Data-Driven Decision Making for Courts

This brief illustrates how courts can use data and evidence to guide policy and practice decisions that promote court ideals of fairness and equal justice.

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BLUEPRINT
for Racial Justice

NCSC
National Center for State Courts

SJI
State Justice Institute

Data-Driven Decision Making for Courts

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Data are a critical component in court community efforts to promote racial justice in the legal system.[1] Racial justice in the legal system can include both issues that are internal to the courts (e.g., racial equity in court workforce experiences and outcomes) and issues related to external court users (e.g., racial equity in court user experiences and case outcomes). Making policy decisions that are informed by evidence helps court leaders ensure that they are addressing the issues that are most urgent, that policies are having their intended effects, and that there are not unforeseen consequences impeding reform.

This brief summarizes various ways that the courts can use data to guide policy decision-making to promote racial justice. The quantitative and qualitative data that courts use to guide their decision-making can take many forms, including case management system data, employment and personnel information, and input from critical stakeholders—including the communities that the court serves. Sometimes the data come from the court's own systems (such as in case management systems), and sometimes courts must collaborate with justice partners to gather the data they need.

There are a wide variety of ways that courts can use data to inform their decision-making. In this brief, we summarize five of these applications, but there are potentially many more. These include:

1. **Describing problems, processes, and outcomes**
2. **Identifying priorities**
3. **Communicating problems and successes**
4. **Evaluating what works**
5. **Tracking changes over time**

This brief highlights a few examples of how state courts have harnessed data to make policy and program decisions. For more examples of how the courts are using data to promote racial equity, see the National Center for State Courts' Blueprint for Racial Justice *Directory of Systemic Change Initiatives*.[2] Each entry in the *Directory* summarizes the roles that data played in the highlighted initiative.

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1 National Center for State Courts, Blueprint for Racial Justice (2022). *Systemic Change Guiding Principles*. Available at https://www.ncsc.org/__data/assets/pdf_file/0029/76574/Systemic-Change-Guiding-Principles.pdf

2 National Center for State Courts, Blueprint for Racial Justice (2022). *Directory of Systemic Change Initiatives, First Edition*. Available at https://www.ncsc.org/__data/assets/pdf_file/0023/86054/Directory-of-Systemic-Change-Initiatives-First-Edition_updated.pdf

1. Describing problems, processes, and outcomes

The first use of data in evidence-based decision-making is to simply describe the state of things. It can be useful for courts to periodically examine their data to better understand the communities they serve, the types of cases they process and people they employ. A simple summary of case data or employment data can point to disparities and potential equity issues that should be examined further.

For example:

- In a study of language translation needs in the state courts, about one third of respondents reported that their courts sometimes use family members or friends, advocates, and other non-credentialed individuals to interpret for litigants with Limited English Proficiency.[3] For languages other than Spanish, this frequency was even higher. This straightforward observation about the prevalence of unmet translation needs points to a potential problem of racial, ethnic, and national origin disparities in access to justice.

- The Ohio Courts use data to ensure that their specialized dockets are operating as intended.[4] Although research generally supports the effectiveness of specialized dockets and problem-solving courts, research also shows that racial disparities may exist when it comes to who has access to such programs, program completion rates, the administration of sanctions and incentives across participants, and recidivism outcomes.[5] To address this concern, the courts collect detailed data on processes and outcomes, including race and ethnicity data. Court leaders regularly examine the data to ensure that there are no racial and ethnic disparities in access to these programs.

- Finally, the Michigan Courts are undertaking an initiative to identify potential racial disproportionality in the composition of juries.[6] Although there is concern

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3 National Center for State Courts and Center for Court Innovation (2012). Effective Court Communication: Assessing the Need for Language Access Services for Limited English Proficient Litigants in Domestic Violence, Sexual Assault, Dating Violence, and Stalking Cases. Available at https://www.courtinnovation.org/sites/default/files/documents/LEP%20Needs%20Assessment%20Report_FINAL.pdf.

4 The Supreme Court of Ohio (n.d.), *Specialized Dockets.* Available at https://www.supremecourt.ohio.gov/courts/services-to-courts/specialized-docket-section/. See also National Center for State Courts, Blueprint for Racial Justice (2022). *Directory of Systemic Change Initiatives, First Edition* (see Initiative 20). Available at https://www.ncsc.org/__data/assets/pdf_file/0023/86054/Directory-of-Systemic-Change-Initiatives-First-Edition_updated.pdf. For general guidance on how to determine whether specialized programs provide equivalent access and outcomes, see the National Center for State Courts and National Drug Court Institute's Equity and Inclusion Assessment Tool (EIAT) User Guide (July 2020) available at https://www.ndci.org/wp-content/uploads/2020/07/EIAT-guide-fnl-w-grant.pdf.

5 The Supreme Court of Ohio, *Racial and Ethnic Disparities Guidance for Specialized Dockets.* Available at https://www.supremecourt.ohio.gov/docs/JCS/specDockets/certification/SDGuidance/RacialEthnicDisparities.pdf

6 National Center for State Courts, Blueprint for Racial Justice (2022). *Directory of Systemic Change Initiatives, First Edition* (see Initiative 19). Available at https://www.ncsc.org/__data/assets/pdf_file/0023/86054/Directory-of-System-

about a lack of racial diversity on juries, courts could not identify jurors' (or prospective jurors') race prior to the launch of this recent project. The Court is working with a university partner to collect and analyze data on the racial composition of its juries for the first time. When the analysis is complete, the Court will be equipped to identify precisely what disparities exist and in which jurisdictions within the state.

2. Identifying priorities

Another use of data is to identify the areas that are most in need of change. There are many ways to promote racial justice in the courts, and courts must choose how to spend their limited resources. Data can help the courts identify which needs are greatest or most urgent. The data that courts rely on to identify these needs can include their own case management data and employment data, as well as feedback and insights that the court hears from the community and court stakeholders.

For example:

- A recent report from the Washington Courts Gender and Justice Commission reviews an extensive study on racial and gendered disparities in court experiences and court outcomes.[7] In areas where the commission had access to high-quality, individual-level data on gender, race, and ethnicity, the Commission was able to identify important issues needing to be addressed. These included the costs of accessing the courts, growing and disproportionate incarceration rates for women of color, underrepresentation on juries, and pay disparities in the legal professions.

- The New Mexico Courts have also used data to identify priorities for reform. While the court was developing plans for the New Mexico Family Advocacy Program (NMFAP),[8] it mined its own case data for insights on which aspects of case processing and case outcomes (e.g., times to permanency, permanency outcomes, levels of reentry into care) showed the greatest disparities and issues.[9] The court then made sure that its new program addressed those specific issues. Because the court used data early on to develop the program, it is now also equipped to use data to examine program effectiveness about five years into implementation.

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ic-Change-Initiatives-First-Edition_updated.pdf

7 Washington State Supreme Court Gender and Justice Commission (2021). *How Gender and Race Affect Justice Now: Final Report*. Available at https://cdm16501.contentdm.oclc.org/digital/collection/accessfair/id/928/rec/1.

8 See New Mexico Courts (n.d.), *New Mexico Family Advocacy Program.* Available at https://nmfap.nmcourts.gov/

9 National Center for State Courts, Blueprint for Racial Justice (2022). *Directory of Systemic Change Initiatives, First Edition* (see Initiative 13). Available at https://www.ncsc.org/__data/assets/pdf_file/0023/86054/Directory-of-System-ic-Change-Initiatives-First-Edition_updated.pdf

- Finally, Michigan used data extensively to inform its recent bail reform efforts.[10] Data collected by the Court's research partner on arrests, jail custody, and court processes and outcomes allowed the Court to identify specific points in the criminal justice process that were most important to target in new legislation. As a result, at least eight bills were proposed in the state legislature to address specific issues, such as pretrial release decision-making, time between arrest and first appearance before a judge, and the use of cash bail.

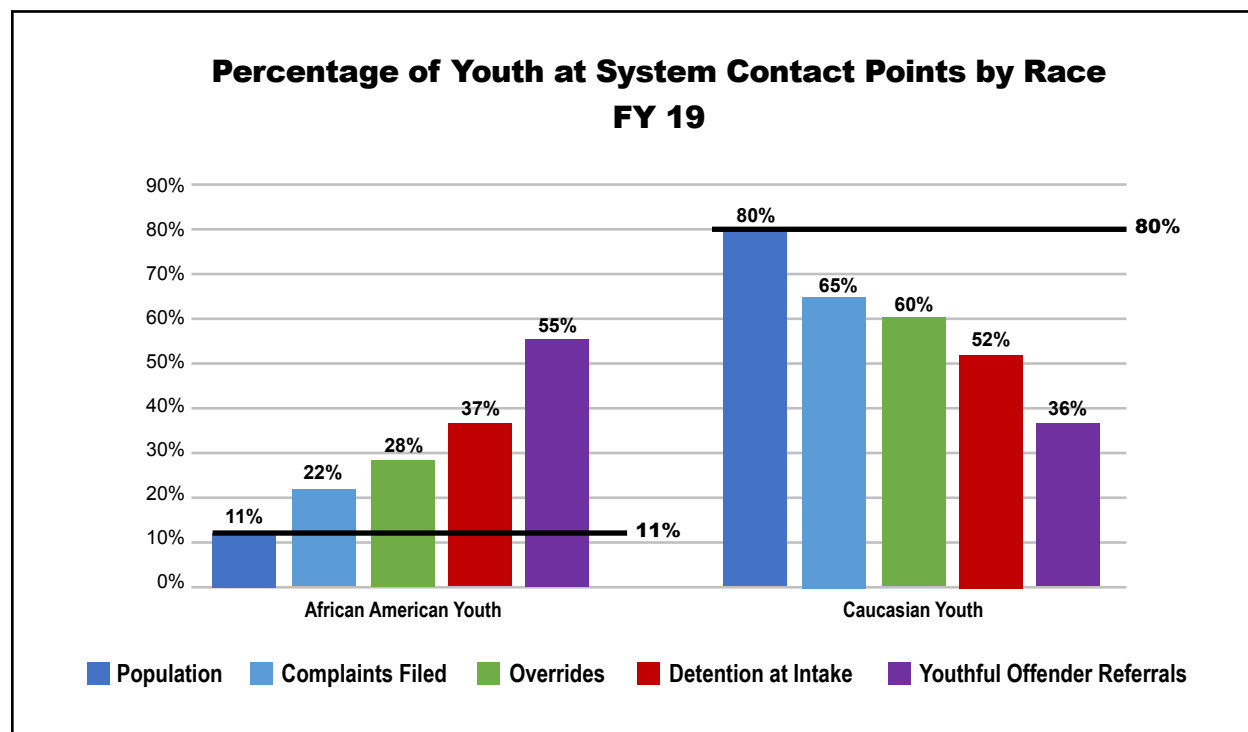## 3. Communicating problems and successes

Another use of data is to communicate a problem in a way that will persuade stakeholders to act. Important systemic reforms often depend on the support of multiple audiences (e.g., court leadership, state legislatures, community organizations), and the data can tell a story in a way that helps everyone see the importance of the issue. Effective communication can lead to the courts receiving more funding and resources to support their programming.

For example:

- The Kentucky courts examined racial disproportionality across decision points in the juvenile justice system.[11] Researchers were able to show that as young people progressed through more punitive contact points in the system, Black participants became more and more overrepresented. By visualizing these data for its audience, the Court was able to communicate in a compelling way how racial disproportionality grows as young people progress through the system. The following graphic is one of the figures used in the report.

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10 National Center for State Courts, Blueprint for Racial Justice (2022). *Directory of Systemic Change Initiatives, First Edition* (see Initiative 18). Available at https://www.ncsc.org/__data/assets/pdf_file/0023/86054/Directory-of-Systemic-Change-Initiatives-First-Edition_updated.pdf

11 Kentucky Court of Justice Response (2020). *A Guide for Identifying, Addressing, and Reducing Racial and Ethnic Disparities*. Available at https://kycourts.gov/Court-Programs/Family-and-Juvenile-Services/Pages/Reducing-Racial-and-Ethnic-Disparities.aspx.

Percentage of Youth at System Contact Points by Race FY 19

- The Texas Judicial Branch has also had success using data to obtain needed support for its language access programming.[12] After launching its remote interpretation and translation initiative to help Spanish-speaking litigants participate fully in court proceedings, the program began collecting data on requests for services, populations of jurisdictions where services are provided, and more. With this information, the program can now specify for court leaders and other stakeholders how much money the remote interpreting program saves the state. This has allowed the program to receive the funding it needs to grow and meet a greater proportion of the demand for services.

- Finally, the Pennsylvania courts have used data dashboards as communication tools to improve outcomes in the child welfare and dependency court.[13] Using the dashboards, judges who are not familiar with data can easily view and understand how case outcomes differ depending on the race of the child in each case. Access to this information has allowed court leaders to have more productive and successful conversations with judges about the need to address systemic and implicit racial biases.

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12 National Center for State Courts, Blueprint for Racial Justice (2022). *Directory of Systemic Change Initiatives, First Edition* (see Initiative 15). Available at https://www.ncsc.org/__data/assets/pdf_file/0023/86054/Directory-of-Systemic-Change-Initiatives-First-Edition_updated.pdf

13 National Center for State Courts, Blueprint for Racial Justice (2022). *Directory of Systemic Change Initiatives, First Edition* (see Initiative 12). Available at https://www.ncsc.org/__data/assets/pdf_file/0023/86054/Directory-of-Systemic-Change-Initiatives-First-Edition_updated.pdf

4. Evaluating what works

Another way that courts can use data to inform policy decision-making is to evaluate the effectiveness of different programs and interventions. For example, courts can compare case outcomes before and after the onset of a new program or compare case outcomes between litigants who opt into or out of a program. Courts can also use data to determine whether a successful program in one jurisdiction has been effectively replicated in a new jurisdiction. It sometimes happens that common sense suggests that a particular reform will be effective and data then reveal that it is not (see, for example, the body of research on *Scared Straight* programs[14] or research on efforts to replicate the HOPE probation model in other jurisdictions).[15] At the very least, continuing to spend time and money on approaches that don't work is a waste of limited court resources and public funds. At worst, programs that are not evaluated can backfire and cause real harm. Courts can ensure program effectiveness by incorporating high-quality data collection and program evaluation into their racial justice efforts.

For example:

- The Ohio courts recently conducted a study to examine the effectiveness of their Online Dispute Resolution (ODR) program.[16] By comparing case outcomes between litigants who participated in the ODR program and litigants who did not, the researchers were able to determine that the ODR program had a positive effect on case outcomes: voluntary case dismissals grew and became more common than default judgments. Furthermore, because the researchers had access to individual-level demographic data, they were able to conclude that positive case outcomes were equally distributed across racial groups and income categories.

- Another example is the new text message notifications initiative in the New Hampshire Judicial Branch.[17] The court is testing the use of text notifications to individuals charged with criminal offenses to reduce the number of failures to appear. The court took the time to collect detailed data on failure-to-appear rates

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14 Petrosino, A., Petrosino, C., & Buehler, J. (2004). *"Scared Straight" and Other Juvenile Awareness Programs for Preventing Juvenile Delinquency.* Available at https://files.givewell.org/files/DWDA%202009/Scared%20Straight/Campbell%20Scared%20Straight%20review.pdf.

15 Lattimore, P., et al., (2018). *Rigorous Multi-Site Evaluation Finds HOPE Probation Model Offers No Advantage Over Conventional Probation in Four Study Sites.* Available at https://nij.ojp.gov/topics/articles/rigorous-multi-site-evaluation-finds-hope-probation-model-offers-no-advantage-over.

16 Sanchez, A. & Embley, P. (2021). Access Empowers: How ODR Increased Participation and Positive Outcomes in Ohio. *2020 Trends in State Courts,* 14-19. Available at https://www.ncsc.org/__data/assets/pdf_file/0018/42156/Trends_2020_final.pdf. Underlying data from the project can be accessed at https://sites.google.com/view/fcmcdata-project/.

17 National Center for State Courts, Blueprint for Racial Justice (2022). *Directory of Systemic Change Initiatives, First Edition* (see Initiative 22). Available at https://www.ncsc.org/__data/assets/pdf_file/0023/86054/Directory-of-Systemic-Change-Initiatives-First-Edition_updated.pdf

prior to launching the program, so that it will be equipped to measure whether the program successfully reduces those rates. After the program has launched, the court will be able to use its data to determine the extent of the program's effectiveness and whether maintaining the program is a good use of court resources.

5. Tracking changes over time

Another way to use data to inform policy decision-making is to establish a baseline and track changes over time. Periodic monitoring allows the courts to ensure that they will become aware of any changes in case processing or case outcomes that occur as a result of societal events and trends (e.g., the pandemic) or system changes (e.g., staff turnover, new programming). This type of analysis often requires courts to collect the same type of data at repeated intervals; it is relatively common for research and policy questions to arise that cannot be answered unless the court had collected the appropriate data earlier (often years before). Accordingly, it is important to collect high-quality individual-level race and ethnicity data to set baselines that can be referenced later.

For example:

- A recent analysis of case filings across the U.S. shows that most types of case fillings decreased dramatically during the pandemic.[18] However, some specific types of case filings known to be characterized by racial disparities, such as mental-health-related cases, increased. This type of analysis was made possible by the fact that the researchers had regularly collected filing data each year prior to the pandemic and therefore had a baseline against which to make comparisons.

- The Iowa Judicial Branch uses data to monitor changes in outcomes for youth of color in its juvenile justice system.[19] In addition to establishing new diversion and screening procedures, the court began to collect extensive data on the overall population, school suspensions and expulsions, complaints, diversions, detention, and more, all disaggregated by race and ethnicity. By examining these reports quarterly, the court is able to monitor changes in outcomes over time and compare outcomes across districts. Each jurisdiction also sets yearly goals in response to the trends that they have observed in the data.

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18 Court Statistics Project (2022). 2020 Incoming Cases in State Courts, https://www.courtstatistics.org/__data/assets/pdf_file/0020/72254/CLHL_2020_Incoming_Cases-.pdf.

19 National Center for State Courts, Blueprint for Racial Justice (2022). *Directory of Systemic Change Initiatives, First Edition* (see Initiative 7). Available at https://www.ncsc.org/__data/assets/pdf_file/0023/86054/Directory-of-Systemic-Change-Initiatives-First-Edition_updated.pdf