel 2013; Goodman et al. 2016; Roscoe et al. 2018; Tomita et al. 2014). This method uses the product of coefficients approach to computing indirect effects after standardizing the coefficients. The current research examines binary mediating and outcome variables. As such, logistic regression is the test conducted for each path. Sex, age, offense severity, prior referral, complainant, and estimated poverty are included in each model as control variables.

Figure 1 shows the mediation analysis in graphic form. Coefficient c represents the direct effect of being African American on the likelihood of receiving a diversion agreement when living arrangement is not controlled. The value of Coefficient c , $-.193$, is the same value present in Table 2, Model 1. Model 1 presented in Table 2 shows a statistically significant relationship between race and opportunities for diversion programs (Coefficient c). When living arrangement is considered, however, the direct effect of race is diminished to the point of non-significance ($c' = -.075$, $p > .05$). Instead, being African American statistically significantly predicts having living arrangements that do not include two parents at home (Coefficients $a1$ and $a2$). Simply put, in our data, African American juveniles are more likely to have one parent at home compared to two parents ($a1 = .245$, $p < .01$), and they are more likely to be living with none of their parents at home as compared to living with two parents ($a2 = .291$, $p < .01$). Adding to this disadvantage, juveniles with one parent are less likely to be included in diversion programs ($b1 = -.254$, $p < .05$), and juveniles living with no parents are much less likely to be included in diversion programs ($b2 = -2.427$, $p < .01$). Thus, inequitable opportunities for diversion by race are driven by inequitable opportunities by living arrangement.

Fig. 1 The mediating effect of living arrangement on the likelihood of receiving a diversion agreement¹



¹ unstandardized coefficients reported
* $p < .05$, ** $p < .01$

Table 4 Indirect effects and other outcomes

Variable	Coeff.	95% CI
Two parents (reference category)		
One parent $\beta_{a1 \times b1}$	−0.004 ^a	[−.010, −.001]
Other arrangement $\beta_{a \times b}$	−0.043 ^a	[−.069, −.019]
Total indirect effect $\beta_{a \times b}$	−0.047 ^a	[−.072, −.023]
Direct effect $\beta_{c'}$	−0.018 ^a	[−.065, −.032]
Total effect β_{overall}	−0.064 ^a	[−.117, −.011]
Proportion of total effect mediated	0.732 ^a	

^aCI does not contain zero

Indirect, direct, and total effects are presented in Table 4. While the coefficients in the logistic regression analyses and in the diagram are not standardized, the coefficients were standardized to complete the product of coefficients process. Additionally, statistical significance of these coefficients is determined by obtaining confidence intervals through bootstrapping techniques as suggested by Preacher and Hayes (2008). Confidence intervals that do not include zero are considered to be statistically significant and are marked with an asterisk. We create bias corrected bootstrapping confidence intervals through 10,000 replications. Age, sex,

severity of charge, prior referral, complainant, and estimated poverty are still included as control variables. We find that the individual indirect effects of both categories of living arrangement are statistically significant. The total indirect effect is also statistically significant, and is approximately 2.5 times larger than the direct effect. The direct effect is not statistically significant, once again pointing to the mediating effect of living arrangement. Importantly, the proportion of the total effect of race on diversion opportunities that is mediated by living arrangement is .73. We conclude that racial disparities exist in assignment to diversion programs, but that it is mediated by the effect of living arrangement on diversion assignment. Hypothesis 2 is supported.²

Perhaps it is the case that there is merit in granting access to diversion programs to those juveniles who are situated

² In analyses not reported here, we examined the bivariate effect of living arrangement on successful diversion completion. Living arrangement was not a statistically significant predictor. In further analyses not presented here, we conducted the same mediation analysis but instead included gender as the primary predictor of the likelihood of receiving a diversion agreement. The results show that gender is non-statistically significant, making the effect of living arrangement a truly racialized factor.

Table 5 Logistic regression results predicting successful diversion ($N = 1005$)

Variable	Model 1			Model 2		
	Coeff.	SE	Exp (B)	Coeff.	SE	Exp (B)
Personal characteristics						
African American	-0.251	0.184	0.778	-0.240	0.186	0.786
Male	-0.360	0.180	0.698*	-0.391	0.182	0.676*
Age	0.008	0.059	1.008	-0.008	0.060	1.008
Offense characteristics						
Felony	-1.345	0.221	0.261**	-1.358	0.223	0.257**
Priors	-0.933	0.254	0.393**	-0.891	0.255	0.410**
Complainant						
Other (reference category)						
Police	1.218	0.261	3.382**	1.232	0.264	3.429**
School	-0.117	0.220	0.890	-0.110	0.221	0.896
Living arrangement						
Two parents (reference category)						
One parent				-0.191	0.201	0.826
All other arrangements				-0.566	0.303	0.568
Socioeconomic status						
Percent poverty estimate	-0.020	0.007	0.980**	-0.019	0.007	0.981*
Constant	2.478	0.907	11.917	2.637	0.918	13.973

* $p < .05$

** $p < .01$

in certain living arrangements. We hypothesize that this is not the case. Hypothesis 3 states that living arrangement has no effect on the likelihood of successful completion of diversion programs. To assess this hypothesis, we explore the effect of living arrangement on successful diversion completion through binary logistic regression including the same independent variables that were included in the models predicting the likelihood of receiving a diversion agreement. Results are presented in Table 5. Since this analysis includes only those who have completed diversion, either successfully or unsuccessfully, the number of cases is reduced to 1005. Of the 1005 juveniles who entered diversion programs in our sample in 2013 and 2014, 787, or 78.8%, successfully completed the program.

Table 5, Model 2 includes the full battery of independent variables. Race is not a statistically significant predictor of successful completion of a diversion program ($b = -.240$, $p > .05$). Statistically significant predictors of successful diversion completion include a decreased likelihood of success for male offenders ($b = -.391$, $p < .05$), felony offenders ($b = -1.358$, $p < .01$), and those with prior offenses ($b = .891$, $p < .01$). Offenses in which the complainant was the police are actually more likely to complete diversion successfully ($b = 1.232$, $p < .01$). Unlike the previous model predicting likelihood to receive a diversion agreement, this model shows a significant effect of the poverty estimate ($b = .019$, $p < .05$). This may indicate resource deprivation in some communities that inhibit juveniles from completing

diversion successfully. Most notably for our test of Hypothesis 3 is that living arrangement is not a statistically significant predictor of successful completion of diversion programs. None of the categories of the living arrangement variable are predictive of diversion success. Living with one parent ($b = 1.191$, $p > .05$) or living in any other arrangement ($b = -.566$, $p > .05$) has no statistically significant effect on this outcome. Hypothesis 3 is supported. As such, we claim that, on average, living arrangement does not affect successful completion of diversion programs and should not be considered as a factor in prescribing diversion programs as a treatment for juvenile offenders. Furthermore, living arrangements are highly related to race, and using living arrangement as grounds to assign diversion creates disproportionate opportunities for diversion that is detrimental to racial minority delinquent youth. Any differences by race in successful completion of diversion warrant further exploration as areas in which diversion programs can focus their efforts to be more successful and equitable.

Discussion

We find support for the argument that minority youth are indirectly affected through institutional juvenile justice decisions, and we advocate that basing decisions on a juvenile's family structure inequitably affects White and African American juveniles' access to diversion programs. The

disproportionate punishment of youth of color in the justice system is a pressing social issue. Contact with the justice system as a juvenile, particularly resulting in probation, detention, or other serious outcome, strongly predicts adult offending (Sampson and Laub 1993). Thus, the juvenile system helps to feed the racial disparities observed in the adult system, including adult incarceration (Western 2006). Intake decision-making is a critical point at which youthful offenders may be given a “second chance” to divert a potentially dangerous trajectory toward crime and imprisonment. Based on data from this Southeastern U.S. jurisdiction, however, our findings provide evidence that racial disparities may be built into juvenile justice decisions about diversion. The examination of our hypotheses revealed that (1) African American youths are less likely to receive diversion agreement, controlling for other relevant factors; (2) living arrangements strongly influence diversion decisions, and mediate the effect of race; and (3) living arrangements do not matter for the successful completion of a diversion program. Our data suggest that evaluations regarding family circumstances appear to thwart diversion opportunities, disproportionately impacting African American youth. We must caution that our results are limited by our data, which capture only results of decisions, rather than the decision-making process itself. Thus, we can only infer that decisions are being made, at least partially, on the basis of a youth’s family situation. However, because the mediation relationship we observe is so striking, we maintain that this inference is logical, based on the results. Moreover, our data, albeit from one jurisdiction, include a large set of observations taken directly from court records, not self-reports. Thus, we have confidence that our results accurately depict a relationship between family structure and diversion.

Taken in context, our results add to the findings on the relationship between racial inequality and criminal justice. As several scholars have shown, the United States has witnessed an unprecedented explosion in the prison population (Garland 2001; Western 2006). Over the past four decades, incarceration rates have increased fivefold, resulting in a U.S. prison population well over two million (Phelps and Pager 2016; National Research Council 2014). This mass incarceration has compromised families and communities, especially in poor, predominately African American neighborhoods (Clear 2007; Wakefield and Wildeman 2013). In particular, historically high incarceration rates have left a surfeit of children with one or both parents in prison (Wakefield and Wildeman 2013). This increase in parental incarceration has disproportionately affected African American children (Western and Pettit 2010). Alternative family structures, such as extended kin networks, have long featured in African American community and family life (Stack 1974). However, with the advent of mass incarceration in recent decades, the number of African American children living

apart from one or both parents has spiked (Foster and Hagan 2015). If, as our findings suggest here, family structure, race, and juvenile justice decisions for diversion are closely interwoven, this may reproduce a linkage between race and criminalization across generations.

We suggest that the protective aegis of the juvenile justice system inadvertently fuels these disparities in family status and race. Ostensibly, the juvenile courts intend to shield youthful offenders, and provide them more leniency and care than adult offenders. The doctrine of *parens patriae* suggests that the state protects the rights of its most vulnerable citizens, including children. However, this putative (and perhaps well-intentioned) compassion can conceal great discretionary authority, which exercises power over children and their families in the interests of state protection (Curtis 1976). Diversion itself represents the subtle administration of state authority through productive, autonomous social programs focused on normalization, similar to what Foucault (1991) termed “governmentality.” The family is a key site of this governmental power, as expert authorities seek to “normalize the family and to improve its functioning” (Garland 1997, p. 179; see also; Donzelot 1979). In making determinations based on a juvenile’s home situation—either its structure or responsiveness—court workers may quietly reinforce normative family assumptions and deny opportunities to those who do not meet these criteria. Our findings regarding diversion thus illustrate how the paternalism of the juvenile system can actually subvert the goals of equal opportunity and rehabilitation.

Because family status is systematically linked to race and diversion decisions in our analysis, we propose that perceptions of family suitability appear to be a key driver of decision-making. Indeed, because family structure mediates the effect of race in our data, and since *White* youths with alternative family structures are similarly denied diversion, our results suggest that decisions may not be made on race per se, yet they clearly result in racial discrepancies. Our results thus concur with a line of research that locates *disparate impact* discrimination (Pager and Shepherd 2008) encoded in the organizational protocols of the justice system, such as gang database initiatives (Rios 2011), accumulating disadvantage (Sutton 2013), and drug sentencing guidelines (Hebert 1997). Such indirect manifestations of inequality may be rooted in the very circuitry of the juvenile system, with little overt evidence of racial bias.

We suspect that, in practice, implicit racial bias may interact with institutional protocols such as risk-assessment screening or policies regarding family structure. Unfortunately, we lack the data to examine this complex decision-making process here. We suggest that future research should gather deeper qualitative data on how justice officials use assessment tools, along with their own interpretations, to make decisions. An in-depth examination of everyday

“situational decision-making” by institutional actors can reveal the interplay of individuals and structures in justice outcomes (Clair and Winter 2016). We view this as especially important in the juvenile system, where decision-making is based on greater discretion and often less transparency than the adult system. Implicit bias is a promising explanation for inequality in the justice system, but we believe that it must be examined in real life situations and integrated with the study of institutional forces.

Remarkably, our results indicate that assumptions about family structure are not just racially biased; they are also erroneous. Family structure is not related to the successful completion of diversion. This raises serious questions about the use of family arrangements as a criterion for delinquency risk in the juvenile system. As mentioned earlier, government-based guidelines of youth behavioral assessment list family structure as a risk factor. While there may be some evidence that justifies this connection on a national scale, local patterns may not follow patterns derived from national studies. Thus, we would urge local officials to study associations of risk and family status in their jurisdictions before using family as a risk criterion. Moreover, denying diversion to juvenile offenders based on the structure or responsiveness of their family seems contrary to principles of equal opportunity. We hope the results shown here prompt a reassessment of the use of family status, along with the role of the family itself, in juvenile justice decision-making.

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