



**‘Race’, disproportionality and diversion from the  
youth justice system:  
a review of the literature  
Executive summary**

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The full review of which this is summary is available at: [lit-review-final-may-23.pdf \(beds.ac.uk\)](#)

## **Executive summary**

### ***Introduction***

This is a narrative review of the literature relevant to understanding the relationship between ethnicity, disproportionality and diversion of children from the youth justice system. The review is part of wider research project, funded by the Nuffield Foundation and undertaken by the University of Bedfordshire and Keele University, exploring ethnic disparities at the gateway to the youth justice system and the impact of increased use of diversionary mechanisms in that context. Further information on the wider project is available on the Nuffield Foundation website at: [Exploring racial disparity in diversion from the youth justice system - Nuffield Foundation](#).

### ***Methodology***

Literature is drawn largely from UK and US, English language, sources, from 2010 to the present. Grey literature is included where from an authoritative source. The focus is decision-making at the gateway to the youth justice system with a particular emphasis on the mechanisms whereby children are drawn into, or diverted from, formal processing and the extent to which those decisions are characterised give rise to disparity. Search terms were used flexibly and in combination.

### ***Disproportionality and the youth justice system***

Concern about the over-representation of children from minority backgrounds in the youth justice system is long-standing and evidence of disparities are well established. In his government commissioned 2017 review of the treatment of Black and other minoritised individuals within the criminal justice system, David Lammy MP noted that disproportionality in the youth justice system was his 'biggest concern' highlighting that ethnic disparities among children receiving criminal disposals had increased in recent years. In the year ending March 2022, 29 percent of children receiving a formal sanction came from a minority background compared to 19 percent a decade before. Similarly, while slightly fewer than one third of the child custodial population came from a minority ethnic background in 2012, a decade later the equivalent figure was in excess of half.

Many of the causes of disparities within the youth justice system have their origins in inequalities outside of it. Children from minoritised backgrounds suffer disproportionately from disadvantage and social exclusion and concentrations of poverty and disempowerment result in increased contact with criminal justice agencies. But there is also consistent evidence that disparities are exacerbated by the responses of criminal justice agencies themselves and are accelerated once children enter the system. Black children, for instance, are significantly less likely than their white peers to be cautioned rather than charged, and once convicted are subject to higher levels of punishment for similar offending. In the year ending March 2022,

Black children accounted for less than 12 percent of all proven offence but 20 percent of those given a custodial sentence.

### ***The case for diversion: the consequences of criminalisation***

Research confirms that children who are diverted from formal sanctioning avoid the negative consequences of system involvement which include the acquisition of a criminal record, as well as interrupted education, training and employment. Formal contact with the justice system, particularly at an early age, can be criminogenic, deepening and extending the child's criminal career.

Despite the evidence that diversion yields better longer-term outcomes than formal sanctioning, youth justice policies have in most jurisdictions tended to favour the latter. Data suggest that minority ethnic children have been less likely to benefit from diversionary mechanisms that have existed, in the form of cautioning, than their white peers. In recent years, contractions in youth justice populations across Europe are indicative of increased diversionary activity but this welcome reduction in criminalisation has not benefited all populations of children equally.

### ***The rise of diversion: policy context 2010-present***

The decline in the number of children subject to formal criminalisation is, in large part, a reflection of changes in the way that agencies respond to children for minor offending in the form of a substantial rise in the use of diversionary mechanisms. Such changes were triggered initially by the introduction of a government target in 2008 to reduce the number of children entering the youth justice system for the first time (so-called first-time entrants or FTEs), by 20 percent by 2020. The target was met within 12 months of its adoption and the decline in FTEs has continued in the interim period, falling by a further 78 percent between 2012 and 2022.

Analysis of youth justice policy from 2010 onwards indicates a progressive shift towards a more child-centred, less punitive, approach to dealing with children's offending behaviour. This has involved a turn away from a focus upon individual and familial risk factors to a more subtle understanding of vulnerability and trauma. It also marks a transformation from policies based on correcting the child's deficiencies to an approach that maximises the child's potential. Central to this emerging philosophy is the idea that whenever possible children in trouble should be diverted from the criminal justice system because of its tendency to worsen the problems to which it is the purported solution. These shifts have generated a rapid expansion in the use of a range of informal outcomes which do not constitute criminal justice sanctions and, unlike youth cautions and convictions, are not captured in the figures for detected youth offending.

Youth justice practice has adapted to, and reinforced, such developments. Pre-court work had expanded considerably beyond responding to children who were subject to youth cautions, with diversion schemes in

most areas operating in a manner which exceeded expectations associated with the statutory framework. By 2021, prevention and diversion cases accounted for 52 percent of youth offending teams' workloads in England and 72 percent in Wales, although these averages obscured substantial variation between areas, with the scope of diversionary and preventive work ranging from 85 percent to six percent.

Such large geographic differences in the scale of diversionary work are indicative of the fact that this changing landscape, wherein cautioning and prosecution has rapidly given way to informal mechanisms, has tended to evolve piecemeal with extensive local autonomy, leading to inconsistencies of practice and understanding. Although informal outcomes are recorded by the police locally, there is no systematic national monitoring of their use for children; published data are not broken down by age or ethnicity. The Youth Justice Board has for instance recently noted the lack of 'consistent definitions, assessment tool or data recording standards' and the limited nature of 'national and local oversight and governance of prevention and diversion work'.

### ***Diversion from the youth justice system and ethnic disproportionality***

Diversion shares with other youth justice mechanisms a tendency to manifest disproportionality. For instance, in the United States in 2019, while 52 percent of delinquency cases involving white children were diverted, the equivalent figures were 40 percent for Black children, 44 percent for children of Hispanic origin, 48 percent for both Tribal children and Asian-American children. Recent analysis conducted for the Youth Justice Board has confirmed a similar pattern in England and Wales: Asian, Black and mixed heritage children were all less likely to receive an out-of-court disposal and more likely to be charged than their white peers. Demographics and offence related factors did not explain this difference.

The above studies do not consider the extent to which informal diversionary mechanisms might be characterised by similar disparities. Given the dramatic growth in such outcomes, this lack of attention might be considered a significant gap in the evidence base. Latest statistics appear to confirm that the rise in informal diversion may have played a role in exacerbating ethnic disparities over the same period. While first time entry has declined for all children (78 percent over the past decade), the fall has been noticeably more pronounced for white children than for those from minority communities: in 2022, the number of white children entering the youth justice system for the first time was 83 percent below that in 2012; the equivalent figure for Black children was 71 percent. The benefits of reduced criminalisation have accordingly not been distributed equally since minority children have become increasingly less likely to be diverted than the equivalent white population.

Recent analysis of data for community resolutions provides further confirmation of this hypothesis. White children constituted a higher proportion of cases resulting in such a disposal by comparison with those

attracting a court disposal: 73% compared to 66%. Conversely, just 14% of children receiving a community resolution were Black while such children accounted for 17% of court outcomes.

Decision making at the gateway to the youth justice system determines which children enter the criminal justice process, whether they are subject to formal sanctions and acquire criminal records. Any disparities at that juncture will thus be reflected, and potentially amplified, within the system itself. Given that relatively little is known about the nature or operation of informal diversion, it is important that a better understanding of the nature of diversionary mechanisms should inform any strategies for reducing ethnic disproportionality within the youth justice system.

### ***The current state of diversion in England and Wales***

There are currently two statutory out-of-court disposals for children: youth cautions and conditional youth cautions. The use of these formal sanctions has tended to fall in recent years, in large part because they have been supplanted by informal diversionary mechanisms which are not recorded in the data for proven offending. The Youth Justice Board identifies four informal diversionary options: Community Resolution; No Further Action; No Further Action – Outcome 22; and No Further Action – Outcome 21. But this list is not exhaustive. It does not, for instance, include Outcome 20 where no further action is recorded by the police on the basis that another agency will intervene. Nor does it fully capture the options that may be available at the local level. For instance, the 'Bureau' model first developed in Swansea and subsequently adopted in other parts of Wales, is explicitly predicated on an adherence to a Child First approach which seeks to 'normalise youth offending' by diverting children into support services that improve access to their entitlements. In Surrey, most cases leading to an out-of-court disposal, around 90 percent, in what is referred to locally as a 'youth restorative intervention', an informal outcome that aims for 'inclusion, integration and participation'. Service delivery is integrated so that the same case worker is able to continue to work with the child as a user of Family Services, should that be required, once the intervention is completed.

Little is known about the relative distribution of informal disposals for children, the circumstances in which each is used, or the nature of interventions attached to them. Nonetheless, it is clear that the use of such outcomes is growing rapidly – both in terms of absolute numbers and as a proportion of all crime outcomes. Figures are not broken down by age but whereas in 2017 community resolution and Outcomes 20, 21 and 22 accounted for 4.1 of police recorded outcomes, that figure had risen to 5.2 percent by 2022.

The lack of detailed information about the use of out-of-court disposals for minoritised children is a constant theme in the literature. A thematic inspection of the experience of Black and mixed heritage children in the youth justice system, published in 2021, found that information in respect of 'street community resolutions' was rarely shared between the police and youth offending services so it was not

possible to assess potential levels of disparity. The quality of work with Black and mixed heritage boys who had received out-of-court disposals was poorer than that delivered to such children subject to statutory court orders. In 40 percent of cases resulting in informal diversion, children had previously experienced racial discrimination but this was rarely addressed by youth justice interventions. Insufficient attention was paid to identifying structural challenges in the child's life and as a consequence appropriate support to overcome such barriers was frequently not provided.

### **Explanations of ethnic disparities in diversion**

There is a limited literature exploring why children from minority ethnic backgrounds are less likely to access diversionary options. Inequalities outside of the youth justice system clearly play an explanatory role but decision making and practices within the system can amplify such effects.

For instance, eligibility criteria that focus on the gravity of the index offence, exclude certain forms of offending or restrict access to diversion on the basis of previous offending, have the potential to disadvantage children from minority ethnic backgrounds since such criteria can reflect the impact of previous discriminatory policing.

The fact that a diversionary outcome frequently requires an admission of guilt can also generate disproportionate outcomes. Children from minority backgrounds are less likely to offer an admission at the point where decisions about diversion are made. Such differentials are commonly explained as the consequence of a lack of trust in the police and other authority figures, which is in turn a product of the fact that individuals from minority communities believe themselves to be unfairly targeted through stop and search and other measures. Baroness Casey's recent review of the Metropolitan police highlights that lack of trust is intergenerational, with many Black families teaching their children that they should avoid contact with the police. Such dynamics underpin data showing that 37 percent of Black children 'completely distrust' or 'somewhat distrust' the police compared with 11 percent of white children.

Given the potentially problematic nature of strict eligibility criteria for accessing diversion, many commentators have called for higher levels of discretion in decision-making at the gateway to the youth justice system; others however note that increased discretion associated with the emergence of informal diversion has promoted inconsistency, has proved to be an obstacle to transparency and potentially provides a site where unconscious bias and institutional racism can influence decisions.

One mechanism through which bias manifests itself is 'adultification' whereby minoritised children are denied the status of innocence and vulnerability afforded to their white counterparts, resulting in the rights of the former being diminished. Davis argues that Black children are most likely to experience adultification

bias because of the legacy of slavery and racism which has perpetuated negative, stereotypical, perceptions of Black adolescents. As a result Black children are considerably more likely to be understood as more mature and less vulnerable than their chronological age would suggest and there is, accordingly, a greater prospect of them treated as if they were adults when they come into contact with the justice system, reducing opportunities for diversion.

A further mechanism by which bias impacts decision-making is through assumptions about the family backgrounds of minority children. Access to diversion may be restricted by assessments which focus on the role of family and mistakenly identify minority families as uncooperative or providing poor supervision of their children.

### **Children's Experiences of Diversion**

A recent exploration of children's experience of diversion undertaken by the Centre for Justice Innovation sheds further light on the nature of disparities at the gateway to the youth justice system. Children's views of the police mirrored some of the dynamics identified in other research described above. Interviewees for the most part demonstrated a distrust of the police and there was a consensus among respondents that children from minority ethnic backgrounds were treated less favourably by that agency, even if individual children did not identify discrimination as a problem for themselves.

Children's experience of legal representation was mixed. Several of the respondents made it clear that they did not fully understand the solicitor's role, a significant concern given the important part that one might anticipate advocacy would play in terms of whether an outcome at the police station was diversionary or otherwise. At least one respondent had been advised to make a 'no comment' interview by the legal representative suggesting a lack of awareness on the latter's part that to do so would potentially exclude the child from diversionary options. However, it was also apparent that other children were, in any event, reluctant to provide the police with any information, even if that increased the likelihood of a formal sanction.

Some of the sample demonstrated a limited understanding of the processes to which they had been subject, the nature of the outcomes which they had received or the obligations to which they were subject as a result. In some cases, children gave a sense of simply 'going along' things without appreciating their choices or the implications of decisions that were being made about them. Some respondents mistakenly believed that they could avoid a criminal record if they complied with the expectations of a caution. By contrast, other children were able to give a clear account of the outcomes they had received, the expectations upon them and the consequences of non-engagement. In such cases, respondents attributed

their understanding to the manner in which options had been communicated to them by police or youth justice workers.

Reinforcing findings described earlier that out-of-court interventions may simply replicate offence-focused work traditionally associated with court orders, the study found that children were less likely to engage unless what was offered matched their specific needs. One for instance reported being expected to participate in a knife crime reduction programme although this was not an offence he had committed. Others were critical of the fact that interventions were frequently online, expressing a preference for face-to-face sessions.

Research on the operation of community resolutions has found that children were largely positive about the benefits of interventions with many highlighting good relationships with youth justice staff. However, some were also critical of the repetitive nature of the work and described taking part in sessions that appeared to rely on deterrence and a 'scared straight' rationale.

Clear communication with children about nature of the decision-making process, their options and the consequences for them, combined with the offer of meaningful support that meets their needs, are thus prerequisites of reducing disparities in diversion.

### ***Promising practice: reducing disparities in diversion***

Revised Case Management guidance, produced by the Youth Justice Board in 2022 includes, for the first time, a section on '*How to adapt for a child's race and ethnicity*'. It highlights the importance of services understanding what drives disproportionality at the local level, but the literature suggests that, insofar as diversion is concerned, such understanding is at best limited. Improved data and monitoring is a prerequisite of addressing disparities in diversion and research directed at understanding decision-making processes is key to holding agencies to account.

There is some debate about what forms of eligibility criteria are most likely to reduce disparity. The Centre for Justice Innovation maintains that focusing on the severity or type of offence unduly restricts the scope for diversion and proposes a more flexible approach that allows for professional discretion. Other commentators point to the potential for bias to inform subjective assessments of suitability for diversion on the basis of willingness to change or supportive family backgrounds.

Roger Smith is critical of current arrangements which do not allow for multiple second chances. Antecedent history is a significant factor in determining eligibility for an out-of-court disposal. Focusing on prior contact with the youth justice system is not race neutral since it assumes that previous records of offending are an



accurate indicator of criminal behaviour rather than an artefact of prior instances of discrimination. Good practice is thus not served by using previous system contact or diversionary interventions as an automatic bar to further informal outcomes.

The requirement for a formal admission of guilt in order to access some forms of diversionary measures disadvantages minority children, based on misleading assumptions that admission is an indicator of remorse and willingness to comply diversionary interventions. Since some measures, such as Outcome 22, do not require an admission prior acceptance of responsibility should not be a prerequisite of other informal outcomes.

Increasing trust of minority children in youth justice processes is clearly important in its own right and in the context of minimising disparity at the gateway to the system. Increased trust is contingent on children being given information in a form that allows them to understand the processes to which they are subject and in order to make informed decisions.

Staff having the confidence to address the impact of prior experiences of discrimination and support children to overcome structural barriers, is important both in the delivery of legitimate decision making and increasing children's recognition that interventions are relevant to their needs. Encouraging practice that is informed by Child First principles can help to mitigate against the potential for adultification of children from minority backgrounds.