

# Addressing Structural Racism in Juvenile Justice Through Experimentalism

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*Anti-discrimination legal efforts are evolving in an effort to address pervasive racism that continues to infect our social institutions. With our society transitioning away from the acceptance of “first generation” (i.e. overt and deliberate) racism, we still have to contend with “second generation” racism that exists in the structures of social programs, such as juvenile detention. Structural racism involves social practices and patterns of interaction that are harder to target with rule-based adjudication or command and control legislation. There is an emerging movement toward a more experimentalist approach, which induces actors to engage in investigation, information sharing, and deliberation to address complex problems. This Note explores the efforts of an experimentalist juvenile justice regime known as the Juvenile Detention Alternatives Initiative (JDAI), which was created in response to innovative amendments to the federal Juvenile Justice and Delinquency Prevention Act (JJDP). Specifically, this Note measures JDAI’s progress in addressing disproportionate minority contact in juvenile justice through the lens of New Jersey, JDAI’s first statewide model jurisdiction. Lastly, the Note evaluates whether lessons from experimentalist responses to workplace discrimination and child welfare reform can be applied to the juvenile detention context.*

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## I. INTRODUCTION

In an era where overt racism is no longer tolerated in American social institutions, racist public policy outcomes remain a problem even when there is no specific person or organization that deserves blame. Racism exists within the structures of our institutions, public and private. Ending pervasive, structural racism calls for a joint problem-solving approach by governments, courts, and intermediaries to identify and eliminate what triggers racist outcomes. The area of juvenile justice serves as an instructive, yet troubling example of how minorities receive disparate treatment within the judicial system.<sup>1</sup> Without evidence of intentional targeting of minorities, the existence of disproportionate minority contact (DMC) within the juvenile justice system is a fact lacking an easy explanation.<sup>2</sup> DMC results from structures and policies within the fabric of our social institutions, such as courts and juvenile detention facilities.<sup>3</sup> Identifying and remedying DMC requires an experimentalist approach to public sector problem solving, as the traditional command and control regulatory regime is ill suited to addressing subtleties that result in discriminatory outcomes.<sup>4</sup> Launched by the non-profit Annie E. Casey Foundation, the Juvenile Detention Alternatives Initiative (JDAI)'s campaign to reform the nation's juvenile justice system, has been widely successful in reducing juvenile detention by developing an experimentalist program for states and municipalities.<sup>5</sup> New Jersey's successful adoption of the JDAI framework stands out as a model for coordinating a statewide approach to reducing juvenile detention and developing innovative programs

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1. Olatunde C.A. Johnson, *Disparity Rules*, 107 COLUM. L. REV. 374, 375 (2007).

2. See, e.g., Perry L. Moriearty, *Combating the Color-Coded Confinement of Kids: An Equal Protection Remedy*, 32 N.Y.U. REV. L. & SOC. CHANGE 285, 313 (2008). See *infra* Part II for a discussion on the development of the DMC standard.

3. *Id.* at 312 ("It has become increasingly obvious that certain characteristics of the system itself contribute to the problem of DMC.")

4. A command-and-control approach to remedying a problem is ineffective when the causes of the problem are hard to pinpoint. See Charles F. Sabel & William H. Simon, *Contextualizing Regimes: Institutionalization As A Response to the Limits of Interpretation and Policy Engineering*, 110 MICH. L. REV. 1265, 1297 (2012). See *infra* Part IV for a discussion on command and control, as well as other policy typologies.

5. *Id.* at 1288.

and policies to combat DMC.<sup>6</sup> This approach should serve as an example to legislatures, administrators, and courts of how experimentalist problem solving can be leveraged to tackle structural racism in our social institutions.

This Note begins by discussing the nature of structural racism in public institutions and how legal standards have evolved to address this phenomenon. Part III introduces the federal and state juvenile justice frameworks, examining the federal Juvenile Justice and Delinquency Prevention Act (JJDP), its subsequent amendments, and how it uses funding to influence adherence on the state level. Part IV surveys different policy typologies, such as experimentalism and command and control, and how they inform the development of JDAI. An in-depth study of New Jersey's experience with JDAI follows in Part V. Lastly, Part VI analyzes New Jersey's juvenile justice system within the context of Professor Susan Sturm's framework for using policy experimentalism to combat structural workplace discrimination and Utah's child welfare system reforms. This Note argues that New Jersey could improve on its successful model by learning from workplace discrimination remedies that institutionalize outsider perspectives and Utah's standardized assessment method to uncover problems and ensure compliance with best practices.

## II. SECOND GENERATION RACISM

American society has steadily transitioned away from the kind of "first generation" racism that permeated public and private life, which entailed intentional and overt discrimination.<sup>7</sup> It is largely rare to observe public officials openly and purposely discriminating against minorities on a widespread basis. Richard Thompson Ford has described our era as one marked by "racism without racists."<sup>8</sup> Ford argues that there is not always a blame-worthy racist behind every instance of racism. "[M]any of today's

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6. STATE OF NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, 2012 ANNUAL REPORT 55 (2013), available at [http://www.nj.gov/oag/library\\_annualreports.html](http://www.nj.gov/oag/library_annualreports.html) [hereinafter 2012 OAG Annual Report].

7. Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458, 465 (2001) (discussing "first generation" discrimination).

8. RICHARD T. FORD, THE RACE CARD: HOW BLUFFING ABOUT BIAS MAKES RACE RELATIONS WORSE 32 (2008).

racial injustices are not caused by simple prejudice; instead, they are the legacies of the racial caste system of our recent past.”<sup>9</sup> Legacies of our nation’s racist past are better described as social problems “that demand social solutions – not individual misdeeds that demand excoriation.”<sup>10</sup> In order to address structural racism, the focus must be on deciphering the “social practices and patterns of interaction among groups within [an institution] that, over time, exclude nondominant groups.”<sup>11</sup> One can create a paradigm for problem-solving by embracing the notion that discrimination in social institutions results from legacies ingrained in their structures, rather than from the acts of a purposeful decision-maker.

The federal legal standard commonly used to address discrimination by government actors is “disparate impact,” which was first articulated by the Supreme Court in *Griggs v. Duke Power Company*<sup>12</sup> and is codified in Title VII of the 1964 Civil Rights Act.<sup>13</sup> The disparate impact test bars institutions from the use of practices and policies that disadvantage minorities if they cannot be reasonably justified.<sup>14</sup> While this standard may be successful in targeting policies with a clear discriminatory effect, the ability to justify actions does little to encourage institutions to consider *how* their policies exacerbate and perpetuate racial inequality.<sup>15</sup> The ability to provide a reasonable justification for a policy’s discriminatory effect stops the inquiry there and does not

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9. *Id.* at 31.

10. *Id.* at 58.

11. Sturm, *supra* note 7, at 460. *See also* Johnson, *supra* note 1, at 379–80 (discussing how structural racial inequality can account for racial disparities in juvenile justice, rather than “invidious bias”).

12. 401 U.S. 424 (1971). In *Griggs*, the Supreme Court prohibited an employer from requiring a high school education or passage of a standardized test as a condition for employment due to the disproportionate disqualification rate of African Americans as compared to White job applicants. *Id.* at 436. “The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.” *Id.* at 431.

13. *See* 42 U.S.C. § 2000e-2(k)(1)(A)(i) (2006) (“[A] complaining party demonstrates that a respondent uses a particular employment practice that causes a *disparate impact* on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity.”) (emphasis added).

14. Johnson, *supra* note 1, at 376.

15. *Id.* at 380.

create an opportunity or incentive for the institution to explore why the policy is discriminatory in the first place.

Addressing racial inequality within institutions, without clear explanation for its existence, requires a standard that is suited to highlighting the mechanisms that sustain racial inequality.<sup>16</sup> Innovations within the federal juvenile justice legal architecture have led to the development of the DMC standard, providing institutions with powerful incentives and tools to identify and remedy structural racism.<sup>17</sup> In 1992 and 2002, Congress amended the federal JJDPa to require state-run juvenile justice programs that receive federal funds to reduce the disproportionate number of minority juveniles who come into contact with the juvenile system.<sup>18</sup> Focusing on disproportionality requires public officials to generate information about how racial disparities are produced, which in turn allows officials and interested parties to pinpoint the areas of a social policy or practice that can be reformed.<sup>19</sup> Rather than focusing on specific prohibited conduct, an antidiscrimination regime should view an identified racial impact as a warning sign that triggers scrutiny.<sup>20</sup>

### III. STRUCTURAL RACISM AND JUVENILE JUSTICE

With the JJDPa amendments, policymakers adopted a DMC standard in the face of stark racial disparities in state juvenile justice programs. In 2002, for example, African Americans comprised about 15% of all youth, while 40% of the juveniles confined in institutions were African American.<sup>21</sup> Indeed, the confinement disparity for all minorities has been exponentially growing since the 1980s. In 1985, 43% of juvenile detainees were youth of color. This number grew to 56% by 1995, and 69% by 2006.<sup>22</sup> The caus-

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16. *Id.* at 386.

17. *Id.* at 379.

18. *Id.* at 401–02. The relevant text of the JJDPa requires that a state plan must “address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system.” 42 U.S.C. § 5633(a)(22) (2006).

19. Johnson, *supra* note 1, at 402.

20. Sabel & Simon, *supra* note 4, at 1286.

21. Johnson, *supra* note 1, at 402–03.

22. RICHARD A. MENDEL, THE ANNIE E. CASEY FOUNDATION, TWO DECADES OF JDAl: FROM DEMONSTRATION PROJECT TO NATIONAL STANDARD, 6 (2009), *available at*

es of DMC in juvenile justice are hard to pinpoint and there are few public officials to point a finger at for conscious discriminatory behavior. Rather, “[m]any researchers have concluded that the race effects observed are likely the product of unconscious bias or the use of decision-making criteria with strong racial correlates that differentially disadvantage minority youth.”<sup>23</sup>

Although a primary focus of the JJDPa is tackling the high juvenile crime rate,<sup>24</sup> the growing racial disparity in the juvenile justice system inspired Congress to make the reduction of disparities in confinement a “core” requirement.<sup>25</sup> Congress leveraged the power of the purse to address racial disparities in confinement by tying 25% of a state’s grant funds to meeting the DMC requirement.<sup>26</sup> Under the JJDPa, a state must first identify whether disproportionate minority confinement is occurring in detention or correctional facilities.<sup>27</sup> Second, the state must attempt to determine the cause of disproportionate minority confinement.<sup>28</sup> The state is required to identify and explain racial differences revealed at various points in the juvenile justice system and must then develop an intervention plan.<sup>29</sup> “Federal regulations give states broad discretion in developing the plan, though it must address certain specified areas, such as increasing the availability and quality of juvenile diversion programs, improving the capacity of prevention programs in minority communities, and providing training to staff.”<sup>30</sup> Rather than simply pro-

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[http://www.aecf.org/~media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/TwoDecadesofJDAIFromDemonstrationProjecttoNat/JDAI\\_National\\_final\\_10\\_07\\_09.pdf](http://www.aecf.org/~media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/TwoDecadesofJDAIFromDemonstrationProjecttoNat/JDAI_National_final_10_07_09.pdf).

23. Moriearty, *supra* note 2.

24. 42 U.S.C. § 5601 (2006).

25. Johnson, *supra* note 1, at 408.

26. *Id.*

27. See 28 C.F.R. § 31.303(j)(1) (2013) (“[D]etermine whether minority juveniles are disproportionately detained or confined in secure detention and correctional facilities, jails and lockups in relation to their proportion of the State juvenile population.”).

28. See 28 C.F.R. § 31.303(j)(2) (“Assessments must, at minimum, identify and explain differences in arrest, diversion and adjudication rates, court dispositions other than incarceration, the rates and periods of prehearing detention in and dispositional commitments to secure facilities of minority youth in the juvenile justice system . . .”).

29. Johnson, *supra* note 1, at 409. The 2002 amendments to the JJDPa “broadened the concept of DMC from disproportionate minority “confinement” to disproportionate minority “contact” by requiring an examination of possible disproportionate representation of minority youth at all decision points along the juvenile justice system continuum.” Moriearty, *supra* note 2, at 317.

30. Johnson, *supra* note 1, at 409.

hibit disparate impacts, the law requires state recipients of federal funds to monitor and assess their juvenile programs to understand and remedy racial disparities. By granting the states broad discretion to create a plan, the federal government allows innovative problem solving to flourish at the local level. The combination of accountability (funding, in the case of the JJDPa) and local autonomy to develop solutions is the hallmark of an experimentalist regime and is one of the reasons why some localities, such as New Jersey have been so successful at reforming their juvenile justice systems.

#### IV. EXPERIMENTALISM AND THE DEVELOPMENT OF THE JUVENILE DETENTION ALTERNATIVES INITIATIVE

Efforts at reforming juvenile justice can be usefully analyzed through the lenses of several policy typologies. This Part discusses the experimentalist model and how it applies to JDAI. Three primary models of public intervention problem solving are “command and control,” “minimalism,” and “experimentalism.”<sup>31</sup> Command and control regimes set rules and standards by utilizing a bureaucracy to ensure compliance.<sup>32</sup> Academics, courts, and policymakers have come to recognize the limitations of the traditional command and control model, which locks parties into their initial adversarial roles and lacks the capacity to learn and revise through experience.<sup>33</sup> Additionally, command and control regimes can promulgate ambiguous rules that “provide inadequate guidance to shape conduct, and will undermine efforts at anticipatory compliance. This uncertainty in turn tends to induce gestures of compliance with the legal norm, without necessarily inducing any change in the underlying behavior causing the problem.”<sup>34</sup> The rigidity of command and control stands in contrast to minimalism and experimentalism. Minimalism “emphasizes public interventions that incorporate market concepts and practices

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31. Charles F. Sabel & William H. Simon, *Minimalism and Experimentalism in the Administrative State*, 100 GEO. L.J. 53, 54–55 (2011).

32. *Id.* at 54.

33. Edgar Cahn & Cynthia Robbins, *An Offer They Can't Refuse: Racial Disparity in Juvenile Justice and Deliberate Indifference Meet Alternatives That Work*, 13 UDC L. REV. 71, 104 (2010).

34. Sturm, *supra* note 7, at 461.

while also centralizing and minimizing administrative discretion.”<sup>35</sup> Although market-based practices are not quite relevant to the juvenile justice context, minimalism occupies a crucial place on the problem-solving spectrum.<sup>36</sup>

Departing from the rigidity of command and control and the centralization of minimalism, experimentalism “emphasizes interventions in which the central government affords broad discretion to local administrative units but measures and assesses their performance in ways designed to induce continuous learning and revision of standards.”<sup>37</sup> Broad discretion allows organic innovations to arise from local administrative units, or in the case of juvenile justice, states and municipalities. “The experimentalist lawmaker does not try to calibrate remedies precisely to induce the desired pattern of conduct, because she does not know with any specificity what the desired pattern of conduct is.”<sup>38</sup> Experimentalist institutions have arisen in settings “in which decades of apparently fruitless and interminable debate have created strategic uncertainty among the contending parties and opened them to interventions aimed at learning from promising local experience.”<sup>39</sup> Examples of experimentalist institutions include the Hazards Analysis and Critical Control Points program for meat and poultry at the Department of Agriculture; the Nuclear Regulatory Commission’s power-plant safety program;<sup>40</sup> and the Toyota Production System.<sup>41</sup> The basic model of the experimentalist architecture for learning consists of a center and local units. The center unit facilitates and induces “this disciplined comparison of local performances and mutual learning among local units. Finally, the framework goals, performance measures, and decision-

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35. Sabel & Simon, *supra* note 31, at 53.

36. *Id.* at 55 (“Minimalism has been influential in legal scholarship and popular policy discourse, but its impact on actual policy design has been surprisingly limited.”). Minimalism cannot be applied to the aspects of the juvenile system that are the focus of this Note, such as the process to detain youths and the alternatives to detention. No market-based approach would be relevant here.

37. *Id.* at 53.

38. Charles F. Sabel & William H. Simon, *Destabilization Rights: How Public Law Litigation Succeeds*, 117 HARV. L. REV. 1015, 1055 (2004).

39. Sabel & Simon, *supra* note 31, at 78. It is worth mentioning that some scholars consider experimentalism to be “in its infancy” and “young and unproven, but operating in the here and now.” Justin Desautels-Stein, *Economic Development and the Problem with the Problem-Solving Approach*, 5 WASH. U. JURISPRUDENCE REV. 1, 51 (2012).

40. Sabel & Simon, *supra* note 31, at 83.

41. *Id.* at 80. *See infra* notes 127-32 and accompanying discussion.



making procedures themselves are periodically revised on the basis of alternatives reported and evaluated in peer reviews, and the cycle repeats.”<sup>42</sup>

Experimentalism, however, does not occur spontaneously and in some cases is coupled with judicial enforcement to provide an impetus for reform. Susan Sturm’s examination of experimentalism and workplace discrimination notes that “courts following the structural approach act as a catalyst, encouraging or even providing the structure for deliberations aimed at solving problems that threaten the legality (and efficacy) of institutions. Courts also supply incentives for employers to implement effective internal problem-solving mechanisms and to evaluate their effectiveness.”<sup>43</sup> Indeed, as will be discussed below, the reforms to New Jersey’s juvenile justice system were partially sparked by litigation and a consent decree. Although courts can act as a “catalyst” for reform, they should not be “assuming central responsibility for dictating how to address [the problem at hand].”<sup>44</sup> Rather, courts encourage actors to undertake problem-solving measures and can provide a structured venue to deliberate over how to engage in reform.<sup>45</sup>

Sturm’s article highlights the role of courts in providing a deliberative process and a consent decree to resolve Home Depot’s workplace discrimination issues.<sup>46</sup> Responding to the structural nature of workplace discrimination, Sturm constructs a framework that employers and the judiciary (through the use of consent decrees) should use to approach structural forms of bias, which shifts the focus from “after-the-fact” to a “fluid, interactive relationship between problem solving and problem definition

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42. Sabel & Simon, *supra* note 31, at 79.

43. Sturm, *supra* note 7, at 557.

44. *Id.* at 555.

45. *Id.*

46. *Id.* at 557. However, Sturm’s conclusions regarding the role of the courts in resolving Home Depot’s workplace discrimination practices are not universally accepted. One scholar, Michael Selmi, argues that the workplace discrimination lawsuit was not the catalyst for Home Depot’s decision to overhaul its hiring process for female employees. Michael Selmi, *The Price of Discrimination: The Nature of Class Action Employment Discrimination Litigation and Its Effects*, 81 TEX. L. REV. 1249, 1287 (2003) (“[Home Depot], however, has maintained that it was planning to overhaul its practices even without the lawsuit, and contends that it simply did what it was planning to do, though within a slightly shorter timeframe.”).

within specific workplaces.”<sup>47</sup> In this framework, problem solving is achieved through structuralism, which “encourages the development of institutions” and “improv[es] institutional capacity to identify, prevent, and redress exclusion, bias, and abuse.”<sup>48</sup> Sturm’s workplace discrimination case studies have much in common with JDAI. Once an impetus for change arises, the stakeholders resort to experimentalist problem solving, rather than dictating a rigid prescription for reform.

In the case of JDAI, the requirements of the JJDPa provided the impetus for an experimentalist response to juvenile justice reform. The JDAI program was developed by the Annie E. Casey Foundation, a non-profit organization focused on assisting disadvantaged children and families through public policy initiatives, human services reform, and community support, as a method to reverse the trend of increasing juvenile detention rates.<sup>49</sup> Launched in the 1990s as a five-site demonstration project, JDAI is now on track to become the standard of practice for local justice systems.<sup>50</sup> Casey Foundation leaders felt that, in addition to directly reducing the number of young people in detention, juvenile detention reform could spur changes in other juvenile justice areas as well.<sup>51</sup> The organization aimed to show that juvenile justice could be “smarter, fairer, and more efficient,” and demonstrate that in the long term this would result in delinquent youth becoming more productive adults.<sup>52</sup> As of 2009, 110 local jurisdictions in 27 states had active JDAI programs, meaning 61% of U.S. youth reside in a state with at least one JDAI site.<sup>53</sup>

JDAI can be comfortably described as an experimentalist regime. Experimentalist regimes establish a framework of goals and preliminary measures for assessing their achievement.<sup>54</sup> JDAI conforms to the experimentalist model in its use of “core elements” that act as overarching goals for each jurisdiction to achieve.<sup>55</sup> The JDAI model has eight core elements: collabora-

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47. Sturm, *supra* note 7, at 462–63.

48. *Id.* at 463.

49. MENDEL, *supra* note 22, at 7–8.

50. *Id.* at 2.

51. *Id.* at 8.

52. *Id.*

53. *Id.* at 10–11.

54. Sabel & Simon, *supra* note 31, at 55.

55. MENDEL, *supra* note 22, at 8.

tion; collection and utilization of data; objective admissions screening; new or enhanced non-secure alternatives to detention; case processing reforms; flexible policies and practices to deal with “special” cases; persistent and determined attention to combating racial disparities; and intensive monitoring of conditions of confinement.<sup>56</sup> Data collection, measurement and continuous monitoring are also key components of the experimentalist model.<sup>57</sup> The inclusion of racial disparities as one of the eight core elements ensures that a JDAI jurisdiction understands that alleviating discrimination is integral to its overall approach to juvenile justice reform.<sup>58</sup>

In order to join the JDAI network, a jurisdiction must apply to the Casey Foundation.<sup>59</sup> Only applicants that “demonstrate a strong commitment to the project’s goals, agree to implement all elements of the model, and mobilize a broad-based collaborative leadership team with the skills and resources required for success” will be accepted.<sup>60</sup> Nationally, JDAI sites have seen an average reduction in juvenile detention by 27% compared to the year prior to joining JDAI, a likely byproduct of the program’s success in lowering admission rates and average length of stay.<sup>61</sup> JDAI sites are also taking steps to address DMC issues. In 2007, JDAI jurisdictions detained 873 fewer youth of color than they did prior to joining JDAI, despite a continuing nationwide increase in the detention of minority youth.<sup>62</sup> While JDAI sites have not collectively reduced minority disproportionality in juvenile detention, JDAI has mobilized local leaders to spearhead innovative projects aimed at reducing DMC.<sup>63</sup> To combat this issue, JDAI jurisdictions have begun to partner with the W. Haywood Burns Institute, a San Francisco based non-profit that works with small jurisdictions to reduce DMC.<sup>64</sup> The goal of JDAI’s DMC approach is to neutralize bias by reviewing evidence of dis-

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56. *Id.* at 8–9.

57. Sabel & Simon, *supra* note 31, at 80.

58. MENDEL, *supra* note 22, at 22.

59. *Id.* at 11.

60. MENDEL, *supra* note 22, at 11.

61. *Id.* at 14.

62. *Id.* at 3.

63. *Id.*

64. *What is R.E.D?*, W. HAYWOOD BURNS INST. FOR JUV. JUST., FAIRNESS, AND EQUITY, <http://www.burnsinstitute.org/what-is-red/> (last visited Mar. 10, 2014).

parate racial impacts that result from certain practices and proposing alternatives to them.<sup>65</sup> The review includes analysis of site-specific data from every step of the detention process.<sup>66</sup>

#### V. ADDRESSING DISPROPORTIONATE MINORITY CONTACT IN NEW JERSEY'S JUVENILE JUSTICE SYSTEM

New Jersey's collaboration with JDAI stands out as an experimentalist model for coordinating a statewide approach to reducing juvenile detention and developing innovative programs and policies to combat DMC. The Casey Foundation designated New Jersey as model state in 2008 due to the presence of a strong existing bureaucratic infrastructure that promotes and sustains learning and replication on a statewide scale.<sup>67</sup> As a result, the state serves as a "learning laboratory" for other JDAI states with ambitions for boosting their replication capacity.<sup>68</sup>

New Jersey was an ideal location to become the first JDAI statewide model site for a number of reasons. The New Jersey Juvenile Justice Commission (JJC), created in 1995 within the Office of the Attorney General, was too new to be entrenched in past practices, but was around long enough to identify flaws in the current system.<sup>69</sup> Additionally, the child welfare system in the state was sued just prior to the initial implementation of JDAI.<sup>70</sup> The litigation created an opportunity for juvenile detention reform, as discussion of the two systems was often intertwined, and the Casey Foundation was able to use the issues surrounding the child welfare system to underscore the importance of reforming juvenile detention.<sup>71</sup> Furthermore, a federal consent order against Essex County was filed in 1987 over illegal condi-

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65. MENDEL, *supra* note 22, at 22.

66. *Id.* at 23.

67. *Id.* at 10.

68. *Id.*

69. Telephone Interview with Lisa Macaluso, former Director, Office of Local Programs and Servs., N.J. Juvenile Justice Comm'n (Nov. 12, 2012) [hereinafter Lisa Macaluso Interview].

70. See *Charlie H. v. Whitman*, 83 F. Supp. 2d 476 (D.N.J. 2000). See also Susan K. Livio, *Monitor: N.J. Child Welfare Agency Struggles to Visit Families, Excels in Getting Foster Kids Health Care*, NJ.COM (July 19, 2012), [http://www.nj.com/index/2012//monitor\\_nj\\_child\\_welfare\\_agenc.html](http://www.nj.com/index/2012//monitor_nj_child_welfare_agenc.html) (discussing the progress of the child welfare reforms spurred by the lawsuit).

71. Lisa Macaluso Interview, *supra* note 69.

tions at the Juvenile Detention Center, and was only lifted in 2008.<sup>72</sup> The mandatory compliance provisions of the consent order pressured New Jersey to improve its juvenile detention system, which also created an environment ripe for broader reform of juvenile justice statewide.<sup>73</sup>

### A. SYSTEM DESIGN

The New Jersey JDAI core governance strategy creates a juvenile justice system with interactive and interdependent parts, as opposed to a set of institutions making individual decisions.<sup>74</sup> The JJC is the lead agency for JDAI in New Jersey, and provides the management and staffing for JDAI's statewide integration.<sup>75</sup> JJC coordinates with counties, which are responsible for their own detention facilities.<sup>76</sup> Guidance is provided by the State Council on Juvenile Justice System Improvement with forty-three current members, which include representatives from the Governor's office, the Attorney General's Office, the judiciary, court administrators, the Public Defenders' Office, Department of Children and Families, and nonprofit organizations.<sup>77</sup>

In 2003, five New Jersey counties began to implement JDAI. The original sites, Atlantic, Camden, Essex, Hudson, and Monmouth counties, all contained cities with high levels of crime and minority populations (Atlantic City, Camden City, Newark, Jer-

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72. Press Release, Essex County, Essex County Executive Divincenzo Announces Federal Consent Order Involving The Essex County Juvenile Detention Center Has Been Dismissed (July 30, 2008), *available at* <http://www.essexcountynj.org/index.php?section=pr/print/073008>.

73. *Id.* ("Overcrowding was addressed by working closing with the Family Court and Youth Services Commission to place juveniles in alternatives to incarceration programs.")

74. Kathleen Feely, *Collaboration and Leadership in Juvenile Detention Reform*, in PATHWAYS TO JUVENILE DETENTION REFORM 1, 12 (The Annie E. Casey Foundation, 1999), *available at* <http://www.aecf.org/upload/publicationfiles/collaboration%20and%20leadership.pdf>.

75. STATE OF NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, JUVENILE JUSTICE COMMISSION, NEW JERSEY JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) 2011 ANNUAL REPORT ii (2012), *available at* [http://www.nj.gov/oag/jjc/localized\\_programs\\_jdai.html](http://www.nj.gov/oag/jjc/localized_programs_jdai.html) [hereinafter NJ 2011 ANNUAL REPORT].

76. *Id.* at i.

77. *New Jersey Council on Juvenile Justice System Improvement, Membership Roster*, N.J.GOV (June 2012), [http://www.nj.gov/oag/jjc/pdf/2012\\_CJJSI-Membership-List.pdf](http://www.nj.gov/oag/jjc/pdf/2012_CJJSI-Membership-List.pdf).

sey City, and Asbury Park, respectively).<sup>78</sup> In the first four years, these five counties were able to reduce detention populations and commitments to state correctional facilities by more than 40%.<sup>79</sup> Five more counties entered the program in 2005 and also saw significant reductions.<sup>80</sup> Six counties followed between 2008 and 2012.<sup>81</sup> In 2013, Cape May County was selected as New Jersey's seventeenth JDAI replication site.<sup>82</sup>

Similar to JDAI nationwide, New Jersey has been successful at reducing the detention of minorities in the aggregate,<sup>83</sup> but has a mixed record of showing definitive progress at tackling disproportionality.<sup>84</sup> Across all fifteen New Jersey sites on any given day in 2011, "there were 400 fewer youth of color in detention than prior to JDAI implementation, a decrease of -54.2%."<sup>85</sup> An over 50% decrease in the average daily population pre-/post-JDAI implementation for youth of color in detention shows that JDAI is effective at reducing detention, but only a handful of counties can show data supporting success at addressing DMC. Across all New Jersey JDAI sites, the percentage of the average daily detention population comprised of youth of color has remained flat since JDAI implementation, up only 1.2 percentage points, from 90.6% to 91.8%.<sup>86</sup> Still, seven JDAI sites have experienced decreases in the percentage of minority youth in detention on an average day, with the largest decrease occurring in Somerset County from 81.9% pre-JDAI to 71.2% in 2011, a decline of 10.7

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78. Paul De Muro, *Going Statewide: The New Jersey Model*, JDAI HELPDESK (2008), <http://www.jdaihelpdesk.org/intersiteconf2008/Going%20Statewide%20New%20Jersey.pdf> (presented at AECF National Conference 2008).

79. MENDEL, *supra* note 22, at 30.

80. *Id.*

81. De Muro, *supra* note 78 (The 2005 counties are Bergen, Burlington, Mercer, Ocean and Union. The 2008 counties are Passaic and Somerset). The counties that joined in 2009 are Cumberland, Middlesex and Warren. *NJ 2011 Annual Report*, *supra* note 75, at 2.

82. Press release, New Jersey Office of the Attorney General, Cape May Becomes 17th JDAI Site (July 9, 2013), *available at* <http://nj.gov/oag/newsreleases13/pr20130709b.html>. Gloucester County was the 16th JDAI site. *Id.*

83. THE ANNIE E. CASEY FOUNDATION, JUVENILE DETENTION ALTERNATIVES INITIATIVE: 2012 ANNUAL RESULTS REPORT 1 (2013) ("In the aggregate, JDAI sites detained 39 percent fewer youth of color than they did prior to JDAI.")

84. *Id.* at 7 ("Racial and ethnic disparities do not appear to have narrowed in JDAI sites overall: Youth of color were still detained at more than three times the rate of all other youth in 2012.")

85. NJ 2011 ANNUAL REPORT, *supra* note 75, at 16.

86. *Id.* at 21.

percentage points.<sup>87</sup> While New Jersey has yet to impact DMC on a wide-scale, there is empirical evidence that some counties have found a way to make progress on reducing DMC.

DMC is a structural problem, which is harder to address than overt racism, in which racist state employees could be screened and fired.<sup>88</sup> Nonetheless, the lack of data showing statewide progress on DMC should not be viewed as an indictment of JDAI. As will be shown below, the value of data is to pinpoint DMC issues along the juvenile justice process. This approach attacks DMC at the margins until widespread structural change is achieved. Experimentalist regimes are not experimental in name only. Solutions to discriminatory outcomes do not come easy, especially in complex government institutions, and the best way to achieve results is to experiment with innovative programs that target DMC problem areas.

## B. DATA MEASUREMENT

The establishment of methods to collect and measure data is a hallmark of JDAI's core framework. Data collection and analysis at pre-adjudication decision points in the juvenile justice system is crucial because it has been shown to significantly reduce racial and ethnic disparities.<sup>89</sup> In New Jersey, data collection is instrumental to uncovering the failings of the system. Once problems are identified, officials can pinpoint specific strategies and steps to reduce the reliance on juvenile detention, and prioritize those areas in which their efforts can lead to the greatest successes and improve juvenile justice outcomes.<sup>90</sup> County sites begin their data analysis through a set of summary statistics called "key detention utilization indicators," to build an initial understanding of the state of juvenile detention in their region.<sup>91</sup> Continual data analysis is present throughout JDAI's framework, both as a way to measure progress and promote continuous learning and revision. The key detention utilization indicators

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87. *Id.*

88. Sturm, *supra* note 7, at 460.

89. Mark Soler, *Missed Opportunity: Waiver, Race, Data, and Policy Reform*, 71 LA. L. REV. 17, 18 (2010).

90. Lisa Macaluso Interview, *supra* note 69.

91. NJ 2011 ANNUAL REPORT, *supra* note 75, at 1.

are Admissions to Detention,<sup>92</sup> Average Daily Population (ADP),<sup>93</sup> and Average Length of Stay (ALOS).<sup>94</sup>

New Jersey conducts its DMC analysis by focusing on every level of the juvenile justice system in an attempt to see what specific points in the system may lead to disparities. One method is to compile all of the data normally collected in a JDAI jurisdiction and to sort that information based on racial or ethnic groups. Observing whether there are greater discrepancies among some measures (e.g. Admissions, ADP, and ALOS) than others is a way of beginning to understand where disparities occur in the system.<sup>95</sup>

### C. LEARNING

Learning from past triumphs and mistakes is a key feature of experimentalism.<sup>96</sup> In the sphere of juvenile justice, every stakeholder has a different opinion about how to successfully reduce the detention of youths. Experimentalist institutions, such as JDAI, have arisen in areas where there have been decades of debate between the stakeholder parties with no actual progress to show for it. The lack of progress opened the minds of stakeholders to experimentalist interventions aimed at learning from local experience.<sup>97</sup> These experimentalist interventions consist of a basic architecture that is designed to learn from local experience to foster continuous improvement. The model begins with a central body and branches out into local units.<sup>98</sup> The role of the center is to “provide[] services and inducements that facilitate this disciplined comparison of local performances and mutual

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92. A count of the number of juvenile’s admitted to detention. *Id.* at 2.

93. A measurement of detention utilization in a given jurisdiction. ADP is the sum of all days in the facility for all youth placed in detention during the year divided by the number of days in the year. *See Performance Measures*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY, <http://www.ojjdp.gov/grantees/pm/glossary.html> (last visited Feb. 12, 2014). ADP also allows a site to gain an understanding of how they are doing in relation to overcrowding and the capacity their juvenile detention facilities are designed to hold. *Id.*

94. Dividing the stays in detention for those released during a given period by the total number of releases over that period. *See id.*

95. *See generally* NJ 2011 ANNUAL REPORT, *supra* note 75, at 16–22 (analyzing JDAI site data on minority youth in detention).

96. Sabel & Simon, *supra* note 31, at 88.

97. *Id.* at 78.

98. *Id.* at 79.



learning among local units.<sup>99</sup> Finally, the framework goals, performance measures, and decision-making procedures themselves are periodically revised on the basis of alternatives reported and evaluated in peer reviews, and the cycle repeats.<sup>100</sup>

As compared to the model experimentalist architecture, the “center” of New Jersey’s experimentalist regime is the JJC. The “learning laboratory” theme played a prominent role in the efforts of JJC officials involved with implementing JDAI throughout the state. The goal was to replicate JDAI innovations across counties and create an organizational structure to connect local work with state policies and practices.<sup>101</sup> The JJC’s focus is on building a network that connects policy norms from a central body with results from local sites. This structure mirrors a traditional experimentalist learning architecture. The key to the success of this network is an organizational structure that allowed the JJC to share learning from local sites to a broad array of stakeholders and key political leaders.<sup>102</sup> This learning came in the form of annual data reports, the Risk Screening Tool, Model Activities reports, and seminars and materials from the Casey Foundation.

i. *Annual Reports*

The purpose of the JDAI Annual Data Report is to illustrate the impact of JDAI on the state and document trends along key indicators, such as, admissions, ADP, and ALOS.<sup>103</sup> The reports emphasize that although JDAI continues to be a success, there is always room for improvement.<sup>104</sup> Highlighting accomplishments alongside unfavorable statistics reflects a constant desire to learn and improve.

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99. *Id.*

100. *Id.*

101. Lisa Macaluso Interview, *supra* note 69.

102. *Id.*

103. NJ 2011 ANNUAL REPORT, *supra* note 75, at iii.

104. *Id.* at iv. For example, the report lists four major achievements at reducing overall detention and on the same page notes that nine of the fifteen sites have experienced an increase in one or more measures of length of stay since JDAI implementation. *Id.*

ii. *Risk Screening Tool*

The Risk Screening Tool (RST) is a set of objective detention screening criteria for use by Family Court Intake Officers.<sup>105</sup> The RST consists of a scale where legally relevant factors are assigned point values, which are then added up by Intake Officers to a final score that guides the detention admission decision.<sup>106</sup>

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105. JENNIFER LeBARON, NEW JERSEY COUNCIL ON JUVENILE JUSTICE SYSTEM IMPROVEMENT RISK SCREENING TOOL (RST) SUBCOMMITTEE, 2009 RISK SCREENING TOOL MONITORING REPORT 1 (2009), available at <http://www.jdaihelpdesk.org/jersey/New%20Jersey%20Risk%20Screening%20Tool%20Report%202009.pdf>.

106. *Id.*

**Table 1**

Components Included in the RST and their Relationship to Detention Statute <sup>107</sup>				
Screening Tool Component	Component Type	Statutory Purpose		Related Statutory Factors
		Public Safety Risk	Flight Risk	
# of Current Counts/Charges	Additive/Weighted	✓		Nature & Circumstances of Offense
Most Severe Current Offense	Additive/Weighted			
# of Delinquency Adjudications	Additive/Weighted	✓		Prior Record of Adjudications
Most Severe Prior Adjudication	Additive/Weighted			
Warrants for FTA in Court	Additive/Weighted		✓	Record of Non-Appearance in Court
Current Detention Alternative Status	Additive/Weighted	✓	✓	
AWOL from Residential Delinquency Placement	Additive/Weighted		✓	
Is there an adult to whom the youth can be released?	Possible Override (If tool = release, but answer = No)		✓	Ties to the Community
Age < 12 and charge is not 1st/2d degree or arson	Decision Tree or Override (If tool = detain, but answer = Yes)			Age

The RST was developed as a means to focus on the third core strategy of the JDAI model, which is implementing effective and objective detention admissions policies.<sup>108</sup> The impetus behind

107. JENNIFER LEBARON, NEW JERSEY JUVENILE DETENTION ALTERNATIVES INITIATIVE STATE SCREENING SUBCOMMITTEE, THE NEW JERSEY JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) REPORT TO THE ADMINISTRATIVE OFFICE OF THE COURTS REGARDING THE DEVELOPMENT OF A DETENTION SCREENING TOOL AND ITS POTENTIAL IMPACT ON CURRENT PRACTICE 4 (2006), available at <http://www.jdaihelpdesk.org/objecttoolsrisk/New%20Jersey%20JDAI%20Report%20to%20the%20Administrative%20Office%20of%20the%20Courts.pdf>.

108. *Id.* at 1.

the development of the RST was to ensure that the option of secure detention for a juvenile is only utilized in a manner consistent with New Jersey state law.<sup>109</sup> The New Jersey Administrative Code states two main objectives of detention: “secure custody for those juveniles who are deemed a threat to the physical *safety of the community* and/or whose confinement is necessary to *insure their presence* at the next court hearing.”<sup>110</sup> From 2006 to 2008, the Risk Screening Tool Subcommittee of the New Jersey Council on Juvenile Justice System Improvement developed, tested, and piloted the tool, which led to its approval by the New Jersey Supreme Court for statewide use.<sup>111</sup>

There are number of prerequisites for jurisdictions to meet before being authorized to use the RST. First, the jurisdiction must be a JDAI participant.<sup>112</sup> Each JDAI site must also complete an RST Site-Readiness Plan, develop local policies and procedures specifying how practices related to the RST will be implemented locally, and participate in training.<sup>113</sup> Only after these requirements are met, will the subcommittee to the Administrative Director of the Courts approve the jurisdiction’s RST implementation.<sup>114</sup>

The stated goals of the RST deployment are a) maximizing consistency in decision making, b) minimizing the unnecessary or inappropriate use of detention, and c) minimizing the incidence of failures to appear and new offenses among non-detained youth.<sup>115</sup> Although consistency is a core goal, the RST also contains an override mechanism that allows an intake officer to rule against the placement recommended by the instrument where there are aggravating or mitigating circumstances.<sup>116</sup> Overrides, however, are reserved for extenuating circumstances<sup>117</sup> and the intake officer is required to explain a deviation from the RST, which is reviewed by a supervisor.<sup>118</sup> The RST Subcommittee’s goal is for

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109. *Id.* at 2.

110. *Id.* (emphasis added). *See also* N.J. ADMIN. CODE § 13:92-1.3(a)(1) (2014).

111. LeBaron, *supra* note 105, at 1.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 4.

117. *Id.*

118. *Id.* at 7.

intake officers to follow the RST's recommendations in at least 85% of all cases in each site and reducing intentional overrides to less than 10% per site.<sup>119</sup> In 2009, the RST produced results that exceeded the subcommittee's goal, with 87.4% of all cases following the RST recommendation.<sup>120</sup> An override, however, was intentionally invoked 10.4% of the time, which is slightly above the goal of keeping overrides to less than 10% of all cases in each site.<sup>121</sup> Therefore, the RST is successful in guiding detention decisions and overrides are largely kept to a minimum.

Overrides come in two categories: up or down. In 2009, 78% of all overrides were *overrides up*, where the intake officer opted to place the youth in a *higher* level of custody than that recommended by the RST.<sup>122</sup> In that same year, 22% were *overrides down*, which include youths who the RST recommends for detention but instead are released or assigned alternative custody by intake or who score for alternative custody but who are released outright.<sup>123</sup> The RST's record indicates it is successful in reducing detention overall as compared to the years prior to its introduction. As compared to 2007, the pre-RST designated baseline year,<sup>124</sup> admissions to detention in 2009 decreased by more than one-third (-34.1%) across all sites, with reductions ranging from -20.3% in Monmouth County to -40.1% in Atlantic County.<sup>125</sup>

Mining overrides for learning falls squarely within the experimentalist learning architecture. Experimentalist norms govern performance and process, as well as deviations from the two. "[M]any norms take the form of indicators that measure performance above mandatory minima, or presumptive rules that need not be followed when doing so would frustrate their underlying purposes."<sup>126</sup> The preeminent experimentalist example of overrides is found in the Toyota Production System.<sup>127</sup> The Toyota Production System is a useful analog for JDAI because like the juvenile justice system, many of the problem-areas in Toyota's

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119. *Id.* at 4.

120. *Id.*

121. *Id.*

122. *Id.* at 5.

123. *Id.* at 4–5.

124. *Id.* at 17.

125. *Id.* at 12.

126. Sabel & Simon, *supra* note 31, at 80.

127. *Id.* at 62.

production system are difficult to identify until they surface.<sup>128</sup> Creating a system that is devoted to uncovering problems (inefficiency in Toyota's case and DMC in JDAI) is the only way to tackle structural issues that are invisible to the naked eye as they occur, yet only reveal themselves in annual car production numbers or DMC data in a jurisdiction's annual report.

The Toyota Production System deliberately stresses its assembly line in order to expose errors quickly.<sup>129</sup> Toyota also designed its vehicle production process to eliminate the distinction between making and applying rules.<sup>130</sup> At Toyota, rules are continuously revised to ensure learning occurs from beginning to end, thus constantly keeping a focus on addressing problems. Toyota "treats rule departures diagnostically as symptoms of systemic problems and opportunities for systemic improvement. Sometimes, instead of minimizing or isolating them, it tends to induce and expand them . . . in order to make the system's weaknesses transparent."<sup>131</sup> Similarly, the RST also induces rule departures by allowing for overrides in a system designed for consistency. Sacrificing consistency to allow for departures creates a transparent window for learning and as a result, exposes instances of DMC at a crucial point in the juvenile justice system — the decision whether to detain. The RST is a valuable learning instrument because the explanations provided when overriding up pinpoint areas ripe for reducing detentions and DMC through experimentation at the local level.<sup>132</sup>

### iii. *Model Activities Report*

With the annual reports and RST coming from the central body, a crucial piece of the learning architecture flowing from local sites is the JDAI Model Activities series, which was created in

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128. *Id.*

129. *Id.* at 62. Toyota is one of the forbearers of "Fjust-in-time' parts delivery, which eliminates buffer inventory stocks. . . ." *Id.* Just-in-time parts delivery forces the process to be as efficient as possible because there are not any fallback parts to prop up the system. *Id.* Treating the system as zero-sum exposes error whenever the supply of parts fails to meet demand. *Id.* Toyota favors "practices that stop the line when defects are discovered and require that the Froot cause' of the problem be diagnosed and remedied before production resumes." *Id.*

130. *Id.* at 80.

131. *Id.*

132. *See infra* Part V.D.

2008.<sup>133</sup> The series comes in the form of a report issued by a site, which highlights and catalogues the achievements of JDAI sites and ties changes in detention populations to specific reforms that led to those changes.<sup>134</sup>

**Table 2**

Sample Model Activities Report <sup>135</sup>	
Site:	ESSEX
Primary Core Strategy Area:	Detention Alternatives
Secondary Core Strategy Area:	Reducing Delay/Case Processing
Title/Name of Activity:	EM Wireless and Expediting Release to Alternatives
Activity Start Date:	9/2006 and 5/2007
Description of Activity:	In order to expedite processing and placement of youth onto detention alternatives, in 9/2006 Essex introduced wireless EM units to its detention alternatives continuum, and in 5/2007 Alternatives Staff were relocated from the detention center to the courthouse.
Problem or Need this Activity Addressed:	Essex historically relied on EM units that required that the youth's home have a landline telephone with specific types of services/features. Youth ordered to EM would have to wait in detention while staff assessed the home telephone situation, and in many cases, while necessary changes to

133. JENNIFER LEBARON, NEW JERSEY JUVENILE JUSTICE COMMISSION, NEW JERSEY JDAI SITE RESULTS REPORT 8 (2008), available at <http://www.nj.gov/oag/jjc/pdf/JDAI-2008-Aug-SitesResultReport.pdf>.

134. *Id.*

135. NEW JERSEY JUVENILE DETENTION ALTERNATIVES INITIATIVE, INNOVATION, IMPROVEMENT, OR INSTITUTIONALIZATION OF POLICY/PRACTICE: MODEL ACTIVITIES, EM WIRELESS AND EXPEDITING RELEASE TO ALTERNATIVES 1 (May, 2008), available at <http://www.jdaihelpdesk.org/aftermodelec/Essex%20County%20NJ%20Model%20Activity%20-%20Electronic%20Monitoring%20Wireless%20and%20Expediting%20Release%20to%20Alternatives.pdf> [hereinafter MODEL ACTIVITIES REPORT].

	<p>the home telephone service were made. Additionally, in the past Alternatives Staff were based out of the detention center. As such, youth ordered to an alternative program at their court hearing were first transported back to detention where the program processing occurred, prior to being ultimately released to alternative supervision. Both of these situations led to delays in release from detention to the court-ordered detention alternative.</p>
<p>Data/Info that Identified this Problem or Need:</p>	<p>Essex's original detention alternatives snapshot data from 6/2004 revealed that for youth on EM, an average of 10.4 days elapsed between the date the youth was referred for placement and the date the youth was released to EM, compared to just 1.6 days for youth released to Home Detention. Additional discussion suggested that problems with household landlines, as well as the location of the alternatives staff who processed placement onto alternatives were likely among the factors contributing to the delay.</p>
<p>Impact/Results of this Activity:</p>	<p>Reviewing the ongoing data that has been maintained in Essex regarding youth departing detention to alternatives reveals a notable impact. The two solutions described above were implemented between 9/2006 and 5/2007. Prior to that, between 6/2005 and 8/2006, time between admission to detention and release to EM averaged 9.6 days. After the implementation of both solutions, between 6/2007 and 12/2007, this figure dropped to 6.7 days, a de-</p>



	crease of 30.2%.
Next Steps or Additional Comments:	Going forward, Essex plans to continue to work with juveniles to place them on EM wireless units. Essex has also been working to increase the availability of EM units by switching youth whose landline issues are ultimately resolved over to the traditional (non-wireless) units, thereby freeing-up additional wireless EM slots.
List Attachments (if any):	N/A
Contact(s) for More Info:	[contact information redacted]
Original Date Prepared 5/2008	

Each report is roughly one or two pages and lists the featured activity, the data used to identify the need for change, and the impact of the activity.<sup>136</sup> The reports are shared with stakeholders throughout the statewide juvenile justice system as a “what works” resource.<sup>137</sup> The reports were a natural outgrowth of the JDAI problem-solving process that the JJC wanted every county to follow: identifying a problem through data, making a plan about how to tackle it, monitoring the progress of the plan, and reporting the outcome.<sup>138</sup> The JJC found that it was difficult for counties to go through the whole process on their own, especially to the stage of measuring the impact of the activity meant to remedy the targeted problem.<sup>139</sup> The Model Activities series was created in part to serve as a vehicle for guiding and incentivizing counties to follow their problem solving efforts to fruition.<sup>140</sup> The JJC also provided detention specialists to help county officials collect and analyze data to diagnose the problem in the first place and then develop a troubleshooting action plan.<sup>141</sup>

When a county follows all of the steps in the action plan, a Model Activities Report is published and disseminated to every

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136. *Id.*

137. Lisa Macaluso Interview, *supra* note 69.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

person on a state or county-level steering committee, amounting to nearly 1,000 people.<sup>142</sup> The broad distribution allows for information sharing across county-lines, encourages friendly competition between counties, and affords bragging rights to the county who authored the report.<sup>143</sup> Simply knowing that officials throughout the state are looking at your capacity to innovate may be a powerful incentive for problem solving.<sup>144</sup> Since many counties may uncover similar problems in their data, the Model Activities Report issued by one county becomes a best practice that another county can try out. At the end of each report, there is a space for the contact information of the individuals who worked on the problem, such as a detention official or a detention specialist.<sup>145</sup> This helps other counties learn from those who actually addressed the problem first-hand, which makes for a more efficient best practice adoption system.

The Model Activities Reports embodies the experimentalist norms of problem solving and knowledge sharing, such as those found within the Toyota Production System. Similar to JDAI, problem solving at Toyota is conducted in a disciplined fashion that not only solves problems, but also builds deeper institutional knowledge about the production process and increases worker capabilities.<sup>146</sup> Toyota's problem solving template<sup>147</sup> nearly tracks the JDAI Model Activities Report.<sup>148</sup> Both templates start with a background of the problem and a description of the current condition, and then the root cause of the problem is investigated and identified. The countermeasure treatments/activities are described and the outcome or impact is revealed. The only difference between the two templates is that Toyota asks for a gap analysis (why reality differed from expectations), while JDAI requires the next steps to be laid out (which encourages continued innovation).

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142. *Id.*

143. *Id.*

144. Sabel & Simon, *supra* note 31, at 91 (discussing the informal pressures of pride and shame).

145. See MODEL ACTIVITIES REPORT, *supra* note 135.

146. STEVEN J. SPEAR, CHASING THE RABBIT: HOW MARKET LEADERS OUTDISTANCE THE COMPETITION AND HOW GREAT COMPANIES CAN CATCH UP AND WIN 222 (2008).

147. *Id.* at 196.

148. See MODEL ACTIVITIES REPORT, *supra* note 135.

Another similarity to the Toyota model is JDAI's emphasis on knowledge sharing. A Model Activities Report is not created simply for the benefit of the juvenile justice officials in the county in which it is generated. It is meant to be a guide to best practices for a particular problem that could be found in any county within the state. Similarly, Toyota captured the result of every experimentalist cycle for a variety of production processes in "lessons-learned books," which are meant to help designers tap "deep wells of knowledge about what sets of solutions had worked or failed in the past and why."<sup>149</sup> The Model Activities Report and the lessons-learned books fit within the experimentalist learning architecture. The rules within each report or book conform to practice, which allows newcomers or outsiders to "reliably read practice from the rules. This makes learning easier for insiders, and it facilitates accountability to outsiders."<sup>150</sup> In practicing experimentalism, the JJC could take the diffusion of best practices one step further and require the best practice found at one particular jurisdiction to be adopted by a similarly situated jurisdiction or at least in that jurisdiction provide a good reason for not doing so.<sup>151</sup>

#### D. REVISION

Another essential component of an experimentalist regime is the ability to utilize the tools available in the system for learning and revise the methods for dealing with the issue based on these insights. This part will consider how norms and practices in JDAI have been revised in light of experience and lessons learned developed by the New Jersey model.

A regime is considered "experimentalist to the extent that [it is] designed to achieve local adaptation and aggregate learning by combining discretion with duties to report and explain, and by pooling information."<sup>152</sup> With regard to the Risk Screening Tool, the duties to report and explain an override are invaluable tools for learning, as overrides pinpoint areas that are ripe for address-

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149. Spear, *supra* note 146, at 253.

150. Sabel & Simon, *supra* note 31, at 81.

151. Sabel & Simon, *supra* note 4, at 1291.

152. Sabel & Simon, *supra* note 31, at 78.

ing possible instances of unnecessary detention.<sup>153</sup> In 2009, the two categories that emerged as most common among override up reasons (i.e. recommending a higher custody level) were “a) family/parent/home issues (33.2% of all overrides up, 2.7% of all calls handled), and b) lack of identification required for detention alternative placement (17.0% of overrides up, 1.4% of all calls). Taken together, these two categories account for half (50.2%) of all overrides to a higher custody level.”<sup>154</sup> “Family/parent/home issues” may include a variety situations that vary from instances when the victim was in the home or was a parent, to times when “the parent refused to take the youth home, a parent/guardian could not or did not pick the youth up from the location where the youth was held in custody, or the youth was in DYFS custody or placement.”<sup>155</sup>

In response to the high proportion of overrides for parents unwilling to pick up their children, the JJC has developed programming to address the issue. In some jurisdictions a group of ministers intervene to counsel parents and children in preventing detention.<sup>156</sup> Additionally, the use of the override allows JDAI officials to focus on why Essex County places such an emphasis on the need for a juvenile’s guardian to have the proper form of identification before a juvenile is placed in an alternative to detention. In 2009, Essex was the only county in New Jersey to override the RST and recommend detention due to a lack of identification.<sup>157</sup> This amounted to forty-seven juveniles going to detention when the RST recommended otherwise, representing 17% of all overrides up in the state.<sup>158</sup>

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153. JENNIFER LEBARON, NEW JERSEY COUNCIL ON JUVENILE JUSTICE SYSTEM IMPROVEMENT RISK SCREENING TOOL (RST) SUBCOMMITTEE, 2011 RISK SCREENING TOOL ANNUAL MONITORING REPORT 9 (2012), available at <http://www.jdaihelpdesk.org/jersey/RST%20Annual%20Report%202011%20-%20New%20Jersey.pdf> (“Reviewing the reasons for overrides is important, as overrides that emerge as most common point to specific policy questions that should be considered and discussed at both the state and local level.”) [hereinafter 2011 RISK SCREENING TOOL MONITORING REPORT].

154. LEBARON, *supra* note 105, at 7.

155. *Id.* at 16.

156. Lisa Macaluso Interview, *supra* note 69.

157. LEBARON, *supra* note 105, at 8.

158. *Id.*

**Table 3**

Table Showing Essex County as an Outlier for Overrides Up Based on Lack of ID <sup>159</sup>												
Sorted Based on "Total" Column, with Most Frequently Cited Reason Listed First												
(Reported as a Percent of All Overrides Up)												
	ATL		CAM		ESX		HUD		MON		Total	
Family/Parent/Home Issues	16.7%	2	22.5%	9	41.1%	67	17.5%	7	31.8%	7	33.2%	92
Lack of Identification Required for Alternative Placement	0.0%	0	0.0%	0	28.8%	47	0.0%	0	0.0%	0	17.0%	47
Nature of Current Offense	33.3%	4	15.0%	6	4.9%	8	20.0%	8	18.2%	4	10.8%	30
Recent Arrest, Pending Charges, and/or Currently on Alternative	8.3%	1	27.5%	11	5.5%	9	17.5%	7	9.1%	2	10.8%	30
No Reason Provided	0.0%	0	0.0%	0	11.0%	18	0.0%	0	0.0%	0	6.5%	18
On Probation/JISP/ Drug Court Parole	0.0%	0	5.0%	2	0.0%	0	20.0%	8	13.6%	3	4.7%	13
Out of County Resident	8.3%	1	0.0%	0	5.5%	9	2.5%	1	0.0%	0	4.0%	11
Runaway Behavior or Flight Risk	8.3%	1	15.0%	6	0.0%	0	2.5%	1	9.1%	2	3.6%	10

The JJC sought to understand the reasons behind the ID requirement to reduce future overrides and spare forty-seven new

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159. *Id.*

youths from enduring detention.<sup>160</sup> The JJC found that the ID requirement stemmed from incidents where a youth was released from detention to the wrong person.<sup>161</sup> This led to Essex County to become overly sensitive to the need for a guardian to have proper identification when picking up a juvenile and placing him into a detention alternative.<sup>162</sup> The JJC then worked with Essex County on a collaborative agreement to reduce the required number of pieces of identification.<sup>163</sup> Two years later, in 2011, the number of overrides up for lack of identification in Essex County fell to twenty-six as opposed to forty-seven in 2009.<sup>164</sup> As a result, Essex County's overrides up for lack of identification in 2011 represented only 9.7% of all overrides up in the state, down from 17% of statewide overrides in 2009.<sup>165</sup> By pinpointing Essex County's outlier status on overrides up, the RST played a major role in the decision to detain twenty-one fewer youths in 2011 than in 2009. Thus, the override served as a trigger to alert the JJC to remedy an anomaly that led to unnecessary detentions — a prime experimentalist example of mutual learning between central and local units resulting in the revision of decision-making procedures.<sup>166</sup>

The override option is an especially useful tool in exposing DMC in decisions to detain minority youth. In 2009, there was a -34.5% overall decrease in detention admissions of minority youth from pre-RST levels in 2007.<sup>167</sup> Yet, despite JDAI's success at reducing detention across the board, racial disparities remained a significant issue. While overrides have been useful in sparking policy reforms, there is a racial disparity in overriding the RST up for higher custody for youth of color. In 2009, the detain override rate is slightly higher for youth of color statewide (12.3%) than for white youth (9.9%).<sup>168</sup> Additionally, the statewide release override rate (recommending release when the RST has a

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160. Interview with Lisa Macaluso, former Director, Office of Local Programs and Servs., N.J. Juvenile Justice Comm'n, in N.Y.C., N.Y. (Nov. 29, 2012).

161. *Id.*

162. *Id.*

163. *Id.*

164. 2011 RISK SCREENING TOOL MONITORING REPORT, *supra* note 153, at 10.

165. *Id.*

166. Sabel & Simon, *supra* note 31, at 79.

167. LEBARON, *supra* note 105, at 13.

168. *Id.* at 6.

score warranting detention) is higher for white youth (6.9%) than for youth of color (1.8%).<sup>169</sup> The data show intake officers are more likely to override the RST unfavorably for youth of color and favorably for whites. In light of this inequity, the JJC subcommittee in charge of overseeing the RST made a new goal of developing local solutions to reduce disparity in both the detain and release override rates across racial/ethnic groups.<sup>170</sup> New Jersey, however, is not alone among JDAI jurisdictions in experiencing racial discrepancies from seemingly standard detention screening criteria. A county in Oregon addressed DMC by analyzing how the criteria in its screening instruments such as “good family structure” led to racial disparities in minority communities with high rates of single-parent families.<sup>171</sup> In an effort to counter this imbalance, the county amended “good family structure” to asking “whether there is an adult willing to be responsible for assuring the youth’s appearance in court.”<sup>172</sup>

Another area in which data mining exposed DMC in the juvenile justice system and consequently prompted corrective action is the Violation of Probations (VOPs) data-point. In response to a significant amount of VOPs filed for minority youths in Monmouth County, the county received JDAI Innovation Funds from the state in 2011 to establish a Community Intervention Coaches Pilot Program.<sup>173</sup> The program is designed to increase the number of minority youth from Asbury Park who successfully complete probation and therefore reduce the number of VOPs that are filed.<sup>174</sup> In Monmouth County, there is a vicious cycle of youths violating the condition of a probation program.<sup>175</sup> This leads to juveniles being kicked out of the program, detained, and eventually released into the same program that they were kicked out of.<sup>176</sup> The Burns Institute, brought in to assist Monmouth

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169. *Id.*

170. *Id.*

171. Johnson, *supra* note 1, at 412.

172. *Id.*

173. MONMOUTH COUNTY YOUTH SERVICES COMMISSION, MONMOUTH COUNTY COMPREHENSIVE YOUTH SERVICES PLAN 2012–2014 312 (2012), available at <http://www.visitmonmouth.com/page.aspx?ID=2079>.

174. *Id.*

175. Interview with Michael Finley, Senior Program Associate, W. Haywood Burns Institute, in N.Y.C., N.Y. (Nov. 5, 2012).

176. *Id.*

County's DMC reduction efforts, identified an intervening moment at the point before the child is kicked out of the program.<sup>177</sup> After a child violates probation but before he or she is kicked out, a probation officer calls a Community Coach who has some relationship with the child and is not viewed by the child as a member of the juvenile justice system.<sup>178</sup> The Coach intervenes and calms the child down to avoid detention.<sup>179</sup> Making the system more understanding to the needs of the children it serves and building relationships between children respected members of the community has led to a decline in VOPs,<sup>180</sup> which are down 84.7% from the period prior to New Jersey's JDAI implementation.<sup>181</sup>

In some counties, leveraging data to reform alternatives to detention, such as electronic monitoring, created efficiency gains and addressed DMC. Electronic monitoring is an alternative program for juveniles who require a higher level of supervision than house arrest, but who do not require secured detention.<sup>182</sup> It is designed to serve a short-term monitoring function until a preliminary court hearing occurs.<sup>183</sup> Electronic monitoring can come in several forms: GPS tracking units (bracelets), wireless transmission tracking equipment, or equipment that is attached to a telephone landline in the juvenile's home.<sup>184</sup> In 2004, an average of 10.4 days elapsed between the date the youth was referred for placement and the date the youth was released to electronic monitoring in Essex County.<sup>185</sup> In part, this significant delay was caused by the fact that when youths were ordered to electronic monitoring they would have to wait in detention until staff assessed whether the youth had a landline that was compatible with the monitoring system used by the county.<sup>186</sup> Realizing this, Essex County explored the possibility of using wireless monitor-

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177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. NJ 2011 ANNUAL REPORT, *supra* note 75, at 5.

182. MONMOUTH COUNTY YOUTH SERVICES COMMISSION, *supra* note 173.

183. *Id.*

184. SUPERIOR COURT OF NEW JERSEY FAMILY DIVISION – ESSEX VICINAGE JUVENILE SERVICES UNIT, A FAMILY GUIDE TO JUVENILE JUSTICE: A HANDBOOK FOR FAMILIES 9 (2012), available at [http://www.judiciary.state.nj.us/essex/family/FamilyGuide\\_to\\_JuvenileJustice\\_Handbook.pdf](http://www.judiciary.state.nj.us/essex/family/FamilyGuide_to_JuvenileJustice_Handbook.pdf).

185. MODEL ACTIVITIES REPORT, *supra* note 135.

186. *Id.*



ing units instead of landline-based systems. After Essex County introduced wireless electronic monitoring units in 2007, thus obviating the need for a compatible landline, the delay dropped to 6.7 days, a decrease of 30.2%.<sup>187</sup> Essex County's successful efforts at reducing delays in releasing children in detention allowed the county to publish a Model Activity Report on the effective use of electronic monitoring.<sup>188</sup>

Union County revised its use of electronic monitoring as a way to reduce DMC in their jurisdiction. After recognizing that youth of color were more frequently precluded from placement on electronic monitoring due to a lack of a landline telephone and therefore placed in detention, Union County added five wireless monitoring units.<sup>189</sup> By focusing on improving their electronic monitoring detention alternative, these counties were able to reduce time spent in detention and target DMC. Honing in on RST overrides, VOP's, and the delay before electronic monitoring approval created a dataset that painted a picture of where DMC existed at specific points in New Jersey's juvenile justice system. The identification of DMC drove the JJC and local officials to call for action on reforming the use of the RST, create the Community Coaches program and modify the electronic monitoring approval process.

#### VI. APPLYING LESSONS FROM EXPERIMENTALIST RESPONSES TO WORKPLACE DISCRIMINATION AND UTAH'S BROKEN CHILD WELFARE SYSTEM

The experimentalist framework found in Susan Sturm's case studies on workplace discrimination and Utah's child welfare diagnostic monitoring process provide powerful analogies to JDAI and lessons for the Initiative's future. The challenge of identifying and addressing DMC within the juvenile justice system is echoed in Susan Sturm's article on second generation racism in the workplace. Sturm writes that in employment practices, discrimination arises not from intentional efforts, but "as a by product of ongoing interactions shaped by the structures of day-to-day

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187. *Id.*

188. *Id.*

189. LEBARON, *supra* note 133, at 18.

decision-making and workplace relationships.”<sup>190</sup> Placing blame on the structures of decision-making as opposed to overt and intentional actions by employers and co-workers corresponds to the Casey Foundation and the Burns Institute’s philosophy on the root cause of DMC in juvenile justice.<sup>191</sup> Similar to DMC in juvenile detention, Sturm notes “[t]he glass ceiling remains a barrier for women and people of color largely because of patterns of interaction, informal norms . . . as well as the absence of systematic efforts to address bias produced by these patterns.”<sup>192</sup> New Jersey JDAI also utilizes a structural approach by developing the capacity of institutions on the county level to detect DMC. Tools such as the RST and Model Activity Report allow local institutions to identify racial bias through overrides, VOPs, and disparities in electronic monitoring, and develop solutions to reduce DMC. New Jersey, while successful at uncovering DMC in areas where none knew it existed, has found it challenging to diminish DMC overall.

Sturm’s aim is to encourage the “evolution of accountable and legitimate internal problem-solving processes” for workplace discrimination, citing the efforts of Deloitte & Touche, Intel and Home Depot as examples.<sup>193</sup> In the case of Deloitte & Touche, one of America’s largest accounting firms, the company’s CEO, J. Michael Cook, sought to address a serious gender gap at the firm: “although Deloitte had been hiring women at an aggressive rate — 50% or more — for more than ten years, the rate of promotion hovered at around 10%.”<sup>194</sup> To uncover the underlying causes of the gender gap, Deloitte’s Board established the Task Force on Retention and Advancement of Women, which then “hired a non-profit research organization, called Catalyst, to help the members to understand better the problem and how to respond.”<sup>195</sup> Through interviewing women both at the firm and those who had recently left, Catalyst and Deloitte heard frustrations ranging from work-life balance to promotion.<sup>196</sup> Deloitte was able to see

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190. Sturm, *supra* note 7, at 469.

191. MENDEL, *supra* note 22, at 23.

192. Sturm, *supra* note 7, at 469.

193. *Id.* at 491.

194. *Id.* at 492–93.

195. *Id.* at 493.

196. *Id.*

that one of the common assumptions of higher female turnover was unfounded: of the forty women who had recently left the firm, “[o]nly a handful were caring for their children full time.”<sup>197</sup> The Taskforce implemented a number of Catalyst’s findings and the changes were both significant and rapid. In 1991, the year Cook’s Women’s Initiative began, the percentage of women admitted to partner was 8% and rose to 21% by 1995.<sup>198</sup> Moreover, the turnover rate for female senior managers dropped from 26% in 1991 to 15% in 1995.<sup>199</sup>

Sturm believes Deloitte achieved such significant results by “institutionaliz[ing] a change process by creating a combination of inside and outside deliberative groups comprised of diverse stakeholders and then investing those groups with the legitimacy, capacity, and resources to solve problems effectively.”<sup>200</sup> Sturm found that Deloitte’s structural approach to resolving gender disparities had similar characteristics to the workplace discrimination problem solving policies instituted by Intel and Home Depot.<sup>201</sup> The shared characteristics important to the effectiveness of the three companies’ internal problem solving regimes are:

- (1) problem oriented — each company developed a customized system to address problems holistically and in relation to its particular culture;
- (2) functionally integrated — the systems linked processes for addressing interrelated domains, such as principle (e.g., bias, access, fairness) and productivity (e.g., recruitment, turnover), individual employment decisions and systemic patterns, and day-to-day operations and problem-solving procedures;
- (3) data driven — decision-making generates and is informed by ongoing analysis of information that reveals patterns of dysfunction (and success); and
- (4) accountable — each system generates process and outcome measures of effectiveness, and

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197. *Id.* (citations omitted).

198. *Id.* at 498.

199. *Id.*

200. *Id.*

201. *Id.* at 520.

builds in systems of accountability for those responsible for its effective implementation.<sup>202</sup>

These four characteristics are similar to JDAI's eight core goals, which also emphasize data-driven problem solving, collaboration and integration, and monitoring to measure effectiveness.<sup>203</sup>

Although there are many similarities between JDAI and Sturm's workplace discrimination framework, the Deloitte case study speaks to the power of institutionalizing an outsider perspective to uncover and solve problems. Similar to Deloitte's decision to hire Catalyst to uncover barriers that lead to gender discrimination, New Jersey's JJC hired the Burns Institute to address DMC within the juvenile justice system. The Burns Institute partnership was originally limited to three pilot counties (Atlantic, Camden and Monmouth) and recently expanded to include a fourth (Mercer).<sup>204</sup> The Burns Institute works with local stakeholders to engage with non-traditional stakeholders as potential community partners to target the highest concentration of DMC in communities.<sup>205</sup>

These non-traditional partnerships have led to innovative programming, such as the Community Coaches program in Monmouth County.<sup>206</sup> Limiting the Burns Institute to one county at a time, however, fails to take the comprehensive and institutionalized approach that Sturm claims led to Deloitte's success. At Deloitte, Catalyst "interviewed 500 women throughout Deloitte, and it conducted small, all-men and all-women focus groups."<sup>207</sup> This comprehensive approach allowed Catalyst to understand common frustrations and barriers, which in turn led to specific recommendations that Deloitte directed its in-house taskforce to implement. In the case of New Jersey, the New Jersey Council on Juvenile Justice System Improvement's Subcommittee on Racial

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202. *Id.* at 519–20.

203. See MENDEL, *supra* note 22, at 8–9.

204. F. LEE FORRESTER & PATRICIA A. WALKER, STATUS REPORT OF THE NEW JERSEY COUNCIL ON JUVENILE JUSTICE SYSTEM IMPROVEMENT 3 (2012), available at <http://www.jdaihelpdesk.org/jersey/New%20Jersey%20Council%20on%20Juvenile%20Justice%20and%20System%20Improvement%20Workplan%202012.pdf>.

205. *Id.*

206. See Part V.D. for a discussion of the Community Coaches program.

207. Sturm, *supra* note 7, at 493.

Disparities & DMC reports that its relationship with the Burns Institute is “ongoing” and the subcommittee “continues to brainstorm, troubleshoot barriers/challenges to achieving reductions in disparities at the local and state level.”<sup>208</sup> “Brainstorming,” however, is not enough to tackle structural racism, a problem that requires a deep dive into every aspect of the system, as well as a more integrated and comprehensive approach. The Subcommittee must explore ways to plug the Burns Institute into a system-wide effort to engage every county on how best to adopt best practices for DMC reduction.

Sturm’s fourth factor, accountability, is also an area in which New Jersey’s JDAI could improve. Although New Jersey is effective at identifying areas of DMC, Sturm argues that it was not “sufficient, although it was certainly necessary, to develop information systems that identified the problem. Some form of pressure had to be built into the system to assure that, once identified, problems were in fact addressed.”<sup>209</sup> The diffusion of Model Activity Reports is a form of soft pressure that encourages friendly competition among counties, but it may be time to turn up the dial.<sup>210</sup>

One method of building-in pressure to ensure a county or local detention facility’s commitment to reducing DMC, is to reform the way facility assessments are conducted by the JJC. Although facility assessments in New Jersey are currently conducted by staff from the state, the assessments themselves do not comport with the national JDAI model for facility assessments.<sup>211</sup> The JDAI model calls for sites to establish “self-inspection” teams composed of volunteers from juvenile justice agencies, other human service systems, and community organizations. The teams undergo rigorous training to master a standardized methodology to examine all aspects of facility policies, practices and programs. The teams then prepare comprehensive reports on their findings and monitor implementation of corrective action plans.<sup>212</sup> For

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208. FORRESTER & WALKER, *supra* note 204, at 8.

209. Sturm, *supra* note 7, at 520.

210. See Part V.C.iii. for a discussion of the Model Activities Reports.

211. Lisa Macaluso Interview, *supra* note 69.

212. THE ANNIE E. CASEY FOUNDATION, DETENTION FACILITY SELF-ASSESSMENT 1 (2006), available at <http://www.jdaihelpdesk.org/JDAI%20Practice%20Guides/JDAI%20Detention%20Facility%20Assessment%20Practice%20Guide.pdf>.

example, the JDAI model assessment evaluates how detention facility staff decide whether to release youth and asks whether a race neutral standard was used.<sup>213</sup> By leveraging JDAI New Jersey's extensive and diverse body of stakeholders, facilities can benefit from an educated outside perspective on how to improve adherence to JDAI's core goal of reducing DMC. Creating a more effective assessment that brings in outside expertise could identify more problem areas that might be invisible to internal or JJC staff.

A successful model for conducting standardized assessments by qualified outside professionals is found in Utah's child welfare diagnostic monitoring process, known as the Quality Service Review (QSR).<sup>214</sup> The QSR arose out of the need to reform the child welfare system and ensure adherence to a new set of performance standards.<sup>215</sup> The QSR process begins with a stratified random sampling of child welfare cases that are reviewed by teams of two individuals.<sup>216</sup> Often, one team member is an agent of the judicial official tasked with monitoring the system reforms, and the other member is a child welfare agency official.<sup>217</sup> Similar to the JDAI model for self-inspection teams, the reviewers are diverse stakeholders and are trained on assessment procedures.<sup>218</sup> The reviewers conduct interviews of the child, family members, community members, and the caseworkers.<sup>219</sup> The reviewers then score the case by several indicators that measure the wellbeing of the child and system performance.<sup>220</sup> The final step is providing critical feedback to the caseworkers.<sup>221</sup>

In addition to helping individual caseworkers improve, the primary general functions of the QSR are to encourage "norm elaboration through peer review that engages all levels of the system" and allowing the data to be "a measure of performance and

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213. *Id.* at 20–21.

214. Kathleen G. Noonan et al., *Legal Accountability in the Service-Based Welfare State: Lessons from Child Welfare Reform*, 34 *LAW & SOC. INQUIRY* 523, 525 (2009).

215. *Id.* at 535–36.

216. *Id.* at 543.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.* at 543–45.

as [a] diagnostic tool of systemic reform.”<sup>222</sup> The QSR was successful in reforming Utah’s child welfare system and allowing the state to meet a benchmark that at least 85% of cases adhere to an “acceptable” standard.<sup>223</sup> The QSR can serve as a valuable model for the JJC to ensure that local JDAI sites in New Jersey adhere to JDAI’s core goals. In order to ensure the diffusion of best practices, JDAI Model Activities Reports could become more of a peer review device than a “what works” resource. Going beyond voluntary information sharing, whenever one county receives a Model Activities Report from another county, the recipient could submit a brief memorandum to the JJC detailing their reaction to the report and how they plan on responding to it. Requiring the submission of a response to a Model Activities Report encourages a county to seriously review a neighboring county’s successful problem-solving approach and provide the JJC with either a unique or similar plan of action. Accountability is necessary for New Jersey to continue to reform the juvenile justice system and innovate in the area of DMC reduction.

## VII. CONCLUSION

Through its commitment to core goals, data collection and analysis, and local flexibility, the JDAI model demonstrates a design in the spirit of experimentalism, with many of the facets of an experimentalist model carried out in practice. However, the JDAI model also has many areas in which it could improve in order to more fully realize its stated goals.

While the JDAI program has seen much success in the reduction of aggregate levels of youth in detention, especially for minorities, it has had less success in directly reducing disproportionate minority contact within the juvenile justice system. New Jersey’s data measurement infrastructure has uncovered numerous areas of DMC in the pre-adjudication, probationary and detention phases, which is the first step to solving the problem of structural racism. The DMC data has provided the impetus for the state’s successful partnership with the Burns Institute and informed innovative programming on the county level. In con-

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222. *Id.* at 545.

223. *Id.* at 549.

tinuing to hone its DMC reduction tactics, JDAI jurisdictions should study the remedies to workplace discrimination detailed by Susan Sturm and Utah's approach to child welfare reform. There have been significant victories in reducing DMC with regard to identifying discriminatory discretion in the Risk Screening Tool, minimizing violations of probation and reducing disparate treatment in adjudicating electronic monitoring. New Jersey serves as an example of how a shift in a legal standard that encourages an experimentalist approach can be successful at piercing the surface of structural racism.