



Findings Related to Racial Disparities in Vermont's Youth Justice Response – 2021

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Pursuant to the Juvenile Justice Delinquency Prevention Act, as reauthorized by the Juvenile Justice Reform Act of 2018, states must “implement policy, practice and system improvement strategies at the state, territorial, local and tribal levels, as applicable, to identify and reduce racial and ethnic disparities among youth who come into contact with the juvenile justice system, without establishing or requiring numerical standards or quotas.”

GOAL:

To submit statewide data at key juvenile justice decision points where research has shown that potential disparities may occur. Data collection must happen for at least four of the five points below. At each data point, the state must provide the percent distribution of race or ethnic groups compared to the general population distribution in the most recent U.S. Census data.

Data collection points:

1. Arrest
2. Diversion (filing of charges)
3. Pre-trial detention
4. Secure Confinement
5. Transfer to Adult Court

This report has a particular focus on Chittenden County, Vermont because it is the most racially diverse county in the state, with the largest population. While historically these reports have been based on three years of data to account for any large year to year fluctuations that may occur in a small population, it is crucial that we review data for only FFY2021 due to Act 201. At the end of Federal Fiscal Year 2020, Act 201 (The “Raise the Age” law (RTA)) came into effect and Vermont became the first state in the nation to raise its upper age of juvenile jurisdiction past a youth’s 18th birthday. This meant that on July 1, 2020, most young people accused of breaking the law at age 18 (excluding the more serious “Big 12” offenses) were prosecuted in the Family Division of the Superior Court (rather than the adult Criminal Division), with supervision and coordination of services provided by the Department for Children and Families (DCF), rather than the Department of Corrections (DOC). Beginning on July 1, 2023, most youth accused of breaking the law at age 19 will be similarly included in the juvenile justice system, making the 20th birthday the upper age of juvenile jurisdiction in the state.

FFY2021 is the first full federal fiscal year that includes 18-year-old youth. Due to this, population data for 18-year-olds has been added to the chart below, but since 18-year-old youth were not juveniles in FFY2019 and most of FFY2020, if we were to compare FFY2019-2021 data to the new population numbers it would depict an inaccurate picture of our system.

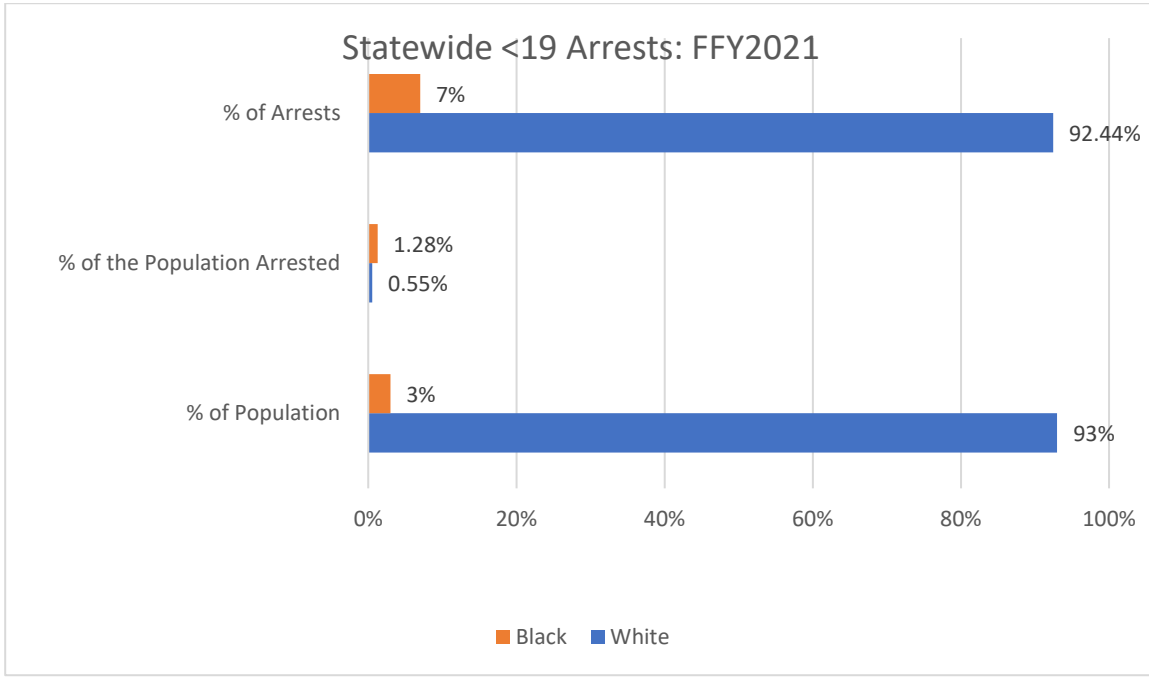
Juvenile Population () by Race/Ethnicity

RACE/ETHNICITY	BURLINGTON SCHOOL DISTRICT	CHITTENDEN COUNTY Ages 10-18	STATE OF VERMONT Ages 10-18
Black	16%	886 (5%)	1,959 (3%)
White	61%	15,501 (89%)	59,753 (93%)
Asian	12%	1,152 (6%)	1,848 (3%)
Hispanic or Latino of all races	2%	576 (3%)	1,878(3%)
American Indian	-	58(.3%)	356 (.6%)
Two or more races	8%	-	-
All		17,597	63,917

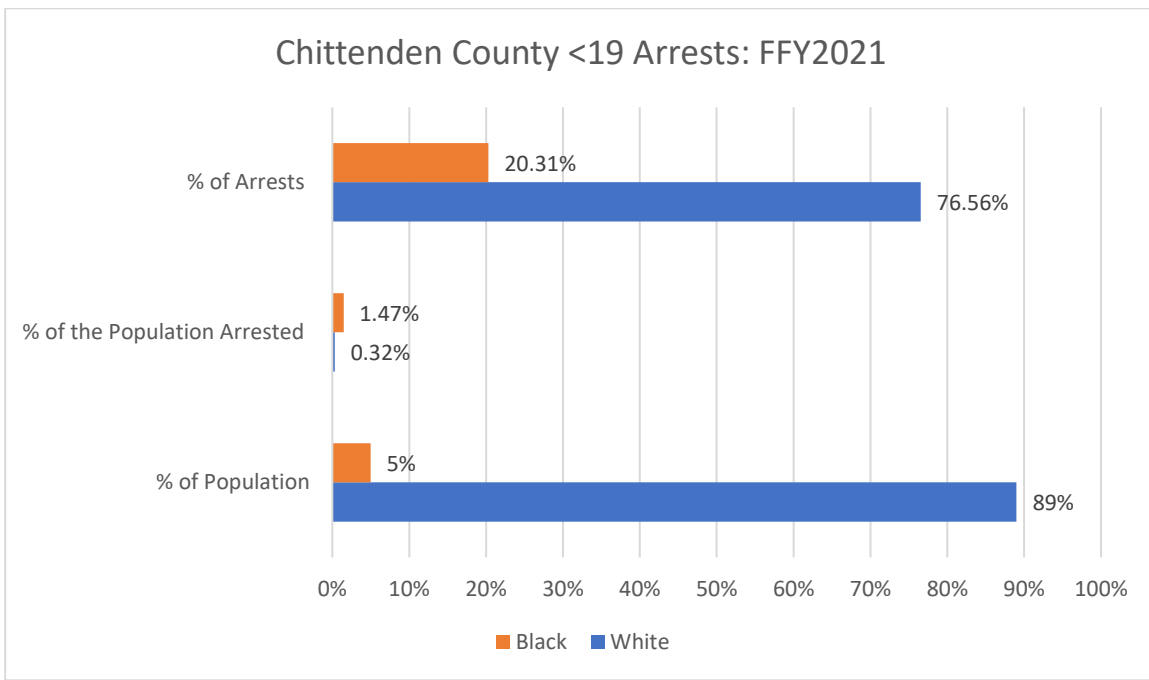
Sources: Easy Access to Juvenile Populations (EZAPOP) (2020 Data), Burlington School District (2020-2021). Please note that the juvenile population numbers include 18-year-olds for the first time, due to state raise the age legislation. EZAPOP aggregates the total number of 18 to 20-year-old youth, and per OJJDP guidance, 18-year-old-data has been gathered by dividing that number in third.

Arrest:

Youth are defined as arrested when law enforcement agencies apprehend, stop, or otherwise contact them and suspect them of having committed a delinquent act. Vermont does not include all contacts with or stops by police, only ones that result in referrals. In addition, the definition of 'arrest' varies across law enforcement entities throughout the state. Some police jurisdictions prohibit entering youth information in the national database to protect confidentiality. This means that the full picture of arrest is not completely accurate.

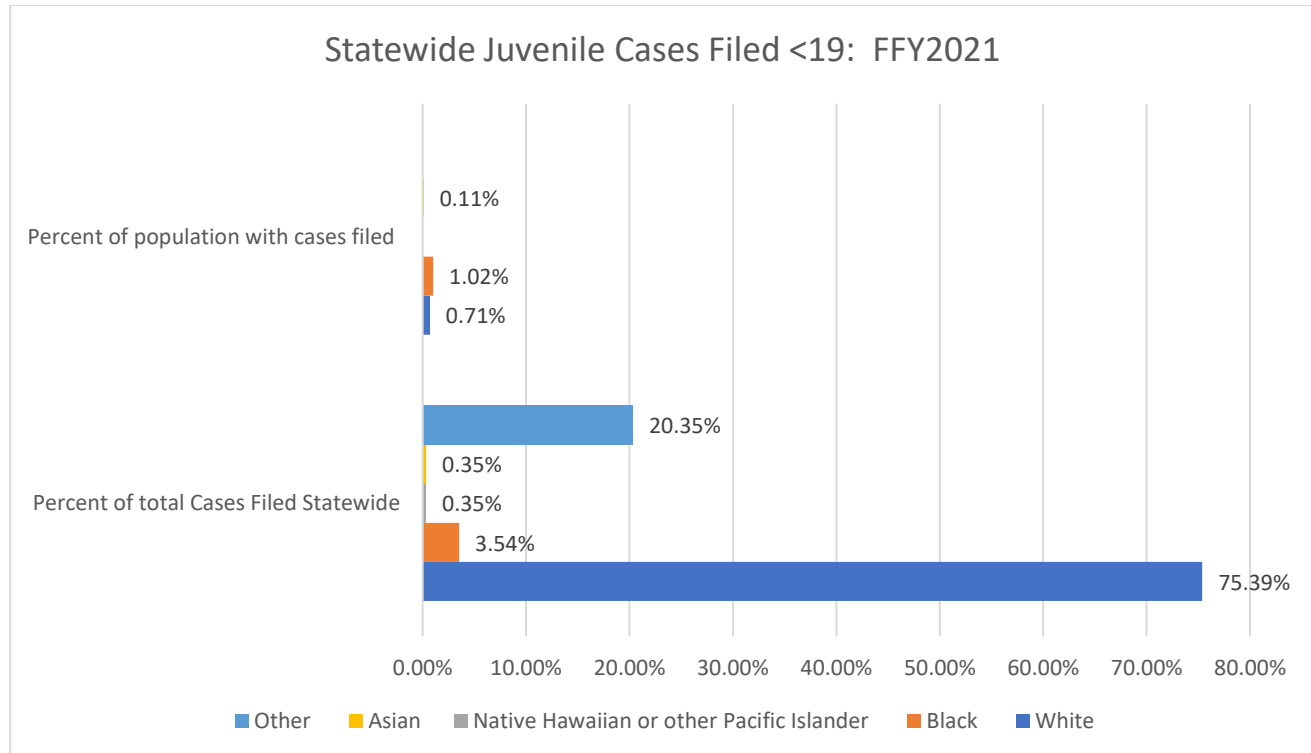


Source: National Incident-Based Reporting System (NIBRS), Easy Access to Juvenile Populations (EZAJPOP)

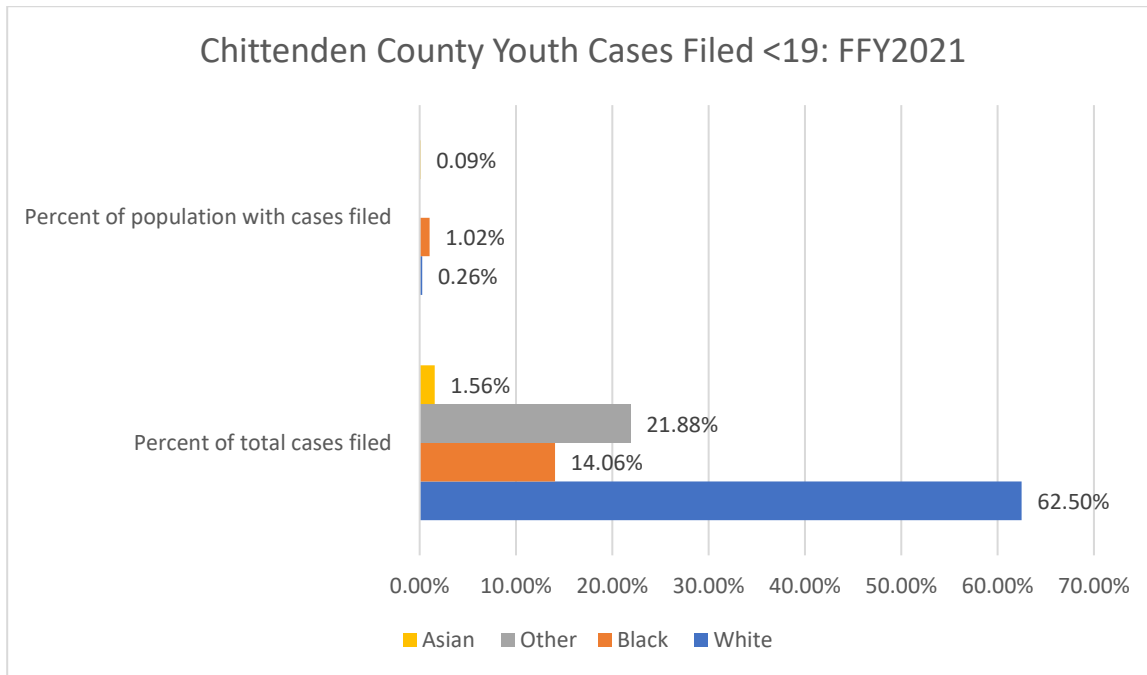


Source: National Incident-Based Reporting System (NIBRS), Easy Access to Juvenile Populations (EZAJPOP)

It is important to note that the National Incident-Based Reporting System may be missing arrest data. Therefore, it is crucial to also look at the cases that are filed with the Judiciary. When looking at the NIBRS arrest data, 1.28% of the total black youth population in Vermont was arrested during FFY2021. When reviewing the juvenile cases files, 1.02% of the total youth black population had a case filed in FFY2021. Across the state, black youth make up 3.54% of the total delinquency petitions filed, and 7% of arrests. It's important to note the sizeable percentage of cases without race identified in the state of Vermont Court data base (20% of cases filed). If we had race reported in these cases, this could drastically change the results.



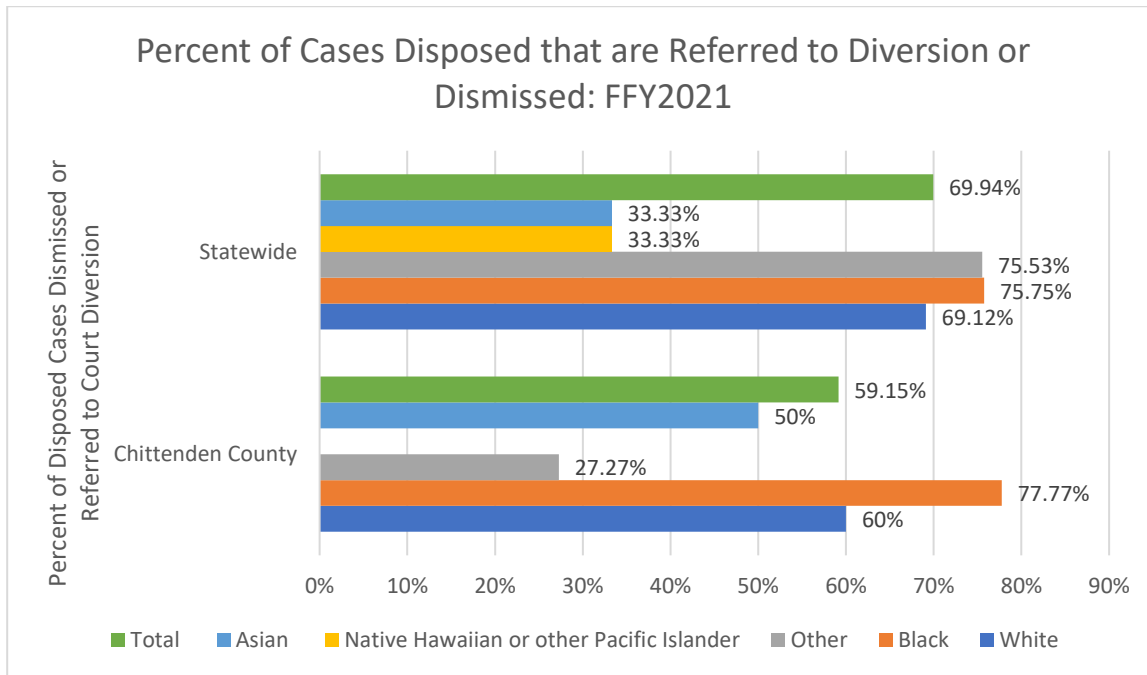
Source: State of Vermont Court Data Base, EZAPOPOP



Source: State of Vermont Court Data Base, EZAPOPOP

Diversion:

The federal definition of diversion is “youth referred to juvenile court for delinquent acts are often screened by an intake department (either within or outside the court). The intake department may decide to dismiss the case for lack of legal sufficiency, or to resolve the matter informally (without the filing of charges) or formally (with the filing of charges). The diversion population includes all youth referred for legal processing but handled without the filing of formal charges.” The below tables indicate the cases disposed in FFY2021 that are referred to court diversion or dismissed. It is important to note that informal diversion in Vermont also occurs at other various offshoots in the juvenile justice system before ever reaching the court system. In addition, including 18-year-olds in the diversion data had a large impact on the data. In FFY2021, the majority of cases disposed are dismissed or diverted, statewide almost 70% of cases. Black youth and youth without race documented have cases dismissed or diverted at approximately 75%.



Source: State of Vermont Court Data Base

Chittenden County is a low court diversion user as more youth cases are processed in community justice options.

Secure Confinement

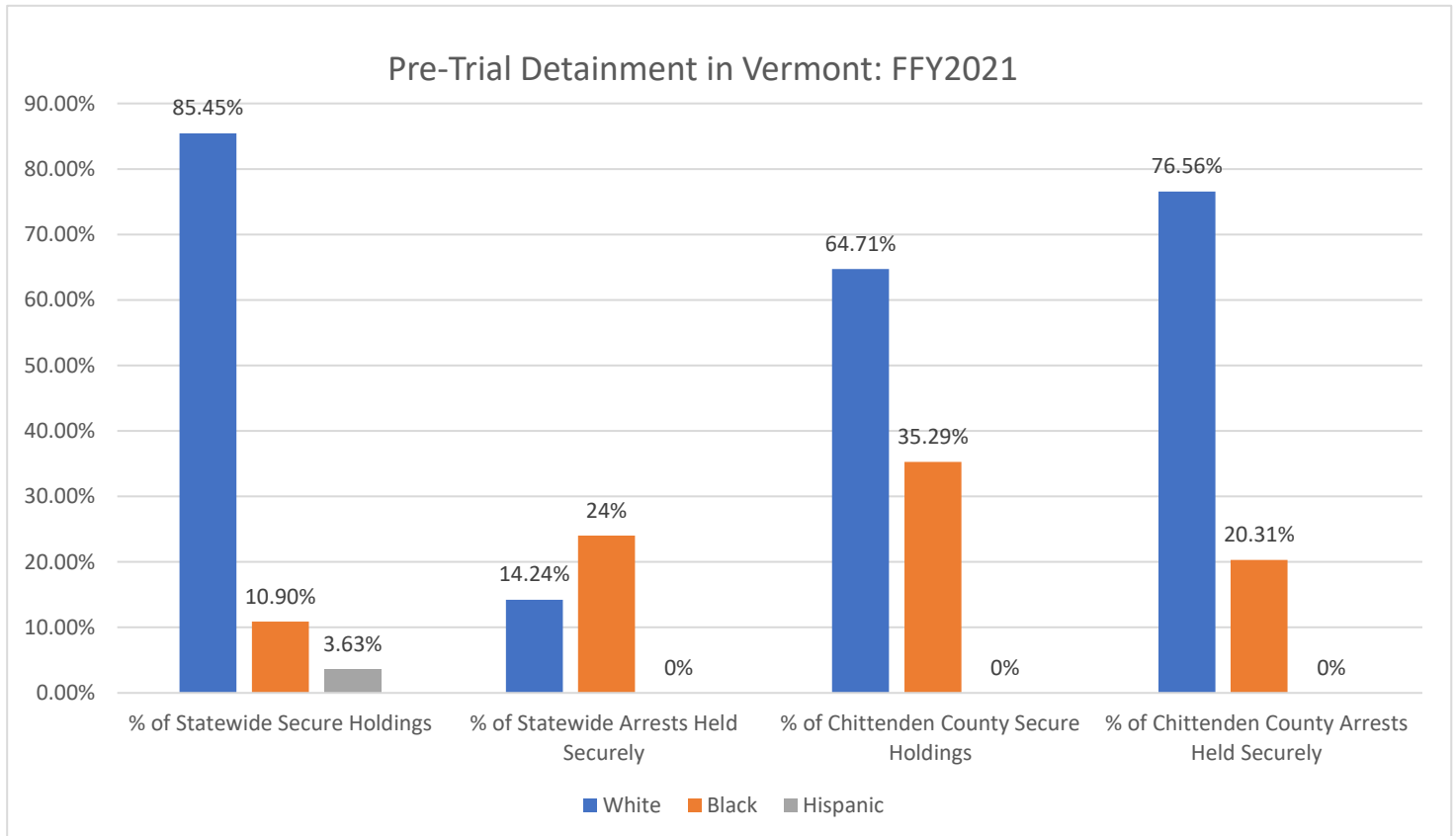
Secure confinement is defined as “those in which, following a court disposition, youth are placed in secure residential or correctional facilities for delinquent offenders.” Vermont’s only secure juvenile detention facility was closed in October of 2020. This means that the only youth held securely in the state of Vermont are for pre-trial detention, not secure confinement. Pre-trial detention in Vermont is in the form of short-term secure holdings at adult jails or lockups, pending transfer to a non-secure residential facility/other placement or release.

Statewide Secure Confinement of Juveniles Charged as Adults

RACE/ETHNICITY	Youth Held in Secure Confinement
Black	0
White	0
Asian	0
Hispanic or Latino of all races	0
American Indian	0
Two or more races	0
All	0

Pre-Trial Confinement

Pre-trial confinement refers “to youth held in secure detention facilities at some point during court processing of delinquency cases (i.e., prior to disposition). In some jurisdictions, the detention population may also include youth held in secure detention to await placement following a court disposition.” In the state of Vermont, there is no juvenile detention or correctional facility, and juveniles charged as delinquents are not permitted to be held in facilities run by the Department of Corrections. This means that the pre-trial confinement of youth is solely short-term secure holdings at adult jails or lockups, while



Source: DCF Compliance Monitoring Holding Logs

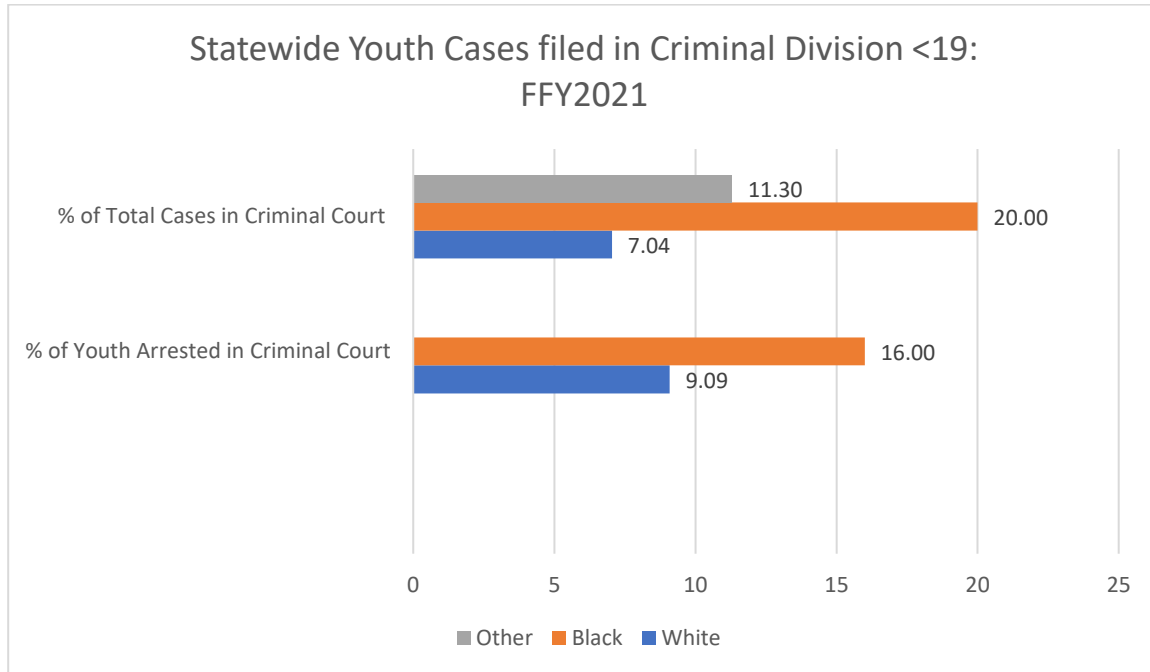
pending transfer to a nonsecure placement, or release. This table indicates the race data for youth that are held securely at those secure facilities, as reported in the compliance monitoring holding logs.

All black youth held securely in the state of Vermont were held in Chittenden County. Due to this, they make up approximately 10% of statewide secure holdings, but account for 35% of Chittenden County secure holdings. As indicated at the beginning of this report, most of the communities of color reside within Chittenden County and is the reason that ERD projects are often focused in that area.

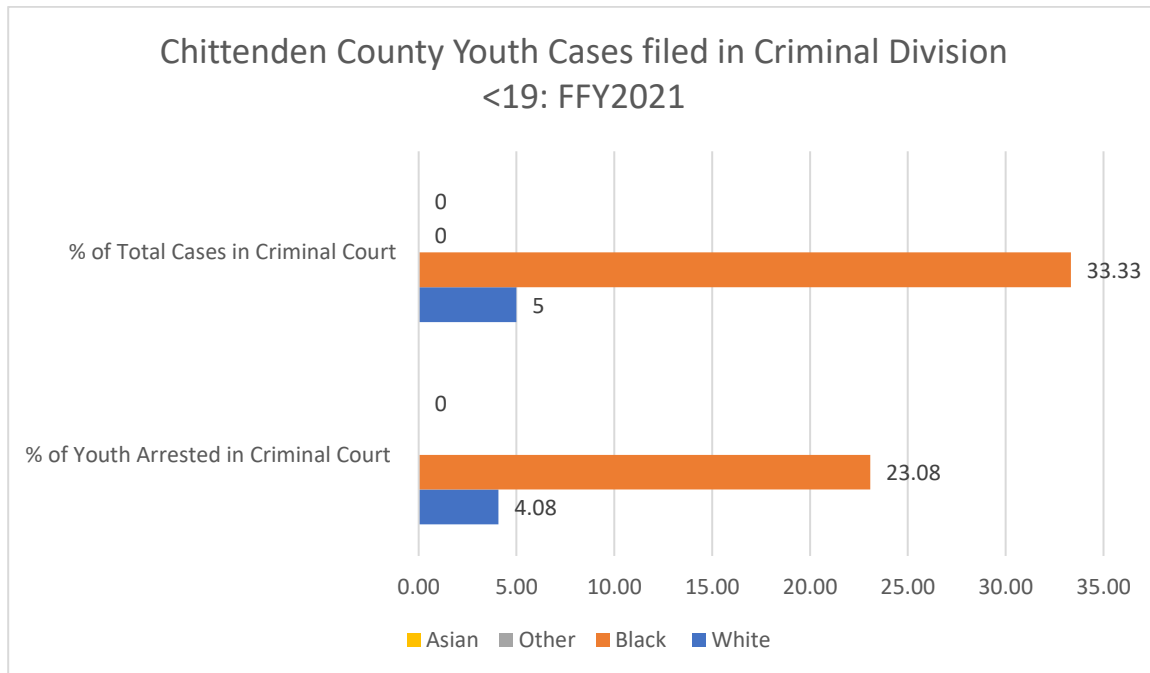
Adult Transfer

Adult transfer is defined as “those in which a youth is transferred to criminal court as a result of a judicial finding in juvenile court. During a waiver hearing, the juvenile court usually files a petition asking the juvenile court judge to waive jurisdiction over the case. The juvenile court judge decides whether the case

merits criminal prosecution. When a waiver request is denied, the matter is usually scheduled for an adjudicatory hearing in the juvenile court. If the request is granted, the juvenile is judicially waived to criminal court for further action. Juveniles may be transferred to criminal court through a variety of other methods, but most of these are difficult or impossible to track from within the juvenile justice system; they include prosecutor discretion or concurrent jurisdiction, legislative exclusion, and the various blended sentencing laws.” In Vermont, “Big 12” offenses are charged directly in criminal court for many youth.



Source: State of Vermont Court Data Base, NIBRS



Source: Source: State of Vermont Court Data Base, NIBRS

The table indicates that 20% of all cases filed for black youth are in the criminal division, in comparison to 7.04% of all cases filed for white youth. When comparing to the NIBRS arrest data, 16% of all black youth

arrested end up in the criminal division, and only 9.09% of white youth arrested end up with a case in criminal division. In Chittenden County, only 5% of the white youth cases filed are in criminal division, in comparison to 33.33% of black youth cases filed.

Once again, there is a sizeable percentage of youth whose race is either not reported at all or recorded as “not known.” in the court database. 11.30% of cases filed for youth without documented race are filed in the criminal division. This could potentially indicate that the percentage of black youth filed in criminal division could be much higher but is hard to know.

This is an issue that the State Advisory Group has been, and will continue to investigate going forward, and is identified in their action plan.

Developing an Action Plan

1. **What do your ERD numbers tell you about your jurisdiction? *Response should reflect an analysis of the state’s data.***

The state population is small, which means that small changes can create disproportionate impacts. This is even more prominent within the population of youth of color throughout the state. Approximately 94 percent of youth in the State of Vermont are white. Usually, due to the small population, three-year cohorts of data have been used traditionally so that there is enough data and to avoid large fluctuations. Due to the inclusion of 18-year-olds into the juvenile justice system in FFY2021, this was not possible this year.

Data issues are clear when reviewing court data. As outlined in previous reports, a large percentage of court data does not indicate the youth’s race. This causes there to be major questions in how large the ERD discrepancies are in the juvenile justice system. Many members of the State Advisory Group (SAG) feel that the designation of “unknown” race, indicates that the youth in question is a youth of color. The SAG has continued to address this, but progress takes time. Please see the outcome-based evaluation of this report for more details.

It is clear from the racial and ethnic disparity numbers that systemic racism and racial and ethnic disparities are pervasive throughout every contact point in the juvenile justice system. While we have limited detention data due to Vermont’s stressed system of care, there is no reason to believe that these disparities will not continue when a new secure juvenile facility is developed. We are seeing serious race disparities in arrest, pre-trial detention, and adult transfer.

Selected Contact Point Numbers for FFY2021

NIBRS Arrest	20.31% of arrests reported to the NIBRS are black youth	5 Percent of youth in Chittenden County are black
Diversion	27.27 percent of cases disposed with no documented race are diverted or dismissed	Overall, 59.15% percent of cases disposed are dismissed or referred to court diversion in Chittenden County
Pre-Trial Detention	35.29% of youth held securely in adult jails and lockups are black in Chittenden County	5 percent of youth in Chittenden county are black
Delinquency Filings	14 percent of cases filed in Chittenden County are black youth	5 percent of youth in Chittenden county are black
Adult Transfer	33.33 percent of black youth cases filed Chittenden county are in criminal court	3 percent of youth statewide are black

2. What would success in ERD reduction look like for your state?

Success in ethnic and racial disparities in Vermont would be lower rates of arrest among youth of color. In order to see this reduction in arrest rates on a statewide level, Chittenden County would need to be targeted due to the population size. Lowering the population of black youth who enter the juvenile justice system is crucial to reducing disparities at all other contact points.

3. How much do you want to reduce ERD next year?

In line with previous plans, we don't anticipate ethnic and racial disparity rates to be reduced in the next year. However, it is important to note that the State Advisory Group, the designated state agency and all others associated with this work want to and are working towards eliminating ethnic and racial disparities.

In FFY2021, the SAG funded two subrecipients for a school-based community approach to racial disparity reduction. The SAG will discuss funding another year of this work when budgeting their FFY2021 title II grant. This decision has been delayed due to the late release of funds from OJJDP.

Other committees of the SAG will also continue to embed ERD work into their goals.

Is the reduction reasonable? If yes, why?

While our goal is to eliminate ethnic and racial disparities completely going forward, we continue to not expect to see numbers impacted in the immediate next year's data as the community-based approach towards addressing ERD (Ethnic and Racial Disparities) have really only just begun. Initially, we expect to see reductions in suspensions/school discipline for youth of color, and then reductions in rates of arrest of youth of color in the later years. The ERD committee has committed to multi-year initiatives to make this sustained change.

4. What do you need from OJJDP to be successful with your plan?

As stated in previous ERD plans, Vermont would greatly benefit from OJJDP leadership by sharing successful approaches to addressing racial and ethnic disparities. While we understand that OJJDP views community partners and other stakeholders working on the ground in this field as the best experts for Vermont strategies, dissemination of best practices from other jurisdictions that have been proven to shift the numbers is critical to this work. Information and examples of best practices organized by jurisdiction demographics and system structure would be appreciated. Training and technical assistance from OJJDP would be welcome as the ERD committee and SAG continues with this work.

In addition, Vermont receives the minimum allotment for the Title II formula grant, which means that we currently do not have a designated Racial and Ethnic Disparity Coordinator. As with other states that receive the minimum allotment, that role is merged with that of the Juvenile Justice Specialist due to the lack of planning and administrative funds. While the SAG appreciated the increase in the FFY2021 funds, the additional planning and administrative funds are still not be enough to support a

separate ERD Coordinator role. This lack of support perpetuates and fuels the acceptance of systemic and institutional racism within our system.

In order to be successful locally, community partners working on the ground need access to more federal resources and funding. An increase in racial and ethnic disparity funding across all sectors is imperative. Currently, restrictions in the program area funding of ERD are a large barrier towards the reduction of ERD disparities.

5. What safeguards will you put in place to ensure that as you work to reduce ERD, you are still protecting the public, holding youth accountable, and equipping youth to live crime-free, productive lives?

People of color must be treated equitably throughout every facet of the community. Until the system is equitable, the public (all youth, families, and residents) are not protected.

Restorative Justice is used throughout the juvenile justice systems in the state of Vermont as much as possible. Two large school-based subgrantees are utilizing funds to, in part, establish restorative justice programming throughout school systems as well.

Developmentally appropriate responses to youth is crucial to equipping youth to live crime-free, productive lives. Positive youth development is a key aspect for holding youth accountable and protecting the public. These are both key principles of the SAG, and all committees are working to improve these programs statewide.

Conduct an outcome-based evaluation

1. What are your new numbers?

It is hard to compare numbers, as the state has brought 18-year-old youth into the juvenile jurisdiction population. However, the NIBRS arrest data (which including 18-year-olds), indicates that 7% of arrests are black youth in FFY2021. This is in comparison to FFY2018-FFY2020 data. It is hard to know if this is due to anti-racist projects, interventions, etc., or because of the new population added or even the pandemic. We would also be remiss if we did not mention the impact of COVID-19 since March of 2020. This data reviews a critical time during our pandemic, from October 1, 2020 – September 30, 2021.

2. Did you meet your goals?

Last year's report noted that elimination of racial and ethnic disparities was the goal, but that reduction in ERD numbers for the next year was not anticipated. We did see a decrease in ERD arrest rates statewide, continuing a trend that we can only hope continues. However, as stated above, it would be remiss to not acknowledge the impact of COVID-19 on the juvenile justice system. It is irresponsible to not recognize the impact when reviewing data from this past federal fiscal year, and we are unsure how the data will change in the years after the pandemic.

3. If yes, what worked? What drove the success? If no, what were the barriers? How might you overcome them next year? What partners do you need?

The ERD Committee did successfully continue to work with school-based stakeholders in the form of subgrantees, which was crucial to this work. Some barriers for the ERD Committee include turnover of membership and ensuring partners are knowledgeable on the issues. This is crucial, but also takes time. It can add a layer of difficulty when recruiting new members.

COVID-19 continued to be a huge barrier during FFY2021. We do not know what the numbers will look like for sure once the pandemic has settled, but we know that raw numbers of high-end cases has increased even in the beginning of FFY2022. We will have to wait and see what the new racial disparity numbers look like next year.

There is concern regarding how much the SAG can impact these disparities with such minimal available funding. Multi-facet approaches are needed, but we can only fund so many. Making progress with goals regardless of funds is difficult, if not impossible. Many goals were on hold this past year due to the delayed release of the title II FFY2021 grant.

4. How can OJJDP help you next year? What do you need from us?

As stated above, Vermont would greatly benefit from OJJDP leadership regarding successful approaches to addressing racial and ethnic disparities in other parts of the country, and additional funding and resources to address ERD.

5. How did you protect the public, hold juvenile offenders accountable, and equip them to live crime-free?

In order to protect the public, hold juvenile offenders accountable, and equip them to live crime-free lives, initiatives must incorporate restorative justice and positive youth development practices. In FFY2021, The SAG funded subgrantees that emphasized and incorporated restorative justice practices within school discipline.

The State of Vermont has and will continue to promote restorative justice practices, positive youth development and equity within every facet of the community.

6. What are your goals for next year?

Last year's plan stated that the elimination of racial and ethnic disparities was the ultimate objective, without a specific numeric reduction goal. The report also laid out the below goals for the SAG.

Last Year's Goals:

- Continue to fund and support Burlington School District and Spectrum Youth and Family services in their development and implementation of school-based community programming that addresses the systemic and institutionalized racism within their school systems as a tactic to addressing the disproportionate arrests of youth of color.
 - Work to assist these subgrantees in appropriate data collection, programmatic assessment, and evaluation of success in reducing disparities.
- Promote and fund workforce development specifically for youth from marginalized communities. This includes assisting juveniles in making the transition to the world of work and self-sufficiency.
 - There is no comprehensive collaboration between state agencies (DOL, DCF, DAIL, etc.). The ERD committee would like to assess the status of youth employment support throughout the state agencies and support collaborative practices.
- Aggregate feedback from youth of color about their employment barriers, such as transportation, and provide resources to address those barriers.
- Ensure that organizations serving youth do not perpetuate ethnic and racial disparities by supporting, funding and promoting anti-racism training for all stakeholders in the juvenile justice, education, youth mental health system, etc.
- Promote raising the baseline age of juvenile jurisdiction (Vermont's current baseline is 10 years old).
- Develop strategies to work with all police departments in Chittenden County to gather their town's ERD arrest data, as is done with Burlington.
- Continue to address the use of "unknown" and "not reported" race and ethnicity data reporting in the Vermont court data base.
 - In FY2020 (State's fiscal year 7/1/19 – 6/30/20), there were 905 juvenile delinquency cases filed in the Family Division. In 16% (147) of the cases, race or

ethnicity was “not reported” by law enforcement. In 3% (25), race/ethnicity was reported as “not known.” The SAG has sent a letter to the Family Rules Committee of the Vermont Supreme Court to address this through a change in rules, and the SAG will continue to assess and address this issue.

- Enhance and develop resources and services within communities that minimize their reliance on law enforcement.
- Work with the Department for Children and Families to assess family and community engagement in case planning for youth involved in the Juvenile Justice System.
- Fund and promote statewide restorative justice training of law enforcement.
 - This includes information on local community-based alternative programs available as alternatives to delinquencies, and the benefits of restorative justice practices for youth. If an officer is familiar with the benefits of the program, pre-charge diversion is a useful tool to deal with non-violent offenses. It provides an immediate opportunity for the juvenile to take responsibility for their conduct while at the same time providing a voice for victims if there are any. By minimizing the degree to which the juvenile/young adult is exposed to the criminal justice system, increased use of pre-charge diversion reduces the likelihood that the juvenile/young adult will commit another crime thereby increasing public safety. The Systems Improvement committee of the SAG is currently working on this training.

As mentioned earlier in this report, the SAG did not expect to see a reduction in the ERD data. Identifying a specific numerical goal would not have been realistic as the SAG only just began funding two subgrantees for a school-based community response.

The SAG was successful in finalizing an extension for both school-based subgrantees for a second year of funding, in addition to adding additional funding to allow for support in collecting data and assessing programmatic success. Vermont just recently received FFY2021 funds and will be discussing whether to fund these two programs for a third year of funding during their budgeting process. Due to the delay in receiving FFY2021 funds, this budgeting decision was delayed. It is anticipated that the budget process with OJJDP will be through quickly, but may still take a few months, which would potentially allow for a third year to begin in January 2023.

In addition, some progress has been made regarding the use of “unknown” and “not reported” in the court database. This is stemming from a form that law enforcement complete when they arrest a youth, which is sent to the State’s Attorney. The form includes a race/ethnicity question, and the State’s Attorney then forwards this information to the court for charge filing. Due to a letter sent by the SAG highlighting the issue, the

Department of State's Attorney's and Sheriff's is reviewing the form and whether that box can be made mandatory in their database. This would ensure that the law enforcement officer has to fill out the question.

In FFY2021, the SAG did fund a statewide restorative justice training of law enforcement, and we are seeing those trainings occur with law enforcement in FFY2022.

Much other work was stalled due to the funding delay, but discussion has occurred within the ERD committee regarding next steps once funding was released. One goal in last year's plan was to "ensure that organizations serving youth do not perpetuate ethnic and racial disparities by supporting, funding and promoting anti-racism training for all stakeholders in the juvenile justice, education, youth mental health system, etc." Members felt that the SAG itself needed to undergo anti-racism training and dismantling of white supremacy culture first. To properly support, fund, and promote anti-racism training for other stakeholder organizations, they need to first undergo a process of dismantling white supremacy culture within the advisory group itself.

Recognizing the progress made in last year's goals, and acknowledging the significant amount of work that still needs to occur, the following goals have been identified. Some of the below are goals that were not completed in the previous year.

This Year's Goals:

- First and foremost, the ERD Committee would like to focus on ensuring that the full SAG is addressing internal racism and white supremacy culture.
 - In September's SAG budgeting process, it is anticipated that they will use FFY2021 funding to support an outside contractor to support this work with the SAG.
- Continue to address the use of "unknown" and "not reported" race and ethnicity data reporting in the Vermont court data base and monitor and support the Department of State's Attorney's work to require law enforcement to gather that information at time of arrest.
- It is anticipated that the SAG will continue to support the two school-based subgrantees for a third year of funding, pending the budget process now that the SAG has received FFY2021 funds from OJJDP.
- Continue to monitor the restorative justice training for law enforcement as a tactic for reducing arrests and court filings.
- Aggregate feedback from youth of color who have experience in the Juvenile Justice System. This is a goal that is supported not only by the ERD committee, but the entire SAG. Ensuring we have a concrete system for engaging input from youth who have been under the juvenile justice system is crucial.

- Promote raising the baseline age of juvenile jurisdiction (Vermont's current baseline is 10 years old).
- Develop strategies to work with all police departments in Chittenden County to gather more accurate ERD arrest data.
- Enhance and develop resources and services within communities that minimize their reliance on law enforcement.
- Work with the Department for Children and Families to assess family and community engagement in case planning for youth involved in the Juvenile Justice System.