



# Identifying Our Bias

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As defenders, we know that bias exists throughout the juvenile legal system,<sup>1</sup> but it is not found only in the actions and motivations of law enforcement, prosecutors, and court personnel. Implicit bias also exists within our own community.<sup>2</sup>

“[Bias] might manifest in whether the defender believes in the guilt or innocence of the person they’re representing . . . [o]r their assessment of their fellow counsel, the credibility of witnesses, or whether to take a plea bargain.”<sup>3</sup>

Questions to ask yourself to identify your own existing bias before you review a new case for appeal:

- Do I believe that racial bias exists within the juvenile legal system?
- Have I evaluated my own implicit biases?
  - Have I completed the Youth Defender Self Audit Worksheet on implicit racial bias?<sup>4</sup>
  - Have I taken an Implicit Association Test to learn more about what my biases are?<sup>5</sup>
  - Have I reviewed research on hidden biases, particularly when it comes to my role as a youth defender?<sup>6</sup>

- Have I reviewed local demographic data to understand which racial and ethnic communities are disproportionately and/or disparately impacted by the juvenile legal system?
- Have I considered the disparate treatment of racial and ethnic communities that are not captured or disaggregated by local and/or federal data (e.g., Arab youth, Southeast Asian youth)?
- Have I noticed whether Black, Native/Indigenous, and Latino/a youth have lengthier and/or harsher dispositions than white youth?<sup>7</sup>
- Am I aware of the unique structures of racism that impact various racial and ethnic communities in the juvenile legal system?
- Which clients have I connected with more easily than others? And can I attribute those connections (or lack thereof) to race and/or culture?
- Have I audited my past cases to see whether I:
  - Have a pattern of believing my white clients, while questioning or not

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1 See generally Namita Tanya Padgaonkar et al., *Exploring Disproportionate Minority Contact in the Juvenile Justice System Over the Year Following First Arrest*, 31 J. RSCH. ON ADOLESCENCE 317 (2021).

2 See, e.g., Vanessa Edkins, *Defense Attorney Plea Recommendations and Client Race: Does Zealous Representation Apply Equally to All?*, 35 LAW & HUM. BEHAV. 413 (2011); see also Theodore Eisenberg & Sheri Lynn Johnson, *Implicit Racial Attitudes of Death Penalty Lawyers*, 53 DEPAUL L. REV. 1539 (2004).

3 Maurice Chammah, *Do Public Defenders Spend Less Time on Black Clients?*, THE MARSHALL PROJECT (May 2, 2016), [www.themarshallproject.org/2016/05/02/do-public-defenders-spend-less-time-on-black-clients?utm\\_medium=email&utm\\_campaign=newsletter&utm\\_source=opening-statement&utm\\_term=newsletter-20160503-477#.5lhjX9cnX](http://www.themarshallproject.org/2016/05/02/do-public-defenders-spend-less-time-on-black-clients?utm_medium=email&utm_campaign=newsletter&utm_source=opening-statement&utm_term=newsletter-20160503-477#.5lhjX9cnX) (quoting Phoebe Haddon, Chancellor of Rutgers University-Camden).

4 KRIS HENNING & GEORGETOWN JUV. JUST. INITIATIVE, [CHECK MY BIAS: IMPLICIT RACIAL BIAS SELF AUDIT—DEFENDER](#) (2022).

5 PROJECT IMPLICIT, [implicit.harvard.edu/implicit/takeatouchtestv2.html](http://implicit.harvard.edu/implicit/takeatouchtestv2.html) (last visited June 6, 2023).

6 See, e.g., MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, *BLIND SPOT: HIDDEN BIASES OF GOOD PEOPLE* (2016) (explaining that defenders face a greater risk of “bias blindspot” due to the belief that others are biased while defenders are not, which in turn leaves defenders susceptible to biases).

7 See, e.g., Debra Chopp, *Addressing Cultural Bias in the Legal Profession*, 41 NYU Rev. L. & Soc. CHANGE 367, 373 (2017).

believing my racially or ethnically diverse clients?

- Raise discretionary issues more for my white clients than my racially or ethnically diverse clients?
- Am more likely to think that a youth received a “deal” on a plea based on their race/ethnicity or the race/ethnicity of prior counsel?
- Do I adopt the racially charged language that other system actors use in my cases?
  - Examples: Are Black, Native/Indigenous, and Latino/a children in my jurisdiction sent to detention for “security” reasons, while white youth are sent for their “best interest”? Are words like “potential” reserved for white youth but “remorseless” used exclusively for Black, Native/Indigenous, and Latino/a youth?
- Does my office have policies or engage in practices that make our implicit racial biases more likely to impact our cases?
  - Has my office completed the Youth Defender Agency/Office Audit Worksheet on implicit racial bias?<sup>8</sup>

Have I familiarized myself with data and research that demonstrates racial bias and the disproportionate contact of Black, Native/Indigenous, and Latino/a communities in the youth and adult legal systems? Specifically, those that exist in:

- School referrals<sup>9</sup>
- Policing and arrest<sup>10</sup>
- Formal court referrals<sup>11</sup>
- Detention rates<sup>12</sup>
- Diversion opportunities<sup>13</sup>
- Findings of competence
- Charging decisions<sup>14</sup>
  - Firearm specifications
  - Gang specifications
  - Waiver/transfer of jurisdiction<sup>15</sup>
- Dispositional decisions/sentencing<sup>16</sup>
  - Access to home-based services vs. incarceration
  - Probation vs. incarceration
  - Mandatory incarceration

8 KRIS HENNING & GEORGETOWN JUV. JUST. INITIATIVE, [CHECK MY BIAS: IMPLICIT RACIAL BIAS SELF AUDIT—DEFENDER](#) (2022).

9 See U.S. DEP’T OF EDUC., OFF. FOR C.R., [CIVIL RIGHTS DATA COLLECTION—DATA SNAPSHOT: SCHOOL DISCIPLINE](#) 1 (2014).

10 See, e.g., Erin Cooley et al., *Racial Biases in Officers’ Decisions to Frisk are Amplified for Black People Stopped Among Groups Leading to Similar Biases in Searches, Arrests, and Use of Force*, 11 SOC. PSYCH. PERSONALITY SCI. 761-69 (2020); see also Marie Pryor et al., *Risky Situations: Sources of Racial Disparities in Police Behavior*, 16 ANN. REV. L. & SOC. SCI. 343 (2020).

11 See, e.g., *Special Topics: Racial and Ethnic Fairness*, OFF. OF JUV. JUST. AND DELINQ. PREVENTION, DEP’T. OF JUST., [www.ojjdp.gov/ojstatbb/special\\_topics/faqs\\_fairness.asp](http://www.ojjdp.gov/ojstatbb/special_topics/faqs_fairness.asp) (last visited June 6, 2023).

12 *Survey: A Pandemic High for the Number of Black Youth in Juvenile Detention*, THE ANNIE E. CASEY FOUND. (Mar. 26, 2021), [www.aecf.org/blog/survey-a-pandemic-high-for-the-number-of-black-youth-in-juvenile-detention](http://www.aecf.org/blog/survey-a-pandemic-high-for-the-number-of-black-youth-in-juvenile-detention).

13 See Padgaonkar et al., *supra* note 1.

14 ALEXIS MCGILL JOHNSON & RACHEL D. GODSIL, AM. VALUES INST., [TRANSFORMING PERCEPTION: BLACK MEN AND BOYS](#) 9 (2013).

15 CAMPAIGN FOR YOUTH JUST., [WINNING THE CAMPAIGN: STATE TRENDS IN FIGHTING THE TREATMENT OF CHILDREN AS ADULTS IN THE CRIMINAL JUSTICE SYSTEM 2005-2020](#) 21 (2020).

16 Peter S. Lehmann, *Sentencing Other People’s Children: The Intersection of Race, Gender, and Juvenility in the Adult Criminal Court*, 41 J. CRIME & JUST. 553 (2018); see also Ryan D. King & Brian D. Johnson, *A Punishing Look: Skin Tone and Afrocentric Features in the Halls of Justice*, 122 AM. J. SOCIO. 90 (2016).

- Once I have identified my own biases, have I:
- Attended training to learn about what I can do to combat them?
  - Committed to checking those biases as I move forward?<sup>17</sup>
  - Created a system within my office for accountability when it comes to racial, ethnic, and cultural bias?<sup>18</sup>

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<sup>17</sup> Patricia G. Devine et al., *Long-Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention*, 48 J. EXPERIMENTAL PSYCH. 1267 (2012).

<sup>18</sup> Jonathan Rapping, *Implicitly Unjust: How Defenders Can Affect Systemic Racist Assumptions*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 999, 1016-19 (2013).

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