



DEFENDERS

*As Disruptors of
Racial Injustice*

Dismantling Racial Injustice in Arrests and Prosecutions

We inhabit an unprecedented moment in which the rampant racial injustices and disparities in our society are starkly illuminated. Nowhere is this more evident than in the criminal legal system. The Department of Public Advocacy is committed to fighting for justice for our clients and seeking systemic change to address racial inequities, law enforcement misconduct, and violence. Now is the time to increase our efforts to dismantle the systems that perpetuate injustice.

As public defenders, we recognize that we are part of this flawed system too, and we can contribute to its injustices if we are not conscious, vigilant, and proactive. We commit to be part of the solutions, learn from our mistakes, and be better today than we were yesterday. In so doing, we seek to be disruptors of racial inequity, not contributors or complicit bystanders to injustice.

Beyond seeking systemic change, we strive to recognize the pain and anger of oppressed persons. We are committed to personal and collective growth by listening to the voices and experiences of those who have been oppressed and humbly examining our own behavior, beliefs, and language. As an agency, we seek to educate ourselves, practice introspection, and engage in challenging conversations, and we encourage our defenders, as individuals, to do the same.

Black Kentuckians, including children, encounter disparate treatment at every point in the system: suspicion, arrest, pretrial detention, incarceration, police violence, and the collateral effects of convictions. This publication is both a recognition of those existing injustices and a resource to empower us to combat them.



Damon Preston
Public Advocate



Naming Racial Disparities

Disproportionate Arrests

Kentucky ranks second in the country for the largest racial disparities in arrests for marijuana possession.¹ Black Kentuckians are 9.4 times more likely to be arrested for marijuana possession than whites—even though both groups have similar national marijuana usage rates. Nationally, Blacks are 3.64 times more likely than whites to be arrested for marijuana possession.



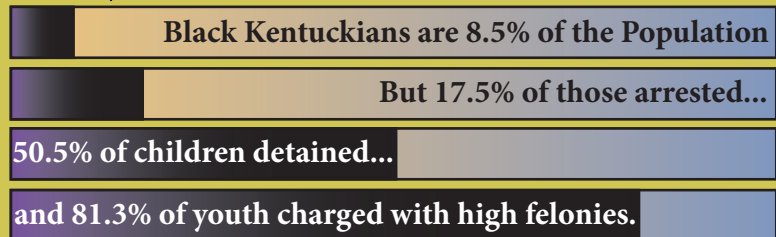
In Kentucky, the top five counties with the largest racial disparities in marijuana possession arrests are Kenton (14.36x), Graves (9.44x), Daviess (8.17x), Hopkins (8.10x), and McCracken (7.80x).

Disproportionately Swept Into the System

Nationally, Black Americans are twice as likely to be arrested and swept into the court system.³ In Kentucky, where 8.5% of the population is Black or African American, 17.5% of all individuals arrested in 2018 were Black. Currently, 14.03% of DPA's clients are Black or African American—more than double the rate at which Black Kentuckians make up DPA's service area.⁴

As of June 2020, 50.5% of children detained in Kentucky were Black. While white children were more likely to be charged with status offenses (i.e. truancy, breaking curfew), Black children were more likely to be charged with Class B, C, and D felonies.⁵

Data compiled by the Centers for Disease Control and Prevention in 2015 shows that Black, Latino/a, and White youth are engaged in illegal behaviors at similar rates.⁶ Among Kentucky youth charged with the most serious offenses—Class A, B, and capital—81.3% are Black.⁷ By virtue of being charged with these felonies at a higher rate, Black children are disproportionately more likely to be tried as adults.



The use of deadly force by police poses a disproportionate threat to the safety of Black Kentuckians. Between 2013 and 2019, out of the 120 police killings of civilians in Kentucky, 19 were Black Kentuckians.²

At 15.8%, that's approaching nearly twice the share of Kentucky's population who are Black (8.5%).

Black Kentuckians are nearly twice as likely as other Kentuckians to be killed by police.²



The Role of Implicit Biases in Disparities

Implicit bias research has uncovered widespread and deep-seated tendencies among White people to associate Black and Latino/a people with criminality.

For example, in a 2010 survey, white respondents overestimated the actual share of burglaries, illegal drug sales, and juvenile crime committed by African Americans by 20-30%.⁸



Fighting Racial Disparities

Promoting Equity by Reducing Pretrial Detention

The COVID-19 pandemic spurred the release of thousands of Kentuckians who were being held pretrial in the spring of 2020. At the beginning of the pandemic, Kentucky had the second highest rate of jail admissions in the U.S. and overcrowded jails across the Commonwealth.⁹ Between February 29 and June 21, 2020, Kentucky's jail population decreased by 31.2%, and the state prison population decreased by 7.5% during roughly that same period.¹⁰ The re-arrest rate for Kentuckians awaiting trial who were released by pretrial services between April 15 and May 31, 2020—4.6%—was the same as the re-arrest rate for those released during the same period in 2019.¹¹ This data supports what defenders have long known; the devastating effects for our clients in the form of family separation, job loss, loss of benefits, loss of housing, and isolation—among other effects—are real, while the supposed safety benefits of pretrial detention are questionable, at best.

Black Americans may be particularly likely to be held in custody pretrial—irrespective of the merits of their cases or their likelihood of following conditions of pretrial release. Across the country, most recent studies show that Black and brown defendants are at least 10-25% more likely than white defendants to be detained pretrial or to have to pay money bail.¹² Although an effort to reform the Kentucky bail system a decade ago had some impact on overall detention numbers, a 2018 study showed it has had little to no impact reducing racial disparities.¹³

This is especially problematic when you consider that a 2013 study of cases in Kentucky found that—even when controlling for other factors such as charge type, demographics, and criminal history—people detained for the entire pretrial period were 4.44 times more likely to receive a jail sentence than those released at some point prior to case resolution.¹⁴ Those sentences were also longer: jail sentences were 2.78 times longer for people who were detained for the pretrial period and prison sentences were 2.36 times longer.

Defenders have the power to help judges, juries, and prosecutors understand that not only is pretrial detention unnecessary but that our Black clients disproportionately bear the consequences.

Recognizing Racial Trauma

Understanding the role of racial trauma is essential to creating a just and responsive criminal legal system. We must consider its effect on charges, especially where an interaction with or response to police is at issue. When considering an interaction between the police and our Black clients, many judges, prosecutors, and jurors—especially those who are not members of a racial or ethnic minority—may not consider our Black clients' perspective, even when facts demonstrate that it is gained through experience with trauma and bias. Defenders are best situated to alert others to this reality, but we must do so thoughtfully, without presuming any person's experience based on race.

To show the effect of racial disparities and trauma to others, defenders must first understand their clients' own perspectives. By inviting conversations with clients on the effect of race on their cases, we can ensure we are telling our clients' stories authentically instead of contributing to the racialized harm visited upon them. This means affirmatively asking clients if they perceived racism, remembering to consider racism in evidence and discovery reviews, and considering race-based challenges in the same manner we consider other legal challenges.



Self-Education Resources

Self-education is essential to eliminating systemic racism. The podcasts, films, and books listed below are examples of resources available to anyone seeking to advance understanding of the important issues in the newsletter. This is a developing collection of items provided to or located by DPA and if you would like to discuss these resources or have other suggestions, please email: DPA.RacialJustice@ky.gov

Podcasts

- 1619
- The Reckoning
- Scene on Radio (S2 E9: “Seeing White”) about Corbin
- Intersectionality Matters!
- Code Switch
- The United States of Anxiety
- Justice in America
- Floodlines
- Throughline
- Race Forward

Films

- 13th
- I Am Not Your Negro
- Whose Streets
- LA 92
- Teach Us All
- Black America Since MLK: And Still I Rise
- The African Americans: Many Rivers to Cross
- Freedom Riders
- Boss: The Black Experience in Business
- Owned: A Tale of Two Americas

Books

- How to Be an Antiracist, Ibram X. Kendi
- The New Jim Crow: Mass Incarceration in the Age of Colorblindness, Michelle Alexander
- From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America, Elizabeth Hinton
- White Fragility: Why It’s So Hard for White People To Talk About Racism, Robin Diangelo
- Why Are All the Black Kids Sitting Together In The Cafeteria?, Beverly Daniel Tatum
- Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership, Keeanga-Yamahtta Taylor
- The Color of Law: A Forgotten History of How Our Government Segregated America, Richard Rothstein
- Buried In The Bitter Waters: The Hidden History of Racial Cleansing in America, Elliot G. Jaspin
- A Terrible Thing To Waste: Environmental Racism And Its Assault On The American Mind, Harriet A. Washington
- Black Males and the Criminal Justice System, edited by Steven Kniffley & Jason M. Williams
- We Were Eight Years in Power, Ta-Nehisi Coates

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14. Leon Digard and Elizabeth Swavola, Justice Denied: The Harmful and Lasting Effects of Pretrial Detention, Vera Institute of Justice, <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>