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# DISPROPORTIONALITY AND EQUITY

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***Please see the Checklist Section for the Disproportionality checklist.***

## Background

Disproportionality is the overrepresentation or underrepresentation of a group within a social system at a rate or percentage that is not proportionate to their representation in the general population. Disparity refers to the differences in outcomes and conditions for some groups of people compared to other groups because of unequal treatment or services. African American and Native American children are disproportionately represented and have worse experiences and outcomes than Anglo children in the nation's child welfare system.

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*Special Issue: The terms used herein to describe populations are the same terms which are currently used to collect race/ethnicity data. In applying an equity lens to the child welfare system, it is important to note that terminology is evolving. African American, Black, Hispanic, Latino/a or Latinx, Anglo, White, Native American, and Indigenous are all terms used to describe race and ethnicity.*

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Disproportionality has most significantly affected African American children, with national data indicating that African American children represent 23% of children in foster care, although they represent only 14% of children in the general population.<sup>104,105</sup> This overrepresentation of African American children has been observed in the child welfare system for more than thirty years, yet persists as a national concern.<sup>106,107</sup>

Disproportionality and disparity can be seen in the experience and outcomes of other populations as well. For example, a 2019 research study by the University of Texas at Austin found that 30.4% of youth in foster care self-identify as Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) compared to 11.2% of youth who self-identify as LGBTQ in the general population.<sup>108</sup> Compared to heterosexual youth in foster care, LGBTQ youth in foster care report greater disparities in terms of school performance, mental health, and victimization.<sup>109,110</sup>

## A. In Texas

In Texas, the issue of disproportionality and disparities is complex. DFPS data from FY 2020 show:

- African American children are 1.7 times more likely to be reported to CPS than Anglo children;
- African American children are 1.9 times more likely to be investigated;
- African American children are 1.6 times more likely to be removed;
- Hispanic children are slightly less likely than Anglo children to be reported or removed, but are investigated at the same rate as Anglo children;

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- Children of other ethnicities are 2.2 times as likely to be reported and slightly less likely to be investigated or removed compared to Anglo children.<sup>111</sup>

After removal, African American children are less likely to reunify and, if reunification is ruled out, they wait longer for adoption than other populations. African American children are overrepresented in foster care, Anglo children are proportionately represented, and Hispanic children are underrepresented. However, most Hispanic children wait longer than Anglo children to be adopted.<sup>112</sup>

DFPS collects data at critical decision points in the CPS system by race and ethnicity to measure and understand the extent of disproportionality in the child welfare system. DFPS traditionally employs a CPS Disproportionality Manager to help improve the response to disproportionality and disparate outcomes in CPS cases. More information can be found on the DFPS webpage [Disproportionality in Child Protective Services System](#) including information on The Texas Model, Texas Community Engagement Model, and other CPS initiatives.<sup>113</sup>

## B. Addressing Equity

Many Texas judges want to know what they can do to combat disproportionality from the bench. As community leaders, judges are in a key position to lead efforts in their jurisdiction to address these important issues. Advancing equity in the child welfare system requires acknowledgement of the existing disparities and understanding root causes. Understanding the history of the community a judge serves will provide a more robust context in which to assist the children and families before the court. Asking the question, “What is the family looking for and what does this family need?” will be easier to answer when acknowledging the breadth of each person’s identity and experiences.

In 2016, the Supreme Court of Texas and Texas Court of Criminal Appeals spearheaded the [Beyond the Bench: Law, Justice, and Communities Summit](#). The Summit brought together leaders from various sectors of the community and participants generated several “Big Ideas” to addressing disproportionality and disparity. The ideas generated from this Summit provide practical steps for judges seeking to address disproportionality within their jurisdiction.

Some of these “Big Ideas” from the Summit as well as additional efforts that may be helpful in advancing equity at the local level include:

- Convene judicially led community meetings (or Courageous Conversations) to discuss planning, data, and desired outcomes in the context of the administration of justice.
  - Engaging diverse populations and community stakeholders in meaningful conversations and practice improvement will provide more meaningful avenues for change.<sup>114</sup> Local equity work leaders might be good partners to inform and further efforts to address these issues in child welfare.
  - Obtaining and understanding a court’s data as it relates to disproportionality and disparity.
- Work with court stakeholders to understand and address issues presented by local and regional data. Ask an independent party or organization, outside of the court, to track demographics including race with the intention of evaluating and checking assumptions about what the data reveals.

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*Special Issue: To obtain child welfare data broken down by race and ethnicity for a specific jurisdiction, reach out to the DFPS Regional Director. You can access public data on the [DFPS Data Book](#). Another resource is Texas Alliance for Child and Family Services [Data Dashboard](#).*

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- Explore the need, feasibility, and sustainability of a specialty court docket such as drug, mental health, and veteran courts .
  - Consult the Texas [Specialty Courts Resource Center](#) for support and more information.
- Educate all members of the court system about the various roles others have, to create a more unified system that can help with all aspects of the needs of the individuals.
- Prioritize training regarding implicit bias for all court stakeholders.
  - There are many trainings available on equity and implicit bias, in-person and online, that can educate court staff.
- Utilize a checklist to provide reminders during a case to be aware of and guard against bias. The National Council of Juvenile and Family Court Judges (NCJFCJ) developed the [Courts Catalyzing Change Preliminary Protective Hearing Benchcard](#), a practical and concrete judicial tool for use at the first court hearing. This bench card reflects best practices for one of the most critical stages in a child abuse and neglect case.<sup>115</sup> Additionally, the Children's Commission has created a bench card for quick reference. Please see the Disproportionality Bench Card in the Checklist section of this Bench Book.
  - Creating common language among court stakeholders is an important step to establish an understanding of race equity and inclusion principles.<sup>116</sup>

#### **Key concepts to understand include:**

- **Equity** refers to “the effort to provide different levels of support based on an individual’s or group’s needs in order to achieve fairness in outcomes. Working to achieve equity acknowledges unequal starting places and the need to correct the imbalance.”<sup>117</sup>
- **Structural, institutional, or systemic bias** refers to a “set of processes that produce unfairness in the courtroom . . . [which] lock in past inequalities, reproduce them, and . . . exacerbate them . . . without formally treating persons worse simply because of attitudes and stereotypes about the groups to which they belong.”
- **Explicit bias** “refers to attitudes and beliefs that are consciously held about a person or group of people.”
- **Implicit bias** “refers to subconscious feelings, attitudes, and stereotypes that affect our understanding, actions, and decision-making processes in an unconscious manner.”<sup>118</sup>

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## C. Additional Resources

- “Equity as a Foundation for a Trauma-Informed Court” presentation during the [Judicial Trauma Institute](#)<sup>119</sup>
- Project Implicit, [Implicit Association Test](#) (IAT)<sup>120</sup>
- Kirwan Institute for the Study of Race and Ethnicity, [Making Sense of Your IAT Results](#)<sup>121</sup>
- NCJFCJ, [Addressing Bias in Delinquency and Child Welfare Systems Bench Card](#)<sup>122</sup>
- The Annie E. Casey Foundation, [Race Equity and Inclusion Action Guide: Seven Steps to Advance and Embed Race Equity and Inclusion within Your Organization](#)<sup>123</sup>
- The American Bar Association, [Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners](#)<sup>124</sup>
- Center for the Study of Social Policy (CSSP), [Key Equity Terms and Concepts: A Glossary for Shared Understanding](#)<sup>125</sup>
- Child Welfare Information Gateway, [Disproportionality Resource Page](#)<sup>126</sup>
- The American Bar Association, [Implicit Bias Videos and Toolkit](#)<sup>127</sup>
- National Center for State Courts, [2020 Ensuring Justice in Child Welfare Summit](#)<sup>128</sup>
- [Beyond the Bench: Law, Justice, and Communities Summit and Toolkit](#) sponsored by the Supreme Court of Texas and Texas Court of Criminal Appeals.<sup>129</sup>