

## **Race, Class and Legal Risk in the United States: Youth of Color and Colluding Systems of Social Control**

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### **Abstract**

Youth of color in the United States, especially African American and Latino males, are at increased risk for formal legal labeling and control by both the juvenile justice system and the adult criminal justice system. While factors such as poverty and low educational attainment offer partial explanations, this increase is largely attributable to significant shifts in policy and in the definition and control of deviance. Against a backdrop of the parallel rise of both the medical model of deviance and the prison industrial complex, a series of policy changes have escalated the likelihood that youth of color will have substantial and lasting legal encounters. This paper examines the role of colluding systems of social control in legal risk for youth of color, locating shifts in media, educational policy, and juvenile and adult criminal justice policies as central to persistent racial over-representation in legal systems of social control.

### **Race, Class and Legal Risk: An Overview**

*“All domination is, in the last instance, maintained through social control strategies”*  
(Bonilla-Silva 2001)

Youth of color, particularly African American, Latino/a, and American Indian, are particularly vulnerable segments of the U.S. population. They are over-represented, relative to their population size, in a wide array of troubling statistics—poverty, homelessness, unemployment, high school drop-out rates, mortality, single parent, grandparent or foster care households, teenage pregnancy rates, incidence of HIV/AIDS and other STDS, and likelihood of crime victimization. (DeNavas-Walt et. al., 2006; National Coalition for the Homeless, 2007; Orfield and Lee 2007; Shah 2007; RB 2007; CDC 2007; Devarics 2004))

A significant set of the risks these youth face are legal; youth of color are also over-represented at all phases of the juvenile justice system, and are increasingly put on a pathway seemed designed to insure perpetual legal control on into adulthood. Race, class, and gender disparities here are certainly not new; they are evidenced in the frequency of police contacts, arrest, adjudication, out-of-home placement, and reference to adult court. A substantial body of research has clearly documented the persistence of racialized patterns with regard to both juvenile justice and the adult criminal justice systems. (Walker, Spohn and DeLone 2007; Feld 2001, 2003, 2007; NAACP 2005)

What is relatively new, however, is the escalation of these disparities in light of the rise of the prison industrial complex and the so-called War on Drugs. This escalation is made possible by colluding systems of social control - the rise of the medical model of deviance which provides therapeutic alternatives for the middle and upper classes and the white; rampant media stereotyping and fear-mongering; shifts in educational practices that favor zero-tolerance policies and a correctional atmosphere that feeds the “school-to prison pipeline; and philosophical and legal changes in the juvenile justice system the maximize penalties, widen the net of control, and directly and indirectly facilitate entry into the adult criminal justice system.

## Youth of Color and Legal Risk: Patterns and Correlates

*“Oppression refers to systemic constraints on groups that are not necessarily the intentions of a tyrant. Oppression in this sense is structural..It names as Marilyn Frye puts it, “an enclosing structure of forces and barriers which tends to the immobilization and reduction of an entire group or category of people.””*  
(Young 1990)

Recent trends indicate that youth of color are at increasing risk for criminalization and incarceration. The over-representation is greatest for young black males, although it should be noted that Latinos, American Indians and females of color are also disproportionately represented in both statistical disadvantage and actual social control. Youth of color, especially African and Latino, are over- represented in a myriad of statistics involving the legal system. African American youth are at increasing risk of out-of-home placement due the incarceration of parents. While young black children are about 17 percent of the nation’s youth, they now account for more than 50% of the children in foster care. This explosion in foster care has been fueled by the destabilization of families and the mass incarceration of Black men and women (Roberts 2004; Brewer 2007; Bernstein 2005).

Further, these youth are at risk for direct legal involvement themselves. Youth of color are over-represented in arrest statistics, especially for both violent and property Index crimes. Again, African Americans, while representing 17% of the youth population, account for 45% of all juvenile arrests (NAACP 2005). Youth of color, particularly African Americans and Latinos, are more likely to have police contacts and police contacts which result in arrest, to be labeled as gang members and tracked via gang databases. Black youth especially experience what the Panel on Juvenile Justice (2001) calls compound and cumulative risk: they are more 2 times more likely than white youth to be arrested, to be referred to juvenile court, to be formally processed and adjudicated as delinquent; and they are 3 times more likely than white youth to be sentenced to out-of-home residential placement. African American and Latino youth are nationally nearly twice as likely as white youth to be referred to the adult criminal justice system. The rates vary by jurisdiction, with youth of color comprising 60% - 80% of all waivers in some states, and by offense type, with African American and Latino youth being more than twice as likely as whites to be referred to adult court for drug offenses (Walker, Spohn and DeLone 2007).

As with the adult criminal justice system, these racial disparities in arrest, legal processing and incarceration *cannot* be attributed to any real racial differences in participation in crime (Walker, Spohn and DeLone 2007). They reflect instead a racial dynamic which, in interaction with other factors, increases the risk of legal encounters. Recent attention to the issues of “disconnected youth” (i.e. youth who are not in school and not working) reveals that African Americans and Latinos are represented at twice the rate of whites (Devarics 2004). Not surprisingly disconnection and the related factors of poverty, lack of quality education and subsequent educational attainment are all highly correlated with encounters with legal systems. The connection between poverty and race/ethnicity is well-documented. People of color, women, and children are disproportionately in poverty. Female-headed single-parent households represent 60% of the poor, and one-third of all female-headed households, one-fourth of racial/ethnic minorities, over 50% of children of color, and nearly 20% of all children in the U.S. live in official poverty. (U.S Census 2007).

The poverty rate for all persons masks considerable variation between racial/ethnic subgroups. Poverty rates for blacks and Hispanics greatly exceed the national average, and so

too the poverty rates for children of color. The poverty rate for African American youth is amongst the highest for all groups, and consistently hovers at approximately 33%. (DeNavas-Walt et. al.,2006). This is related in part to poverty rates among female-headed single parent households. Poverty rates are highest for families headed by single women, particularly if they are black or Hispanic. In 2006, 28.4 percent of households headed by single women were poor, while 13.5 percent of households headed by single men and 5.5 percent of married-couple households lived in poverty. In 2006, both black and Hispanic female-headed households had poverty rates just under 40 percent (National Poverty Research Center 2007).

High poverty rates for youth of color also correlates with another legal risk—that of lack of educational attainments. The national graduation rate is 68 percent, with nearly one-third of all public high school students failing to graduate. Tremendous racial gaps are found for graduation rates. Students from historically disadvantaged minority groups (American Indian, Hispanic, and Black) have little more than a fifty-fifty chance of finishing high school with a diploma. By comparison, graduation rates for Whites and Asians are 75 and 77 percent nationally. (Orfield and Lee 2007).

Graduation rates for students who attend school in high poverty, racially segregated, and urban school districts lag from 15 to 18 percent behind their peers. Race and class combine to create situation of public education that is still decidedly separate and unequal. As Orfield and Lee (2007 22) observe:

“Half of U.S. schools have less than 20 percent black and Latino students attending them One fifth (20%) of the schools report having at least 70 percent black and Latino students, and more than 80 percent of these schools report that at least half of their students qualified for free or reduced price lunches. In short, students in intensely segregated (90-100%) minority schools are more than four times as likely to be in predominantly poor schools than their peers attending schools with less than ten percent minority students (84% compared to 18%)”.

Graduation rates in these schools maybe negatively impacted by the high stakes testing environment created by No Child Left Behind. Ironically, the very schools with the fewest resources are effectively further penalized by retention of less than stellar students. (Devariacs 2004). NCLB, along with new zero tolerance school policies, which will be detailed later, may in effect push students to leave school.

Youth of color of are over-represented in both poverty and lack of educational attainment. Indeed, these factors alone increase their risk for legal encounters, as both juveniles and later as adults. These factors alone, however, cannot account for more recent increases in the racial disparities present in juvenile justice. Youth of color, particularly African American and Latino youth are increasingly at risk for earlier and more extensive encounters with both juvenile justice and the adult criminal justice system. This cannot be explained with reference to the older correlates of poverty and educational attainment alone; it can only be adequately accounted for by an examination of policy shifts in that has resulted in colluding systems of social control

### **Colluding Systems of Social Control: Medicalization and Prisonization**

*“The law in its’ majestic equality forbids the rich and poor alike from sleeping under bridges, begging in the streets, and stealing food.” (France 1894)*

The accelerated over-representation of youth of color in juvenile and adult criminal justice is largely the result of a series of policy changes and practices in multiple systems of social

control. They have been defined by media, by schools and by the legal system as the most dangerous of deviants who should be subject to the most drastic mechanisms of social control. (Perry 2001; Dorfman and Schiraldi 2001; Walker, Spohn and DeLone 2007). Their predicament is indicative of a larger pattern of inherent and interconnected racism, classism, sexism and ageism that pervades the very definition and control of deviance.

The labeling of “deviants” offers informal/extra-legal, medical and formal/legal options, all designed, at least in theory to regulate particular types of rule-breaking. (See Figure 1). Informal, medical and formal systems of social control all involve varying degrees of discretion or flexibility in decision-making, as to who should be controlled and how. These models suggest that different types of deviant behavior warrant different types of social control; i.e. minor deviations may be handled via highly discretionary informal social control, deviants who have mental illnesses may best be served by the “expert” judgment and treatment of the medical model, and intentional violators of the law must be punished via formalized legal systems. (Heitzeg 1996; Pfohl 1994; Reiman 2007). [See Figure 1]

A closer examination of the mechanisms of social control, however, reveals that the type of social control exerted has much less to do with the deviation in question and much more to do with the demographics of the deviant. Far from being mutually exclusive or race and class blind, these systems of control are inter-dependent and over-lapping, and discretion often is shaped by discrimination, (Reiman 2007; Pfohl 1994; Heitzeg 1996, 1999; Perry 2001; Simon 2007; Walker Spohn and DeLone 2007; Zuberi 2006; Zuberi and Bonilla-Silva 2008).

Race, class and gender are inextricably bound up with the definition and control of deviance. To the extent that the privileged and empowered “norm” is white, male, financially well off, heterosexual and adult, then people of color, women, the poor, GLBT persons, and the young become “the Other”, the “abnormal”, the “deviant”. (Goffman 1963; Pfohl 1994; Zuberi 2001, 2003, Bonilla-Silva and Zuberi 2008).

Further, these “Others” have been subject to labeling and social control based on the intersection of race, class, gender and other differences. The “matrix of domination” (Anderson and Hill-Collins 2007) shapes access to systems of social control as well as to social opportunity. And, while there are “deviants” of all classes, all races, all genders and ages, the models under which they are controlled reflect their relative social status. The informal markers and sometime associated stigmas of race, class and gender often provide the foundation for escalations in social control, leading to medicalization of the “redeemable” white middle and upper classes and criminalization for the poor and communities of color. (Conrad and Schneider, 1992; Heitzeg 1996; Davis 2002).

Indeed, the medical model and criminal justice have operated as parallel systems for comparable deviations but disparate deviants from the outset. The medical model was always a therapeutic alternative for whites, women and the well-to do, while crime has long “been imputed to color” (Ehrenreich and English, 1973; Conrad and Schneider, 1992; Douglass in Foner 1955). Indeed, analysts have argued that the very foundations of criminal justice are rooted in racism and classism, that in fact our notions of crime and criminal justice have essentially served the primary function of social control of persons of color and the poor (Brewer and Heitzeg 2008; Davis 1997, 2002). While these disparities are long standing, in recent years, two key trajectories have magnified the disparities in these systems of control—the inter-connected rise of both the medicalization of deviance and the prison industrial complex.

### ***The Rise of the Medical Model of Deviance***

Once laden with stigma and images of the publically funded insane asylum, the treatment of mental illness is now a multi-billion dollar industry, privatized and driven by the wide-spread use of pharmaceuticals to treat nearly every major affliction. Access to this model requires insurance or sufficient wealth to accommodate psychiatrists, \$50,000 stays at private treatment facilities, and psychotropic medications. The expansion of the model was initially sparked by the addiction treatment industry for Substance Use Disorders, and now extends far beyond (APA 2000; Conrad and Schneider 1992). One of the growth sectors of psychiatry is the diagnosis and treatment of Disorders of Infancy, Childhood and Adolescence (DICA), particularly the Disruptive Behavior Disorders of Attention-Deficit Hyperactivity Disorder, Oppositional Defiant Disorder and Conduct Disorder. (Diller, 1998, Males 1996; APA 2000). These psychiatric labels perfectly overlap with potential educational and legal labels, and thus offer an alternative mechanism for parents, school officials and law enforcement to deal with disciplinary infractions and drug use by both adults and juveniles. Indeed, research indicates that class, insurance coverage, and race are key indicators of who receives treatment (Safer and Malever 2000). These factors play a significant role in the labeling of youth in particular; study after study shows racial disparities in the diagnosis and treatment of ADHD as well as other Disruptive Behavior Disorders, with the indication that teachers were most likely to expect and define ADHD as an issue for white boys. (Currie 2005; Safer and Malever 2001).

The expansion of the medical model creates new opportunities for the diversion of white and middle-class children and adults from the juvenile and criminal justice systems. Their substance use, their disruptive behavior, their deviance may now be defined as an addiction and a disease, not as a disciplinary infraction or a crime. The existence of a therapeutic medical alternative also makes the rise of the punitive state of juvenile and adult criminal justice possible. It allows for the harsh mandatory prison terms associated with the War on Drugs; it allows for the increasing punitive penalties associated with both educational systems and juvenile justice; it allows for the mass incarceration of millions of people of color without the concomitant risk of targeting privileged race and class groups. The rise of the medical model creates the context for the escalating risks for youth of color by insuring that their white counterparts may not be caught in the same legal net.

### ***The Incarceration Explosion and the Prison Industrial Complex***

Juvenile justice and criminal justice have grown increasingly punitive as other diversionary social control options for white and well-off deviants have developed. The “imputation of crime to color” (Douglass 1955 379) is certainly not new and continues to the present with media stereotyping, “racial profiling” and ultimately the extensive over-representation of persons of color in all phases of the criminal justice system. Indeed, crime and criminal justice have become the primary mechanism for controlling communities of color in the era of post-Civil Rights “color-blind racism” (Bonilla-Silva 2001; Bonilla-Silva 2006). Marable (1983 120-121) makes this point, “...white racists began to rely almost exclusively on the state apparatus to carry out the battle for white supremacy...The criminal justice system became, in short, a modern instrument to perpetuate white hegemony.” The criminal justice system provides a convenient vehicle for physically maintaining the old legally enforced color-lines as African Americans and other youth of color are disproportionately policed, prosecuted, convicted, disenfranchised and imprisoned. The reliance on the criminal system provides the color-blind racist agenda with the perfect set of codes to describe racialized patterns of alleged crime and

actual punishment without ever referring to race. There is no discussion of “race” and “racism”; there is only public discourse about “crime” and “criminals “and “gangs” and “drug-infested neighborhoods”. Via media representation and criminal justice practices and policies, crime and criminals are increasingly associated with blackness; Davis ( 1997 62) notes “By relying on the alleged “race-blindness’ of the law, black people are surreptitiously constructed as racial subjects, thus manipulated, exploited, and abused, while the structural persistence of racism—albeit in changed forms—is ignored.”

The past 40 years has also seen a dramatic escalation the U.S. prison population. Much of this increase can be traced to the War on Drugs and the rise of mandatory minimum sentences for drug crimes and some other felonies. A brief glimpse into the statistics immediately reveals both the magnitude of these policy changes as well as their racial dynamic. Approximately 7 million adults are currently under some sort of correctional supervision in the U.S. Over 4 million are under some sort of community correctional supervision such as probation and parole; another 2.3 million are incarcerated in prisons and jails. Over 3500 of these are awaiting execution; some for Federal crimes, most for capital offenses in one of the 38 states that still allows for capital punishment. For every 100,000 Americans, there are 751 in prison – this is the highest incarceration rate in the world (Sourcebook of Criminal Justice Statistics 2006; PEW).

The poor and people of color, particularly African Americans, are over-represented in these statistics at every phase of the criminal justice system. The overwhelming majority of those in prisons and jails were unemployed or employed in the minimum wage service sector at the time of their commitment offense. (Sourcebook of Criminal Justice Statistics 2006) More than  $\frac{3}{4}$ 's of a million black men are now behind bars and 2 million are under some form of correctional supervision. One in every 8 black men between the ages of 25 to 34 is in prison or jail. One in 3 African American men and 1 in 10 Latinos between the ages of 20 to 29 are under some sort of correctional supervision (Mauer 2002). Approximately 50% of all prisoners are black, 30% are white and 1/6 Hispanic. While the adult male prison population has tripled in the past 20 years, the number of women incarcerated has increased tenfold during the same time span. Women represent the fastest growing sector of the prison population. Over 90,000 prisoners are women, and they are overwhelmingly women of color. African American women are three times more likely than Latinas and 6 times more likely than white women to be in prison. Over 60% of women who are in prison are serving time for nonviolent offense, especially for drugs (Sourcebook of Criminal Justice Statistics 2006).

These policies and practices have a devastating impact of on communities of color. In addition to the direct impact of mass criminalization and incarceration, there is plethora of, what Mauer and Chesney-Lind (2002) refer to as “invisible punishments”. These additional collateral consequences further decimate communities of color politically, economically and socially. The current expansion of criminalization and mass incarceration is accompanied by legislation that further limits the political and economic opportunities of convicted felons and former inmates. Felony disenfranchisement is permanent in 14 states. 48 states do not permit prison inmates to vote; 32 states disenfranchise felons on parole and 28 states prohibit probationers from voting. Nationally, 40 million felons are disenfranchised; 2% of the nation on average cannot vote as a result of a felony conviction. 13% of African American males are disenfranchised; in 7 states, 1 in 4 is permanently barred from voting. (Mauer 2002). 25 states bar felons from ever holding public office, 33 states place a lifetime ban on gun ownership for convicted felons, and all states require driver’s license suspension for convicted drug felons. States have also increased the occupational bans for convicted felons, prohibiting them from teaching, childcare work, related

work with children or law enforcement. This is accompanied by eased access to criminal records, an increase in all employers checking criminal backgrounds and new technology, which facilitates quick checks. Research indicates that the explosion in incarceration is negatively correlated with black male employment rates. (Travis 2002)

Collateral consequences are particularly harsh for drug felons who represent the bulk of the bulk of the recently incarcerated. Drug felons are permanently barred from receiving public assistance such as TANF, Medicaid, food stamps or SSI. Drug use, possession or sales are the only offenses other than welfare fraud that result in a ban on federal assistance. The welfare fraud ban is limited to 10 years. Probation or parole violations also result in the “temporary” suspension of federal assistance. Drug felons are also permanently prohibited from receiving Federal financial aid for education. Those convicted of drug felonies “or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by others” are permanently barred from public housing or Section 8. A growing number of private rental properties also screen for convicted felons. More than 20,000 persons each year are denied federal housing assistance due to a felony conviction (Travis 2002; Rubenstein and Mukamal 2002). A felony conviction by anyone in the household is grounds for eviction from public housing.

Recent legislation also creates barriers for families, and has particularly devastating consequences for women. Certain convicted felons are prevented from being approved as adoptive or foster parents. Congress has accelerated the termination of parental rights for children who have been in foster care for 15 of the most recent 22 months. 19 states regard felony conviction as grounds for parental termination; 29 states identify felony conviction as grounds for divorce (Chesney-Lind 2002; Ritchie 2002).

The situation is further complicated by the insertion of the profit motive into the correctional system. Once solely a burden on tax payers, the so-called “prison-industrial complex” is now a source of corporate profit, governmental agency funding, cheap neo-slave labor, and employment for economically depressed regions. “The prison industrial complex is not a conspiracy, but a confluence of special interests that include politicians who exploit crime to win votes, private companies that make millions by running or supplying prisons and small town officials who have turned to prisons as a method of economic development.” (Silverstein 2003) This complex now includes over 3,300 jails, over 1,500 state prisons, and 100 Federal prisons in the US. Nearly 300 of these are private prisons. Over 30 of these institutions are super-maximum facilities, not including the super-maximum units located in most other prisons. The prison industrial complex consumes vast amounts of tax dollars at the expense of education and other social programs. Each year, the U.S. spends over \$146 billion dollars on the criminal justice system, including police, the judiciary and court systems and corrections. Over \$50 billion on of this is spent directly on corrections, with the majority of those expenditures going towards incarceration and executions – the two most expensive sentencing options. (Sourcebook of Criminal Justice 2004) Brewer and Heitzeg (2008) observe:

“the prison industrial complex is a self-perpetuating machine where the vast profits (e.g. cheap labor, private and public supply and construction contracts, job creation, continued media profits from exaggerated crime reporting and crime/punishment as entertainment) and perceived political benefits (e.g. reduced unemployment rates, “get tough on crime” and public safety rhetoric, funding increases for police, and criminal justice system agencies and professionals) lead to policies that are additionally designed to insure an endless supply of “clients” for the criminal justice

system (e.g. enhanced police presence in poor neighborhoods and communities of color; racial profiling; decreased funding for public education combined with zero-tolerance policies and increased rates of expulsion for students of color; increased rates of adult certification for juvenile offenders; mandatory minimum and “three-strikes” sentencing; draconian conditions of incarceration and a reduction of prison services that contribute to the likelihood of “recidivism”; “collateral consequences” —such as felony disenfranchisement, prohibitions on welfare receipt, public housing, gun ownership, voting and political participation, employment- that nearly guarantee continued participation in “crime” and return to the prison industrial complex following initial release.)”

The consequences of these shifts have major implications for youth of color. First of all, it is youth of color who are impacted by the direct and collateral consequences of the prison industrial complex as parents - increasingly mothers are incarcerated and then educationally, politically and economically disenfranchised upon release. The over-representation of youth of color in foster and grandparent care is directly attributable to aforementioned policies in the adult criminal justice system.

Secondly, it is youth of color who are being tracked into the prison pipeline via educational practices such as zero-tolerance and juvenile justice policy shifts. All are designed, by intent or default, to insure an endless stream of future bodies into the prison industrial complex. As Donzinger (1996 87) aptly notes, “Companies that service the criminal justice system need sufficient quantities of raw materials to guarantee long term growth *in the criminal justice field, the raw material is prisoners...*The industry will do what it must to guarantee a steady supply. For the supply of prisoners to grow, criminal justice policies must insure a sufficient number of incarcerated Americans whether crime is rising or the incarceration is necessary.”

From this vantage point, it is youth of color and the poor—not their white middle-class counterparts who are tracked to college or rehabilitated via treatment—who represent that future raw material.

### **Colluding Systems of Social Control: Youth of Color and the “School to Prison Pipeline”**

*“There is no escaping the question of race and crime.”*  
(Silberman 1978)

The rise of the medical model as a rehabilitative alternative for white middle-class deviance combined with the growth of the criminal and prison industrial complex create the dangerous back-drop for the expanded social control of youth of color. Youth of color are disproportionately labeled as legal threats and placed on a pathway towards the adult criminal justice system, while their white counterparts are more likely to be medicalized and thus diverted from formal social control. The increased legal risks for youth of color may be attributed to several related factors that flow from these bifurcated systems of social control: media stereotyping, shifts in educational policy that emphasis zero tolerance and security, legal and philosophical changes in the both the juvenile and adult criminal justice systems that give rise to mass incarceration as the primary response to crime. [See Figure 2]



### ***Media***

A vast body of research has established that the media creates an unrealistic portrait of both crime and criminals. In fact, both news and entertainment representations of crime, offenders, victims and the workings of legal systems are portrayed in a fashion that is diametrically opposed to any semblance of reality. In general, the research, as reviewed by Dorfman and Schiraldi (2001 28) indicates:

“depictions of crime in the news are not reflective of either the crime rate generally, or the proportion of crime which is violent.... The proportion of crime committed by people of color (usually African Americans) is over-reported and Black victims are under-represented... The problem is not the inaccuracy of individual stories, but that the cumulative choice of what is included- or not included-in the news presents the public with a false picture of higher frequency and severity of crime than is actually the case.”

Television news in particular plays a key role in constructing the racialized picture of both crime and offenders. As Davis (1997 62) observes, “Crime is one of the masquerades behind which “race”, with all its menacing ideological complexity, mobilizes old public ears and creates new ones.” Violent crime is dramatically over-represented as is youth crime and African American and Latino males are over-represented as violent offenders. Inter-racial crimes as well as stranger based crime are also depicted as the norm rather than the exception To complicate matters, African American offenders of all ages are depicted in a more negative way than their white counterparts. Blacks are mostly likely to be seen on TV news as criminals; they are four times more likely than whites to be seen in a mug shot; twice as likely to be shown in physical restraints; and 2 times less likely to be identified by name. Black suspects are also depicted as more poorly dressed and were much less likely to speak than white suspects, reinforcing the notion that they were indistinct from non-criminal blacks (Entman and Rojecki, 2000).

Media generated hysteria over gang-violence and the crack cocaine “epidemic” is of particular relevance here. Both issues became inextricably linked in the late 1980s and throughout the 1990s and were unmistakably characterized as issues of race. The coverage of the youth gangs, which focused almost exclusively on African American and Latino gangs, exaggerated the extent of gang membership and gang violence, contributing the creation of “moral panic” ( McCorkle and Miethe 2000). Gangs, crack and youth of color became synonymous, and ushered in a series of harsh legislative responses (Sheldon, Tracy and Brown, 2001; Walker, Spohn and DeLone 2007). Exaggerated public fear of crime combines with the stereotyping of men of color as “the criminal” to provide public support for tough juvenile justice and criminal justice policies (Gilliam and Iyengar 1998; Peffley 1996; Dorfman and Schiraldi 2001). As documented earlier, these harsh policies, including mandatory minimums for drug violations, “three strikes”, and the increased use of imprisonment, disproportionately affect people of color.

The public’s view of crime and criminals shapes their evaluation of juvenile and criminal justice policies and practices. Public acceptance of TV’s distorted depiction of crime and criminals leads them to believe that these racial disparities in the criminal justice system are warranted. Unrealistic fears of blacks and other people of color leads them to accept and perhaps applaud racial profiling by the police, racialized sentencing differences, and disproportionate imprisonment for both youth and adults of color (Dorfman and Schiraldi 2001; Walker, Spohn and DeLone 2008; Reiman 1998; Glassner 1999). The actual problem of racism in the criminal

justice system is ignored, since the public is deluded into believing that the real predators are being appropriately punished.

TV news coverage of crime has only negative consequences for the African American and Latino youth and adults who are cast in the role of the “criminal”. Widespread acceptance of this stereotype by the general public has implications for everyday interactions that these boys and men have in public places, with prospective and actual employers, with teachers, with public officials, and with the police.

### ***Educational Policy***

Many schools have adopted what are called zero-tolerance policies; these policies were, in part, a response to increased public concern over gangs but most immediately to the highly publicized school shootings of the late 1990s. These zero-tolerance policies are largely directed towards weapons, alcohol/drugs, threatening behavior, and fighting on school premises, and as the name implies, indicate zero-tolerance for any infractions. Zero-tolerance policies are also associated with an increased police and security presence at school, metal detectors, locker searches and all the accoutrements of formal legal control. Violators are suspended, expelled, and increasingly arrested and charged in juvenile court as a result. (ABA 2001)

In theory, zero-tolerance policies are intended to have a deterrent effect for intentionally troublesome students, i.e. the mere presence of the policies is intended to thwart disruptive behavior. On the surface, these policies are also facially neutral; they are to apply equally to all regardless of race, class and gender. A growing body of research suggests that these policies are neither. (ABA 2001; NAACP 2005; Skiba 2002)

According to the American Bar Association (2001), zero-tolerance policies do not distinguish between serious and non-serious offenses, nor do they adequately separate intentional troublemakers from those with behavioral disorders. They cast a very wide net; students have been suspended and or expelled for nail clippers, Advil and mouthwash. The Justice Policy Institute (2000) outlines the following cases subject to zero-tolerance policy:

- “A seventeen-year-old junior shot a paper clip with a rubber band at a classmate, missed, and broke the skin of a cafeteria worker. The student was expelled from school.
- A nine-year-old on the way to school found a manicure kit with a 1-inch knife. The student was suspended for one day.
- In Ponchatoula Louisiana, a 12-year-old who had been diagnosed with a hyperactive disorder warned the kids in the lunch line not to eat all the potatoes, or "I'm going to get you." The student, turned in by the lunch monitor, was suspended for two days. He was then referred to police by the principal, and the police charged the boy with making "terroristic threats." He was incarcerated for two weeks while awaiting trial.
- Two 10-year-old boys from Arlington, Virginia were suspended for three days for putting soapy water in a teacher's drink. At the teacher's urging, police charged the boys with a felony that carried a maximum sentence of 20 years. The children were formally processed through the juvenile justice system before the case was dismissed months later.
- In Denton County, Texas, a 13-year-old was asked to write a "scary" Halloween story for a class assignment. When the child wrote a story that talked about shooting up a school, he both received a passing grade by his teacher and was referred to the school principal's office. The school officials called the police, and the child spent six days in jail before the courts confirmed that no crime had been committed.
- In Palm Beach, Florida, a 14-year-old disabled student was referred to the principal's office for allegedly stealing \$2 from another student. The principal referred the child to the police, where he was charged with strong-armed robbery, and held for six weeks in an adult jail for this, his first arrest. When

the local media criticized the prosecutor's decision to file adult felony charges, he responded, "depicting this forcible felony, this strong-arm robbery, in terms as though it were no more than a \$2 shoplifting fosters and promotes violence in our schools." Charges were dropped by the prosecution when a 60 Minutes II crew showed up at the boy's hearing."

These policies have been enforced most stridently against youth of color. Ironically, while zero-tolerance policies were largely inspired by the school-shootings in largely white suburban schools, they have been most readily adopted and enforced in urban schools with low student-to-teacher ratios, high percentages of students of color and lower test scores ( Skiba 2002). Again, black youth bear the brunt of zero-tolerance policies; "zero-tolerance" the primary contributor to the disproportionate suspension and expulsion rates noted earlier. Since research has found no indication that African youth violate rules at higher rates than other groups (Skiba 2002), the persistence of stereotypes of young male males and "cultural miscommunication" between students and teachers is oft cited as a key factor. "Some of the highest rates of racially disproportionate discipline are found in states with the lowest minority populations, where the disconnect between white teachers and black students is potentially the greatest. White teachers feel more threatened by boys of color. They are viewed as disruptive." (Witt 2007).

Students of color are much more likely than their white counter-parts to be suspended or expelled from school for disciplinary reasons. This trend does not appear to be correlated with actual racial/ethnic differences in disruptive classroom behaviors. Annually, there are over 3 million suspensions and approximately 100,000 expulsions each year. (NAACP 2005). While African American students make up 16% of all school age youth, they account for 37% of suspensions and 35% of all expulsions. Black students are suspended and expelled at nearly three times the rate of white students. In some states, the disparities are even more glaring, with black students expelled at 6 times the rate of whites (Witt 2007). These statistics have lead observers to question the extent to which students are high school "push outs" rather than merely "drop-outs. (Orfield and Lee 2007; NAACP 2005.)

Zero-tolerance policies have long-lasting and devastating consequences for those caught up in them. They create a direct pathway from schools to the juvenile and sometimes adult criminal justice systems, hence the descriptor, "the school to prison pipeline." According to the Advancement Project (2004):

"Zero tolerance has engendered a number of problems: denial of education through increased suspension and expulsion rates, referrals to inadequate alternative schools, lower test scores, higher dropout rates, and racial profiling of students..... Once many of these youths are in "the system," they never get back on the academic track. Sometimes, schools refuse to readmit them; and even if these students do return to school, they are often labeled and targeted for close monitoring by school staff and police. Consequently, many become demoralized, drop out, and fall deeper and deeper into the juvenile or criminal justice systems. Those who do not drop out may find that their discipline and juvenile or criminal records haunt them when they apply to college or for a scholarship or government grant, or try to enlist in the military or find employment. In some places, a criminal record may prevent them or their families from residing in publicly subsidized housing. In this era of zero tolerance, the consequences of child or adolescent behaviors may long outlive students' teenage years."

### *Juvenile Justice*

Over the past 40 years, the juvenile justice system has shifted sharply from its' original rehabilitative, therapeutic and reform goals. While the initial Supreme Court rulings of the 1960s—*Kent, in re Gault* and *Winship*—sought to offer juveniles some legal protections in what was in fact a legal system, more recent changes have turned the juvenile justice system into a “second-class criminal court that provides youth with neither therapy or justice.” (Feld 2007) Since the 1980s, legislators, in a pattern that parallels their response to adult crime and sentencing, have enacted a series of increasing tough policies with respect to juvenile offenders. These include a plethora of gang legislation and new policies that ease the transfer of juveniles into adult court via certification or related net-widening practices. Again, as the aforementioned statistics indicate, it is youth of color that are the primary targets of these measures.

In the midst of the War on Drugs and media fixations on youthful violence, nearly all states began to specify offenses related to gang activity. 46 states and the District of Columbia (DC) have enacted some form of legislation relating to gangs. 36 states and DC have legislation that defines “gang.” (<http://www.iir.com/nygc/gang-legis/>) Most states and cities that have gang-legislation use a penalty-enhancement approach, meaning that the offense is defined as legally more serious and subject to harsher sentences if it is deemed to be committed for the benefit of a gang.

Legal definitions of what constitute a gang are often vague and subject to police interpretation. Much of the meaning of gang” is deeply connected to racial imagery and stereotyping, so the interpretation of gang statutes rest as much on the race, class, gender and age of the person in question rather than the letter of the law ( Walker, Spohn and DeLone 2008) Analysis of police gang databases indicate that this is indeed the case; youth of color are vastly over-represented in these databases, which are often compiled via simple street interrogations and observations rather arrest data. (Zatz and Krecker 2003). Sample legislation is noted below:

Arizona 13-105. Definitions

7. "Criminal street gang" means an ongoing formal or informal association of persons whose members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any felony act and who has at least one individual who is a criminal street gang member.

8. "Criminal street gang member" means an individual to whom two of the following seven criteria that indicate criminal street gang membership apply:

- (a) Self-proclamation.
- (b) Witness testimony or official statement.
- (c) Written or electronic correspondence.
- (d) Paraphernalia or photographs.
- (e) Tattoos.
- (f) Clothing or colors.
- (g) Any other indicia of street gang membership.

(<http://www.iir.com/nygc/gang-legis/gang-related%20definitions.htm> )

California 186.22 (e)(f) Participation in Criminal Street Gang; Punishment; Felony Conviction; Sentence Enhancement; Commission on or Near School Grounds; Pattern of Criminal Activity

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of

the criminal acts enumerated in paragraphs (1) to (25), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity. (<http://www.iir.com/nygc/gang-legis/gang-related%20definitions.htm>)

Minnesota 609.229. Crime Committed for Benefit of a Gang Subdivision 1. Definition

As used in this section, "criminal gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, that:

- (1) has, as one of its primary activities, the commission of one or more of the offenses listed in section 609.11, subdivision 9;
- (2) has a common name or common identifying sign or symbol; and
- (3) includes members who individually or collectively engage in or have engaged in a pattern of criminal activity

(<http://www.iir.com/nygc/gang-legis/gang-related%20definitions.htm>)

In addition to defining gangs, most states and many cities have specified several offenses as "gang-related". Some of these offenses are serious felonies; others involve juvenile status offenses, petty misdemeanors, and infractions related to schools. A partial list of gang-legislation by topic includes: Carjacking, Curfew, Drive-By Shootings, Enhanced Penalties—Sentencing, Expert Testimony, Gang Activity and Forfeiture, Gang Databases, Gang Participation, Gang Prevention, Gang Prosecution, Gang Recruitment, Threats, Intimidation, Gang-Related Clothing, Dress Codes, School Uniforms, Gang-Related Definitions, Gangs and Correctional Facilities, Bias Crimes, Eviction, Graffiti and Graffiti Tools, Institutional Vandalism, Juvenile Gatherings, Loitering, Parental Responsibility, Public Nuisance, Truancy, Weapons, Gangs and Schools, and Probation and Parole. (<http://www.iir.com/nygc/gang-legis/>) Beyond extensive criminalization of gangs and de facto, youth of color, juvenile justice policy has also literally converged with the adult criminal justice system. Again, in the 1980s, state legislators began to facilitate the ease of transfer of juveniles directly into the adult criminal justice system (Feld 2007). As Griffin (2008 10) observes,

“A total of 31 states made substantive changes to their laws governing the criminal prosecution and sentencing of juveniles during the five-year period from 1998 to 2002. In general, the changes tended to expand the reach of these laws. But legislative activity was less frequent and less dramatic during the 1998-2002 period (especially during the latter years of the period) than in the years 1992 through 1997, when nearly all states took significant steps to toughen up their laws in this area, and many rewrote them completely.”

All states allow adult criminal prosecution of juveniles under some circumstances. The most common mechanism for transferring juveniles to adult criminal court is the judicial waiver. Since the *Kent* decision of 1966, states have been required to formalize the process by which this transfer occurs. There are 46 states that authorize or require juvenile court judges to waive jurisdiction over individual cases involving minors, so as to allow prosecution in adult criminal courts. (Griffin 2008). What has changed more recently is the ease of waiver, the lowering of the age at which juveniles maybe referred to adult courts in many states, and the expansion of options that allow for simultaneous juvenile and adult court jurisdiction. (Walker, Spohn and DeLone 2007)

Many states now have statutes that exclude certain serious, violent, and/or repeat offenders from the juvenile court's jurisdiction. In many jurisdictions, referral to adult court is now mandatory, giving the juvenile court no role except that of making the probable cause determination. In all, the laws of 38 states dictate adult criminal handling of some categories of juvenile offenders, either by way of statutory exclusion, mandatory waiver, or both. In a case covered by a statutory exclusion, the juvenile is tried from the beginning "as an adult"--that is, proceeded against (by information, indictment, or otherwise) in the criminal court that would have had jurisdiction over the same offense if it had actually been committed by an adult. (Griffin 2008. Shelden. Tracy and Brown 2001).

Some states exclude only the most serious offenses; others single out sufficiently serious cases involving older juveniles for example, all felonies by a juvenile aged 17. Finally, some focus not so much on offense or age as on the individual juvenile's offending history. Some states excludes any felony committed by a juvenile as young as 15, provided the juvenile has two or more previous delinquency adjudications and dispositions for offenses that would have been felonies if committed by an adult. (Griffin 2008)

The past two decades has also seen several states lower the age at which a juvenile can be referred to adult court. It should be noted that 23 states have no lower age limit, meaning that youth as young as 8 may be charged, tried and sentenced as adults. The remaining states specify ages between 10 and 15, of those 24 have recently lowered the age limit. (Griffin 2008; Walker, Spohn and DeLone 2007).

One new development in the juvenile court systems is blended sentencing, where the jurisdiction of the juvenile court is extended past age 18 and both juvenile and stayed adult criminal court sentences are imposed. 26 states have some form of blended sentencing as an option; often, it is accompanied by an inclusion of juvenile convictions in adult criminal history scores. This has the effect of widening the net and increasing the adult criminalization of juveniles who do not meet the criteria for waiver, as well as their potential sentence length. In discussing Minnesota's Extended Juvenile Jurisdiction (EJJ), Podkopacz and Feld (2001: 8) write:

“Although the legislature intended EJJ to provide judges with a stronger juvenile treatment alternative to waiver, the law instead had a substantial “net-widening” effect; judges continued to waive the same numbers and type of youths that they had transferred previously *and* revoked the probation and executed the adult sentences of nearly one-third of EJJ youths, many of whom were younger and first-offenders. Most of those youths, judges previously had decided should *not* be waived and many of them had their probation revoked for technical violations rather than new offenses.”

The distinction between the school system, the juvenile justice system and adult criminal justice is increasingly blurred. Youth of color are increasingly at risk for arrest for a multitude of serious offenses as well as at risk for adult prosecution. Critics of these policies changes charge that this is no mere coincidence. The age of mass incarceration and the prison industrial complex calls for the continual replenishment of the ranks of the imprisoned, and it is youth of color that are most often selected to fill that onerous role.

## Policy Implications

*“The most difficult and urgent challenge of today is that of creatively exploring new terrains of justice, where the prison no longer serves as our major anchor.”*  
(Davis 2003)

While youth of color have always been at risk for the most serious sorts of social control, the trends of the past 40 years have clearly exacerbated the likelihood of their entry into both the juvenile and adult criminal justice systems. While white well-off youth may be medicalized and treated for their deviance, youth of color are routed into punitive legal systems at an astounding rate. The road is paved and fast-tracked by media hysteria, school policies that emphasize high stakes testing and zero-tolerance, a juvenile justice system rooted in racialized preoccupation with gangs and growing convergence with the adult system, and a profit-driven project in mass incarceration that insatiably seeks new bodies -preferably young black and brown bodies- to fill the growing ranks of the prison industrial complex.

Certainly, specific reforms have been suggested and, at least in part, implemented. Scholars and activists have organized and pushed for policy changes with regard to the media (Dorfman and Schiraldi 2001); an end to zero-tolerance policies in school (Advancement Project 2005); education not incarceration and an interruption of the School to Prison Pipeline (NAACP 2005; Southern Poverty Law Center 2008); and a return to a juvenile justice system that treats youth as more than just miniature adults (Justice Policy Institute 2008; Council on Crime and Justice 2008). The goal of all these programs is to stymie the steady flow of youth of color into legal systems.

While these recommendations do address the central factors that contribute to legal risk for youth of color, in the end, they address the surface symptoms and not the root. Reforms may ameliorate some risk for youth of color, but until the race, class, crime nexus and its' current manifestation in the prison industrial complex is fully explored and uprooted, they will remain at risk. As Davis (2003 20) observes:

“As important as reforms may be, frameworks that rely exclusively on reforms help to produce the stultifying idea that nothing lies beyond the prison...The most immediate question today is how do we prevent the further expansion of present prison populations and how to bring as many imprisoned men and women as possible back into the free world.”

We must imagine an end to mandatory minimum sentencing for non-violent offenders, decriminalization of drugs and treatment rather than punishment for those who are addicted, and a legal system guided by reparative justice rather than retribution. We must give serious consideration to “abolitionist strategies to dismantle the prison system...which preserves existing structures of racism as well as creates new ones...this is no more outlandish than the fact that race and economic status play more prominent roles in shaping the practices of social punishment than does crime.”(Davis 1998 105).

Our current experiment in mandatory imprisonment for non-violent offenders and mass incarceration is a very costly one. The prison industrial complex grows and profits at the expense of tax-payers, of social programs, of entire communities, of both current and future generations, and at the expense of the lives of the millions lost to its' vast machinery. The cycle must end. The future of youth of color depends on our ability to imagine and enact a radical transformation of our current criminal and penal policies.

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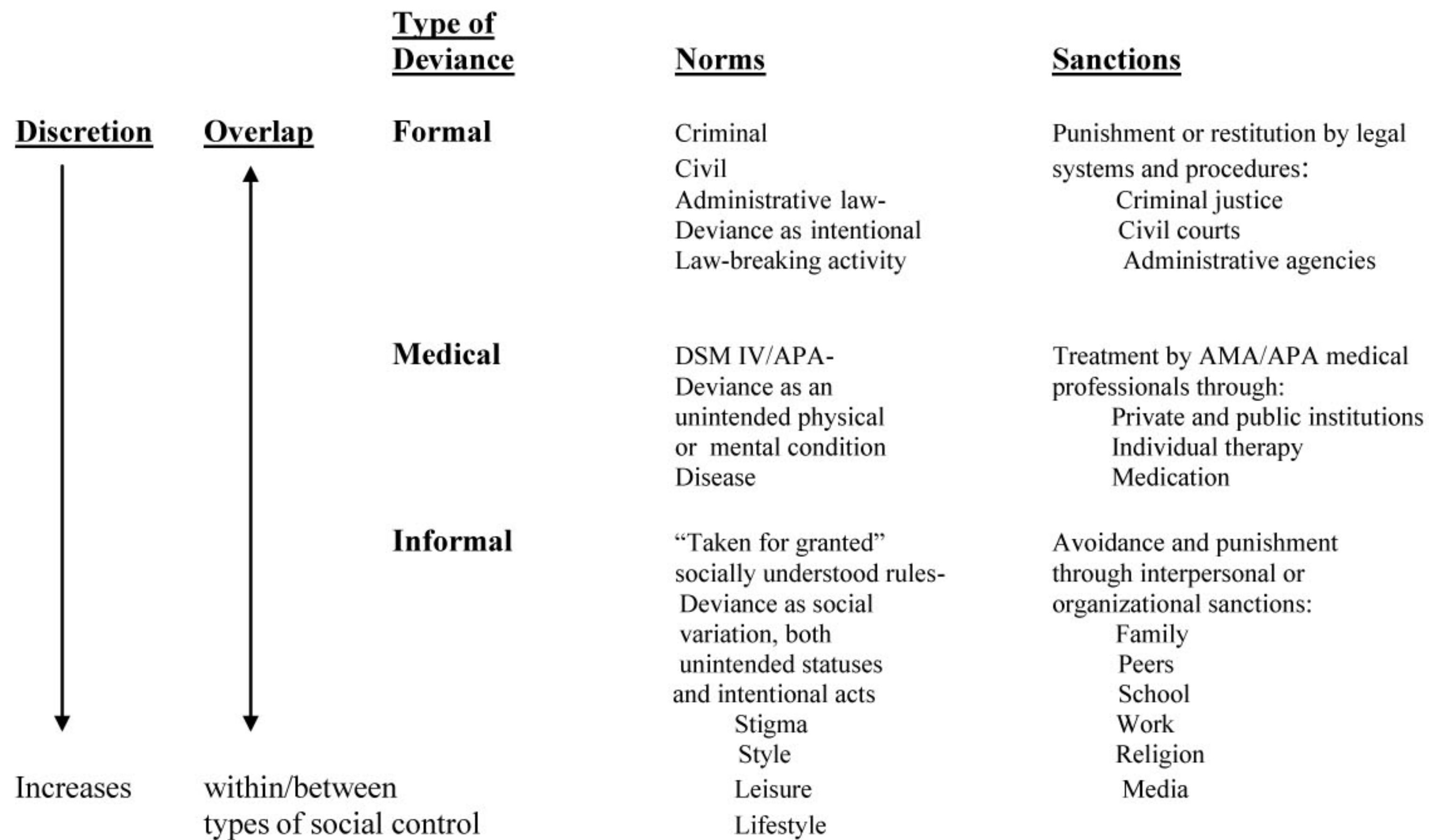


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**Figure 1. The Definition and Control of Deviance (Adapted from Heitzeg, Nancy A. 1996. *Deviance: Rulemakers and Rulebreakers*, St. Paul, MN: West)**

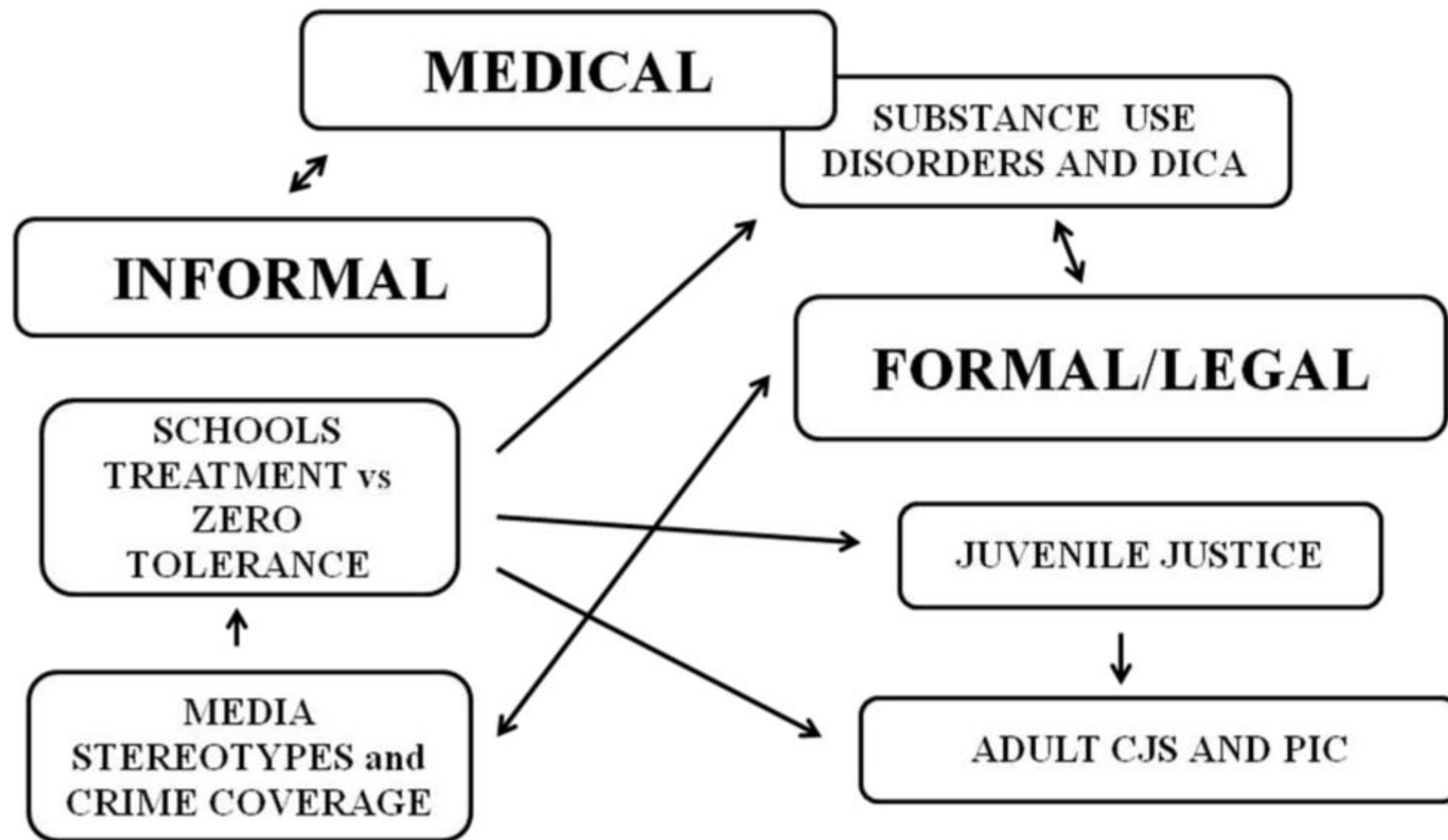


Figure 2. Race, Class and Intersecting Social Control: Options for Defining “Deviant” Youth