

# JUVENILE JUSTICE PIPELINE AND THE ROAD BACK TO INTEGRATION

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## HEARING BEFORE THE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED SEVENTEENTH CONGRESS FIRST SESSION

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THURSDAY, MAY 13, 2021

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### **Serial No. 117-21**

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Printed for the use of the Committee on the Judiciary



Available via: <http://judiciary.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

46-140

WASHINGTON : 2021

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## **JUVENILE JUSTICE PIPELINE AND THE ROAD BACK TO INTEGRATION**

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**Thursday, May 13, 2021**

**HOUSE OF REPRESENTATIVES**

**SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY**

**COMMITTEE ON THE JUDICIARY  
*Washington, DC***

The Subcommittee met, pursuant to call, at 10:10 a.m., in Room 2141, Rayburn House Office Building, Hon. Sheila Jackson Lee [chairwoman of the subcommittee] presiding.

*Members present:* Representatives Nadler, Jackson Lee, Demings, Bass, McBath, Dean, Scanlon, Bush, Cicilline, Correa, Escobar, Biggs, Chabot, Gohmert, Steube, Tiffany, Massie, Spatz, Fitzgerald, and Owens.

*Staff present:* David Greengrass, Senior Counsel; Moh Sharma, Member Services and Outreach Advisor; Cierra Fontenot, Chief Clerk; John Williams, Parliamentarian; Monalisa Dugue, Deputy Chief Counsel; Veronica Eligan, Professional Staff Member; Jason Cervenak, Minority Chief Counsel for Crime; Ken David, Minority Counsel; and Kiley Bidelman, Minority Clerk.

Ms. JACKSON LEE. The Subcommittee will come to order. Without objection, the chair is authorized to declare a recess of the Subcommittee at any time.

We welcome everyone to this morning's hearing on Juvenile Justice Pipeline and the Road Back to Integration. I must say how excited I am about the many witnesses and their perspectives on talking about fixing, helping, overhauling a system that protects our children.

Before we begin, I would like to remind Members that we have established an email address and distribution list dedicated to circulating exhibits, motions, or other written materials that Members might want to offer as part of our hearing today. If you would like to submit materials, please send them to the email address that has been previously distributed to your offices and we will circulate the materials to Members and staff as quickly as we can.

I would also remind all Members that guidance from the Office of Attending Physicians states that face coverings are required for all meetings in an enclosed space such as Committee hearings. You may remove your mask only when recognized to speak.

I would also ask Members to mute your microphone when you are not speaking. This will help prevent feedback and other tech-

nical issues. You may unmute yourself any time you seek recognition.

Now, I will yield myself time for an opening statement.

Today, this subcommittee, and I must say with a great deal of excitement because this is an area of great love and affection for me and the work that we have done in years past in this committee, but this is an exciting time that this Subcommittee will discuss several issues that impact youth and the juvenile justice system. It will examine recent trends in law and policy and their impact on the prosecution, incarceration, and treatment of juveniles. It will also explore effective methods by which we can reform our juvenile justice system.

Historically, reform has been a monumental challenge particularly when addressing our justice system, for reform always requires those whose hands are free, whose hearts are in the works, and who care for the results. As Abraham Lincoln once put it in his speech, a house divided against itself cannot stand. United we need to stand on behalf of our children.

When a series of litigation challenges across the Nation demonstrated the lack of due process and protection for youth in a justice system, we came together as a Congress to pass the preliminary juvenile justice Act and that is the Juvenile Justice and Delinquency Prevention Act (JJDPA). With JJDPA as their guide, many states have taken up the task of reforming their juvenile justice system and are doing well in places like Utah, California, Massachusetts, Illinois, the District of Columbia, Connecticut, and Washington State. Thank them for their vision, but there is so much more work to do.

They recognized that an investment in our children and their future is an investment in America. As we make this investment, we must take into consideration childhood trauma and its impact on an already undeveloped brain when prosecuting, punishing, and incarcerating our youth.

Scientific-based research has shown that adolescence is a distinct development stage that lasts from the mid-teens years into the mid-20s. In essence, the brain doesn't fully mature until at least 25-years old. Does that tell us about high school students, middle schoolers, and yes, young people who may make rash or irreverent or spontaneous decisions? Should that be their life? Should we have a way of addressing these young people?

It tells us that during that time, brains continue to mature and develop throughout childhood and adolescence and well into early adulthood. As such, adolescents do engage in behaviors that are risky and sometimes dangerous. It is our responsibility as guardians of the future to be able to help to steer those individuals that have made such decisions to a brighter future.

Even the Supreme Court recognizes this fact as demonstrated in its line of landmark cases from *Roper v. Simmons*, to *Graham v. Florida*, to *J.D.B. v. North Carolina*, *Miller v. Alabama*, and *Stevenson and Montgomery v. Louisiana* when determining the legal culpability of juveniles facing life without parole sentences.

Although the conservative majority in the Supreme Court stated in *Jones v. Mississippi* that it does not overrule *Miller*, this deviation from precedent is a clear reminder that we must remain com-

mitted to enacting legislation that addresses juvenile life without parole more effectively. It is unacceptable. The United States stands alone as the only Nation that sentences people to life without parole for crimes committed before turning 18. Twenty-five states and the District of Columbia banned life sentences without the possibility of parole for juveniles, while several others have no one serving this sentence.

Congress has much work to do to make this policy consistent, meaning that it is irrational and may be inhumane to sentence young people to life without parole for acts they committed before the age of 18. This work must be done in addressing this and other issues like juveniles in adult facilities, age appropriate prosecutions, reentry fines and fees, probation, status offenses, and solitary confinement. According to the ACLU, research has shown that solitary confinement can cause extreme psychological, physical, and developmental harm resulting in persistent mental health problems or even suicide.

Kalief Browder, whose family I met, whose brother I met, was a tragedy and a prime example of the psychological harm that may result from excessive isolation when he took his young life in 2015 after remaining in solitary confinement in Rikers Island even to the point of being in his own feces for simple allegations of taking a backpack. I might add that it was determined that the owner of the backpack wasn't in the country and it wasn't an offense in the first place, but he couldn't get a lawyer. He couldn't get representation and remained there for a very long time.

We are at an inflection point where we can no longer sit on the sidelines and hope and pray things get better. We are summoned by our better angels to take up this task to do what we are sent here Congress to do to act. I paid tribute to Kalief with legislation named after him, but we must do more.

I look forward to hearing your testimony on how we can help the states in addressing these pivotal issues and thereby saving our children.

It is my privilege now to recognize the Ranking Member's opening statement for five minutes.

Mr. BIGGS. Thank you, Madam Chair. Thank you to all the witnesses for being here, both in person and remotely.

At today's hearing, the Subcommittee will examine the issue of juvenile justice. We should be discussing President Biden's inhumane border crisis. I was at the border again last week and what I saw was maddening.

The Biden Administration is not acting to resolve the crisis. The solutions are not difficult, but it requires the Administration to admit that there is a crisis and they created it.

I think we should explore some simple statistics at the beginning of this hearing today. Over the past 2 months, 35,000 unaccompanied minor children have been apprehended by border patrol. You should see the conditions that most of them are in. I have visited those facilities. I have been in virtually every sector in the last eight weeks. There isn't a single one of those children who hasn't been trafficked or transported by the transnational criminal organizations called cartels. These children have been placed into hands

of very dangerous and inhumane coyotes who abuse and victimize many, if not most, of these children.

There is evidence of an additional pernicious problem affecting children crossing our southern border. They are being rented and recycled.

Testimony before Congress asserted that children as young as five-years old are used by dozens of adults to cross our border and obtain release into the interior of the United States. In one case, a 51-years-old man bought a 6-month-old child for \$80.

On the other hand, there are exactly zero juveniles being held in the United States Bureau of Prison facilities; zero. Those are federal prisons. According to the Bureau of Prisons' website, there are 15 juveniles being held in three contract facilities. We are here today talking about those 15 ostensibly instead of the 35,000.

Police Executive Research Forum tracks crime trends and recently found that "Juveniles seem to be"—this is a quote, "increasingly involved in shootings and other violence in part because they are not in school and school resource officers have been reassigned."

Don't forget an emerging policy objective from some of the Democrats on the left to defund police or even elimination of police departments altogether. The concomitant spike in crime, including juvenile crime, has already demonstrated the danger in this rather facile and wrong-headed idea.

Issues surrounding juvenile justice are State issues and should be left to the states. The only nexus the Federal Government has to the juvenile system in America is when Congress inserts itself into the process through the Administration of grant programs. There are myriad issues that this Subcommittee could be looking that are relevant to the jurisdiction of this Committee and the role of the Federal Government, issues that are of great importance to the American people.

As I mentioned previously, the Biden Administration has refused to address the humanitarian and security crisis at the southern border that continues to worsen every day. It has been 50 days since President Biden appointed Vice President Harris to solve the crisis and she still has not even visited the border. I invited her and any member of this Committee to join me at the border to see and hear first-hand what is happening. It is hard to solve a crisis when you refuse to acknowledge that there is a crisis.

Over two months ago, I and other Members of this subcommittee, sent a letter to the chair requesting a hearing to examine how the Biden Administration's crisis along the southern border affects homeland security and public safety. Of course, we have not had such a hearing and we renew our request to hold such a hearing in the near future.

The President needs to reinstate successful Trump Administration policies such as the Migrant Protection Protocols that were working. We need to update our asylum laws and address loopholes in our immigration laws that serve as magnets for UAC, unaccompanied children, and families in our country illegally because they know that once they get here they will most likely never be removed.

Specifically, we need to amend the Trafficking Victims Protection Reauthorization Act so that UAC from noncontiguous countries are treated the same as UAC from contiguous countries. When you address the impacts of the Florida Settlement Agreement that require UAC to be released from custody even if they are with their parents, even the Obama and Biden Administration advocated for those fixes. That is why I introduced the Stopping Border Surges Act to make these changes.

The Biden Administration's border crisis also raises serious concerns about violent, criminal gang activity. According to a 2018 Congressional Research Service report, there are also concerns that MS-13 may exploit the U.S. southwest border by bringing young gang Members from Central America to the United States as unaccompanied alien children or may recruit some of the vulnerable UACs to join the gang once in the United States. This is exactly where we see the intersection of the Biden Administration's border crisis and the topic before us today. These policies have very real and sometimes very deadly consequences.

Not too long ago, four juveniles were charged with murder in West Palm Beach, Florida. They were Members of the violent MS-13 gang, in the country illegally, and suspected of being unaccompanied children. This was not an isolated incident. MS-13 is taking advantage of our open southern border and bringing in unaccompanied children who actively participate in criminal gang activities. When these unaccompanied children enter our juvenile justice system, they divert resources that could be used to help serve those who are not in this country illegally. So, we see yet another disastrous consequence of the Biden Administration's lack of border security policy.

I again thank each of the witnesses for being here today. I look forward to your testimony and hearing what you have to add to this important topic. I thank the chair and I yield back.

Ms. JACKSON LEE. I thank the Ranking Member and was delighted to yield to him, thank him for his passion, and to remind him of the great work of the Biden-Harris Administration, particularly the humanitarian response that they have offered and the intensity of their work on the issues of the border and unaccompanied children. So, I thank you, Mr. Biggs, very much.

I now recognize the distinguished Chair of the Full Committee, the gentleman from New York, Mr. Nadler, for his opening statement.

Mr. Nadler.

Chair NADLER. Thank you, Chair Jackson Lee for holding this importing hearing on juvenile justice, not, by the way, on immigration.

It is particularly important to hold this hearing on juvenile justice in the aftermath of the Supreme Court's recent decision in *Jones v. Mississippi*. That decision which makes it easier for courts to sentence children to life in prison without the possibility of parole, marks a significant break from the court's prior precedent.

Previously, the court had issued a string of decisions restricting the imposition of these harsh sentences, based in large part on the significant and growing scientific consensus regarding the differences between children and adults and the recognition that we

should view, treat, and rehabilitate children in our justice system accordingly.

Prior to the progressive era, the period of widespread activism and social reform spanning years from the 1890s to the 1920s, child offenders over the age of 7 were punished and confined with adults in harsh and overcrowded penal institutions. Early reformers and psychologists opposed incarcerating youth with adults and urged the creation of new institutions for youth that focused on rehabilitation. This work led to the creation of the New York House of Refuge in 1824, the first juvenile reformatory in the United States and the pioneer in the treatment of children.

By 1899, other states had followed suit and recognized that children who commit crimes are different from adults. By the 1920s, our juvenile justice system had emerged, but over time a system originally focused on rehabilitation and the differences between children and adults shifted to one fueled by tough-on-crime laws in response to an exaggerated rise of juvenile crime and delinquency. These laws resulted in disparate sentences, especially for African American children, deplorable conditions of confinement for sentenced youth, and the deprivations of constitutional rights.

According to the Death Penalty Information Center and the Equal Justice Initiative, at least 366 people have been executed for juvenile offenses by 2005. Thousands more, including children as young as 13, were sentenced to life in prison without the possibility of parole.

The Supreme Court slowly recognized that children are different. In 2005, it held in *Roper v. Simmons* that “that the death penalty cannot be imposed upon juvenile offenders.” In doing so, the court acknowledged “the overwhelming weight of international opinion against the juvenile death penalty resting in large part on the understanding of the instability and emotional imbalance of young people may often be a factor in the crime.”

In 2010, the court held in *Graham v. Florida*, that the 8th amendment forbids life without parole sentences for juveniles convicted of non-homicide offenses. In 2012, it held in *Miller v. Alabama*, a case argued by Bryan Stevenson, one of our witnesses, that mandatory life without parole sentences for juveniles violate the 8th Amendment.

The court’s 2016 decision *Montgomery v. Louisiana*, applied *Miller* retroactively, finding that children are constitutionally different from adults in their culpability and that the severest punishments should be reserved for “the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.”

The recent *Jones* decision, however, guts this precedent and it sadly reaffirms our standing as the only country in the world that sentences children to life imprisonment without the possibility of parole for offenses committed before they turned 18-years old.

As we examine the impact of this decision and possible solutions, it is important that we also explore the full range of issues affecting justice-involved youth. This includes early intervention strategies for at-risk youth, particularly those who experience childhood trauma; developing appropriate confinement settings and rehabilitation programs that will ease reentry when sentences are over.

Some states have led the way on juvenile justice reform. I hope these efforts, these reform efforts, will mitigate some of the harm caused by the Jones decision, retroactively and prospectively. Our treatment of justice-involved youth should not be based on geography. Congress must be an equal partner in these reform efforts which includes examining the way our federal laws treat youth in our justice system.

I look forward to hearing from our witnesses as we continue to explore these important issues. Thank you. I yield back the balance of my time.

Ms. JACKSON LEE. The gentleman yields back. It is now my privilege to recognize the distinguished Ranking Member of the Full Committee, the gentleman from Ohio. We thank Mr. Jordan for this hearing and happens to have stepped away for another hearing. We thank him very much. The Ranking Member will submit his written statement and we appreciate that (no statement provided).

We will now proceed with witness introductions. We have heard the stories presented in our opening statements, mine and Mr. Nadler's, where we are in this issue. A quintessential leader, visionary in this effort, along with our other witnesses, is Mr. Bryan Stevenson.

Mr. Bryan Stevenson is the founder and executive director of the Equal Justice Initiative, a human rights organization in Montgomery, Alabama. Under his leadership, EJI has won major legal challenges eliminating excessive and unfair sentencing, exonerating innocent death row prisoners, confronting abuse of the incarcerated and the mentally ill, and aiding children prosecuted as adults.

Stevenson has argued and won multiple cases at the U.S. Supreme Court and he and his staff have won reversals, relief, or release from prison for over 135 wrongly condemned prisoners on death row and won relief for hundreds of others wrongly convicted or unfairly sentenced.

We are seeking a journey to reform and we thank Mr. Stevenson for being willing to be part of that journey and that victory.

Ms. Marsha Levick is a legal chief counsel and co-founder of the Juvenile Law Center since 1975, and is a nationally-recognized expert in juvenile law. Levick oversees Juvenile Law Center's litigation and appellate docket and has successfully litigated challenges to unlawful and harmful laws, policies and practices on behalf of children in both the juvenile justice and child welfare systems.

Ms. Levick has authored or co-authored numerous appellate and amicus briefs in State and federal appeals courts throughout the country, including many before the U.S. Supreme Court and has argued both State and federal appellate courts in Pennsylvania and numerous other jurisdictions. She realizes the wrongness of the Jones case and we are glad to have here to help us reform the system.

Mr. Brett Peterson, he is one who is working in the vineyards. Brett is the director of the Utah Department of Juvenile Services. He is responsible for the operation and management of Utah's Division of Juvenile Justice Services. Brett also oversees the continuum of care in juvenile justice including early intervention, shelter, de-

tention, and long term secure settings. He is committed to reducing the need for out-of-home placements, correlating the services provided with the leading research related to the adolescent brain development. He oversees the ongoing implementation of significant juvenile justice reforms in Utah. He is working in the fields and the vineyards and he sees our children and what can be done on their behalf. Thank you so very much.

Let me thank Mr. Aaron Toleafoa. He is reality check for all us, a young man who we should listen to. Aaron is the chair of the Emerging Leaders Committee with the Coalition of Juvenile Justice and has been a long term advocate for youth justice reform. Aaron's advocacy efforts have led to the passage of numerous legislative reforms in Washington State, including Senate Bill 6160 which would allow minors convicted in the adult court to stay in the juvenile correction system until they turn 25 rather than being transferred to prison when they turn 21-years old.

Aaron was given 21 years for felonies he committed when he was 15-years old. He was sentenced to Green Hill School, a Washington State juvenile correctional facility that focused on juvenile rehabilitation, treatment with education and vocational training. He is there now.

There he has become a leader in the community and joined in lobbying efforts for felon incarcerated youths to promote juvenile justice reform. His voice is one that should not be ignored.

Ms. Jessica Vaughan, Jessica is the Director of Policy Studies at the Center for Immigration Studies, a Washington, DC, based research institute that examines the impact of immigration on American society and educates policymakers and opinion leaders on immigration issues. She has been with the Center since 1992. Her area of expertise is immigration policy and operations covering topics such as visa programs, immigration benefits, and immigration law enforcement. Thank you for being here.

I want to take just a moment to do something somewhat unusual and that is to thank my Members for being here because this is important work and we have experienced a pandemic and a COVID-19. We know that time is of the essence as we move to make change. So, I want to thank Karen Bass, Val Demings, Lucy McBath, Madeleine Dean, Mary Gay Scanlon, Cori Bush, David Cicilline, Ted Lieu, Luis Correa, Veronica Escobar, and Steve Cohen for their presence here along with Chair of the Full Committee, Mr. Nadler.

I thank my Members of the minority, Mr. Jordan, Mr. Biggs, Mr. Chabot, Louie Gohmert, W. Gregory Steube, Tom Tiffany, Thomas Massie, Victoria Spartz, Scott Fitzgerald, and Burgess Owens. I know that we will work together for what is good for young people.

It is now my obligation as I welcome all our distinguished witnesses to thank them for their participation. I will begin by swearing in our witnesses. I ask that our witnesses in person please rise and raise your right hand. I ask that our remote witnesses please rise and raise your right hand. The witnesses who are in the room please rise and raise your right hand. I ask that our remote witnesses please turn on their audio and make sure that I can see your face and your raised right hand while I administer the oath. May I see a raised right hand while I administer the oath. Wit-

nesses unmute and raise your right hands in a way that is visible in the screen.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God.

Let the record show the witnesses have all answered in the affirmative. Thank you all very much.

Please note that each of your written statements will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in five minutes. To help you stay within the time, there is a timing light on the witness table. When the light switches from green to yellow, you have one minute to conclude your testimony. When the light turns red, it signals your five minutes have expired.

For our witnesses appearing virtually, there is a timer on your screen to help you keep track of time.

To my fellow Members on this committee, I want to indicate how much the witnesses are part of the process of democracy, so we are very grateful.

As I yield to Mr. Stevenson, it should be known as Ms. Levick that they have just recently been engaged in a Supreme Court case. Mr. Stevenson has a graduation speech, but he was willing to be with us because we must make change.

Mr. Stevenson, you are now recognized for five minutes.

Thank you so very much.

#### STATEMENT OF BRYAN STEVENSON

Mr. STEVENSON. Thank you, Madam Chair, and it's my great honor to be with all of you this morning.

I want to begin by just emphasizing the childhood trauma epidemic that we are seeing across this country. I don't think we have talked enough about the fact that there are hundreds of thousands of children in this country who are born into violent families, that live in violent neighborhoods, that are being shouted at, abused, and mistreated, in their early years.

What happens when children are treated in this way is that they develop trauma disorders just like our combat veterans coming back from combat.

When someone is constantly being threatened their brain begins to produce these chemicals, cortisol and adrenalin, and they become hyperreactive and these trauma disorders have lifelong consequences if we do not intervene, and we have the power and the knowledge to intervene and to deal with this trauma epidemic and I believe it would not only lower crime and improve public safety but it would save lives.

Instead of doing that, when these children get to schools we do the opposite. We don't make them feel safe. We threaten them. We have too many schools where teachers react to these children like the teachers are correctional officers and the children are prisoners.

We have too many principals that act like wardens. We say, do this and we'll suspend you. Do that we'll expel you. That threat mindset aggravates the trauma, and by the time some of these kids are 9- and 10-years old and someone gives them a drug and for the

first time in their life they feel three hours of release and peace from the trauma and the stress, what do they want?

They want more drugs, and some of these kids get to 11 and 12 someone says, join my gang, we'll help you fight the forces that make you feel threatened, and what do they do? They join that gang, and we have to understand that dealing with trauma is at the heart of how we improve the lives of so many of our children.

We haven't done it, in part because we have had too many people preaching a false narrative about children. Some have said that some children aren't children. Some kids look like kids, but they're not kids.

Super predator myths and other distorted notions of child development have dominated our policymaking. Today is a day, I hope, we will recognize the error of that and change things.

I believe that all children are children. I don't believe we show our commitment to children by looking at how well we treat talented kids, gifted kids, and privileged kids. Our commitment to children must be expressed by how we treat poor kids, abused kids, and marginalized kids. That's the context and we haven't done very well. There are these things that I believe we must do.

Last month, Maryland became the 25th State that banned life without parole sentences for children. I believe the Federal Government has a critical role to play in leading this country.

The United States Congress should end and ban life without parole sentences for children. Not just because the Supreme Court has recognized that that's important, but because this country has an obligation to lead in rebutting the false narratives that have shaped these policies.

There is a critical need for us to do something about the fact that we still have children in adult jails and prisons.

In 2003, a bipartisan Congress passed something called the Prison Rape Elimination Act. One of the critical provisions of that Act was a prohibition on putting children in adult jails in prisons.

Notwithstanding that act, today there are thousands of kids in adult jails and prisons where they're threatened, where they're sexually assaulted, where the risk of suicide is dramatically higher, and that abuse continues and I believe we have to create an enforceable ban on placing children in adult jails and prisons, a ban that applies both at the State and the federal level.

The bill was introduced in 2003 by Senator Sessions in the Senate, Bobby Scott in the House. It passed unanimously. I have to believe that this Congress recognizes the importance of ending the shameful practice of putting children in adult jails and prisons.

Finally, I think we have to reckon with the distortions that have been created by lowering the minimum age of trying children as adults. We have 13 states in this country that have no minimum age of trying a child as an adult. I've represented 9- and 10-years-old kids facing 40- and 50-years prison sentences in adult jails and prisons.

Last week, I was in California. I was celebrating a book release by one of my clients, a 13-years-old boy named Ian Manuel who was arrested and convicted in Tampa, Florida. He was born into violence. His mother was put in prison for a violent act.

He was abused. He was homeless. He tried to join a gang at 13-years old and he ended up attempting a robbery where he shot someone. For that crime, he pled guilty and the judge sentenced him to life imprisonment without parole at the age of 13-years old.

They sent him to an adult prison, and even though he was 14-years old, they couldn't put him in the population so they put him in solitary confinement. He spent 18 years in solitary confinement where he cut himself, where he was abused.

We won his release after the Supreme Court banned life without parole sentences for children. He spent five years in our re-entry program and today, he is a published author. He issues poetry.

He is very, very acclaimed. He is an example of the problem and the solution. He represents the challenges but also the hope of what happens when we commit to recognizing that all children are children.

That's what I hope this Congress will do today in changing this narrative and lifting up the children who are most vulnerable in American society.

[The statement of Mr. Stevenson follows:]

**TESTIMONY OF BRYAN A. STEVENSON**

Director, Equal Justice Initiative

May 13, 2021

Subcommittee on Crime, Terrorism and Homeland Security

*Juvenile Justice Pipeline and the Road Back to Integration*

Dear Members of Congress, My name is Bryan Stevenson, I am the founder and director of the Equal Justice Initiative, a non-profit law organization in Montgomery, Alabama.

I come before this Committee in support of proposals to strengthen protections for children who are arrested and accused of crimes in this country. I specifically urge this Committee to support a complete ban on life imprisonment without parole sentences imposed on children under the age of 18. Consistent with state trends around the country, United States Supreme Court precedent, and international law, such a ban would advance our understanding and care of children in our society.

Similarly, there is a need for new federal protections that create an enforceable ban on the placement of any child in any adult jail or prison in this country. Thousands of children are currently housed in adult facilities and suffer abuse, sexual violence and increased risk of suicide each day.

Finally, this Congress should adopt new laws that increase the age at which children can be prosecuted as adults for any crime in the federal system. In support of these proposals, I offer this testimony.

### THE EQUAL JUSTICE INITIATIVE

EJI challenges the death penalty and excessive punishment, including excessive adult sentences imposed on children, and provides reentry assistance to formerly incarcerated individuals. For over three decades we have worked with communities that have been marginalized by poverty and discouraged by unequal treatment. EJI is committed to changing the narrative about race in America. EJI recently launched an ambitious national effort to create new spaces, markers, and memorials that address the legacy of slavery, lynching, and racial segregation, which shapes many issues today.

EJI provides research and recommendations to assist advocates and policymakers in the critically important work of criminal justice reform. EJI publishes reports, discussion guides, and other educational materials in support of efforts by policymakers to build healthier communities. Our work with children includes providing legal assistance to juveniles condemned to die in prison; challenging the placement of youth in adult jails and prisons; and challenging the prosecution of very young children as adults. This work has focused especially on young adolescents.

EJI has represented dozens of young adolescents all around the country in challenging their excessive adult sentences, as well as during resentencing

proceedings and at parole hearings. I was counsel for the petitioners before the United States Supreme Court in *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455, 183 L.Ed.2d 407], as well as *Sullivan v. Florida*, No. 08-7621, the companion case to *Graham v. Florida* (2010) 560 U.S. 48 [130 S.Ct. 2011, 176 L.Ed.2d 285]. These cases each involved young adolescents. EJI also filed an amicus brief in *Montgomery v. Louisiana* (2016) 136 S.Ct. 718 [193 L.Ed.2d 599], another case involving children sentenced to life without parole, which highlighted the cases of two young adolescents.

Our reentry work has also concentrated on the special needs of people who entered prison before the age of eighteen, who, because they have never lived outside of prison as adults, face unique challenges in rejoining society. EJI provides employment, daily supervision, counseling from licensed mental health professionals, and educational programming for clients who entered state prison as children.

#### **ENDING EXCESSIVE PUNISHMENT OF CHILDREN**

##### **I. Science Has Demonstrated That Young Adolescents, Because of Their Developmental Status, Have Immature Judgment, Greater Vulnerability to Negative Influences, and a Heightened Capacity for Change.**

Contemporary psychological, sociological, and neurological studies

converge<sup>1</sup> to demonstrate that children’s changeability, immature judgment, underdeveloped capacity for self-regulation, vulnerability to negative influences and outside pressures, and lack of control over both their own impulses and their environment peak during the early teenage years. This is the onset of the crucial developmental period of adolescence, bringing radical transformations that include the stressful physical changes of puberty (increases in height and weight and sex-related physiology), followed later by progressive gains in capacity for reasoned, mature judgment, impulse control, and autonomy.<sup>2</sup>

A “rapid and dramatic increase in dopaminergic activity within the socioemotional system around the time of puberty” drives the young adolescent toward increased sensation-seeking and risk taking; “this increase in reward seeking precedes the structural maturation of the cognitive control system and its connections to areas of the socioemotional system, a maturational process that is gradual, unfolds over the course of adolescence, and permits more

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<sup>1</sup> The convergence of research across multiple disciplines makes this scientific consensus particularly strong. (See Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?* (2009) 64 Am. Psych. 739, 744.)

<sup>2</sup> Geier & Luna, *The Maturation of Incentive Processing and Cognitive Control* (2009) 93 Pharmacology, Biochemistry & Behav. 212, 212 (hereafter Geier & Luna); see also Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations* (2000) 24 Neuroscience & Biobehavioral Rev. 417, 434–436 [discussing radical hormonal changes in adolescence] (hereafter Spear).

advanced self-regulation and impulse control.”<sup>3</sup> “The temporal gap between the arousal of the socioemotional system, which is an early adolescent development, and the full maturation of the cognitive control system, which occurs later, creates a period of heightened vulnerability to risk taking during middle adolescence.”<sup>4</sup> “This imbalance . . . results in poor regulation of emotions and a tendency to focus on the immediate rewards of choices, while discounting long-term costs . . . increas[ing] inclinations to engage in risky behavior, including offending.”<sup>5</sup>

These biological and psychosocial developments explain what is obvious to parents, teachers, and any adult who reflects back on his or her own teenage years: young teenagers lack the maturity, independence, and future orientation that adults, and even older teens, have acquired over the course of adolescence. While many 18-year-olds are starting to think about their future careers and families, younger teens are fixated on what video to post on their TikTok

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<sup>3</sup> Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model* (2008) 44 Dev. Psych. 1764, 1764 (hereafter Steinberg, *Dual Systems Model*).

<sup>4</sup> Steinberg, *Adolescent Development and Juvenile Justice* (2009) 5 Ann. Rev. Clinical Psych. 459, 466 (hereafter Steinberg, *Adolescent Development*).

<sup>5</sup> Scott et al., *Brain Development, Social Context, and Justice Policy* (2018) 57 Wash. U. J. L. & Pol'y 13, 28–29 (hereafter Scott, *Justice Policy*); see also Shulman et al., *The Dual Systems Model: Review, Reappraisal, and Reaffirmation* (2016) 17 Dev. Cognitive Neuroscience 103, 106 [positing that “late adolescents are less biologically predisposed to risk taking than middle adolescents”] (hereafter Shulman).

accounts that day.<sup>6</sup> Among adolescents, young teens have the least capacity to imagine consequences, regulate their wildly shifting emotions, and resist peer pressure. Yet they also have the most capacity for change, precisely because they are at the beginning of the most intense period of rapid growth in their lifetimes.<sup>7</sup>

**A. Young Adolescents Are Especially Susceptible to Risk-Taking Impulses and Negative Peer Influences.**

Early teenagers' propensity for risk-taking exacerbates their decision-making difficulties. It is universally recognized that adolescence is characterized by risk-taking behavior; contemporary neurological science establishes that this is a function of physical brain development as well as a socially scripted phase of the passage from childhood to maturity.<sup>8</sup> In some ways, risk-taking is an essential part of adolescent development, because "increased sensation seeking

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<sup>6</sup> TikTok is a popular smartphone application for making and sharing short videos. (Herman, *TikTok is Rewriting the World*, N.Y. Times (Mar. 10, 2019), <https://www.nytimes.com/2019/03/10/style/what-is-tik-tok.html>.)

<sup>7</sup> Spear, *supra*, 24 Neuroscience & Biobehavioral Rev. at p. 428 ["[A]dolescence is second only to the neonatal period in terms of both rapid biopsychosocial growth as well as changing environmental characteristics and demands . . . "]; see also *id.* at pp. 428–429 [finding that stress is elevated in early adolescents, incidence of depression is often highest, and teens experience sleep problems, great extremes in mood, and peak anxiety and self-consciousness].

<sup>8</sup> See, e.g., Steinberg, *Risk Taking*, *supra*, 16 Current Directions Psych. Sci. at p. 56-58; Geier & Luna, *supra*, 93 Pharmacology, Biochemistry & Behav. at p. 218; Kelley et al., *Risk Taking and Novelty Seeking in Adolescence* (2004) 1021 Annals N.Y. Acad. Sci. 27, 27.

... encourages adolescents to explore their environment and to develop a sense of identity and autonomy.<sup>9</sup> Neurodevelopmental studies<sup>10</sup> have suggested that heightened risk taking in adolescence is associated with greater activation of reward-sensitive brain regions that make “individuals more attentive, sensitive, and responsive to actual and potential rewards.”<sup>11</sup>

Risk-taking behavior is so common in adolescence that researchers understand “criminal offending as a specific instance” during young adolescence of “the more general inclination of young adults to engage in risky activity.”<sup>12</sup> For the purpose of understanding young adolescent behavior relative to that of adults, and even older teens, the critical observations are that (1) most adolescent risk-taking is a group phenomenon and (2) young adolescents are the

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<sup>9</sup> Scott, *Justice Policy, supra*, 57 Wash. U. J. L. & Pol'y at p. 21; see also Crone & Dahl, *Understanding Adolescence as a Period of Social-Affective Engagement and Goal Flexibility* (2012) 13 *Nature Rev. Neuroscience* 636, 642; Ellis et al., *The Evolutionary Basis of Adolescent Behavior: Implications for Science, Policy, and Practice* (2012) 48 *Dev. Psych.* 598, 601.

<sup>10</sup> In brain imaging studies, when presented with images of rewarding stimuli, such as smiling faces, adolescents gave a stronger response in reward-processing regions than children or adults did. (See Galvan et al., *Risk-Taking and the Adolescent Brain: Who is at Risk?* (2007) 10 *Dev. Sci.* F8, F11.) Other studies utilizing, for example, “self-report scales that assess characteristics such as thrill- or novelty-seeking, or behavioral tasks that assess responsiveness to rewarding stimuli (such as monetary rewards)” and “gambling tasks in which individuals must learn to discriminate between gambles that are likely to be rewarding . . . and those that are likely to be costly” have shown similar results. (Scott, *Justice Policy, supra*, 57 Wash. U. J. L. & Pol'y at pp. 22–23.)

<sup>11</sup> Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy* (2016) 85 *Fordham L.Rev.* 641, 646–647.

<sup>12</sup> *Id.* at p. 646.

most vulnerable to peer-group influence.

Parents, teachers, and observers of teenagers the world over know that social interactions and affiliations with peers take on an out-sized importance in adolescence. Teens spend about one-third of their waking hours talking with peers (but only 8% with adults).<sup>13</sup> While all adolescents are more peer-oriented than adults, research indicates that vulnerability to peer pressure, especially for boys, increases during early adolescence to an all-time high around age 14.<sup>14</sup> The need to fit in with the peer group—to impress peers with daredevil antics and smart-alecky comments—exerts enormous influence on the behavior of young adolescents, more so than during pre-adolescence or late adolescence.<sup>15</sup> Researchers have found that “a network of brain systems governing thinking about social relationships undergoes significant changes in adolescence in ways that increase individuals’ concern about the opinion of other people, particularly peers.”<sup>16</sup> During this period of development, teenagers are more sensitive to

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<sup>13</sup> Spear, *supra*, 24 *Neuroscience & Biobehavioral Rev.* at p. 420.

<sup>14</sup> Steinberg & Silverberg, *The Vicissitudes of Autonomy in Early Adolescence* (1986) 57 *Child Dev.* 841, 846, 848; Mann, *supra*, 12 *J. Adolescence* at pp. 267-68, 274; Steinberg, *Risk Taking*, *supra*, 16 *Current Directions Psych. Sci.* at p. 57; Reppucci, *Adolescent Development and Juvenile Justice* (1999) 27 *Am. J. Cmty. Psych.* 307, 318 (hereafter Reppucci).

<sup>15</sup> Steinberg, *Social Neuroscience*, *supra*, 28 *Dev. Rev.* at p. 92.

<sup>16</sup> Scott, *Justice Policy*, *supra*, 57 *Wash. U. J. L. & Pol'y* at p. 24; see also Blakemore, *Development of the Social Brain in Adolescence* (2012) 105 *J. Royal Soc'y Med.* 111, 112; Blakemore & Mills, *Is Adolescence a Sensitive Period for Sociocultural Processing?* (2014) 65 *Ann. Rev. Psych.* 187, 189.

praise and rejection than children or adults, “making them potentially more susceptible to peer influence, and responsive to threats.”<sup>17</sup> This is arguably why teenagers are “more likely to offend in groups” than adults and “take more risks in the presence of peers than when they are alone or with an adult”—the increased awareness of peers makes “approval especially important in group situations.”<sup>18</sup> The presence of peers increases risk-taking among teenagers even when they are given information about the likelihood of positive or negative outcomes.<sup>19</sup> Moreover, teenagers who are rejected by their peers often engage in risky behavior “to fit in with a group” that “may draw a teen to engage in behaviors, including illegal activity, even when they know better.”<sup>20</sup>

Indeed, extreme vulnerability to peer influence (especially when it is to do something bad) is a defining characteristic of young adolescence, reflected in the fact that it is statistically aberrant for boys to refrain from minor criminal

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<sup>17</sup> Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 24; see also Dreyfuss et al., *Teens Impulsively React Rather than Retreat from Threat* (2014) 36 Dev. Neuroscience 220, 220; Guyer et al., *Probing the Neural Correlates of Anticipated Peer Evaluation in Adolescence* (2009) 80 Child Dev. 1000, 1000.

<sup>18</sup> Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 25.

<sup>19</sup> Smith et al., *Peers Increase Adolescent Risk Taking Even When the Probabilities of Negative Outcomes are Known* (2014) 50 Dev. Psych. 1564, 1567–1568.

<sup>20</sup> Cohen & Casey, *supra*, 18 Trends Cognitive Sci. at p. 64.

behavior during this period.<sup>21</sup> Peer pressure is so strong in young adolescence that “affiliation with antisocial peers is the factor most predictive of juveniles’ involvement in criminal activity.”<sup>22</sup>

Peer pressure heavily impacts young adolescents’ decisions to offend because of the “dynamic interaction between a still-maturing individual and her social context.”<sup>23</sup> Neurodevelopmental researchers have found that social environment greatly impacts the developing brains of young adolescents and heavily influences their decisions to take risks.

Critically, the tendency for young adolescents to engage in risk-taking behavior increases in emotionally and socially arousing contexts.<sup>24</sup> “In emotionally charged situations,” adolescent brains are “even less capable of adequately regulating emotions and actions, resulting in a teen exercising less self-control in making a risky decision, even when he or she knows better.”<sup>25</sup> So the combination of a negative environment, an adolescent’s proclivity for reward-seeking, and an emotionally charged situation can lead to especially reckless

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<sup>21</sup> Spear, *supra*, 24 *Neuroscience & Biobehavioral Rev.* at p. 421; Reppucci, *supra*, 27 *Am. J. Cmtly. Psych.* at p. 319.

<sup>22</sup> Scott, *Justice Policy*, *supra*, 57 *Wash. U. J. L. & Pol'y* at pp. 47–48.

<sup>23</sup> *Id.* at p. 13.

<sup>24</sup> Smith et al., *Impact of Socio-Emotional Context, Brain Development, and Pubertal Maturation on Adolescent Risk-Making* (2013) 64 *Hormones & Behav.* 323, 325–326.

<sup>25</sup> Cohen & Casey, *supra*, 18 *Trends Cognitive Sci.* at pp. 63–64.

decision-making.<sup>26</sup>

The added pressure of a threatening context or the presence of peers further undermines “rationality and contribut[es] to impulsive decisions.”<sup>27</sup> Because risk-taking behavior can manifest in many ways, a teenager living in a “high-crime neighborhood with many antisocial peers is more likely to get involved in criminal activity” than “if he were a member of a close-knit and highly competitive basketball team, [where] the interaction of peer influence and reward-seeking might lead to the sort of risk-taking on the basketball court that is socially accepted.”<sup>28</sup>

Young adolescents are in such an early developmental stage that their environment can influence them to the point that it “shape[s] the trajectory” of their lives.<sup>29</sup> The adolescent brain is “malleable” and “plastic,” an adaptability that allows them to respond to their environment, and if their social environment encourages risk-taking, they are more likely to engage in those

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<sup>26</sup> Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 37.

<sup>27</sup> *Ibid.*; see also Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts* (2016) 27 Psych. Sci. 549, 559–560; Forbes et al., *Neural Systems of Threat Processing in Adolescents: Role of Pubertal Maturation and Relation to Measures of Negative Affect* (2011) 36 Dev. Neuropsychology 429, 446–47; Kassin, *The Psychology of Confessions* (2008) 4 Ann. Rev. L. & Soc. Sci. 193, 204.

<sup>28</sup> Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at pp. 16–17; see also Steinberg, *The Influence of Neuroscience on U.S. Supreme Court Decisions Involving Adolescents' Criminal Culpability* (2013) 14 Nature Rev. Neuroscience 513, 513–518.

<sup>29</sup> Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 17.

behaviors.<sup>30</sup>

Social context is as out of a teenager's control as is "other aspects of brain development, including the inclination toward reward-seeking or the tendency to make impulsive choices when aroused."<sup>31</sup> Young adolescents are unable to extricate themselves from social contexts—whether it be their homes, neighborhoods, or schools—where they are likely to get into trouble or get involved in criminal behavior.<sup>32</sup> Denied the rights and privileges that accrue at age 18, all adolescents have less ability than adults to free themselves from morally toxic or dangerous environments. Still, the younger teens are worst off. State and federal laws meant to protect young teens from exploitation and from their own underdeveloped sense of responsibility—including restrictions on driving, working, and leaving school—operate conversely to disable adolescents from escaping an abusive parent, a dysfunctional or violent household, or a dangerous neighborhood.

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Id.* at p. 63.

<sup>32</sup> Steinberg & Scott, *Less Guilty by Reason of Adolescence* (2003) 58 Am. Psych. 1009, 1014; Scott & Steinberg, *Blaming Youth* (2003) 81 Tex. L.Rev. 799, 817. The U.S. Supreme Court has adopted this position in its Eighth Amendment opinions. (See *Roper v. Simmons* (2005) 543 U.S. 551, 569 [125 S.Ct. 1183, 1195, 161 L.Ed.2d 1]; *Miller v. Alabama* (2012) 567 U.S. 460, 471 [132 S.Ct. 2455, 2464, 183 L.Ed.2d 407]; *Montgomery v. Louisiana* (2016) 136 S.Ct. 718, 733 [193 L.Ed.2d 599].)

**B. Young Adolescents Have Not Yet Begun to Imagine Their Futures and Thus Have the Capacity to Change and Mature.**

Young teens, to a much greater extent than adults or older teens, are unable to fully envision who they want to be or what they want to achieve in the future. The flip side of young adolescents' underdeveloped sense of self is that they have, relative to older individuals, more potential to change and develop positive character traits as they grow up. Just as a young adolescent can be particularly susceptible to negative influences, the malleability and plasticity of their still-developing brains means that young teens are also especially responsive to positive interventions.<sup>33</sup>

A typical teenager who acts irresponsibly in reaction to a thrilling impulse or peer pressure is not irretrievably depraved or permanently flawed. Nothing about his character is permanent, and he has years of development ahead, during which he can (and, in most cases, will) grow into a moral, law-abiding adult.<sup>34</sup>

Dozens of longitudinal studies have shown that the vast majority of adolescents who commit antisocial acts desist from such activity as they mature into adulthood and that only a small percentage—between five and ten percent, according to most

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<sup>33</sup> Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 63.

<sup>34</sup> Steinberg, *Risk Taking in Adolescence: What Changes and Why* (2004) 1021 Annals N.Y. Acad. Sci. 51, 55.

studies—become chronic offenders. Thus, nearly all juvenile offenders are adolescent limited. . . . [M]ost juvenile offenders mature out of crime (and [ ]) most will desist whether or not they are caught, arrested, prosecuted or sanctioned).<sup>35</sup>

Most teens grow out of their risky behavior as a part of the maturation process.<sup>36</sup> Typically, the ability to resist peer influence and to regulate internal impulses matures in middle or late adolescence.<sup>37</sup> Moreover, at the same time that an adolescent's brain is developing, "reducing impulsivity and the inclination to engage in risk-taking," his social context is also changing because his friends' and peers' brains are developing too, and thus "he is no longer surrounded by sensation-seeking individuals, inclined, as he was, to make impulsive choices when emotionally aroused."<sup>38</sup>

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The U.S. Supreme Court has recognized that adolescents, as a class, lack the maturity, autonomy, and self-governing capacity of adults. (*Miller v.*

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<sup>35</sup> Steinberg, *Adolescent Development*, *supra*, 5 Ann. Rev. Clinical Psych. at p. 66.

<sup>36</sup> Spear, *supra*, 24 Neuroscience & Biobehavioral Rev. at p. 421; Reppucci, *supra*, 27 Am. J. Cnty. Psych. at p. 319.

<sup>37</sup> Cohen & Casey, *supra*, 18 Trends Cognitive Sci. at p. 64 [“[D]iminished self control is transient and will continue to develop as underlying circuitry becomes fine tuned with experience and time.”].

<sup>38</sup> Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 45; see also Sweeten et al., *Age and the Explanation of Crime, Revisited* (2013) 42 J. Youth & Adolescence 921, 935.

*Alabama* (2012) 567 U.S. 460, 471 [132 S.Ct. 2455, 2464, 183 L.Ed.2d 407]; *Roper v. Simmons* (2005) 543 U.S. 551, 569-71 [125 S.Ct. 1183, 1195-96, 161 L.Ed.2d 1]; *Eddings v. Oklahoma* (1982) 455 U.S. 104, 115-16 [102 S.Ct. 869, 877, 71 L.Ed.2d 1].) As is readily observable and widely accepted, the youngest adolescents are the least mature, most susceptible to internal impulses and external influences, and have the greatest capacity for change.<sup>39</sup>

## II. POLICIES MUST CONFORM TO THE NEEDS OF CHILDREN AND PUBLIC SAFETY

### A. The Characteristics of Young Adolescents Demonstrate that Keeping These Youth In Juvenile Court Promotes Public Safety, Emphasizes Rehabilitation, and Reduces Wasteful Spending on Prisons.

As discussed at length above, young adolescents have tremendous capacity for rehabilitation. Indeed, one of the most salient features of young adolescence is an enormous potential for change. Young teens are so early in their developmental trajectory that nearly everything about them has yet to be determined. As a result, not only are young adolescents capable of change, they *will* change as an inevitable part of growing up.<sup>40</sup> As the Supreme Court has

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<sup>39</sup> See, e.g., Steinberg et al., *Age Differences in Future Orientation and Delay Discounting* (2009) 80 Child Dev. 28, 28, 39-40; Steinberg & Monahan, *Age Differences in Resistance to Peer Influence* (2007) 43 Dev. Psych. 1531, 1540; Steinberg, *Dual Systems Model*, *supra*, 44 Dev. Psych. at pp. 1775-1776.

<sup>40</sup> Spear, *supra*, 24 Neuroscience & Biobehavioral Rev. at p. 421; Seagrave & Grisso, *supra*, 26 Law & Hum. Behav. at p. 229;

recognized, “the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient: as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside.” (Roper v. Simmons (2005) 543 U.S. 551, 570 [125 S.Ct. 1183, 1196, 161 L.Ed.2d 1 [quoting Johnson v. Texas (1993) 509 U.S. 350, 368 [113 S.Ct. 2658, 2669, 125 L.Ed.2d 290].]) Young adolescents’ heightened capacity for change indicates that their treatment in the juvenile system furthers the intent of appropriate care for children and public safety.

First, because young adolescents are especially likely to be rehabilitated, keeping these youth in the juvenile system is consistent with the goal of emphasizing rehabilitation. Young adolescents, because they still have so much growing to do, are best able to take advantage of the opportunities offered by the juvenile system, and are especially susceptible to the positive influences that they can provide.<sup>41</sup>

Further, because young adolescents are still changing and changeable, it also promotes public safety for them to remain in the juvenile system. While theoretically, in some circumstances, public safety might be served by harsh

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Reppucci, *supra*, 27 Am. J. Cmty. Psych. at p. 319.

<sup>41</sup> See *supra* Section I.C; see also Scott, *Justice Policy, supra*, 57 Wash. U. J. L. & Pol'y at p. 61.

sentences that deter criminal behavior, the effectiveness of adult sentencing as a deterrent for young adolescents is questionable due to their immature development. As the Supreme Court has recognized, “the same characteristics that render juveniles less culpable than adults”—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment.” (*Montgomery v. Louisiana* (2016) 136 S. Ct. 718, 733 [193 L.Ed.2d 599] [quoting *Miller v. Alabama* (2012) 567 U.S. 460, 472 [132 S.Ct. 2455, 2465, 183 L.Ed.2d 407]). Young adolescents, who have the greatest deficits in future orientation and capacity to weigh risks and consequences (see *supra* Section I.A), are especially unlikely to take potential adult punishment into account to modify their behavior.

Public safety is best served by a system that reduces recidivism so fewer crimes are committed in the future. Here again, because of young adolescents’ innate capacity for change, these youth are especially capable of rehabilitation. Indeed, several studies have shown that teens who are tried as adults have higher rates of recidivism than those who remain in juvenile court, even after controlling for other factors, including the seriousness of the offense.<sup>42</sup>

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<sup>42</sup> Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* (2010) Office of Juvenile Justice & Delinquency Prevention, 5–8; Fagan et al., *Be Careful What You Wish For: Legal Sanction and Public Safety among Adolescent Felony Offenders in Juvenile and Criminal Court* (2007) 69–72; Myers,

Researchers have also found that juvenile experiences in correctional facilities “can have a critical impact on whether [adolescents] successfully navigate the transition to productive adulthood.”<sup>43</sup> Heightened plasticity in the adolescent brain can make “the brain susceptible to positive influence” but can equally make “it vulnerable to toxic experiences.”<sup>44</sup> For young adolescents involved in the criminal legal system, correctional facilities are the social contexts in which they experience a critical developmental period.<sup>45</sup> If their correctional experiences are “harmful,” particularly if adolescents are exposed to violence and social isolation, incarceration is “likely to be particularly damaging at this stage of life.”<sup>46</sup>

A positive “maturation process” during adolescence depends on several conditions of a teenager’s social context: (1) the presence of an “authoritative” adult who provides guidance and structure, (2) membership within a “pro-social peer group,” and (3) participation in activities that “promote autonomous

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*The Recidivism of Violent Youths in Juvenile and Adult Court: A Consideration of Selection Bias* (2003) 1 Youth Violence & Juv. Just. 79, 80.

<sup>43</sup> Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 57.

<sup>44</sup> *Id.* at p. 59.

<sup>45</sup> *Id.* at p. 70.

<sup>46</sup> *Id.* at p. 59.

decision-making and critical thinking.”<sup>47</sup> Juvenile correctional facilities can create these conditions by “foster[ing] the relationship between the young offender and one or more authoritative adults,” limiting the influence of “antisocial peers” and encouraging engagement with “pro-social peers,” and teaching social, educational, and vocational skills so that adolescents can make their own decisions and think critically.<sup>48</sup>

These conditions are far less likely to exist in adult prisons. In adult correctional facilities, the relationships between guards and the incarcerated have been described as “hostile and distant” and adult inmates may feel less responsible “to care for and provide positive adult guidance to juvenile prisoners.”<sup>49</sup> Moreover, adolescents serving sentences in adult prisons are “surrounded by antisocial peers and adults” during a lot of “unstructured time.”<sup>50</sup> These experiences in the correctional setting can determine the trajectory of the adolescent offender’s future life.<sup>51</sup>

While many young adolescents tried as adults can and do overcome these

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<sup>47</sup> *Id.* at p. 57.

<sup>48</sup> *Id.* at pp. 71–72.

<sup>49</sup> *Id.* at p. 60.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Id.* at p. 61.

obstacles to become productive citizens, the evidence shows that the juvenile system achieves this goal far more successfully. Therefore, keeping young adolescents in the juvenile system is consistent with protecting children and promoting public safety.

For the same reasons, it is also not necessary to waste taxpayer dollars on incarcerating young teens for decades in the adult system, and prohibiting transfer of young adolescents is also consistent with other federal laws and research.

In light of the scientific and societal consensus on the vulnerabilities and disabilities of young adolescents, keeping young adolescents in the juvenile justice system is consistent with and furthers public safety by emphasizing rehabilitation, and reducing costs for the adult prison system.

The needs of children in our criminal justice system have long been undermined by false narratives about the status and vulnerabilities of children. Policies that embrace the misguided view that some children aren't children must be changed to promote healthy communities that reflect what science, best practices in the field and most parents can clearly recognize.

Ms. JACKSON LEE. Let me thank you very much for your testimony, Mr. Stevenson, and the passion in which you have given it.

I now yield to Ms. Levick for five minutes.

[Pause.]

Ms. JACKSON LEE. I think you need to turn on your mic. Thank you.

Ms. LEVICK. Happy to do that.

Ms. JACKSON LEE. Yes, thank you.

#### STATEMENT OF MARSHA LEVICK

Ms. LEVICK. I'll start over.

Madam Chair Jackson Lee, Chair Nadler, Ranking Member Biggs, and distinguished Members of this subcommittee, thank you for welcoming me today.

At a press conference this past Saturday to address the civil rights charges recently filed by the Justice Department against convicted Officer Derek Chauvin and three other officers charged in George Floyd's death at which Chair Jackson Lee was also present, Congressman Al Green from Houston proclaimed, "The winds of change are blowing."

The winds of change are, indeed, blowing. I've been advocating for youth in the justice system since 1975. I co-founded Juvenile Law Center one year after Congress passed JJDPA and just eight years after the United States Supreme Court first declared that children are people too under our Constitution.

The cries for transformation have never been louder or more urgent. Since 1975, I have seen the highest levels of youth arrests and incarceration, and I have also seen the lowest.

In 2019 the lowest number of youth arrests in more than 40 years and youth incarceration has dropped by 70 percent since 1996. Even in the face of such steep drops, youth incarceration remains too high and our youth are still suffering. Children are still experiencing physical, emotional, and sexual abuse in custody.

We remain the last country in the United Nations to sentence children to die in prison and racial disparities have only worsened in the youth justice system.

Federal leadership can make a difference. Several bills have now been introduced that will set standards and provide guidance on how to establish a more humane justice system for our children.

I will briefly highlight a few of these opportunities.

Costs and fees—over 10-years ago, I litigated the Kids for Cash case in Pennsylvania, an international scandal in which two judges were alleged to have taken nearly \$3 million in kickbacks from the developer and owner of private for-profit youth detention centers. The greed and corruption were unprecedented.

The case also exposed the largely hidden system of fines and fees charged directly to kids and their families that kept them embroiled in the legal system even after their cases were essentially resolved.

Just in the past three years, seven states have passed legislation to abolish or substantially limit fees. Nine have legislation pending this term.

We're just at the beginning of this transformation. Federal level incentives to reduce fines and fees would further spur these reforms.

Conditions—even one day of incarceration harms children's future outcomes. We still lock too many children up, and while these youth are often portrayed as dangerous, here's some important data.

The majority of youth are detained—62 percent of them are detained for property, public order, or drug offenses, not offenses against persons. The pandemic actually underscored our propensity to over incarcerate. Custody levels dropped by about 24 percent at the beginning of the pandemic last spring and these numbers have remained low.

Too many children are still placed in isolation, pepper sprayed, and assaulted by staff and others while in custody with little recourse available unless they can jump through very complicated administrative hoops required by PLRA.

Research has shown us that rehabilitation and programming are much more effective and economical when delivered to children and their families in their communities rather than in out-of-home placements.

While the number of state-run facilities has dropped by more than half since 2000, federal investments to continue this trend and support a continuum of care from prevention to intervention is essential and it costs much less.

Extreme sentencing—when Juvenile Law Center opened in 1975, children could still be executed. After the Federal Crime Bill in 1994, nearly a quarter of a million children were sent into the adult criminal justice system every year.

Today, children as young as six and seven can be arrested in half the states across the country. The emergence of developmental and neuroscientific research in the last 15 years has changed or eliminated some of these practices.

I served as co-counsel in *Montgomery v. Louisiana* and on leading amicus briefs in the earlier U.S. Supreme Court decisions that struck certain extreme sentencing practices for youth based on their developmental immaturity.

The United States still remains alone in its harsh treatment of children. That children are different from their adult counterparts is now established both in science and in the law. This principle must inform every aspect of our youth justice system.

We must keep the youngest children out and provide those who remain the care and treatment and rehabilitation the system was designed to provide. The states have made good progress here.

Nearly all states set 18 as the age of criminal responsibility. More than half have eliminated life without parole and half the states have eliminated the automatic transfer of children to adult court.

Yet, our federal statute has no such boundaries. These aren't radical ideas. Reforms in the states, like at the federal level, are bipartisan. Conservative groups as diverse as Freedom Action Network, Americans for Prosperity, Our Streets Strategies, and Right on Crime support these efforts locally and nationally.

Let me close with two final points. In 1985, Nelson Mandela famously observed, “There can be no keener revelation of a society’s soul than the way in which it treats its children.”

More recently, Justice Sotomayor wrote in her dissent from the Supreme Court’s denial of cert in a case in which incarcerated individuals in Texas sought greater health and safety protections in the face of COVID-19, she wrote, “It has long been said that a society’s worth can be judged by taking stock of its prisons. May we hope that our country’s facilities serve as models rather than cautionary tales.”

I urge the Members of this Committee to keep these two truths close. Change and transformation are indeed possible in our youth justice system, but only if that system mirrors the core values of human dignity, racial equity, and true justice for all.

Thank you.

[The statement of Ms. Levick follows:]

To: **House Judiciary Committee**  
**Subcommittee on Crime, Terrorism and Homeland Security**  
“Juvenile Justice Pipeline and the Road Back to Integration”  
May 13, 2021

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**OPENING STATEMENT:**

Marsha Levick, Chief Legal Officer and Co-Founder, Juvenile Law Center

Madam Chairwoman Jackson Lee, Chairman Nadler, Ranking Member Biggs, & Distinguished Members of this Subcommittee, thank you for inviting me to testify before you today. I am honored to share my thoughts and experience with you regarding a path forward for youth involved in the justice system.

At a press conference this past Saturday to address the civil rights charges recently filed by the Justice Department against convicted Officer Derek Chauvin and the other three officers charged in George Floyd’s death – at which Chairwoman Jackson Lee was also present – Congressman Al Green from Houston proclaimed, “the winds of change are blowing.”

The winds of change are indeed blowing. I have been advocating for youth in the justice system since 1975. I co-founded Juvenile Law Center one year after Congress first passed the JJDPA, and just 8 years after the United States Supreme Court first declared that children are people too, under our Constitution. The cries for transformation have never been louder or more urgent.

Since 1975, I have seen the highest levels of youth arrests and incarceration, and I have also seen the lowest. 2019 saw the lowest number of youth arrests in more than 40 years, and youth incarceration has dropped by 70% since its peak in 1996.

But even in the face of such steep drops, youth incarceration remains too high, and our youth are still suffering. Children are still experiencing physical, emotional, and sexual abuse in custody; we remain the last country in the United Nations to sentence children to die in prison; and racial disparities have actually worsened in the youth justice system.

Federal leadership can make a difference. Several bills have now been introduced that will set standards and provide guidance on how to establish a more humane justice system for our children. I will briefly highlight a few of these opportunities.

**COSTS AND FEES:**

Over ten years ago, I litigated the “Kids for Cash” case in Pennsylvania – an international scandal in which two Pennsylvania judges were alleged to have taken nearly \$3 million in kickbacks from the developer and owner of private, for profit youth detention centers. The greed and corruption were unprecedented – but the case also exposed a largely hidden system of fines and fees charged directly to kids and their families that kept them embroiled in the legal system even after their cases were essentially resolved. Just in the past three years, seven states have passed legislation to abolish or substantially limit fines and fees in the youth justice system, and nine have legislation pending this term, but we are just at the beginning of this transformation. Federal level incentives to reduce fines & fees would further spur these much-needed reforms.

**CONDITIONS:**

Even one day of incarceration harms children’s future outcomes, but we still lock too many children up. And while these youth are often portrayed as dangerous, the data reveal a different story:

- The majority of youth (62%) are detained for property, public order or drug offenses, not offenses against another person.
- The pandemic actually underscored our propensity to over-incarcerate. Custody levels dropped by about 24% at the beginning of the pandemic last Spring, and these numbers have remained low in many jurisdictions.
- Too many children are still placed in isolation, pepper sprayed, and assaulted by staff and others while in custody--with little recourse available unless they can jump through complicated administrative hoops required by PLRA. This is unacceptable.
- Research has shown us that rehabilitation and programming are much more effective and economical when delivered to children and their families in their communities, rather than in out of home placements.
- While the number of state-run facilities has dropped by more than half since 2000, federal investments to both continue to this trend and support a continuum of care from prevention to intervention in the community is better for youth and for the community, and costs less.

## EXTREME SENTENCES:

When Juvenile Law Center opened in 1975, children could still be executed. After the Federal Crime Bill in 1994, nearly  $\frac{1}{4}$  million children were sent into the adult system EVERY YEAR. Today, children as young as 6 and 7 can be arrested in almost half the states across the country.

The emergence of developmental and neuroscientific research in the last 15 years has changed or eliminated some of these practices. I served as co-counsel on *Montgomery v Louisiana* and on leading amicus briefs in the earlier US Supreme Court decisions that struck certain extreme sentencing practices for youth based on their developmental immaturity. But the United States remains far behind in its harsh treatment of children.

That children are different from their adult counterparts is now established both in science and the law. This principle must inform every aspect of our youth justice system. We must keep the youngest children out, and provide the youth who remain the caring treatment and rehabilitation the system was designed to provide. The states have made good progress here -- nearly all states now set 18 as the age of criminal responsibility; more than half of the states have abolished JLWOP as a sentencing option; and half the states have limited-the automatic transfer of children into adult court.

Yet, our federal statute has no such boundaries.

These aren't radical ideas. Reforms in the states, like at the federal level, are bipartisan. Conservative groups as diverse as Freedom Action Network, Americans for Prosperity, R Street Strategies and Right on Crime support these efforts locally and nationally.

Let me close with 2 final points.

In 1985, Nelson Madela famously observed, "There can be no keener revelation of a society's soul than the way in which it treats its children."

More recently, Justice Sotomayor wrote, in her dissent from the Supreme Court's denial of cert in a case in which incarcerated individuals in Texas sought greater health and safety protections in the face of COVID 19, "It has long been said that a society's worth can be judged by taking

stock of its prisons. May we hope that our country's facilities serve as models rather than cautionary tales."

I urge the members of this Committee to keep these two truths close. Change and transformation is indeed possible in our youth justice system, but only if that system mirrors the core values of human dignity, racial equity, and true justice for all.

Ms. JACKSON LEE. Thank you very much, Ms. Levick. Time has expired.

Now, we recognize Mr. Peterson.

Mr. Peterson, you are recognized for five minutes.

#### **STATEMENT OF BRETT PETERSON**

Mr. PETERSON. Thank you. Chair Nadler, Chair Lee, Ranking Member Biggs, and esteemed Members of the subcommittee, my name is Brett Peterson and I am the director for the Division of Juvenile Justice Services within the Utah Department of Human Services.

It is an honor to be here today. Our division operates early intervention, detention, community-based placements, long-term secure care, transition, and parole for youth up to 25-years old.

We align within Utah's system of care model to change young lives while holding them accountable and keeping communities safe.

System transformation does not happen overnight. It requires philosophical, policy, and practice change, and it will not occur without an unrelenting commitment to partnership.

With this focus, Utah pivoted our treatment approach with public input and Pew Research-based legislation in 2017. The fundamentals of reform include actively challenging the relativist system that wrongly believed the best response to low-risk behavior was to incarcerate and institutionalize.

We do not criminalize adolescent behavior, especially when overwhelming research shows treating children as adults only puts them on a path to worse behaviors and worse public safety outcomes.

Buy in involves consistent education about adolescent brain science, that children are different from adults. Not to mention, we know our youth are more likely to have challenges stemming from socioeconomic and racial bias, to be victims of trauma, and to be involved in other areas of human services, including mental health, behavioral health, disability services, and child welfare.

Systemically we promote and engage in policy decisions that support prevention, research models, equitable treatment, and the best public outcomes.

In Utah, transformative policy change includes the following: Strict limits on when a youth can be tried as an adult, the elimination of life without parole and death penalty for anyone under 18, the entitlement to free and effective legal counsel for every youth, the requirement of parental consent or legal counsel for a youth to waive Miranda, limitations on when and how school-based offenses can be referred to juvenile court, strict limits on lengths of stay and the use of contempt, assurances that youth may only be detained if they pose a public safety risk, mandates that programming must be evidence based, the elimination of incarceration or court for youth younger than the age of 12 except for aggravated offenses, and the elimination of isolation, indiscriminate shackling, and limits on room confinement.

A critical element of our pivot is to flow resources and savings to a no-wrong-door early intervention model. We deliver trauma-in-

formed care and ensure youth receive the right amount of treatment in the right settings.

We establish free and voluntary services in the community to help youth improve risk behaviors, avoid any involvement or deepening in juvenile justice or child welfare system. We are pioneering new models and partnerships for vocational, employment, and higher education for every incarcerated youth.

Data indicates our endeavor to transform a system is working. Since 2018, I can report the following: A 46 percent reduction in detention admissions, a 26 percent reduction in risk to reoffend, over 130 locked rooms taken offline, over \$9 million in savings captured from a reduction in out-of-home placements, a 19 percent increase in early intervention programs, especially in our rural communities. Nearly 100 full time employees have been reassigned from locked settings like detention to early intervention.

Reform is a journey. It is not a destination. I recall speaking to a small child of 11, shaking as they sat in a detention center. I have come to know a youth who grew up in our facility, seeing them leave at 21 for prison for an offense committed when they were 15. We still witness heartbreak, tragedy, and loss every day. Our data shows disproportionate system involvement for youth of color.

We do not have all the answers. However, we believe we will continue to see positive results through our proven philosophy, policy changes, and practice change.

Youth today and generations to come will benefit from our nation's commitment to changing young lives when they need us most.

Thank you.

[The statement of Mr. Peterson follows:]



State of Utah

SPENCER J. COX  
*Governor*

DEIDRE M. HENDERSON  
*Lieutenant Governor*

Department of Human Services

TRACY S. GRUBER  
*Executive Director*

Division of Juvenile Justice Services

BRETT M. PETERSON  
*Director*

Brett M. Peterson  
Utah Director of Juvenile Justice  
May 13, 2021

Subcommittee on Crime, Terrorism and Homeland Security  
**Hearing: Juvenile Justice Pipeline and the Road Back to Integration**

**Opening Statement for Brett Peterson, Utah Director of Juvenile Justice Services, Juvenile Justice Pipeline and the Road Back to Integration, May 13, 2021**

Chairman Nadler, Chairwoman Lee, Ranking Member Biggs, and esteemed members of the Subcommittee, my name is Brett Peterson and I am the Director for the Division of Juvenile Justice Services within the Utah Department of Human Services. It is an honor to be here today. Our division operates early intervention, detention, community-based placements, long-term secure care, transition, and parole for youth up to 25 years old. We align within Utah's system of care model to change young lives while holding them accountable and keeping communities safe.

System transformation does not happen overnight. It requires philosophical, policy, and practice change. And it will not occur without an unrelenting commitment to partnership. With this focus, Utah pivoted our treatment approach with public input and Pew research-based transformative legislation in 2017, to realize better outcomes for the youth, their families, and our communities as a whole.

The fundamentals of reform include actively challenging the relics of a system that wrongly believed the best response to low-risk behavior was to incarcerate and institutionalize. We do not criminalize adolescent behavior, especially when overwhelming research, brain science and system wide outcomes show treating children as adults only puts them on a path to worse behaviors and worse public safety outcomes. Buy-in involves consistent education about adolescent brain development science—that children are different from adults. Not to mention we know our youth are more likely to have challenges stemming from socioeconomic and racial bias, to be victims of trauma, and be involved in other areas of Human Services, including behavioral health, disability services, and child welfare.

Systemically we promote and engage in policy decisions that support prevention, researched models, equitable treatment, and the best public outcomes. We put preventative measures in place to avoid an adolescent entering the formal system. We have changed statute each general session since our first reform bill as we learn more, and see results. In Utah, transformative policy changes include the following:

- Elimination of life without parole and death penalty for anyone younger than age 18
- Limitations on shackling of youth in the legal system
- Entitlement to free and effective legal counsel for every youth
- Requirement of parental consent or legal counsel for a youth to waive Miranda Rights
- Elimination of jailing for status offenses
- Limitations on when and how school-based offenses can be referred to juvenile court
- Strict limits on lengths of stay and the use of contempt
- Assurances that youth may only be detained if they pose a public safety risk
- Mandates that programming must be evidence-based
- Elimination of incarceration or court for youth younger than age 12, except for aggravated offenses
- Elimination of isolation and reduction of room confinement

A critical element of our pivot is to flow resources and savings reinvestment to a “no wrong door” early intervention model. We deliver trauma informed care and ensure youth receive the appropriate amounts of evidence-based treatment in the right setting. We established free and

voluntary services in the community to help youth improve risk behaviors and avoid any involvement or deepening in the juvenile justice or child welfare system. We are pioneering new models and partnerships for vocational, employment, and higher education for every incarcerated youth.

And data indicates our endeavor to transform a system is working. Since 2018, I can report the following encouraging outcomes:

- 46% reduction in detention admissions
- 26% reduction in risk to reoffend among our long-term incarcerated population
- Over 130 locked rooms taken offline at juvenile justice facilities
- Over \$9 million in savings captured from a reduction in out of home placements
- 19% increase in early intervention programs, especially in rural areas
- Nearly 100 full-time employees have been reassigned from locked settings to early intervention services

Reform is a journey, not a destination. I recall speaking to a small child of 11 shaking as they sat in a detention center. I have come to know a youth who grew up in our facility, seeing them leave at 21 for prison for an offense committed when they were 15. We still witness heartbreak, tragedy, and loss every day. Our data shows disproportionate system involvement for youth of color. We do not have all the answers.

However, we believe we will continue to see positive results through our proven philosophy, policy and practice. Youth today, and generations to come will benefit from our nations' commitment to changing young lives when they need us most.

**Additional Written Information:**

The Utah Juvenile Justice Oversight Committee Annual Report provides additional outcomes and information on Utah's reform efforts. It can be accessed at: <https://justice.utah.gov/juvenile-justice/juvenile-justice-oversight-committee/>

A summary of recent outcomes in Utah's juvenile justice system is also included in the following "one-pager" or flier:



## Utah's Pivot in Juvenile Justice

Since 2017, Utah's Division of Juvenile Justice Services (DJS) has been pioneering an evidence-based approach to reform and is reinvesting in Utah's juvenile justice system.



### Philosophy Change

Research in adolescent brain development and public safety has shown that the formal involvement of youth in the justice system, especially juvenile incarceration, results in:

- Developmental issues
- Increased likelihood to reoffend
- Increased likelihood that youth offenders will return to jail
- Greater expense to taxpayers

Outcomes improve dramatically when social and behavioral interventions begin early, ideally before the law is involved.

The evidence is clear: youth are best served in their homes, schools and communities.



### Policy Change

Policy changes to support reform and reinvestment thus far include HB 239 (2017), 404 (2019), 384 (2020), 262 (2020), and other efforts. These policy changes share a common thread: they place limits to entering and remaining in the formal system (courts and detention).



### Practice Change

As reliance on the "deep end" of the formal system decreases, changes must occur, including an increased focus on the Youth Services Model, in which front-end services are accessible without court or law enforcement involvement. These services include:

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Assessment and screening</li> <li>• Family engagement</li> <li>• Skill-building programs</li> <li>• School liaisons</li> <li>• Mentoring</li> </ul> | <ul style="list-style-type: none"> <li>• Counseling/therapy</li> <li>• Parent education</li> <li>• Crisis support services, including residential</li> <li>• Employment programs</li> </ul> |
|--|---|



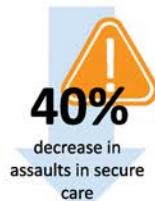
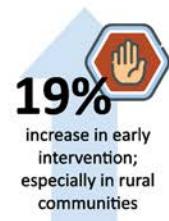
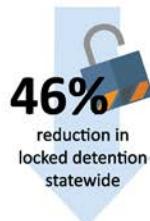
### Partnership

Reform and reinvestment requires collaboration and partnership among courts, schools, law enforcement, and agencies working to serve youth at home, in schools, and in communities.

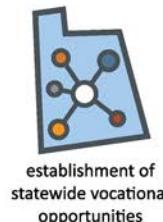
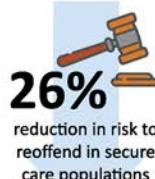
## Juvenile Justice Reform and Reinvestment is working in Utah

utah department of  
human services

So far, we have seen:



More youth on home  
detention than in locked  
detention on a daily basis  
by the end of  
**FY20**



court referrals  
have decreased  
since reform

\* Data and reported outcomes from FY17 to FY20

Ms. JACKSON LEE. Thank you very much, Mr. Peterson, for acknowledging that this is a journey. Thank you for your work.

Mr. Toleafoa, and it's Aaron, and you can let me know whether I pronounced that last name right, sir. Good to have you here.

We recognize you now for five minutes. Thank you.

#### **STATEMENT OF AARON TOLEAFOA**

Mr. TOLEAFOA. Good morning, Madam Chair, to the Committee as well. I thank you all for this opportunity to speak with you today.

My name is Aaron Toleafoa. I'll be speaking to you from the State of Washington, where I am incarcerated.

Since the age of 15-years old and going through the system, I've learned that the system was created for us, but the thought of us being involved in the creation itself had not occurred.

In other words, the system wasn't built by us and therefore it makes sense that the system doesn't work for us. I say us directed at people of color and people from poor communities who are disproportionately impacted by the system.

Many people who I've worked with and as well as myself have tried to stress the importance of bringing individuals who were and are currently incarcerated to the table when making decisions that may impact them or decisions that would make sense to have their input.

Without authenticity, real change doesn't exist. So, including those with lived experience alongside community outreach programs and organizations is the most effective way to ensure that our youth are properly provided the tools and are equipped with the skills to succeed wherever they are.

For example, here in Washington State, for Asian and Pacific Islander youth like myself, we have an organization from my community called Tough Love that meets with the youth in the facility and in our group meetings we—that we have we learn about our culture and where we come from. We learn the values and morals and ways of our culture that we have been so out of touch with.

We learn from someone who comes from a similar background as us, and when you find out more about yourself you get a sense that you belong, and how many times do youth try to belong but find themselves looking in the wrong places.

For instance, when suspended or expelled from school, youth aren't receiving education at that time. Now, with this idle time often find others who give them a sense of belonging, which is where we see youth engaging in criminal activity, hence the school to prison pipeline.

Now, with our youth who enter the system, we speak about rehabilitation. We need to ask ourselves how exactly we expect our youth to find rehabilitation in a prison setting.

Since the beginning of COVID, those inside the system have experienced isolation even more. Knowing the impact isolation has on brain development, you can assume right that incarcerated youth are experiencing a greater amount of stress and anxiety because of the many outlets and ways of coping that were closed off due to the pandemic.

We're essentially helping the at times hopeless and for the most part helpless youth to find hope and help within the environment they're thrown into. It's almost as if we're helping a flower to bloom in a dark room.

We have to become the light for our youth to grow and not the dark room that prevents growth. How this can happen is through understanding things like generational trauma, understanding what rehabilitates as much as what dehabilitates, understanding that a duty to the individual doesn't end upon release, this as well as introducing love and care into the lives of youth who have been deprived of those essentials growing up.

What I feel is very important is actually talking to the youth who are incarcerated. Our youth who enter the system may often leave the system as legal adults. Not knowing how to function as an adult in society is a big factor in why they experience recidivism.

If we are to stop our youth who become young adults from re-offending upon release, we need to offer them real help. For youth with no money, we need to get them help financially.

This means financial literacy programs and jobs where they can actually earn money and learn how to manage it.

For youth with no housing, we need to offer them housing or they are literally just being thrown out into the streets. So, we see that our system does a good job at holding those inside accountable for their actions, but what about the rehabilitation and re-entry parts, which are just as important for not only our communities but the youth themselves.

For the youth who are sentenced as adults, one message from the system is very clear, that the system doesn't care about you. I believe in keeping our youth from the adult system.

Being a part of passing legislation in my state, I've seen the positive impacts of extending the age a youth is able to spend in the juvenile system.

Instead of being shipped off to DOC before their 21st birthday, they're able to make the best of the opportunities that are offered in the juvenile institution until their 25th.

Opportunities like going to a community placement program instead of an adult prison where recidivism rates are tripled once you walk through the doors.

So, by keeping youth out of the adult system, we offer them better outcomes in their future. When it comes to passing—when it comes to changing how the system operates and what it looks like by passing bills into law instead of talking about why it shouldn't work, we should ask how it will work.

Thank you.

[The statement of Mr. Toleafoa follows:]

Name: Aaron Toleafoa

Position: Chair

Emerging leaders Committee

Coalition for Juvenile Justice

Date: 05/13/21

Subcommittee: Crime, Terrorism and Homeland Security

Dear Committee Members, I am-honored for the chance to talk with you about this important issue. My name is Aaron Toleafoa. I am here on behalf of the Coalition for Juvenile Justice where I serve as Chair of the Emerging Leaders Committee. I am part of the Washington State Partnership Council on Juvenile Justice and have previously worked through Capitol Classroom to help pass two bills, which raised the age of Juvenile sentences to 25. This has allowed many Juvenile offenders to complete their sentences in a rehabilitative environment. I am currently at Green Hill School, a juvenile facility in Chehalis, Washington.

I'm speaking to you from the state of Washington where I've been incarcerated since the age of 15. Going through the system I've learned that this system was created for us but the thought of us being involved in the creation itself had not occurred. In other words, the system wasn't built by us and therefore it makes sense that the system doesn't work for us. I say us, directed at people of color and people from poor communities who are disproportionately impacted by the system.

Many people who I've worked with and as well as myself have tried to stress the importance of bringing individuals who were and are currently incarcerated to the table when making decisions that may impact them or decisions that would make sense to have their input. Without authenticity, real change doesn't exist. Therefore, including those with lived experience alongside community outreach programs and organizations, is the most effective way to ensure our youth are properly provided the tools and are equipped with the skills to succeed wherever they are. For example, here in Washington State for Asian and Pacific Islander youth like myself, we have an organization from my community called Tuff Love that come into the facility to meet with the

youth. In our group meetings that we have we learn about our culture and where we come from. We learn the values and morals and ways of our culture that we've been so out of touch with. We learn from someone who comes from a similar background as us and when you find more about who you are, you get a sense that you belong, and how many times do youth try to belong but find themselves looking in the wrong places?

Since the beginning of COVID, those inside of the system have experienced isolation even more. Knowing the impact isolation has on brain development, you can assume right that incarcerated youth are experiencing a heightened amount of stress and anxiety because of the many outlets and ways of coping were closed off, due to the pandemic. When we speak about rehabilitation, we need to ask ourselves how exactly do we expect our youth to find rehabilitation in a prison setting. We are essentially hoping, the at times hopeless and for the most part helpless youth to find hope and help within the environment they are thrown into. It is almost as if we're hoping a flower to bloom in a dark room. We have to become the light for our youth to grow and not the dark room that prevents growth.

How our country can do this is through understanding things like generational trauma, understanding what rehabilitates as much as what de-habilitates, understanding that its duty to the individual doesn't end upon release, this as well as introducing love and care into the lives of youth who have been deprived of those essentials growing up, and what i feel is very important is actually talking to the youth who are incarcerated.

We see that our system does a good job at holding those inside accountable for their actions but what about the rehabilitation and re-entry parts which are just as important for not only our communities but the youth themselves.

When it comes to changing how this system operates and what it looks like by passing bills into law, instead of talking about why it shouldn't work, we should ask how it will work.

Ms. JACKSON LEE. Thank you very much for your testimony, for your life story, and for your commitment. We hear you very loudly. I now recognize Ms. Vaughan for five minutes.

#### STATEMENT OF JESSICA VAUGHAN

Ms. VAUGHAN. Thank you. My testimony will focus on a specific serious problem that is imposing an enormous burden on American communities and which will have lasting effects, including making it more difficult to resolve the justice pipeline issues under discussion today, but which this Congress so far has failed to address, and that is the crisis at the border.

We are experiencing a border policy disaster. The number of apprehensions in April were the highest monthly total in 20 years, and Border Patrol agents say that the number who are successfully evading capture is higher now too, potentially double or triple that.

Mr. Biggs went through the statistics and they're very concerning. In addition to the huge numbers of families and kids arriving illegally and being released into the country, Border Patrol has seen a huge increase in opioids, fentanyl, and other lethal drugs that are coming in that is fueling the spike in overdoses in many communities today that we're seeing.

The cause is obvious. The migrants call it la invitacion from President Biden. The invitation they're referring to is the loudly and clearly proclaimed reversal of the Trump enforcement policies that had successfully worked around loopholes in the law, and the Biden Administration's move to essentially abolishing interior immigration enforcement through executive action plus the promise to enact a mass amnesty for all those living here illegally and even many were deported in the past.

The resulting new surge of illegal arrivals is a major burden on American communities, so much so that two days ago the governors of 20 states sent a letter to President Biden imploring him to end this crisis.

The governors wrote, quote, "At a time when our country is trying to recover from once in a generation pandemic, the last thing we need is a self-created crisis that exploits families, undermines public safety, and threatens our national security."

The border crisis is a giant unfunded mandate for State and local governments. It severely strains schools, foster care programs, health care, and other support systems, the very same systems that are critical to shutting down the juvenile justice pipelines like the foster care system. Kids in foster care are facing a disproportionate risk of incarceration and any of them are Blacks, Latinos, and other minorities.

Piling on huge new caseloads of unaccompanied minors will not help solve this problem. That is why four states so far have refused to participate in the Biden Administration's Unaccompanied Minor Resettlement Program.

It's not just the numbers. The policies on placements of unaccompanied minors with sponsors are inadequate to prevent kids from being put in inappropriate and even dangerous environments.

There is no meaningful screening of home placements or the people who come forward to take custody. Most of them are here ille-

gally, and no meaningful monitoring of their welfare or activities after release from government custody.

They are here to stay. Our dysfunctional immigration system offers several pathways to permanent legal status for these minors, which they access with legal services provided by taxpayers, and those pathways include the Special Immigrant Juvenile program and asylum.

Another problem is the lenient policies at the border are deliberately exploited by transnational street gangs, especially MS-13, enabling them to significantly boost their activity here both by sending gang Members across our border to join cliques here and also by providing the opportunity to recruit other vulnerable newly arrived youths.

There is a clear nexus between the border crisis and the resurgence of MS-13 violence and crime, and especially juvenile crime.

My analysis of 500 recent MS-13 arrests revealed that 43 percent of the MS-13 Members that were arrested for murder in the last five years were under the age of 21 and many of their victims were young, too. Twenty-three percent of these murder suspects had apparently originally entered this country illegally as unaccompanied minors.

Obviously, Congress cannot fix all of the social and economic problems that set the stage for juvenile delinquency, but Congress can Act to fix our immigration laws that are making it so hard to resolve these problems.

What Congress can do is update the TVPRA to clarify how arriving minors should be handled, with emphasis on swiftly returning them to their families in their own countries, override the unreasonable Flores settlement agreement, require meaningful consultation and coordination with State and local governments on resettlement programs, end or rewrite the Special Immigrant Juvenile program, reform the dysfunctional asylum laws, establish a baseline for mandatory minimum level of interior immigration enforcement, and especially Act to preserve job opportunities for marginalized Americans, including young offenders, by boosting worksite enforcement and reducing issuance of certain temporary work visa programs.

Thank you.

[The statement of Ms. Vaughan follows:]

The Juvenile Justice Pipeline and the Road Back to Integration:  
Lax Border and Immigration Enforcement Strains the System  
U.S. House Judiciary Committee  
Subcommittee on Crime, Terrorism and Homeland Security  
May 13, 2021

Statement of Jessica M. Vaughan  
Center for Immigration Studies

Thank you, Ms. Jackson Lee and Mr. Biggs, for the opportunity to testify today on the juvenile justice pipeline. My testimony will focus on a specific problem that is imposing a significant burden on all levels of government and specifically those institutions that are critical to an effective and successful juvenile justice system – namely, the uncontrolled influx of illegally arriving unaccompanied minors and families. This influx has significantly worsened since President Biden reversed an array of policies that had greatly reduced these arrivals. We know from past experience that this new surge of illegal arrivals is an enormous burden on many American communities. It also likely to have specific consequences for our juvenile justice system. For instance, the uncontrolled entry of lightly vetted and vulnerable minors over the southern border exacerbates our criminal street gang problem and weakens the institutions that could otherwise be more effective in addressing juvenile delinquency and crime. The lack of interior enforcement, combined with the manipulation of immigration laws and the intervention of activist judges, ensures that virtually all of the juveniles now crossing our border illegally will end up staying here, even many of those who end up in the juvenile or adult criminal justice system after committing crimes.

Congress cannot fix all of the social and economic problems that set the stage for juvenile delinquency. But Congress can avoid exacerbating the problem by fixing our immigration laws to restore border security and interior immigration enforcement – for starters, by withdrawing what has become known in Central America as “la invitacion.”<sup>1</sup> In addition, Congress should scale back certain temporary work visa programs in order to protect job opportunities for youth, thus interrupting the “unemployment to justice” pipeline. The benefits of solving the border and immigration enforcement crisis extend far beyond the juvenile justice system and will help all American youth by preserving educational and job opportunities and relieving burdens on the institutions that help ensure future socio-economic success in our communities.

Lenient Border Policies Have Set Off A New Surge of Illegal Arrivals

Since January, Customs and Border Protection (CBP) has been dealing with an unprecedented spike in the number of illegal border crossers. In March alone, more than 172,000 illegal crossers were apprehended. In the first half of the fiscal year (October 2020–March 2021) about 570,000 illegal crossers were apprehended, which is more than were

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<sup>1</sup> Todd Bensman, “Inside a Cartel Smuggling Operation Into West Texas,” Center for Immigration Studies, April 28, 2021, [Inside a Cartel Smuggling Operation Into West Texas \(cis.org\)](https://cis.org/Inside-a-Cartel-Smuggling-Operation-Into-West-Texas).

apprehended in the entire fiscal years in 2020 and 2018. The number of apprehensions was up about 70 percent from February to March of this year.<sup>2</sup>

This includes about 94,000 adults and children arriving in a family unit and 49,000 unaccompanied minors. According to government records, more than 70 percent of the unaccompanied minors are over the age of 14, and more than two-thirds are male. More than 90 percent are citizens of Guatemala, El Salvador, and Honduras.<sup>3</sup> According to government records, about half of those arriving in a family unit are children, and the majority of these children are under age 12.<sup>4</sup>

Statistics from Customs and Border Protection (CBP) show that not only are there many more new illegal arrivals at the southern border, but that a much larger percentage are being allowed to enter the country rather than face expulsion or removal.<sup>5</sup> Most of those allowed to enter are minors and families with minor children. About 143,000 new illegal arrivals were released to American communities since October, with the vast majority released since the beginning of the Biden administration.

In addition, Border Patrol agents estimate that for every illegal crosser that they apprehend, another one to three others are able to evade capture and gain entry to the interior. These crossers are of even greater concern than those who are caught, because we have no information on who they are, where they are going, or the purpose of their entry. According to the Border Patrol agents, these surreptitious crossers are often able to get through while agents are distracted dealing with groups of families and children.

It has been well established that certain policy changes are responsible for this influx, including the end to expulsions of families and unaccompanied minors under Title 42 public health emergency authorities, discontinuing the Migrant Protection Protocols, and canceling agreements with other countries in the region to enforce borders and offer safe haven where appropriate. As a result, more newly arriving families and minors are allowed to enter the United States, which motivates even more prospective migrants to hire smugglers and attempt illegal entry. In addition, as discussed further below, enforcement in the interior has been suspended except for all but the most serious criminals, , meaning that prospective migrants know that if they can gain entry they will not be subject to enforcement for the foreseeable future, whether they abide by the terms of their entry, or file an asylum claim, or not.

Why is this a problem for the juvenile justice system? Of course most of the new arrivals are not already criminals, or doomed to become criminals. Nevertheless, the same lax policies also enable transnational gangs and other criminal enterprises to grow their ranks, enlarge the

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<sup>2</sup> See Customs and Border Protection website at [Southwest Land Border Encounters | U.S. Customs and Border Protection \(cbp.gov\)](https://www.cbp.gov/programs-initiatives/southwest-border-encounters).

<sup>3</sup> Fact Sheet, HHS Administration for Children and Families, May 5, 2021, [uac-program-fact-sheet.pdf \(hhs.gov\)](https://www.hhs.gov/acs-program-fact-sheet.pdf)

<sup>4</sup> Rebecca S. Gambler, *Southwest Border: Actions Needed to Improve DHS Processing of Families and Coordination between DHS and HHS*, Government Accountability Office, GAO-20-245, February 19, 2020, [Southwest Border: Actions Needed to Improve DHS Processing of Families and Coordination between DHS and HHS \(gao.gov\)](https://www.gao.gov/Downloads/gao-20-245.pdf).

<sup>5</sup> Customs and Border Protection, Custody and Transfer Statistics, 2021, [Custody and Transfer Statistics FY2021 | U.S. Customs and Border Protection \(cbp.gov\)](https://www.cbp.gov/programs-initiatives/custody-and-transfer-statistics).

pool of vulnerable youth from which they can recruit, and strain the institutions that otherwise might help prevent youth from entering the criminal justice system or assist their rehabilitation.

#### Screening of Minors and Sponsors Inadequate to Detect Risks

The policies that govern the placement of minors who arrive unaccompanied are inadequate to prevent these minors from being placed in inappropriate environments that include labor and sex trafficking situations and participation in or exposure to criminal gangs. These policies have always been inadequate, in part due to an unmanageable volume of cases, but have been loosened even more by the Biden administration. In addition to providing an opportunity for bad actors to exploit the system, these lenient policies offer an incentive for prospective migrants to try to gain entry, believing (correctly) that they likely will succeed with few questions asked from U.S. authorities, and gain access to an array of social, educational, medical, and legal services, not to mention employment, often with a work permit.

Many of the systemic deficiencies were revealed by a Senate investigation following the case of dozens of unaccompanied illegal alien minors who were trafficked for the purpose of working on an Ohio egg farm in 2014.<sup>6</sup> The Trump administration adopted a number of policies recommended by the bipartisan investigators, including more thorough background checks and questioning of prospective sponsors.

Currently the Border Patrol has thousands of minors and others in its custody in short-term emergency shelters awaiting transfer to the custody of Health and Human Services (HHS). As of May 2, HHS had more than 22,000 minors in its custody, housed in contract residential facilities and other emergency facilities such as convention centers that are not set up for such a responsibility. In part to avoid public outrage over crowded conditions in the border facilities, the Biden administration has endeavored to move the new arrivals from processing facilities near the border to other facilities around the country.

In addition, Biden officials have relaxed child placement policies with the goal of releasing the minors as swiftly as possible to a family member, friend, or other sponsor, with few questions asked. These policies, which stray from well-established best practices for foster care, refugee, and similar child placements, greatly increase the risk of problems for the youth and increase the likelihood that some will end up in the juvenile justice pipeline.

According to HHS, the sponsors who come forward to take custody of these minors receive little meaningful vetting.<sup>7</sup> They typically are subject to a biographical name check for criminal records, but are fingerprinted only if staff are able to articulate a reason why the placement might be a problem, not to discover information that might suggest a risk. Similarly, home studies to evaluate the environment to which the minor will be released or the sponsor's credibility or financial stability are done only in very rare cases, such as with child trafficking victims; very young (under 12 years), disabled or abused children; or if a sponsor has

<sup>6</sup> Staff Report, *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*, U.S. Senate Permanent Subcommittee on Investigations, [Majority & Minority Staff Report - Protecting Unaccompanied Alien Children from Trafficking and Other Abuses 2016-01-282.pdf \(senate.gov\)](https://www.senate.gov/committee/immigration-and-naturalization/report-protecting-unaccompanied-alien-children-from-trafficking-and-other-abuses-2016-01-282.pdf).

<sup>7</sup> Fact Sheet, HHS Administration for Children and Families, May 5, 2021, [uac-program-fact-sheet.pdf \(hhs.gov\)](https://www.hhs.gov/acs-program-fact-sheet.pdf).

volunteered to take in multiple kids. Contrary to best practices, other adults in the sponsoring household are not routinely subject to fingerprinting or investigation.

While the minors are provided with a lawyer to help them gain legal status, there is no meaningful monitoring of their activities or well-being after they leave government custody and are placed with a sponsor. They are not required to accept post-release services, and in many cases the sponsors have blocked case workers from contact with the minors. In fact, the government usually loses track of the minors after release, either because the minors and their sponsors refuse to communicate, the youth moves to another household, drops out of school and services, and skips out on immigration hearings.

Lenient Border Policies Strain Critical Institutions Serving Juveniles and Preventing Delinquency

It is difficult to obtain a full count of the number of aliens who have been able to settle here after crossing the border illegally, but piecing together various sources of data, I estimate that since 2012, there have been close to one million new arrivals who entered as an unaccompanied minor or as part of a family unit. For a variety of reasons discussed below, only a tiny percentage of those allowed to enter have been removed.

This influx has severely strained schools, foster care systems, health care, and other social support systems in many communities that have had to accommodate them. For this reason, several states (South Carolina, Iowa, Nebraska, and South Dakota) have announced that they will not participate in the resettlement of unaccompanied minors.

**Foster Care Resources.** In the case of South Carolina, the state determined that the arrival of any large group of children needing foster care placement would be an unacceptable burden on the state's existing capacity for "timely and stable placements and other services and supports."<sup>8</sup> The order further states that in light of a recent class action settlement agreement (*Michelle H. v Haley*) that requires the state to address numerous problems in its foster care placement system, including the number of foster homes, a case worker shortage, and the availability of health services, the governor determined that:

*"...accepting placements of unaccompanied migrant children entering the United States via the southern border into residential group care facilities or other foster care facilities located in, and licensed by, the State of South Carolina would unduly limit the availability of placements for children in South Carolina and would present a threat of harm to the children in such facilities and would constitute a failure of any such facility to keep the facility safe to care for children as contemplated by [SC law]."*

The order further states that children arriving from abroad who were held in close quarters in federal government-run facilities would pose an unacceptable risk of transmission of COVID-19 to SC children in these facilities.

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<sup>8</sup> Governor Henry McMaster, Executive Order No. 2021-19, filed on April 12, 2021, [2021-04-12 FILED Executive Order No. 2021-19- Prioritizing SC Children.pdf](#).

Ample research has concluded that foster care systems in America are a significant pipeline to juvenile delinquency. According to some credible accounts, the more than 400,000 children in foster care<sup>9</sup> face a disproportionate risk of incarceration within two years of exiting foster care.<sup>10</sup> Black children are especially at risk, according to experts, because they are twice as likely as white children to be placed in foster care. As South Carolina governor McMaster articulated, when the foster care system is unnecessarily strained every month due to an influx of thousands of newly arrived non-citizen children needing to be placed in facilities, group homes, or with foster families, then all of the children in the system lose. For the sake of these children, who are already facing enormous obstacles to finding success in life, it is imperative that Congress act to stem the flow of children into the system who are drawn or sent to this country specifically to take advantage of lenient immigration policies.

**Education is the Most Significant Cost.** Many school districts around the country have been scrambling to make room for the new youth arrivals, who settle all over the country, but tend to be concentrated in certain locations where friends and family have gone before.

The states receiving the most unaccompanied minors are Texas (especially Harris, Dallas, and Travis counties), Florida (especially Miami-Dade and Palm Beach counties), California (especially Los Angeles county), and New York (especially Kings, Queens and Suffolk counties). Other large settlements are in Prince Georges County in Maryland, Mecklenburg County in North Carolina, and Davidson County in Tennessee.<sup>11</sup>

The problem for the school districts is not only the numbers and the lack of accompanying funding, but also that typically many of the new arrivals had only a few years of schooling in their home country, and arrive with what educators I have spoken with call “extreme disadvantages” compared even with other immigrant children. According to these educators, many of the new arrivals have not learned to read nor acquired other basic skills fundamental to education beyond elementary school, they often speak indigenous languages for which there are fewer interpreters available, and have been more likely to require individualized educational plans and tutoring support due to emotional trauma, learning disabilities, or other special needs.

Many of these communities are already very experienced in dealing with immigrant children; however, one Massachusetts school committee chair told me that the UAC arrivals were a “shock to the system” because most are older than the typical new immigrant children, who are more likely to enter elementary or middle school, not high school. Massachusetts had to assemble a state-wide working group of educators to design a new curriculum, known as the Students With Limited or Interrupted Formal Education (SLIFE) program, especially for the UAC arrivals. Some districts have had to create unique “newcomers” educational programs. However, the districts must be careful not to run afoul of federal oversight on “mainstreaming”

<sup>9</sup> Fact Sheet, Department of Health and Human Services, Administration of Children and Families, May 2020, [Foster Care Statistics 2018 \(childwelfare.gov\)](https://www.acf.hhs.gov/foster-care-statistics-2018).

<sup>10</sup> Juvenile Law Center, “What is the Foster-Care-to-Prison Pipeline?,” May 26, 2018, [What Is The Foster Care-to-Prison Pipeline? | Juvenile Law Center \(jlc.org\)](https://www.jlc.org/what-is-the-foster-care-to-prison-pipeline).

<sup>11</sup> HHS, Administration of Children and Families, Unaccompanied Children Released to Sponsors by State - March 2021, [Unaccompanied Children Released to Sponsors by State - March 2021 | HHS.gov](https://www.acf.hhs.gov/unaccompanied-children-released-to-sponsors-by-state-march-2021).

special needs children. The city of Lynn, Massachusetts was threatened with litigation by the U.S. Department of Justice when it attempted to launch a night school program designed to better meet the needs and interests of the large percentage of male UAC arrivals who wanted to drop out and work rather than attend a traditional day school program.

The schools know that these students will need a great deal of support to succeed, but the problem is how to pay for it. Over the years of the ebb and flow of unaccompanied minors, school districts have had to improvise to free up funds to support these students, often by cutting back in other areas, including public safety, fire departments, and salaries of local government employees.

For example, Louisiana's Jefferson Parish, which received 533 Unaccompanied Alien Children (UACs) for resettlement, said that at the start of the surge several years ago that it needed to hire 27 new ESL teachers, 20 new ESL para-educators, 19 regular teachers, and three special education teachers to accommodate the influx. The total cost was estimated to be \$4.6 million, split between the state and the parish. The state was not expecting any additional support from the federal government for the Limited English Proficiency students, because most of them arrived at the last minute.<sup>12</sup>

At the time, a number of other states disclosed the expenses they incurred for the education of a UAC student:

- Texas -- \$9,500 (source: Texas Legislative Budget Board)
- Florida -- \$8,900 per child + \$1,900 per UAC for special needs (source: Florida Department of Education) for a total cost of \$30-40 million per year.
- Fairfax County, Virginia -- \$14,755 per English Language Learner, for a total estimated cost per year for UACs of \$14 million. (source: Fairfax County Supervisor).
- National Average: \$11,153 to 12,608 (source: National Center on Educational Statistics).
- Total Cost Nationwide: \$580 million to \$670 million for the FY2014 UAC cohort per year (not counting children who arrived as part of family units).

Some schools have had difficulty assimilating unaccompanied minor students into their larger population, especially when the youths become involved in gangs or other forms of delinquency. For example, Rockville High School in Maryland, a suburb of Washington DC not far from the U.S. Capitol, has had severe problems with the behavior of older teen-agers who have been enrolled after resettlement as unaccompanied minors.<sup>13</sup>

**Health Care Costs.** Less has been reported on the health care costs for UACs, but they are inevitably a burden for state and local governments. "I think the biggest issue for us is the big handoff to local governments in terms of service costs and wraparound for these families and

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<sup>12</sup> Letter from John White, Louisiana Superintendent of Education to Sen. David Vitter, September 12, 2014, <http://freebeacon.com/wp-content/uploads/2014/09/Sen.-David-Vitter-Response-ltr-9-12-14.pdf>.

<sup>13</sup> "High School Rapists Entered U.S. as Unaccompanied Alien Children, Lived in Sanctuary County," Judicial Watch, March 24, 2017, [High School Rapists Entered U.S. as Unaccompanied Alien Children, Lived in Sanctuary County | Judicial Watch](http://www.judicialwatch.org/2017/03/high-school-rapists-entered-u-s-as-unaccompanied-alien-children-lived-in-sanctuary-county/).

children. There's no getting around that," said Uma Ahluwalia, director of the Montgomery County, Maryland, Department of Health and Human Services. "In the meantime, the children are going to be attending local schools, they're going to have health and mental health needs . . . I think it will definitely strain our capacities."<sup>14</sup>

The Washington, DC-based Mary's Center, which provides health services to DC-area immigrants, reported costs of \$400,000 for services for UACs in 2014. The services to UACs cost more than double what routine services cost for most immigrants, because many of the newly arrived Central American youths had been injured or sexually molested on the journey.<sup>15</sup>

Mental health care for these individuals may be a long-term challenge. According to numerous studies, UACs are more likely to need counseling and other forms of care as a result of physical or emotional trauma suffered in their home countries, on the journey with smugglers, or after arrival in the United States. According to one report:

*Unaccompanied alien children's migration likely compounds significant levels of preflight trauma. The 2000-plus-mile journey to the United States traces routes controlled by drug cartels who beat, drown, drug, maim, murder, rob, molest, and starve undocumented migrants, with some UAC targeted for forced recruitment. Likewise, coyotes (guides [actually smugglers]) may offer UAC drugs or alcohol to stem their hunger or proposition them for hard labor or sex in return for survival. Combined, the high level of potential trauma before and during migration may lead to some of the highest levels of mental illness among children in the United States.<sup>16</sup>*

Typically this care will need to be provided through publicly-funded state, local or federal social service programs for children rather than private insurance, since most of the family members who are assuming custody of the youths are also in the country illegally and thus more likely to lack insurance (and are not required to carry it under federal rules).

Congress should act to stem the flow of new illegal arrivals in order to avoid expanding what some advocates refer to as the mental health branch of the "school-to-prison pipeline."<sup>17</sup>

#### Border Policies Enable Transnational Gangs to Expand and Proliferate With Young New Members

A previous surge of illegal arrivals from Central America in the late 1990s that, like today, coincided with a time of minimal immigration enforcement and little attention to

<sup>14</sup> Quoted in the International City/County Management Association newsletter, August 15, 2014: [http://icma.org/en/Article/104850/Preparing\\_for\\_Costs\\_of\\_Unaccompanied\\_Children\\_Influx?pub=108&issue=8.1.9.2014](http://icma.org/en/Article/104850/Preparing_for_Costs_of_Unaccompanied_Children_Influx?pub=108&issue=8.1.9.2014).

<sup>15</sup> Tina Reed, "This is what it's costing one DC health center to treat 'influx of 'unaccompanied minors' from Central America," *Washington Business Journal*, August 15, 2014: <http://www.bizjournals.com/washington/blog/2014/08/this-is-how-much-it-s-costing-one-d-c-health.html>.

<sup>16</sup> Elizabeth G. Kennedy, "Unnecessary Suffering: Potential Unmet Mental Health Needs of Unaccompanied Alien Children," *JAMA Pediatrics*, April 2013: <http://archpedi.jamanetwork.com/article.aspx?articleid=1569275>.

<sup>17</sup> Matt Leistra, "Mental Health and the School to Prison Pipeline," *Shared Justice*, December 5, 2017, [Mental Health and The School to Prison Pipeline — Shared Justice](http://www.sharedjustice.org/mental-health-and-the-school-to-prison-pipeline)

suppressing gang activity had a disastrous consequence – a dramatic rise in violent criminal street gang activity in communities around the United States. The gangs that evolved then, which included MS-13 and 18<sup>th</sup> Street, were extremely vicious and unusually degenerate; in fact, my research shows that the gang members who are arrested for the most violent crimes are disproportionately members of the Central American-dominated gangs. These gangs spread across the nation before federal and local law enforcement agencies realized the extent of the threat, and now are well established and sometimes very well organized.<sup>18</sup>

About four years ago, the leadership of MS-13 in El Salvador issued a directive to the leaders of MS-13 cliques based in the United States to increase their membership in order to boost criminal activity and revenue. This was accomplished both by sending younger members into the United States taking advantage of lenient policies on illegal minors crossing, enabling them to settle here with sponsors and also by increasing recruitment of newly arrived Central American minors they encountered in the neighborhoods and schools they shared.

The result was a noticeable resurgence of crime and violence associated with these two rival gangs, which are made up largely of illegal aliens from Central America or the US-born sons and daughters of Central American migrants. Of course, not all child migrants from Central America are gang members, but many are targets for recruitment, and we know that a significant share of new MS-13 members arrived in the recent surge of minors and families.

I have been monitoring nationwide arrests of MS-13 members that are reported in open sources as part of my ongoing research on transnational gangs.<sup>19</sup> My team and I have identified 499 publicly reported arrests of MS-13 members from 2016 to the present.

Out of these 499 MS-13 suspects and offenders, we have been able to determine that 143, or about 29 percent, were under the age of 21 at the time of their arrest. Their victims often were young, too; we identified 111 victims of MS-13 who were under the age of 21. Out of all the arrests, we could determine that 81 of the MS-13 suspects/offenders, or 16 percent, were reported to have entered as unaccompanied minors, or were judged likely to have entered as UACs, based on information in the report.

Statements by Immigration and Customs Enforcement (ICE) gang investigators indicate that this is an understatement of the number of crimes committed by MS-13 members who entered as unaccompanied minors. Some ICE agents have said that as many of 40 percent of the MS-13 members arrested in operations on Long Island, NY, which like Houston, Boston, and the suburbs of Washington DC has been one of the hot beds for both MS-13 activity and UAC resettlement, had arrived illegally as children.

Out of the 499 MS-13 members we identified, there were 181 who were charged with murder. Of these, 77, or 43 percent, of the MS-13 members arrested for murder were under the

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<sup>18</sup> See Jessica M. Vaughan and Jon D. Feere, *Taking Back the Streets*, Center for Immigration Studies, September, 2008: <http://cis.org/ImmigrantGangs>.

<sup>19</sup> Jessica M. Vaughan, "MS-13 Resurgence: Immigration Enforcement Needed to Take Back Our Streets," Center for Immigration Studies, February 21, 2018, [MS-13 Resurgence: Immigration Enforcement Needed to Take Back Our Streets \(cis.org\)](http://cis.org/MS-13-Resurgence-Immigration-Enforcement-NEEDED-to-Take-Back-Our-Streets). Statistics updated to April 2021 are forthcoming.

age of 21 at the time of arrest. Eighty of the victims were under the age of 21. We identified 41 of the MS-13 members arrested for murder, or 23 percent, who likely arrived as UACs.

Detailed reports of some of these cases have been published by my organization, including the murder of two high school girls in Brentwood, NY<sup>20</sup> and the murder of a young woman in Baltimore County, Md.<sup>21</sup>

While ICE once was making great strides in dismantling and disrupting transnational gang activity in the United States, in recent years the agency has made this less of a priority. Under Biden, ICE has de-emphasized working with local law enforcement agencies, such as by pro-actively taking illegal alien gang members off the street and removing them. A few successful ICE-local partnerships remain, but considering that the new nominee for ICE Director, Harris County Sheriff Ed Gonzalez, is an outspoken opponent of ICE-local partnerships, we can expect to see a shift in focus and resources to overseas operations and complex racketeering cases, at the expense of local initiatives.

It should go without saying that when our immigration policies attract and enable violent transnational gangs like MS-13 to import recruits into this country right under the noses of immigration officials and local authorities, thereby strengthening their organizations, especially when those gangs are known to focus their recruiting on youth who are living in the Central American diaspora communities, this will create new public safety problems that will have to be addressed through the juvenile justice system.

#### Biden Reductions in Immigration Enforcement Reduce Criminal, Juvenile Removals

As discussed, the resumption of catch and release policies at the border for minors and families is drawing thousands of new illegal settlers every week. Other Biden policies – especially the dramatic curtailment of immigration enforcement in the interior – will guarantee that the fraction of the new arrivals who end up in the juvenile and criminal justice systems will continue to sap these resources indefinitely, because only the most serious offenders will be deemed priorities for removal, if they can be located.

According to new Biden enforcement rules, implemented in the first days of his term and further defined in a February 18 memo from acting ICE director Tae Johnson<sup>22</sup>, immigration enforcement officers (which applies to both border officers and ICE) may seek to remove only those aliens who are a) a terrorist, spy or other national security threat; b) arrived illegally before November 1, 2020; or c) was over 16 and convicted of certain serious felonies, known as

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<sup>20</sup> "Brentwood, NY- A Case Study of How Flawed Immigration Policy Begets Gang Violence," teleconference by the Center for Immigration Studies, November 4, 2016, [Teleconference: Brentwood, NY- A Case Study of How Flawed Immigration Policy Begets Gang Violence \(cis.org\)](#).

<sup>21</sup> Andrew R. Arthur, "Five MS-13 'Affiliates' Held in Rural Baltimore County Killing of 16-Year-Old Girl," Center for Immigration Studies, October 30, 2020, [Five MS-13 'Affiliates' Held in Rural Baltimore County Killing of 16-Year-Old Girl \(cis.org\)](#).

<sup>22</sup> [Interim Guidance: Civil Immigration Enforcement and Removal Priorities \(ice.gov\)](#)

“aggravated felonies,” or gang crimes. Officers encountering aliens not meeting these definitions must seek the approval of senior ICE officials before making an arrest.

Under these rules, most juvenile offenders and offenders who started their criminal career as juveniles will not be subject to removal. The vast majority of ICE’s caseload—perhaps as much as 85% of those typically targeted by ICE<sup>23</sup>—is no longer amenable to deportation under the Biden policies, even though they have been arrested for crimes, because they have not yet been convicted of aggravated felonies. Further, juvenile offenders under the age of 16 who are gang members will be exempt. Most of these offenders will have the opportunity to remain here, and staying under the purview of the juvenile justice system and perhaps graduating to the adult criminal justice system.

Most significantly here, any alien offender who has a pending immigration court case or who has applied for an immigration benefit is exempt from deportation until that case is adjudicated. Virtually all those arriving as unaccompanied minors and many who arrived with parents would fall into this category. That is because immigration law provides numerous opportunities for minors to seek residency, such as by applying for Special Immigrant Juvenile (SIJ) status<sup>24</sup>, asylum, or as a dependent of someone with a lawful status.

The dramatic rise in the number of minors seeking residency under the SIJ program is especially impactful to the juvenile justice system. The number of applications has exploded since the early years of the influx of unaccompanied minors: in 2012, USCIS received about 3,000 SIJ applications, but by 2017 the number of annual receipts grew to nearly 21,000, and in the first quarter of this fiscal year, USCIS received nearly 12,000 applications.<sup>25</sup> The first step for all of these applicants is to petition a state family, juvenile or probate court for a finding of abuse, neglect or abandonment. These cases have tapped a significant portion of the resources of juvenile and family courts in many states.

#### Recommendations

To address the problem of juvenile delinquency in our communities and conserve resources in this system that are needed to handle its traditional caseload, Congress should start by fixing the parts of the immigration law that add to the problem by enticing citizens of other countries to hire smugglers to bring families and minors to cross our border illegally.

Such measures would include:

- 1) updating the Trafficking Victims Protection Act to clarify and reform how arriving minors shall be handled, with the primary emphasis on swiftly returning them to their families in their home countries;
- 2) overriding the unreasonable judicial rulings that prevent the government from promptly processing families with children who arrive illegally or at ports of entry and should be kept

<sup>23</sup> Jessica M. Vaughan, “Biden Freezes ICE; Suspends 85% of Criminal Alien Deportations,” Center for Immigration Studies, January 22, 2021, [Biden Freezes ICE; Suspends 85% of Criminal Alien Deportations \(cis.org\)](#).

<sup>24</sup> [Special Immigrant Juveniles | USCIS](#)

<sup>25</sup> USCIS statistics: [Immigration and Citizenship Data | USCIS](#).

together in government custody as the law states, and to more easily and efficiently complete their due process;

3) require meaningful consultation and coordination between federal agencies and state and local governments on the number, locations, and expected needs of newly arriving migrants who are allowed to enter pending due process;

4) direct and fund HHS to better screen, place and monitor unaccompanied minors who are allowed to enter the country, and to disclose and share relevant information with government agencies and the public;

5) reform the SIJ program to reduce fraudulent and frivolous cases, enable USCIS to have sole discretion for determining eligibility under the law, and limit access to minors who are entirely lacking appropriate guardianship either here or in their home country;

6) reforming asylum laws to avoid encouraging fraudulent, frivolous, or unqualified applicants, share the responsibility of providing safe haven with other countries in the region, and reverse results of judicial intervention that has eroded the standards for eligibility that Congress established;

7) greatly curtail the discretion of federal agencies to implement catch and release policies at the border;

8) establish a baseline for a mandatory minimum level of interior immigration enforcement by clarifying categories of aliens who shall be subject to arrest and removal, with few exceptions;

9) eliminate the Temporary Protected Status program and authority;

10) clarify and narrow the executive branch's authority to issue work permits;

11) clarify ICE authority to secure the cooperation of other law enforcement agencies in identifying, arresting and removing criminal aliens;

12) establish consequences for state and local sanctuary policies;

13) establish a minimum mandatory baseline for worksite enforcement and reduce issuance of certain temporary work visas (especially H-2A, H-2B, and J-1) so as to preserve job opportunities for young offenders and those at risk of offending due to lack of stable and rewarding employment.

Respectfully Submitted,

Jessica M. Vaughan

Director of Policy Studies

Center for Immigration Studies

Washington, DC

Ms. JACKSON LEE. Let me thank you, Ms. Vaughan, and continue to emphasize the respect for the humanitarian approach that the Biden-Harris Administration has now taken with unaccompanied minors. Thank you.

We will now proceed under the five-minute Rule with questions. I will begin by recognizing myself for five minutes.

Mr. Stevenson, even Supreme Court Justice Kennedy, Senator Rand Paul, and others spoke against solitary confinement. I'm reminded of meeting Kalief and his family, as I indicated, a 15-year-old who questionably took a backpack, who was incarcerated for three years, served two years in Rikers Island.

That generates for me the pathway that we should we proceed, and that is the emphasis, if you will, on barring juvenile from having life without parole, eliminating of juveniles in adult facilities, changing the age at which juveniles are prosecuted as adults.

Going back to this point of Justice Kennedy and Rand Paul, when discussing the adverse and inhumane elements of solitary confinement generally, as you well know, we have introduced Kalief's Law and intend to expand with the elements of banning the life without parole, eliminating of juvenile in adult facilities, and changing the age.

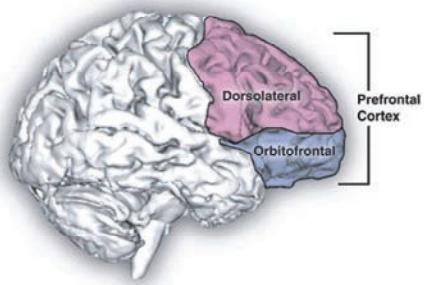
I want you to collectively assess the cost analysis to these forms of treatment of juveniles. As I do so, let me, if I may subject it to the record, Mr. Stevenson, science. Remember we kept saying during the pandemic science, science.

So, I want to introduce into the record the brain, and emphasize the prefrontal cortex as of unanimous consent, and I submit it without objection. Which indicates in young brains you have delay and reflect, inability to delay and reflect, inability to take all options into account, inability to contemplate risk and consequences, and inability to have social intelligence. Science.

[The information follows:]

**MS. JACKSON LEE FOR THE RECORD**

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Ms. JACKSON LEE. All these that I've asked you about, Mr. Stevenson, would you please respond. Thank you so very much for being here, and your leadership.

Mr. STEVENSON. Yes. Yes, thank you, Madam Chair.

Yeah, I think this is one of the issues where there is pretty wide consensus. Most wardens, most jailers, most institutional providers recognize the challenges that are created when we put children in adult jails and prisons. I don't know any that favor that policy.

Yet, we have thousands of kids in these facilities. The dilemma for these facility providers is that when you put young children in population, these children are at risk of assault, they're at greater risk of sexual violence, they're at greater risk of abuse. So, banning the placement of children in adult jails and prisons seems to me to be the obvious and urgent next step.

I just want to reinforce what I said earlier. It's already been the expression of this congress to prevent—the Prison Rape Elimination Act makes very clear that children should never be placed in adult jails and prisons without sight and sound separation. Yet, because there is no enforcement mechanism, other than what the Justice Department can do, that continues to be a problem.

That's why we believe that if this is adopted in law that provided a private right of enforcement, we could eliminate this problem very quickly. A year from now, we could come together and see that there are no children in adult jails and prisons. That would reduce the risk and the challenges that are created by putting kids in solitary confinement.

Kalief Browder, my client, Ian Manuel, spent 18 years in solitary confinement, where he was tear-gassed, where he was abused, and where he cut himself. When he was traumatized. That's happening more and more. Our prisons are very violent right now, as Ms. Levick indicated. We are really having hard times helping these kids because of these legal restrictions.

That's why I absolutely agree that a ban on placing children in adult jails and prisons that's enforceable would be an immediate response. I also agree that ending life without parole for children would be a very, very logical and important next step. And twenty-five states have already done this. In 31 states there are no children serving life without parole.

We would commit to doing things that the court was indicating when they issued the decisions in Graham and Roper and Miller and Montgomery. Those interventions, Madam Chair, I just have to believe could be advanced. As I said, the PREA was passed unanimously just 18-years ago.

We just haven't failed to implement—we have failed to implement it. We need to do something about that now for the Kalief Browders and Ian Manuels. More than that, for the thousands of children that are at risk right now in adult jails and prisons across this country.

Ms. JACKSON LEE. Thank you. Quickly to Mr. Peterson and to Mr. Toleafoa, your quick response to the impact of children put in solitary confinement and being incarcerated without the ability for parole. Mr. Peterson.

Mr. PETERSON. Yes. So thank you. When we look in our system—working with our partners at Department of Corrections, when

they have a young person—and it's incredibly rare in Utah when that occurs. We've taken steps from a policy perspective to make sure that youth are housed in developmentally appropriate settings in the juvenile justice system.

However, there are circumstances where they are still transferred to the Department of Corrections. When that occurs, they do have to be essentially in 24, 23 in one type lockdown situations, because they can't be in general population for their own risks.

So developmentally, it's really a step in the wrong direction to have them introduced in that environment.

Ms. JACKSON LEE. All right, time has expired.

Mr. Toleafoa, the harm to young people in solitary confinement that you might perceive.

Mr. TOLEAFOA. Yeah, from my experience, just entering a prison and seeing what I used to see on TV, knowing that I'm going to be here really was just like a shocking, because really it's like, man, this is what I'm going to be—this is where I'm going to be staying.

So, for me mentally, it just wasn't healthy for me to, at that time when I was 17-years old, to experience that. So, I'm with Mr. Peterson and disagree with just youth entering adult prison, period.

Ms. JACKSON LEE. Thank you very much. I yield now to Mr. Owens. I yield for five minutes to Mr. Owens.

Mr. OWENS. Thank you, Chair Jackson Lee and Chair Nadler and Ranking Member Biggs for holding this hearing today.

I'm pleased to welcome all the witnesses this morning, but especially wanted to thank my friend, Brett Peterson, Director of the Utah Division of Juvenile Justice Services, for joining us today.

I had the opportunity several years ago to move to Utah, where I fulfilled a three-decades-old dream to work with at-risk youth. I started a nonprofit helping young boys and girls successfully transition from juvenile detention.

It was Brett's JJS team that gave us the opportunity and framework to combine collaborative support from the state, educational institutions including curriculum support from Utah Valley University, small businesses, Utah Homebuilders Association, other respected corporations, and our greatest resource, community volunteerism.

Second Chance for Youth now services as three facilities. We've had men transition, young men transition to higher education, including University of Utah and Salt Lake City Community College, begin careers, and most importantly gain access to lifelong leadership.

I received a call last week from a young man who was part of our very first class. He now has a career, he's raising his family. He called me to follow up on my promise to introduce him to a specialist in the financial field to help him understand how to plan, save, and invest.

I want to take this opportunity to publically thank Brett, his JJS team, and my fellow Utahans for the remarkable hearts that they have for our youth.

Before I begin my questioning for Mr. Peterson about the success of Utah's juvenile system, let me State that we need to be seeking

state-centric solutions. Let best-practice models coming from states like Utah and others drive this process, and our youth will win big time.

By the way, from personal experience, all these curriculum and intervention activities were all based on—were all evidence-based. I also want to take a few minutes just to thank Aaron. Your voice, young man, is invaluable. You're going to give hope to so many youth that need to hear that if I can do it, you can do it. So, thank you very much.

Mr. Peterson, when we talk about early intervention, what does that specifically look like in Utah, and can you give me some examples of effective early intervention?

Mr. PETERSON. Thank you, Congressman Owens. I think in any justice reform effort, there's often this question of now what. In other words, we used to have in Utah, for example, we had a very broad filter—or funnel.

Everything from very low risk offenses to high risk offenses were coming through the same doorways. They were coming through detention centers and courtrooms. Recognizing that we intentionally had to shrink that doorway, which we did.

Now, we have to say how are we now going to flow resources towards the community. How are we going to serve people in their homes, schools, and communities to help them thrive?

So for us, what we stood up is our JJS Youth Services Model. Truly, what this is, is a no-wrong-door approach to early intervention. So, it doesn't matter who refers to us, whether it's child welfare, a school, a parent, a youth walking in themselves, or whether it's law enforcement.

Regardless of how a youth comes to our door on this very front end, they can be sure that they're going to have a dedicated case manager, a plan manager. They're going to be allowed and afforded evidence-based screening tools and evidence-based assessments.

Then the real game-changer, because of reform, we're able to provide services on the very front end for youth and families. That was a tragedy of the juvenile justice system and the child welfare system.

Before you could actually get to sometimes the more formal approaches of treatment, you had to be in the system. We're trying to flip that, and we're having and making success.

So today, I want to highlight just a couple things. Our court referrals are down. Our non-judicial diversions are up. Our detention admissions are down significantly.

I have less than 50 youth, about 50 youth in locked detention today, statewide. Our graduation rate is up. Certainly that's not all attributed to JJS. It's a system effort, Department of Human Services and collaborative with our partners in the courts and the schools.

What this corresponded with on a federal level of the Family First Prevention Services Act, which unlocked and gave us the ability to now access federal dollars for prevention work. That was a game-changer, and it continues to be a game-changer. So, thank you for that question.

Mr. OWENS. The last few seconds we have, you mentioned 26% reduction in risk level for incarcerated youth. What was responsible for that reduction in Utah?

Mr. PETERSON. Thank you, Representative Owens. First, it really does start with reform. We have to make sure we weren't locking up low-risk youth. So, in Utah before reform about half of the youth in my populations, incarcerated populations, were there, they were relatively low risk.

They were there for contempt, maybe even some types of misdemeanors, or property crimes. So, we had to stop that, we had to stop that pathway into the system. We had to really be looking at what's going to actually improve public safety.

So, we've done that. Today, when I look at my long-term incarcerated population, actually, not today, but Friday May 7, I had 72 youth total statewide in those sets, those settings. So, that's step one.

After we did that, we had to re-gear and reinvent our entire operations, focused on we knew from the literature and the research the amount of treatment we had to deliver for youth. We knew what would impact various criminogenic risks. We had to reinvent our entire operation subject to that linchpin, that point.

So, making sure every youth has is getting the right amount of treatment, every youth is getting the right amount of dosage in the right way. We set out with this ambitious goal of 25% reduction in the risk to re-offend by 2021.

I am excited to be able to report that that's actually 26%. So, we beat our goal, just barely. So, thank you for that question.

Mr. OWENS. I will yield up my time. Let me just say thank you for your work, and this is the way we should look at best practices. All our states can benefit from this. So, thank you again, Mr. Peterson, I appreciate it.

Ms. JACKSON LEE. The gentleman's time has expired. I now recognize the Chair of the Full Committee, Mr. Nadler.

Chair NADLER. Thank you. Mr. Stevenson, the Supreme Court has ruled several times in the past 15 years or so that children are constitutionally different from adults and must be treated differently for the purposes of sentencing.

Can you tell us what these decisions mean for us as policymakers and how they should inform our work in reforming the way the criminal justice system treats children?

Mr. STEVENSON. Yes. I think it's been really important that we have the courts intervene in this way. As was indicated earlier, in 2005 the Court recognized that we could no longer execute children. They rooted that decision based on an analysis of what we've learned about child development.

We know that children are biologically different. Children change, it's the hallmark of being a child. What was interesting, Chair, is that we get this. That's the reason why we don't let children drink, we don't let children smoke, and we don't let children vote. We have all these restrictions, every State in the country recognizes that children are different than adults.

The area where we have failed to make that recognition is in the criminal justice system. When we began prosecuting children 13-years old, putting them in the adult prisons, 9-years old, when we

started doing that, that's when we created the crisis that we are talking about today. There's a long line of cases.

In Graham, the Court recognized that imposing life without parole sentences on children makes no sense because children would change. The argument essentially was that it's cruel to say to any child of 13-years old that you are beyond hope, beyond redemption. That you are fit only to die in prison. That's what states are still doing. That's what the federal law still does.

That's why believe it is so urgent that the legislatures catch up with this understanding that has been articulated. Mental health professionals have been preaching this for a very long time. We now have a critical need on the legislative side, given where the Court seems to have drifted in the last year.

Chair NADLER. Well, thank you. We must give all children a second chance to live up to their full potential as adults. An investment in the future of our children is an investment in the future of America.

April was Second-Chance Month, and the Administration spoke and called for automatic juvenile expungement and sealing of juvenile records to allow a successful path forward in their education and gainful employment.

Ms. Levick, as the Biden Administration has aptly stated and states across the country, protections for individual—for juvenile records are inadequate. What should a concerted effort between the Federal Government and the states look like to allow kids a viable second chance?

Ms. LEVICK. I think that there are three critical issues that are raised in thinking about Second-Chances Month, and thank you for that question. There are three issues. One certainly is providing for automatic expungement of juvenile records and sealing of records. The Federal Government can certainly incentivize those practices.

We know that even juvenile records can significantly adversely impact education opportunities, employment opportunities, and housing opportunities for our youth. So, thinking about automatic expungement is a critical way to avoid those kinds of challenges that our youth don't need to face.

It's also true that extreme sentencing—abolishing life without parole as we've already heard about in this hearing is critical to thinking about second chances. The whole premise of the Supreme Court decisions in recognizing that youth not only should have hope, but that they also are entitled to second chances because of their capacity for change. Eliminating life without parole for children is critical to thinking about second chances.

The final suggestion that I would make is with reference to fines and fees. Fines and fees can have extraordinarily devastating impacts on both children and on their families. Why should families and kids have to make choices between paying those fines and buying groceries?

Those fines and fees can also follow children after their juvenile delinquency experience. It can manifest itself in civil judgments that follow them, and again can inhibit those opportunities that these youth should have for employment and housing and schooling.

I think these are three critical areas where the traditional role of the Federal Government incentivizing states to adopt best practices can be undertaken here.

Chair NADLER. Thank you very much. Mr. Toleafoa, what are some of the measures your organization are reviewing that would address this problem to provide a second chance to juveniles?

Mr. TOLEAFOA. So, the organization I work with, CJJ, obviously we work just around the JJDPA. Also, really getting youth involved, I think that's really one of the main things is when we're giving—when we're thinking about giving them the second chance, not really just thinking okay, yeah, here's a good idea. I think, this would work for them.

Actually, getting them involved, and asking youth, hey, what would work for you, instead of coming up with an idea of our own and thinking that it's going to work for them. So that's, I think would be one of the most important things is really just getting youth involved.

Chair NADLER. Thank you very much. My time is expired, I yield back.

Ms. JACKSON LEE. The Chair yields back. I now recognize Mr. Chabot for five minutes.

Mr. CHABOT. Thank you, Madam Chair.

Juvenile justice is predominantly a State and local issue, not federal. Over 800,000 juveniles a year are referred to the State or local courts. Of those, there's usually around 60,000 that are incarcerated.

As of this morning, there are 20, 20 out of 60,000 that are on federal issues. Those are not housed in federal facilities; they're housed in State or local facilities.

Now, where there is a federal issue is immigration. The Biden border crisis, their failure to resolve this. This Administration's refusal to enforce our immigration laws.

Its policies that incentivize the drug cartels, who exploit children and juveniles and put the public at risk. That's what we ought to be talking about, that's what we ought to be doing something about, and that's what I intend to devote my time here this morning to.

Ms. Vaughan, it's your testimony, is it not, that the current Administration, the Biden Administration, reversed policies implemented by the previous Administration, and that's resulted in a huge influx in illegal entries into this country, many of those unaccompanied minors. Is that correct?

Ms. VAUGHAN. Yes, it is correct. There are a number of policies that have been reversed. First, the construction of the border wall was suspended. The title 42 public health-based expulsions of everyone arriving illegally have been eased now so that unaccompanied minors and most families arriving with kids are allowed to come in and then released into the country. It's basically the reestablishment of catch and release.

The cooperative agreements with some of the countries in the region to share the responsibility of offering safe haven to asylum seekers, those are all in limbo now.

Also, importantly, basically what amounts to a freeze on interior immigration enforcement also—and it has helped send the message

that if you can get to this country illegally, you will be allowed to enter, and you will not face a threat of immigration enforcement for the foreseeable future.

So, all of this—and this sends a very powerful message that they actually call, as I mentioned, la invitacion, that's it's an invitation for people to pay criminal smuggling organizations to come here because they know they will be successful.

Mr. CHABOT. Thank you. Those criminal drug organizations, the cartels and the gangs, they're profiting immensely from this, aren't they?

Ms. VAUGHAN. Yes. I've seen estimates that it's a multibillion dollar industry every year. The more that they can make off of smuggling families and kids and others here, the stronger they become and the more difficult it is for law enforcement to deal with them. The more money they have for bribes, the more resilient they are and the less likely they are to give up this illegal trade.

Mr. CHABOT. According to your statement, you indicated that the border patrol agents estimate that for every one illegal crosser that they actually apprehend, there's another one, two, or three who's able to evade their capture and gain entry into the U.S.

So, it's the numbers that we hear on TV, etc., the numbers are actually far more than we hear about, isn't that true?

Ms. VAUGHAN. That's right, because of the number who are getting through successfully because the Border Patrol is distracted by dealing with the arriving families and kids, and because there are not enough barriers along the border, there are not enough Border Patrol agents, they don't have enough support from the National Guard. Only Texas has invested some of its resources into assisting the Border Patrol in controlling this.

We're concerned about those so-called gotaways especially because that's where most of the criminals and prior deportees and others that we really need to worry about—

Mr. CHABOT. Well, let me stop—

Ms. VAUGHAN. They're in that group.

Mr. CHABOT. Thank you, let me stop you there because I've only got a short period of time. So, the gotaways that you talked about, so they're not in the system at all. So, we therefore have no information about who they are. We don't know the purpose of their entry. We don't know whether they have a criminal record. You mentioned MS-13.

We don't know if these folks are connected with MS-13, although, we know an awful lot of them are. We don't know whether they have COVID, we don't know if they have tuberculosis or hepatitis. We also don't know in whose neighborhood these people are going to ultimately end up in, is that correct?

Ms. VAUGHAN. That's exactly right. They're spreading out across the country. We don't even know where they came from, and we know that people are coming from all over the world.

Mr. CHABOT. Thank you. My time's expired, Madam Chair.

Ms. JACKSON LEE. The gentleman's time has expired. Thank you very much. I just want to remind Members that we're here for the juvenile justice pipeline and the road back to integration.

Also, that children arriving unaccompanied from Central America are fleeing gang violence, not bringing it, and the increased lev-

els of domestic, gender, and gang-based violence in these countries leave young people with no choice but to flee or face gang recruitment.

Mr. CHABOT. Madam Chair, point of order.

Ms. JACKSON LEE. Face atrocities—

Mr. CHABOT. Point of order, point of order.

Ms. JACKSON LEE. So, let me yield now to the gentleman from California.

Mr. CHABOT. Point of order, Madam Chair.

Ms. JACKSON LEE. I understand.

Mr. CHABOT. I would just note, I would ask that the—

Ms. JACKSON LEE. You'll be next. I'm going to recognize you, just a moment. Just a moment. You'll be next, thank you. The gentleman is recognized.

Mr. CHABOT. I would just ask if it's appropriate for the Chair to basically comment and get additional time over and above her 15, excuse me, her five minutes.

Ms. JACKSON LEE. Yes, it is.

Mr. CHABOT. To comment on virtually every person on this side and to disagree with the witnesses and us.

Ms. JACKSON LEE. Mr. Chair, Mr. Chabot. Mr. Chabot, it is the prerogative of the Chair to clarify the title of the hearing, and that's what we did. Thank you.

Mr. CHABOT. Well, I disagree, but you're in the majority.

Ms. JACKSON LEE. Thank you, Mr. Chabot.

Ms. BASS. So Madam Chair, Mr. Chair—

Ms. JACKSON LEE. Ms. Bass from California is recognized for five minutes.

Ms. BASS. Why, thank you, Madam Chair.

Ms. JACKSON LEE. Thank you.

Ms. BASS. Mr. Chair Nadler, and Ranking Member. Thank you so much for having this hearing, because my view of this hearing is that it's an opportunity to really look at a system that I believe is profoundly out of date and needs to be changed fundamentally to be consistent with the science that we know today.

So, I want raise some of those fundamental questions. One of them, similar to my colleague Mr. Owens. Mr. Owens started an at-risk youth project that I'd like to know more about. I did the same in South Central Los Angeles.

I found that working with some of the most challenging teens that if they have an opportunity at a future and a life, they will go for that and they will not go toward a life of crime. That's not a normal way to go.

So, I wanted to raise a question, and I wanted to ask Mr. Stevenson, who I think should get a Nobel Prize, and Ms. Levick, why do we arrest kids for status offenses? Why do have status offenses?

What I found in South Central is that that was the gateway to a long life of interacting with the criminal justice system, whose families could not afford to take them off the escalator into prison.

I want to compliment my colleague, Steve Chabot, he, I see he left, but I invited him to come to my district and meet some of the youth and see some of the programs. He did that. I appreciated that, because we cannot just say you can throw the life of a kid away. Kids don't come in isolation, they come with families.

So, can you please tell me why do we have status offenses? Why don't we just eliminate that?

Ms. LEVICK. Well, we certainly should not be prosecuting and arresting children who are effectively charged with status offenses at all. Your points are all well-taken. We're essentially trying to punish children for acting like children.

We are singling them out for conduct that is not remotely criminal, that does not require the attention of law enforcement or other stakeholders in the justice system. We harm them greatly.

What we know from our experience, and certainly Mr. Peterson's experience in running the system in Utah, children don't benefit really from their engagement with the juvenile justice system. When we put them into that system, we always risk harm, every day there's a potential to risk harm to those children, and certainly sometimes to their families.

Ms. BASS. Thank you. Let me, before I run out of time—

Ms. LEVICK. Okay.

Ms. BASS. Let me ask Mr. Stevenson to comment on that as well.

Mr. STEVENSON. Yes, Representative, I think it's a really important question. We didn't always do it. That's why I think it's so necessary that we recognize that we don't not have to stay on this path. It's in the 70s and the 80s that we began criminalizing people for things that really weren't crimes.

We said that people who are drug-addicted and drug-dependent are criminals. We could have said that people have a health problem and need a healthcare response. Making status offenses crimes and treating children like criminals was the consequence of what I call the politics of fear and anger.

That's why these interventions that you're hearing about in Utah that you've talked about in Los Angeles are so important. I absolutely believe that when we framed best interest of the child as the dominant, controlling principle for how we dealt with children, we didn't put children in custody for status offenses.

Ms. BASS. Well—

Mr. STEVENSON. We need to return to that frame.

Ms. BASS. Well, I would argue that we still don't put certain children in prison. So status offenses, as I'm aware of, really are only problematic with children who are low income or kids of color.

I don't know, because in my district part of my district is very affluent, does not look like me. I just never heard of a kid being ticketed or arrested for truancy or a status offense. So, I do want to ask a question about Utah, because I know Utah has wonderful examples. Does your agency deal with the for-profit part, the Sequel Youth and Family Services, Lava Heights Academy, and Falcon Ridge? How do you interact with the profit? Because, I also think, that's one of the fundamental things that needs to be transformed.

Mr. PETERSON. Yeah, thank you for that question. So, we operate ourselves all of our detentions, shelters, and early intervention programs. We do contract with providers for a lot of our community placements. We don't currently contract with Sequel, for example.

What we do is, so most of our youth, actually, they are ordered into state's custody are actually served in the community, so in a residential treatment.

Ms. BASS. So, if you don't contract with Sequel, which MSNBC, there was a special done on them, I'm sure you're aware of that.

Mr. PETERSON. Mm hm.

Ms. BASS. Do you have any ability to supervise them? Do you have any authority over them?

Mr. PETERSON. Well, I don't directly, but our, in our state, our Department of Human Services Office of Licensing does have regulatory authority over any license providers in the state.

Ms. BASS. So, I don't think our kids should be subjected to a for-profit industry. I also don't think that only some kids—well, I don't think status offenses should exist, period, because it is a pathway to prison.

I yield, I'm done.

Ms. JACKSON LEE. The gentlelady yields back. I now yield time to Mr. Tiffany for five minutes.

Mr. TIFFANY. Thank you, Madam Chair.

First, Mr. Stevenson, I really appreciate the comment you made in regards to children are different. We don't have them drink and smoke and vote.

I would just urge you to contact some of my colleagues who want children to vote and put bills forward suggesting that they should vote. I would suggest that you may want to contact some of them and share that with them.

Also, I just want to comment, Ms. Levick, I really do agree what you were saying in regards to fines and fees can be a real anchor for, especially when somebody comes out of incarceration.

I saw it when I was in the State legislature, some of the really heavy fines and fees, that it is a real burden once you get out of incarceration to be able to handle that. So, I really appreciate that you mentioned that.

I just wanted to ask a question of Mr. Peterson. You cited, I believe it was the Pew model that you guys used. Did you do some things differently than what the Pew model was or what some other states that perhaps led in this direction before you? Did you do a few things differently than some other states kind of adapted to your situation?

Mr. PETERSON. I don't think significantly, no. I think that we primarily followed the Pew model and engaged with a pretty comprehensive working group to first establish—in looking at our own data.

So, there's always going to be different data points in every system that might control the situation. No, I think in general that is what we implemented.

Mr. TIFFANY. Okay, and your working group, was it just within the state, or did you work across State lines?

Mr. PETERSON. No, just within the state.

Mr. TIFFANY. Yeah. Because I think it's really important, I mean, it's great to have a hearing like this at the federal level, but it really seems that if we want to see innovation and creativity being used here, it's once again, go to the states, the laboratory of the states, allow them to create the models.

We use this cookie cutter approach, which really is a continual theme that is going on here, at least in the two committees I sit in, Judiciary and Natural Resources, where we just look to the Fed-

eral Government to try to solve problems, we're going to create more problems that we can't handle.

So, Ms. Vaughan, you're saying there's a connection, there could be a connection between the border crisis and the number of youth offenders that are out there?

Ms. VAUGHAN. Well, there's no doubt that there's a connection between the border crisis and the influx of unaccompanied minors and families with kids with the resurgence of certain transnational street gangs, especially MS-13. This is well known at state, local, and federal law—by state, local, and federal law enforcement agencies.

This gang, MS-13, is based in El Salvador and specifically sent out a directive a few years ago to its cliques in the United States to take advantage of the lenient border policies on unaccompanied minors to grow their ranks to import new foot soldiers, essentially, for these cliques to increase the gang's revenue.

They also set about recruiting among the newly arrived youth in the communities where they were located. For example, there was a DACA recipient who was a member of MS-13 who was working at middle school in Maryland who had contact with other kids and was able to use that to benefit the gang.

There have been numerous other cases where the gang benefitted by being able to bring in new recruits. They're going to benefit now by this new influx and also the lack of interior immigration enforcement that will be directed against them.

Mr. TIFFANY. So, you're saying in all likelihood that we're going to see with UACs coming in as they have been over the years and unprecedented numbers now coming in, and by the way, unprecedented is the term that the Border Patrol uses, that some of them are going to end up in the juvenile justice system. Is that correct?

Ms. VAUGHAN. It's inevitable. Obviously most of the kids who are coming here are not potential offenders or gang Members or going to end up in the justice system. The problem is that many of those who arrived as unaccompanied minors who are in the justice system are going to contribute to the problems. They have taken advantage of these lenient offenses.

So, not all newly arrived kids are going to be criminals or gang Members. Of the new criminals and gang Members that we're encountering, and that law enforcement is encountering, many of those entered as unaccompanied minors.

Mr. TIFFANY. I'll conclude, Madam Chair, but first I want to thank everybody for their testimony. I think it was really some interesting testimony. To say that there is not a connection, as the Chair did, between illegal immigration and the juvenile justice system is simply inaccurate.

We are seeing—when you have unprecedented numbers that are facilitated by gangs, gangs that are on the other side of the border as well as in the United States of America, there is going to be an impact on the juvenile justice system.

I yield back.

Ms. JACKSON LEE. I thank the gentleman and will clarify that in going forward. It's my pleasure now to yield five minutes to the gentlelady from Florida, Ms. Demings.

Ms. DEMINGS. Well, thank you so much, Madam Chair, and thank you to our witnesses for joining us today. I also want to thank the Chair for this very important discussion.

I've worked as a social worker working with foster care youth, and I'm sure everybody in this hearing can imagine their stories. I've also, I've spent time as a law enforcement officer and worked as a detective sergeant and a detective in the crimes against children unit. As a police chief, I started a youth program specifically designed to help at-risk youth.

I clearly believe that every child deserves to have an opportunity. I think it's incumbent upon us as leaders, whether local, state, or federal, to design programs that give children every opportunity to succeed.

I think we fail as a system when we fail to address those quality-of-life issues that plague children in the first place when we leave those quality-of-life issues to the juvenile justice system to solve.

I do believe this is an appropriate forum, as Members of Congress, to look at states who may have programs that provide best practices that we certainly can adopt. As we have a discussion about many other issues and we are looking at what states are doing, some of those states were trying to prevent those things. Other states that are doing it correct regardless of what the issue is.

I think we're smart when we try to adopt best practices, especially I see investments in children's lives as a major investment in our future.

So, Mr. Peterson, if you could just talk again about the importance of intervention, and how if we're going to give children an alternative to incarceration, how important intervention is into doing that.

Mr. PETERSON. Yeah, thank you, Representative. It is absolutely critical. Like you said, we can't address all when you start talking about the social determinants of health economic instability and housing instability and healthcare instability, we're not that well-positioned to do that in juvenile justice.

We're going to do our best, and we're going to do everything we can to focus on reducing criminogenic risk factors. Fundamentally what we have to do and the whole vision of reform is to be able to reinvest, to flow resources into communities so that youth can stay there, and they can thrive.

So, this takes a lot of innovation. It takes an endless amount of partnership. Finding ways to listen, to hear.

So, our schools, for example, what's the challenge you're seeing? We recognize and we have a shared philosophy that we don't want to send a kid in front of a judge for truancy. I shouldn't say it's completely shared, but it's a journey. Then like you said, how do we then help, how do we then help?

So, we partner. I have staff in some school districts where they actually go, and they're staffing cases with the social workers in the school and recognizing, okay, maybe this family needs some more intensive treatment.

We the ability to actually fund, it can by youth or family, therapy, counseling, skill-building, and family group. It kind of goes a whole range. We have that ability because of reform.

Ms. DEMINGS. Thank you so much, Mr. Peterson, for that. Specifically talking about schools, Ms. Levick, thank you as well for mentioning that we've come a long way. We still obviously have a long way to go. How we've seen the reductions in the number of arrests leading to the reductions in incarcerations.

I want to talk to you too about how can schools play kind of a greater role in fostering those reductions that we see. If we know that the overwhelming majority of people in our prisons around the United States are Black and brown and that they did not graduate high school, how can we continue to see those reductions in arrests and incarcerations by the school playing a better role in the process?

Ms. LEVICK. Yes, thank you, Congresswoman Demings, such an important question. I think it's important to start out by saying that roughly 39% of youth in the juvenile justice system don't graduate from high school. So, that's precisely the problem that you've identified.

I think that schools play a critical role, first, by not sending children into the juvenile justice system. So, we need to really be re-thinking about I think we lost our way in the last 20 years or so in pushing school resource officers into the schools, seeing schools really—

Ms. DEMINGS. Who were placed in the school, by the way, initially for drug, you know—

Ms. LEVICK. Exactly.

Ms. DEMINGS. Addiction prevention.

Ms. LEVICK. Now, they've become—

Ms. DEMINGS. For prevention purposes.

Ms. LEVICK. Now, they've become feeders—

Ms. DEMINGS. That's right.

Ms. LEVICK. Into our youth justice system. That's exactly what we saw in the Kids for Cash case. All of those kids were coming from the school system. These were kids who committed really trivial misconduct, not even offenses.

So, I think that we need to start by focusing on schools as places of education. We need to recognize that we spend more money on incarceration than education. We need to change to that funding balance. We need to invest in schools, and we need to invest in communities.

I think your opening comments—the juvenile justice system can't solve the ills that plague our communities and that plague our families and our kids. It's not going to fix those problems. So, by investing in smart services and really investing in education that's how we're going to find our way out of this.

Ms. DEMINGS. Again, thank you to all our witnesses, and thank you much for the important work that you are doing, all in this space. Madam Chair, thank you for being such a visionary and for this hearing. I yield back.

Ms. JACKSON LEE. The gentlelady's time has expired. Thank you very much. Let me now yield to Mr. Massie for five minutes.

Mr. MASSIE. Thank you—

Ms. JACKSON LEE. You're welcome, thank you.

Mr. MASSIE. Thank you, Madam Chair. Instead of asking one witness five questions, I'm going to ask all five witnesses the same

question. Before I do that, I'd like to introduce into the record two articles, and this will give you an idea of the question I'm going to be asking you all.

The first article appeared in The Atlantic, and it's by Elder G. Yusef Qualls, retired pastor and criminal justice advocate. The article is titled "Kyle Rittenhouse Deserves the Kind of Mercy My Son Did Not Receive". It appeared in The Atlantic.

The second article is by Marcy Mistrett. She's the CEO of the national advocacy organization called the Campaign for Youth Justice. This appeared in LA Progressive, and the title of this article is "Not Even Kyle Rittenhouse Should Be Tried as an Adult."

So, I ask unanimous consent to introduce these two articles into the record.

Ms. JACKSON LEE. Without objection, so ordered.

[The information follows:]

**MR. MASSIE FOR THE RECORD**

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## IDEAS

## Kyle Rittenhouse Deserves the Kind of Mercy My Son Did Not Receive

To a great many people in this country, my son deserves to die in prison. To another great many, Kyle Rittenhouse deserves the same fate. Neither outcome is just.

OCTOBER 20, 2020

**Elder G. Yusef Qualls**

Retired pastor and criminal-justice advocate



CARLOS JAVIER ORTIZ / REDUX

Kyle Rittenhouse, the 17-year-old who was charged with shooting and killing two people during protests in Kenosha, Wisconsin, is just a year older than my son was when he was convicted of murder and sentenced to life without the possibility of parole. To a great many people in this country, my son deserves to die in prison. To another great many, Rittenhouse deserves the same fate. Neither outcome is just.

What Rittenhouse is accused of doing is abhorrent. While thousands rose up to protest police violence in the aftermath of the shooting of Jacob Blake, Rittenhouse's response was to arm himself and travel to a city not his own, out of a professed desire to defend businesses and private property. As protesters and counterprotesters clashed, eyewitness accounts and video footage suggest that he shot one man, killing him, and when protesters ran after him, he shot two others, killing one.

His supporters, who say he is a patriot and acted in self-defense, have sent hundreds of thousands of dollars to his legal fund. Rittenhouse is currently being held in a

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The Lost Month That Haunts the World

URI FRIEDMAN



Under Wisconsin law, Rittenhouse can be charged as an adult, and if convicted, could face a life sentence without parole. Despite the anger I have toward him and his supporters, I feel strongly that Rittenhouse should have the kind of mercy that my son—and so many other predominantly Black and brown children—did not receive. He is too young for such a harsh punishment.

*[Brandon L. Garrett: Life without parole for kids is cruelty with no benefit]*

My son Yusef was only 16 when, drunk and high, he drove with two men to a house in Detroit where one murdered two women. Afterward, Yusef's mother drove him to the police station to tell officers what had happened. He was never free again. He was not the shooter, but he was charged as an accomplice, with two counts of premeditated murder, among other charges. After the trial, the judge gave him the mandatory sentence for that crime in the state of Michigan: life in prison without the possibility of parole.

Yusef is now 41 years old. While incarcerated, he has lost his mother, his brother, and last month, his sister. His good friend—another juvenile lifer who was weeks from his freedom—recently died of COVID-19. Even though Yusef has grown up behind bars, he is an artist, a mentor, a leader, a facilitator, and a friend to many.

American law is already a bit more merciful now than when Yusef was convicted. In 2012, in *Miller v. Alabama*, the Supreme Court prohibited mandatory life sentences without parole for juveniles convicted of any offense, including homicide. In 2016, the Supreme Court determined that the ruling in *Miller* should apply retroactively. Those decisions stemmed from scientific data and testimony showing that the minds of adolescents are not fully developed until they reach their mid-20s. As such, juvenile mandatory life without parole constitutes cruel and unusual punishment under the Eighth Amendment. Four years have passed, and nearly 1,000 juvenile lifers are still waiting to have their sentences reviewed. My son is one of them. When the hearing does happen, his lawyers will ask the judge to reduce his sentence to time served.

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stupid. I also saw more than just youth. Rittenhouse and my son are a product of a country built on fear, violence, and hypocrisy. Yusef was in that car 25 years ago because of his youth and impulsive desire to fit in, but also because of poverty, shame, isolation, and the ever-present violence in our Detroit neighborhood. Rittenhouse was in Kenosha with an assault rifle because of youthful impulsivity, but also because of a country that has told him again and again that Black people in the streets are dangerous, even if they're protesting racism.



Yusef Qualls and Elder Qualls (Courtesy of Elder Qualls)

What kind of country has made killers of so many young people? The law doesn't answer that question or attempt to address the underlying factors that brought our kids to this point.

*If I am advocating to free my son for a crime he committed when he was only 16*

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accountable, but the courts need to recognize that he is, in fact, a child, and he should not die in prison for decisions he made as one. Years from now, he may become someone unrecognizable from his 17-year-old self. And like every other person sentenced as a child, he should be given the chance to redeem himself.

*[Read: [A prison lifer comes home](#)]*

I don't make this decision easily. I understand well how one—driven by vengeance—would justify seeking the maximum punishment for a person who is accused of taking human life. I understand because I once felt the same way.

In addition to being the father of a son in prison, I am also the father of a murdered son. My eldest was in his 30s when he was shot during a botched ATM robbery. He was the random victim of an assailant who left home armed and ready to do harm. Enduring his untimely death—and then having to stare into the face of his dazed, apathetic assailant in court—was immeasurably painful, and brought me to the very edge of my faith. But the experience was also instrumental to my advocacy today. I knew I could not stand on behalf of my youngest son without forgiving and advocating for those people, especially young people, entangled in this faulty system. My trauma was not healed by caging yet another person. It only made me feel worse.

We are, so many of us, victim and victimizer. Those most harmed are so often those who commit harms against others. It is difficult to find mercy and have the emotional flexibility to reckon with those truths.

I understand that precedent is very much a part of legal practice, and as such, I hope a precedent is established in Rittenhouse's upcoming trial that would extend to others—especially those from Black, brown, poor communities, whom the legal system treats with particular harshness and then casts away and forgets. I ask for justice for the people who lost their life, as I asked for justice for my eldest son. For my youngest, and for Rittenhouse, I also ask for mercy. I know that both justice and mercy can coexist. I just hope the courts recognize that too.

**ELDER G. YUSEF QUALLS** is a retired pastor, community leader, and criminal-justice advocate who provides mentorship for people who went to prison as children.

## Not Even Kyle Rittenhouse Should Be Tried as an Adult

**K**enosha, Wis., dominated headline news in late August, due in part to the actions of 17-year-old Kyle Rittenhouse of Illinois, who was arrested for allegedly killing two protesters and injuring a third. To some observers he acted in self-defense, to others he acted in the name of white supremacy.

The pieces of the story that remain consistent, regardless of one's politics, is that two families are grieving and a child is again



being charged as an adult in Wisconsin.

As the CEO of a national advocacy organization, the [Campaign for Youth Justice](#), I have spent the past seven years advocating for states to change their laws and practices toward the treatment of children who are charged, sentenced and incarcerated as if they were adults. Much of my ire has been directed to Wisconsin – [one of only three states](#) that still considers every 17-year-old as an adult in the eyes of the law, regardless of their crimes (Georgia and Texas are the others). The state has charged and sentenced three children younger than 12 as adults in the past six years.

Uequivocally I stand against these practices – as brutal, human rights violations, that undermine public safety and our nation's century-long belief in the ability of children to be rehabilitated.

So in the case of this 17-year-old child, I stand my ground. Kyle Rittenhouse is still a child – a child who has been alleged to commit senseless and avoidable pain and death, but a child nonetheless. He is also a child who, by some news accounts, has received the benefit of this doubt – that he acted in self defense, that the police provided

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**I stand my ground. Kyle Rittenhouse is still a child – a child who has been alleged to commit senseless and avoidable pain and death, but a child nonetheless.**

him with water and gratitude earlier that night, that he was allowed to leave the state and turn himself in later, that he is currently being housed in an age-appropriate youth detention facility in Illinois (a “benefit” that won’t be extended once he arrives in Wisconsin, where he will be placed in an adult jail). Treatment that many say, and to which I agree, would likely not be extended if he were Black or brown.

This case cuts to the soul of the conflict in our country. It is why we are having these protests to begin with. They test our moral compass and the type of future we are building for our children. There are many values that are challenged: Our sanctity of childhood and the belief that every person is more than the worst thing they have ever done; our call to end the structural racism that, had Kyle been Black, would have led law enforcement to presume his carrying of a weapon was an act of aggression and not self-defense, and that easily could have led to his injury or death. Our desire to live out the practice of restorative justice and healing even in the face of unspeakable loss and tragedy; to seek peace and not just punishment.

I believe we can rise to this challenge. Wisconsin legislators can use this tragedy as a point of self-reflection to examine the way it treats its children. Law enforcement can examine their behavior in response to a white armed child versus a Black one. Let us not let this moment of deep pain and loss turn us into a society of retribution. We have endorsed that failed strategy for far too long.



**T**hese are difficult things to ask of us, a nation-divided right now. But they are questions we must wrestle with if we are to ever evolve into a country that is better than the worst thing we have ever done.

**Marcy Mistrett**  
[The Imprint](#)

This story originally appeared in [The Imprint](#), a daily news publication dedicated to rigorous, in-depth journalism focused on families and the systems that impact their lives.

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BY MARCY MISTRETT POSTED ON SEPTEMBER 5, 2020

**DISCLAIMER:** The opinions expressed here are those of the individual contributor(s) and do not necessarily reflect the views of the LA Progressive, its publisher, editor or any of its other contributors.

Mr. MASSIE. Thank you, Madam Chair. So, that should give you an idea what my question is going to be. No surprises or gotchas here. I know you're not going to be jurists and you won't be judges and you can't know, possibly know all of the circumstances of this situation.

What we do know is he was, Kyle Rittenhouse was 17, and he's been accused of felonies and he's being tried as an adult in Wisconsin.

I'll start with you, Mr. Peterson. Please be brief, I want to give everybody a chance to answer the question. Should Kyle Rittenhouse be tried as an adult?

Mr. PETERSON. No, I don't believe so.

Mr. MASSIE. Thank you very much. Ms. Levick.

Ms. LEVICK. I support that. I think that the science has taught us what we need to know about children. Kids are different, and we should treat them differently.

Mr. MASSIE. Thank you, Ms. Levick. Let's see, Mr. Stevenson.

Mr. STEVENSON. No, I agree with the panelists. I will note that there's a 14-years old named Omar Ninham in Wisconsin who has been tried as an adult and sentenced to life without parole. What I want to do for Kyle Rittenhouse I want to do for the hundreds of other children in Wisconsin.

Mr. MASSIE. Understood. Then finally I want to ask Aaron Toleafoa what your opinion is.

Mr. TOLEAFOA. No, I don't think he should be tried as an adult.

Mr. MASSIE. Then Ms. Vaughan, should Kyle Rittenhouse be tried as an adult?

Ms. VAUGHAN. I don't know. I don't have an opinion on that. I do know that the border crisis and other problems with our immigration system are making it much more difficult to resolve this pipeline problem into the juvenile justice system. I think that is an appropriate thing for Congress to be focusing on right now during this crisis.

Mr. MASSIE. Well, I thank you all for answering the question to the best of your ability. I'll give you my opinion. I think it—but let me condition it. You were nice enough to give a short answer and I'll give the longer answer myself.

I think it should be left up to the states. In Wisconsin, unfortunately, Mr. Tiffany isn't here and I'm talking about Wisconsin, but in Wisconsin, 17-years olds are regularly tried as adults. I do believe it should be left up to the states. I believe he acted in self-defense, that's just an opinion, I'm not a jurist or a judge.

If he's going to be tried, I think he should be tried as a juvenile. He was 17, he should not be tried as an adult. I agree with the four witnesses here who gave me a straight answer, I thank you for doing that. He shouldn't be tried as an adult.

Adding to the absurdity of this case, he's also being tried for a misdemeanor crime of being a minor in possession of a firearm. So, he's being tried for a crime that only applies to minors while simultaneously being tried as an adult.

The only thing that would be more ridiculous, if they tried him for the crime of being a minor in possession of a firearm as an adult. That's almost how ridiculous this case is.

I thank you for not having a double standard. I thank you for standing up for the rights of all juveniles. I hope that Kyle Rittenhouse sees justice. I yield back the remainder of my time.

Ms. JACKSON LEE. The gentleman yields back, and I now recognize Ms. McBath for five minutes. Thank you.

Ms. MCBATH. Thank you, Madam Chair. I just want to thank each and every one of you that are here this morning, those that are physically present and those that are virtually here with us today. Thank you so much for really talking about this extremely critical and important subject today.

I know that it is critical that we recognize the challenges facing our nation's children and that we give them an opportunity to grow and learn from their mistakes. We have long recognized that basic principle in our justice system, creating different pathways in the justice system for youth and for adults.

That distinction exists for a reason. When we erode that distinction, suddenly our children can end up in a system that wasn't designed for their needs and their circumstances.

This is especially troubling for those youth who have committed the so-called status offenses that we have just talked about, actions or circumstances that are a violation of a law only when they are committed by a minor, such as skipping school or simply running away from home.

When kids skip school, we need solutions that put our students back in the classroom, not in the courtroom. I represent Georgia, and I'm thankful that Georgia took a good, deep look at how we were serving our youth in 2013. We decided that there was room for change.

A council led by Republican Governor Nathan Deal found that we were spending over \$90,000 per year to incarcerate our youth. That expenditure wasn't solving anything. More than half of our youth ended up back in the justice system within three years of their release.

Thankfully, Georgia redirected our taxpayer dollars toward evidence-based programs and policies. We put an emphasis on data and to keep evaluating our successes as well as our failures. Because when we get this right, everyone benefits. Our kids get back on that path towards success, our taxpayer dollars are used far more efficiently, and our communities are much safer.

We have to keep working on these very goals, keep these very goals in mind. So, I thank those of you that are doing this work every single day. We must work together on a bipartisan basis to make sure that we're achieving a more humane environment for our incarcerated children.

Mr. Peterson, I just want to thank you so much for the work that you've been doing in Utah. Like Georgia, Utah implemented a number of reforms, including different responses to low-risk behavior and also reducing the involvement of teens in our courts and jails.

Do you have a sense of which of these reforms was the most important?

Mr. PETERSON. Yeah. I think that when I look at Utah, that we've definitely been on a journey. We've had good bones in the system for a long time, if I can use that phrase. Having a dedicated

juvenile court bench, having a dedicated probation, a dedicated agency. The right type of philosophy.

I do think that the most impactful was creating policies, those hard-line guardrails on keeping low-risk youth out of the system. I do think that has been the most significant.

When you start looking at our building out to reinvest and to actually serve youth in their home schools and communities and not in a jail cell and a courtroom, that's been the most significant step in our policy changes.

Ms. MCBATH. Thank you for that. Mr. Stevenson, it's so good to see you again. I'm so glad to have you with us this morning, and thank you so much for your commitment to justice, and especially your work to tell the stories of Black Americans through our history.

We have to make sure that people understand our country's history of racial injustice. That's the only way we're going to be able to achieve equality for all Americans. How can juvenile justice reform reduce socioeconomic and racial inequality?

Mr. STEVENSON. Well, I do think it's a really important issue, and thank you for that question. Because there are huge racial disparities. When we were looking at children sentenced to die in prison, all of the 13- and 14-year-old children sentenced to die in prison in this country for nonhomicide offenses were Black. There are huge disparities.

Even in the schools, the suspension rate for Black children and Brown children is much higher than non-Black children. So, the disparities are key. I think the most critical thing is recognizing that we have to be remedial, we have to be affirmative.

We have to understand that bias, conscious and unconscious, is implementing and manifesting itself in the way we treat children of color differently than children who are White. That has to shape our policymaking.

Some states have done this effective work. They're being proactive, being intentional and eliminating racial disparities in education policy and sentencing policy. I think that has to be a goal.

Ms. MCBATH. Thank you so much. I'm out of time, but Madam Chair, may I ask that I submit a question to Ms. Levick and have it answered in the future.

Ms. JACKSON LEE. Absolutely, all Members are allowed to submit questions into the record and the witnesses will subsequently provide answers. Thank you so very much.

Ms. MCBATH. Thank you.

Ms. JACKSON LEE. Congresswoman, for your line of questioning, I'm now happy to yield five minutes to the gentleman from Texas, Mr. Gohmert. Unmute, Mr. Gohmert.

Mr. GOHMERT. Yes, I did, thank you.

Ms. JACKSON LEE. Thank you.

Mr. GOHMERT. Thank you to the witnesses and thank you for this hearing. I'm very much interested in ensuring juvenile justice in our nation. I'm so glad that we all agree on that. Appreciate the witnesses very much.

I find myself again perplexed that the majority would have this hearing and not address or even acknowledge the obvious elephant

in the room, as Ms. Vaughan, you testified that February to March we had 49,000 unaccompanied minors that were gathered in on our border.

There's a lot of disturbing scenes at the border, whether its little children being dropped over the fence, as we saw down in Del Rio, little bitty children, even a one-year-old. They didn't get to the border unaccompanied, they got there through the drug cartels.

I wanted to ask you based on your study and what's going on that's controlled by the drug cartels, what will the drug cartels likely do to the children whose parents owe money for bringing the children into the United States?

Ms. VAUGHAN. Well, the cartels and smuggling organizations will use any tactics or means that they have at their disposal, including extortion, violence, kidnapping, and other ways to try to extract payment from the parents or others who pay them to bring the kids into this country. So, it's horrifying, some of the things that have happened to kids.

There are all kinds of abuses that occur because these are criminals who are doing a criminal business and they're making so much money on it that they want to continue.

That's why we should not have policies that encourage people to contract and pay criminal smuggling organizations who are brutal and violent. It's our policies that are encouraging people to put themselves in these situations where they can be exploited, abused, hurt, or taken advantage of.

Mr. GOHMERT. Thank you. It is staggering, and it's scary what's happening to those children. It seems that the cages that were constructed during the Obama Administration are not the worst things that are happening to those children as they're transported into sex trafficking and human trafficking, drug trafficking to make the money to pay back the cartels for bringing unaccompanied to this country.

Quickly want to point to another problem that has arisen, terrible injustice involving young people. One in particular, Bruno Joseph Cua. He was from Georgia, lived on a three-acre farm with his parents.

He was arrested February 5 by a bunch of FBI agents in Atlanta. He was indicted as a high schooler in his senior year, including assaulting a police officer, possessing a dangerous or deadly weapon, which was a little baton that wasn't used.

We hadn't even—there's not even evidence he assaulted anybody at this point. He was whisked away, held in jail. The Justice Department under—is before Judge Moss. They're arguing that this 18-year-old high schooler should be kept in jail.

He shouldn't be released, and I'm quoting, "I don't believe that home incarceration would work because he's an 18-year-old who's being home-schooled." That's Assistant U.S. Attorney Ryan Buchanan.

So, this case did not arise at him traveling or going different places. It actually is the case of many dozens of cases of people who committed a crime that many Democrats did of questioning the outcome of the federal election.

They're being punished. He's being held in jail. He's a high schooler. There's no evidence that he's some terrible criminal.

So, we need to address all of this injustice for young people. I appreciate, again, the opportunity. I yield back.

Ms. JACKSON LEE. The gentleman's time has expired. Now, my pleasure to yield five minutes to the gentlelady from Pennsylvania, Congresswoman Dean.

Ms. DEAN. I thank the chairwoman, and I thank you for assembling this important group of testifiers and experts. I thank you for your focus on our children and on the juvenile justice the pipeline.

Mr. Stevenson, it is good to be with you again. Thank you for your extraordinary leadership in so many areas of justice.

I wanted to pull a line from your testimony. You said, on page 1, this Congress should adopt new laws that increase the age at which children can be prosecuted as adults for any crime in the federal system. As you well know, the United States Supreme Court in *Miller v. Alabama* recognized that adolescents as a class lack the maturity, autonomy, and self-governing capacity of adults. Could you give us in a more granular way, based, obviously, on the research and what we understand about children's development into adulthood, what Congress should do? What policies and new laws should we adopt?

Mr. STEVENSON. Yes. Well, thank you for that question, Congresswoman Dean.

First, consistent with those Supreme Court decisions in *Graham* and *Miller*, Congress should pass a law banning life without parole for anyone in the federal system who is a child. Twenty-five states have done that. I think that it would send an important signal, not just to the states, but even internationally, that practice has been prohibited for some time now.

Second, I do believe we need to create an enforceable ban on placing children in adult prisons. This is an area where Congress was really controlling and trying to respond to prison violence at the State level. The Prison Rape Elimination Act was passed in 2003. It was about controlling a problem in the states. I think this Congress should fulfill that promise of eliminating that by having an enforceable ban. Create a private right of action, so that lawyers can challenge the placement of children in adult jails and prisons.

The third thing I believe the Congress should do is to raise the minimum age. The gentleman was talking about Wisconsin. I don't believe any child should be prosecuted as an adult. I don't think we risk public safety when we do not prosecute children as adults. I think we could do more for children and the larger society by making that commitment.

Ms. DEAN. Thank you very much.

I would like to follow up with you, also, on the other side of the juveniles' experience. Researchers found that juvenile experiences in correctional facilities can have a critical impact on whether adolescents successfully navigate the transition to adulthood, productive adulthood. What are some of the hallmarks of that experience that either determine they will be more successful or they will not be successful?

Mr. STEVENSON. Yeah, this is where the evidence about trauma is so important. When you tell children at 5 and 6, at 7 and 8, that if they make a mistake, they will be suspended, they will be failed, you actually aggregate their fear, their sense of being targeted and

menaced. That is why this kind of zero-tolerance policy that we have seen in the education space has been so disastrous. We now put children, 6- and 7-year-olds, in handcuffs, and children never forget that. We put them in police cars. We send them to jails. We treat them like criminals. That is what I believe we need to prohibit. There are states—you heard about that in Utah—that don't permit those kinds of practices. I think we need to see that in more states.

The ultimate thing, I do think we have to influence educational policy, Congresswoman. The Department of Education, when they evaluate schools, when they judge schools, when they grade schools, they don't look at suspension rates; they don't look at expulsion rates. Many schools have used suspension and expulsion as tactics to improve performance. That has been a recipe for increasing the criminalization and the traumatizing of young children that I just think no one should embrace. That is an area where education policy could intersect with juvenile policy. We could help a lot of children be healthy.

Ms. DEAN. Great. Thank you so much. Sorry, my time is so limited.

Ms. LEVICK, if I could go to you, you were instrumental in seeking justice in the Kids for Cash case that took place in my home State of Pennsylvania, where some 3,000 children were placed in prison in exchange for financial kickbacks. That judge now is behind bars himself.

What safeguards were established in Pennsylvania to ensure corruption, like the Kids for Cash case, does not happen again? What reforms should we be looking at here?

Ms. LEVICK. Well, I think one of the critical reforms, of course, was ensuring the children had a right to counsel. We had too many children who passed through the courtrooms in the Kids for Cash scandal that really had no access to lawyers. We found that, without lawyers, they were likely to be placed and more likely to be adjudicated. So, that is one critical reform that has been made.

We have also required that judges actually State the reasons for why they are placing children out of their homes, because we know that every placement outside the home places children at risk for greater harms and abuse within facilities.

I am not sure if I should continue.

Ms. DEAN. I thank you for that. I see my time has expired.

Ms. JACKSON LEE. You can finish your sentence.

Ms. DEAN. Oh, go right ahead.

Ms. JACKSON LEE. Finish your sentence.

Ms. LEVICK. I can continue?

Ms. JACKSON LEE. Finish your sentence.

Ms. LEVICK. Oh, I am sorry.

Yes, and I think that what we have seen is that, by really forcing I think exposure of what is happening behind the closed doors of the juvenile justice system, has made a significant change in really holding that system accountable.

Ms. JACKSON LEE. Thank you. Your time has expired.

I now want to recognize Mr. Fitzgerald for 5 minutes.

Mr. FITZGERALD. Thank you, Madam Chair.

My state, the State of Wisconsin, is currently going through a reform of juvenile justice, more based on as much changes to the physical construct of the entire state. There were some issues in a juvenile facility located in central Wisconsin, but the legislature I think is trying to wrap their arms around what those reforms and changes would be. Antiquated facilities are one of the issues that certainly needed to be addressed.

I wanted to go back some of the earlier discussion. I know Mr. Tiffany talked a little bit about it. It is kind of this transfer that has been happening throughout the nation. We talked about a pipeline of juvenile incarceration and issues related to that. There really is kind of this operation, this nationwide operation, where children are being exploited. I think many of us have certainly dealt with the issues or talked about the issues related to human smuggling and trafficking and the drug-related crimes there as well.

I wanted to ask Ms. Vaughan, along those lines, as we continue to see kind of that exploitation, and then, the end result of those children that are incarcerated, it all goes back to these cartels. We have actually had federal charges that have been levied against some of these individuals coming out of the Milwaukee districts as of late.

If we don't stop or hold back the tide of these crimes related to those issues, how do we address kind of the whole juvenile justice system? We cannot forecast or predict the amount of juveniles that are coming into the system right now, and I think that is just as important as anything we could do kind of on the back end, as these children are incarcerated.

Ms. VAUGHAN. That is right. We had started to see some lower numbers in terms of juvenile offenders, but this influx of minors, many of whom do end up becoming involved in gangs or crimes, either to pay off their smuggling debts or the smuggling debts of their parents that they paid to bring them here, or because they are vulnerable and exposed to gangs in the schools or in the neighborhoods, all of that is going to complicate and undermine efforts to improve outcomes for youth.

I have to add, one of the most important things to interrupt this so-called pipeline is to provide job opportunities for youth. Right now, we are seeing a very, very low employment participation among America's teenagers especially. Teenagers are one of the groups that are most affected by our country's failure to control illegal immigration. Illegal employment displaces Americans, especially young people, especially people who lack a high school education for whatever reason. It displaces them from job opportunities and depresses their wages. Access to employment is one of the things that could keep our youth and others who are vulnerable out of the justice system altogether because they are gainfully employed. That is another reason why we want to stem this flow of uncontrolled illegal immigration.

Mr. FITZGERALD. Thank you very much.

The one other comment I just wanted to make, because it came up a couple of times and I know there are different titles for them, but school safety officers. The comment was made that somehow that is an adverse or a negative force on schools. I have found that,

whenever you talk to a high school principal or a counselor, the relationships that are built and the understanding that is gained by these individual officers being within the schools certainly outweighs any negativity, you might say, that would be on the back end of this. I always thought that it was probably the best way for law enforcement, also, to establish kind of a different profile than what youth may experience if they end up in a situation with direct contact with an officer on the street. So, I just wanted to make that comment.

I yield back, Madam Chair.

Ms. JACKSON LEE. The gentleman yields back.

Now, I yield to Mary Gay Scanlon from Pennsylvania for 5 minutes.

Ms. SCANLON. Thank you, Chair Jackson Lee, for holding this important hearing.

Thank you to our witnesses for testifying here today. I want to particularly recognize my fellow Philadelphia lawyer, Marsha Levick, whose decades of work with the Juvenile Law Center has been so instrumental in ensuring that the phrase access to justice also applies to children.

Some of my colleagues have expressed concern about whether the Federal Government has an appropriate role to play with respect to juvenile justice. My view is less circumscribed, but I want to focus on a particular federal issue, and that is the Prison Litigation Reform Act, which governs the circumstances under which an incarcerated person can bring a civil rights suit in the federal courts. The PLRA applies not only to adult prisons, but also to the thousands of children confined in prisons, jails, and juvenile detention facilities.

My district is home to the now shuttered Glen Mills School, the oldest school for delinquent boys in the country, founded in 1826. For years, its bucolic campus masked serious daily violence inflicted upon the children placed there. An explosive 2019 report by the Philadelphia Inquirer revealed years of physical, sexual, and psychological abuse of the young residents, including broken bones, threats, and sustained physical assault at the hands of staff Members.

Although the stories from Glen Mills were heartbreaking, they are not unique. Physical and sexual violence, harmful restraints, and solitary confinement have been documented in juvenile facilities in almost every state. Unfortunately, states have not adequately protected children. Despite the recent example of the Glen Mills School in my district, this past March, children were removed from another facility, the Delaware County Juvenile Detention Center in Lima after horrifying reports of abuse.

The purpose of our juvenile justice system is supposed to be rehabilitative, not punitive. When juveniles in detention are subject to physical and psychological trauma, it causes disproportionate harm. From Roper to Graham, Miller, and beyond, the Supreme Court has long held that juveniles lack the maturity and mental acuity to be treated as adults in our justice system.

So, Ms. Levick, the testimony we have before us today speaks to how youth are at particular risk of harm in juvenile and criminal justice facilities due to their youth and developmental immaturity.

Can you talk about the Prison Litigation Reform Act, or PLRA, and how it creates obstacles to young people facing abuse to seek relief in the courts when the detention system fails to protect them?

Ms. LEVICK. Yes, and thank you for that question.

So, the same folly that I think the U.S. Supreme Court has recognized in treating children like adults for sentencing purposes is reflected in the inclusion of children in the Prison Litigation Reform Act as it was originally drafted. The assumption that children can jump through the administrative hoops that PLRA requires, can file grievances, can figure out how to file grievances—often youth who are in these facilities don't even have access to counsel. In many jurisdictions across the country, lawyers are simply not a part of that post-adjudication experience.

So, I think the leadership that you have shown in really asking Congress to change a provision that really makes no sense—it is not reflective of the difficulties that children face in these facilities. What it does, of course, is that it places children at great risk.

I have been involved in litigation, of course, in the Glen Mills litigation. I was involved in the litigation in Wisconsin. So, we know that kids face extraordinary forms of abuse and trauma in these facilities. If we don't give them the ability to challenge and to address and to fix those kinds of abuses, then we are doing more harm to our children even than by bringing them into the system.

So, I really think that the bill that you have introduced, it is designed to really spare children these extreme administrative hurdles to be able to file litigation. It is critically important to redress the harms that they suffer inside these facilities. I thank you for that.

Ms. SCANLON. Thank you, and thank you for mentioning the Justice for Juveniles Act. We did pass it unanimously on the House Floor last term, and I would invite Members of the Committee to join me again in supporting the bill.

I mean, just to sum up, would it be fair to say that juveniles are both more likely to be abused while in detention and less likely to be able to pursue relief?

Ms. LEVICK. I would say that is an excellent summing up of their dilemma.

Ms. SCANLON. Thank you. With that, I would yield back.

Ms. JACKSON LEE. The gentlelady yields back. Thank you for that insightful proposal.

I would now like to yield to the gentleman, Mr. Steube for 5 minutes.

Mr. STEUBE. Thank you, Madam Chair.

Ms. JACKSON LEE. Thank you.

Mr. STEUBE. Thank you.

We have heard testimony today about violent crimes committed by juveniles associated with MS-13 and other Central American gangs, including murder and rape. We have also seen violent juvenile crime right here in Washington, DC. This March, in Southwest DC, 13- and 15-years-old girls murdered a food delivery driver in an attempt to steal his car. He was just trying to do his job, and they killed him in broad daylight a little over a mile from where we sit right now.

Violence like this occurs all over the country. For instance, in 2014, in Tacoma, Washington, a 15-years old shot a man at close range with a rifle during a carjacking. According to a letter by the victim's family to the sentencing court, the victim lost use of his arm for a period and was left not fully able to work or care for his daughter. The victim is lucky to be alive after he was shot. The teenager convicted of these crimes would go on to be charged with a felony count of rioting in prison just two years ago. The convict I am referring to is Mr. Toleafoa, and he is here today testifying by invitation of the chair about how he needs more opportunities in prison.

Despite the horrific nature of these crimes, we continue to hear calls to not fully prosecute the criminals that are responsible for these crimes. It is all part of the defund the police agenda. For example, a prominent spokeswoman for the Black Lives Matter movement recently said that teenagers have been fighting, and I quote, "with knives for eons, and we don't need police to address these situations by showing up to the scene and using a weapon." So, I guess police are just supposed to let people stab each other. This is a dangerous ideology, and combined with the flow of criminals at the southern border, it is made even more dangerous.

Ms. Vaughan, I have a couple of questions. In your testimony, you describe MS-13 and the 18th Street Gang as, I quote, "extremely vicious and unusually degenerate." Can you provide some further examples of the crimes they commit and how juveniles are involved in those crimes?

Ms. VAUGHAN. Well, there are numerous examples of this. We have examined about 500 cases of MS-13 arrests nationwide in the last 15 years. There is sometimes unspeakable violence associated with these crimes, whether it is hacking off people's limbs or luring people to parks to dismember them and bury the bodies. Some of the victims have not been fellow gang Members, or sometimes they are youth who they thought might have been involved with a rival gang, or simply people who were killed because these kids are trying to prove their value to the gang and are expected to carry out random senseless violence to be accepted into the gang, and they are eager to do that. So, they will pick out random victims to do that. These gangs lure kids in a very predatory and frightening way that also makes it difficult for them to escape from the gangs.

My research of both State databases and other federal crimes has found that these transnational gangs, and MS-13 in particular, are especially prone to violence, that many of these Members are violent by the time they get here, and are less afraid of the consequences from law enforcement, which makes them bolder, less wary of committing violence against a police officer, for example, or a teacher or a kid who is not involved in the gang.

It is a problem that is exacerbated by our failure to control the entry of these individuals over our border. It is one that is making it hard for kids who are in the same schools to get meaningful education, to avoid entanglement with these gangs, and it is ruining the quality of life in some neighborhoods.

Mr. STEUBE. Well, and you just hit on the challenges that we are seeing at the border and how this is causing an increased amount of crime, especially with juveniles. Under Biden's border policies,

violent criminal gang Members under the age of 16 are not subject to removal. Can you explain the consequences of this and how MS-13 will exploit this?

Ms. VAUGHAN. Well, the gangs are well aware of the policies. They know more about our border policies than most Americans do. They know that a kid who arrives and claims to be under the age of 18 will likely be lightly screened. If we happen to have their fingerprints, they might be interrupted, and the Border Patrol is catching more gang Members than ever before at the border. Usually, they are sent to a residential facility with other kids where they also have the opportunity to recruit and eventually released to sponsors who are very lightly vetted, often not fingerprinted or submitted to rigorous background checks. They are free in the community to work for the gang, to work on other jobs and live here indefinitely, and often even receive permanent residency here.

Mr. STEUBE. Thank you for your testimony here today.

My time is expired. I yield back to the chair.

Ms. JACKSON LEE. Thank you, Mr. Steube, for your testimony, the gentleman from Florida. We appreciate your testimony. You were not here, and I seek a clarification again. I just want to clarify that this hearing is entitled, Juvenile Justice Pipeline and the Road Back to Integration. The gentleman from Florida was not here when Mr. Massie made a very eloquent point about a juvenile that killed two individuals in Wisconsin. He raised the point of that individual being tried as a juvenile, and I imagine he made the same point about that juvenile possibly not being incarcerated with adults.

Now, let me say that, when we invite witnesses here, we expect courtesies to be extended to the witnesses. We don't have any quarrel with witnesses, in essence, being questioned, but Mr. Toleafoa is a young man who has made a seismic contribution to this nation. I will not allow him to be disparaged. His advocacy has saved lives because he has led the passage of numerous legislative reforms in Washington State, and he has been the leader of disallowing minors who are convicted to be in an adult court, to stay in a juvenile correction system until they turn 25. In essence, those minors convicted in an adult court are able to stay in a juvenile correction system until they turn 25. He is a credible contributor to this process, and I wish that that would be noted by our Members in a respectful manner.

Mr. BIGGS. Madam Chair, I have a parliamentary inquiry.

Ms. JACKSON LEE. The gentleman can State your parliamentary inquiry.

Mr. BIGGS. My inquiry is this: When a member of the Committee makes a comment or makes a statement that is not violative of our rules of decorum, is the Chair entitled to rebut the statement of that member of the Committee? How long will this go on?

Ms. JACKSON LEE. I thank the gentleman for his question. As Chair, I have discretion to run the Committee hearing as I believe is appropriate. In this instance, the challenges to a witness in terms of that witness' credibility, that was not in the form of a question to the witness. I wanted to make sure the record was clear.

I will move now to the next speaker. I thank you, Mr. Biggs.

Mr. STEUBE. Well, there is nothing that I did to challenge—

Ms. JACKSON LEE. Let me yield to—

Mr. STEUBE. I presented the facts to this Committee and to the American people.

Ms. JACKSON LEE. Let me yield to the gentlewoman from Missouri, Ms. Bush, for 5 minutes.

Ms. BUSH. St. Louis and I thank you, Madam Chair, for convening this hearing.

In my home State of Missouri, Black youth account for 15 percent of our youth population; yet, receive 27 percent of referrals to juvenile court. In the St. Louis region, Black girls are 11 times and Black boys are 18 times more likely than their White peers to be suspended from school. These zero-tolerance policies regularly do not take into account the social conditions in which children may live, unsafe and unstable housing; lead exposure, which is no fault of their own; cyclical violence and trauma in their community, no fault of their own. Instead, they force our children out of school for acting out and fueling the school-to-prison pipeline. It is this fear of Black and Brown youth, long labeled super-predators, that has made jailing and sentencing them to life without parole too easy and too common.

The stereotype that Black and Brown boys and girls are dangerous or threatening has normalized systems of trauma. The cradle-to-prison pipeline, foster care, youth detention, and being tried and sentenced as adults—we treat trauma with more trauma. We treat Black and Brown kids who can't vote yet, join the military, rent a car, or even buy a lottery ticket, like adults in our criminal legal system.

We deprive them of their joy and their youth—children who deserve to live rich and abundant lives; children who should be allowed to make mistakes, to learn from their mistakes, because we did; to grow up and live productive and loving lives, children like all other children. These children are young. These are children. They are young people who need love and support, love and support that our communities should give and our government.

Mr. Toleafoa, thank you for being here with us today and for sharing your story and your incredible work with all of us. Thank you for that, as we strive to build a more just America.

Can you please tell us about the trauma and lasting harm that incarceration can have on young people?

Mr. TOLEAFOA. Yeah. So, speaking of trauma and harm, a couple of weeks ago, I had a call from one of my friends who was sent to prison, and we were on a three-way call. I was asking him, how are you doing? I asked, what was it like when you first got there?

He said, well, the first thing that he did was go and take a shower. Once he walked into that shower, he seen a dead body lying on the floor. Mind you, he is 18-years old, first going into prison.

Thinking about that was his first experience when going into that shower; he just seen a dead body. Thinking about how young he was and how he experienced that, I personally don't think that he is ever going to forget something like that. He is going to carry that onto when he grows up to take on adult responsibilities. So, when we think about just trauma and harm that being in an insti-

tution can cause, I feel like that just experience right then and there kind of expresses the totality of it.

Ms. BUSH. Absolutely. Thank you for sharing that. Thank you for sharing that. That is the truth of what is happening to our youth. That is why trying to reform care also, that care and support needs to be prioritized in this space. Thank you.

Mr. Peterson, what holistic alternatives to incarceration exist for young people?

Mr. PETERSON. I am sorry, can you repeat the question?

Ms. BUSH. Sure. What holistic alternatives to incarceration exist for young people?

Mr. PETERSON. Sorry, the list of questions, you broke up just a little bit.

Ms. BUSH. Holistic alternatives to incarceration.

Mr. PETERSON. Oh, holistic alternatives? Thank you.

Someone said earlier how it is so important that we can't view youth out of context. So, we can't have a youth enter the system and, all of a sudden, not recognize the community or family that they are from.

So, this could include things that are very informal. So, for example, during COVID, when we looked at our youth and our families, we recognized they couldn't have visits the way they used to have. So, we had to switch to like a virtual platform. Well, there is a big digital divide in a lot of communities. So, we had to think of ways—maybe the family needs something as simple as a smartphone, things like that, that are these kinds of holistic approaches. Or maybe they do need something more intentional and more focused, like some type of evidence-based treatment with the youth and the family.

For us, also, holistic, when we are talking about holistic, we have to look at educational opportunities.

Ms. BUSH. I only have a few more seconds. If you could—yeah, I am sorry.

Mr. PETERSON. That is okay.

Ms. BUSH. I am sorry, I have one more question that I need to get in but, thank you.

Mr. Stevenson, your work has always been rooted in a deep commitment to justice and a belief in redemption. Can you tell us why it is important to extend mercy and compassion to children and young people—mercy?

Mr. STEVENSON. Thank you, Congressman Bush.

I think mercy is at the heart of a just system. We have been governed by this idea that we can put crimes in jails and prisons. If you look at some of these sentences and you look at some of these policies, it is as if we think we can punish the crime. The truth is we can't put a crime in prison; we put people in prison. We put children in prison. I don't believe that people are crimes. I don't believe that children are crimes. The difference between a crime and a child is what dictates that we think more compassionately, that we embrace mercy, when we think about these policies.

Ms. BUSH. Thank you.

Thank you, and I yield back.

Mr. STEUBE. Madam Chair, I ask unanimous consent to—

Ms. JACKSON LEE. I thank the gentlelady.

The gentleman is not recognized. The gentleman has an inquiry or?

Mr. STEUBE. I am asking for unanimous consent.

Ms. JACKSON LEE. All right. The gentleman is recognized for unanimous consent.

Mr. STEUBE. Thank you, Madam Chair.

I ask for unanimous consent to enter into the record the unpublished opinion filed July 9, 2020, in the Office of the Clerk of the Court, Washington State Court of Appeals, Division III, *State of Washington v. Aaron Ata Toleafoa*, which states in facts, in 2014, Aaron Toleafoa engaged in a crime spree that ended with a near fatal shooting. He was 15-years old at the time. Mr. Toleafoa was charged with eight felonies and two misdemeanors. The Juvenile Court declined jurisdiction, and Mr. Toleafoa eventually pleaded guilty to a reduced set of charges, including attempted second degree murder.

[Chair uses gavel.]

Ms. JACKSON LEE. Without objection. Again, I have never heard of Members trying to disparage witnesses in the way that this is. Without objection, your document is submitted into the record. It doesn't have any reflection on the gentleman who is here before us today. We thank him for his presence.

[The information follows:]



**MR. STEUBE FOR THE RECORD**

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FILED  
JULY 9, 2020  
In the Office of the Clerk of Court  
WA State Court of Appeals Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

STATE OF WASHINGTON,	)	No. 37349-5-III
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
AARON ATA TOLEAFOA,	)	
	)	
Appellant.	)	

PENNELL, C.J. — Aaron Ata Toleafoa appeals his sentence, arguing it was unconstitutionally imposed without proper recognition of his mitigated culpability. We disagree and affirm.

FACTS

In 2014, Aaron Toleafoa engaged in a crime spree that ended with a near-fatal shooting. He was 15 years old at the time. Mr. Toleafoa was charged with eight felonies and two misdemeanors. The juvenile court declined jurisdiction and Mr. Toleafoa

No. 37349-5-III  
*State v. Toleafoa*

eventually pleaded guilty to a reduced set of charges, including attempted second degree murder.

Mr. Toleafoa was first sentenced in 2016. He presented a mitigation package and requested an exceptional sentence downward based on youth. The trial court denied that request and imposed a standard range sentence totaling 260 months. The court also imposed restitution. Mr. Toleafoa appealed his term of incarceration and his case was remanded for resentencing pursuant to the intervening decision of *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017). See *State v. Toleafoa*, No. 49152-4-II (Wash. Ct. App. Oct. 24, 2017) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2049152-4-II%20Unpublished%20Opinion.pdf>.

Resentencing occurred in 2018. In addition to reasserting his arguments based on youth, Mr. Toleafoa presented evidence of his substantial rehabilitation during his time in juvenile custody. Mr. Toleafoa asked the court to impose a sentence that would allow him to be released by age 21 or 25, so that he could avoid being transferred to an adult prison facility.<sup>1</sup> Mr. Toleafoa's attorney noted that restitution was "mandatory." Report of Proceedings (Aug. 10, 2018) at 22. He did not request reconsideration of restitution.

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<sup>1</sup> Placement at a juvenile rehabilitation facility cannot extend beyond a defendant's twenty-first or twenty-fifth birthday, depending on circumstances. RCW 13.40.300.

The trial court acknowledged Mr. Toleafoa's youth and the progress he had made toward rehabilitation. It determined a mitigated sentence was appropriate. The court imposed a total sentence of 192 months, along with the restitution amounts that had been imposed in 2016.<sup>2</sup> The sentence imposed by the court was 68 months lower than the original term of incarceration, but it would still result in Mr. Toleafoa being in custody past the age of 25.

Mr. Toleafoa brings this timely appeal from that judgment and sentence. His case was administratively transferred from Division Two to Division Three of this court and considered without oral argument.

#### ANALYSIS

Mr. Toleafoa challenges the constitutionality of the trial court's sentencing procedure. This is the type of issue that can be raised for the first time on appeal. *State v. Osman*, 157 Wn.2d 474, 481-82, 139 P.3d 334 (2006); RAP 2.5(a). Nevertheless, the substance of Mr. Toleafoa's claims fail on the merits.

Because he was under 18 years of age at the time of his offense and determined to have diminished culpability due to youth, Mr. Toleafoa claims he should have been sentenced according to Washington's standards for juvenile court. Mr. Toleafoa

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<sup>2</sup> The court waived discretionary legal financial obligations.

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highlights precedent holding that life without parole sentences designed for adults are constitutionally excessive for a minor defendant whose “crimes reflect transient immaturity.” *State v. Ramos*, 187 Wn.2d 420, 440, 387 P.3d 650 (2017) (quoting *Montgomery v. Louisiana*, \_\_\_ U.S.\_\_\_, 136 S. Ct. 718, 735, 193 L. Ed. 2d 599 (2016)).<sup>3</sup> From that premise, Mr. Toleafoa extrapolates that *any* adult sentence is presumptively inappropriate for a minor defendant with mitigated culpability. According to Mr. Toleafoa, a sentencing court that finds a juvenile defendant’s culpability was mitigated by youth must presumptively resort to sentencing options under the Juvenile Justice Act of 1977 (JJA) chapter 13.40 RCW, not the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, which was designed for adults.

Mr. Toleafoa’s attempt to constitutionally transpose juvenile court processes into adult court runs headlong into long-standing precedent. There is no constitutional right to adjudication under juvenile court processes. *In re Pers. Restraint of Boot*, 130 Wn.2d 553, 571, 925 P.2d 964 (1996). This is true regardless of a juvenile defendant’s reduced

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<sup>3</sup> In *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018), our Supreme Court held that article I, section 14, of the Washington Constitution is more protective than the United States Constitution and prohibits imposing a sentence of life without parole on a minor defendant, regardless of a finding of reduced culpability. Nevertheless, Mr. Toleafoa does not appear to argue that all minor defendants, regardless of mitigating circumstances, should be sentenced under the Juvenile Justice Act of 1977, chapter 13.40 RCW.

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culpability. *State v. Watkins*, 191 Wn.2d 530, 538, 423 P.3d 830 (2018). The right to proceed under juvenile court provisions is purely a creature of statute. *See id.* at 536, 538. Once the juvenile jurisdiction is lawfully declined in accordance with applicable procedures, no further rights exist under the JJA. *Id.* at 538.

Recent decisions setting constitutional guideposts for sentencing juvenile offenders do not compel a different result. In *Houston-Sconiers*, the Washington Supreme Court recognized the Eighth Amendment to the United States Constitution requires judges have maximum flexibility when sentencing juveniles in adult court. 188 Wn.2d at 21. But that flexibility is in reference to the SRA, not the JJA. *See id.* When sentencing a juvenile defendant in adult court, a sentencing court has “absolute discretion to depart” below the “otherwise applicable SRA ranges” based on the defendant’s reduced culpability. *Id.* at 9 (emphasis added).

Mr. Toleafoa was declined into adult court. He has not challenged this decision. Accordingly, the JJA no longer governed Mr. Toleafoa’s case and the court was not required to consult it any further.

The only statutory provision governing Mr. Toleafoa’s sentencing hearing was the SRA. Once the court found Mr. Toleafoa’s offense was mitigated by transient immaturity, *Houston-Sconiers* empowered the court to depart downward from the sentencing range

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contemplated by the SRA. No further statutory restrictions applied. Consistent with *Houston-Sconiers*, the court's hands were "not tied" by any state statutes, be they found in the SRA or the JJA. *Id.* at 9. Once freed from statutory restrictions, the court had multiple options. It could have followed Mr. Toleafoa's suggestion for a sentence short enough to avoid transfer to an adult correctional facility; but it was also permitted to settle on a sentence between the extremes of what would have otherwise applied in juvenile or adult court. The sentencing court appropriately exercised its discretion. Review on appeal is therefore unwarranted.

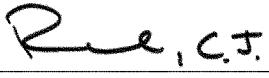
In addition to challenging his term of incarceration, Mr. Toleafoa argues for the first time on appeal that the trial court's restitution order violated his constitutional right to be free from excessive punishment. Mr. Toleafoa has not established a basis for relief. Imposition of restitution turns on the victim's losses, not a defendant's culpability. RCW 9.94A.753(3). The juvenile sentencing cases cited by Mr. Toleafoa have no bearing on the trial court's restitution order. Nor, as set forth above, was the trial court required to consult JJA provisions regarding restitution to insurance companies. *See* RCW 13.40.190(1)(g).

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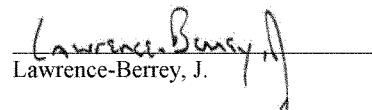
CONCLUSION

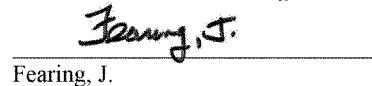
The judgment and sentence is affirmed.<sup>4</sup>

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
\_\_\_\_\_  
Pennell, C.J.

WE CONCUR:

  
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Lawrence-Berrey, J.

  
\_\_\_\_\_  
Fearing, J.

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<sup>4</sup> Mr. Toleafoa has filed a statement of additional grounds for review that fails to detail any assignments of error. As such, it will not be reviewed. *See RAP 10.10(c).*

Ms. JACKSON LEE. With that, allow me to yield to Ms. Spartz. Ms. Spartz, are you present?

[No response.]

All right. Then, we will be able to yield, I believe, to Mr. Biggs, the Ranking Member of the Subcommittee. Thank you very much.

Mr. BIGGS. Thank you, Madam Chair. I appreciate that.

I know that we have been reminded repeatedly from the majority that this is about juvenile incarceration and how we treat juveniles.

I was looking at Arizona's—and we have been focusing on the inhumanity of the treatment of juveniles in the Biden border crisis, but here is the thing—I was looking at the Arizona juvenile information, and there is a relationship to those who are illegally in the country in the Arizona juvenile system. We see the discharge of some to ICE, *et cetera*. It does impact virtually every community. It impacts Utah, Arizona. It impacts New Mexico, Texas, and California for certain. To deny that, and that it doesn't have some role in the pipeline that we have been discussing today, just, frankly, boggles my mind.

You would probably be surprised how much of what I have heard that I agree with, because there is a substantial amount of that. The reality is, however, this is a state-centric issue. Not one of our witnesses has talked about the very few individuals who are in the federal juvenile system. I was surprised by that, and yet, not surprised.

I have been reminded repeatedly about the humanitarian response by the Biden-Harris Administration. I have walked recently in detention facilities of unaccompanied minors and putative family units that there isn't anybody in this room that could say that was humane or humanitarian. I have talked to Border Patrol agents and I have talked with individuals who have come across our border illegally. The treatment they receive as juveniles is in no way humanitarian.

In the district that I live in, akin to, next to, contiguous to the Tucson sector, which has the most getaways by far, more than twice the amount of any other sector on the border, those are mostly 14–25-year-old young males dressed in camouflage, wearing carpet boots, and carrying methamphetamine, fentanyl, and bringing it forward. The cartels are exploiting our system. That is why we have raised this over and over today. To ignore that has an impact on how we deal with citizen juveniles is to ignore reality.

Ms. Vaughan, how does the TVPRA loophole incentivize non-Mexican parents to send their parents to the United States?

Ms. VAUGHAN. The TVPRA incentivizes sending unaccompanied minors here because it says that any arriving minor from a country other than Mexico and Canada is going to be taken from—instead of being removed swiftly, as citizens of contiguous countries are, they are taken from Border Patrol custody and put with the Office of Refugee Resettlement into a network of shelters, and that they should be released to a sponsor; that the mission of ORR is to find a placement for these minors, either with a family member or a friend or some other unrelated sponsor, often in the foster care system. So, what happens is that the U.S. government essentially completes the smuggling Act by moving these kids who get caught

crossing illegally into a placement in the community, essentially, to stay.

Mr. BIGGS. So, Ms. Vaughan, does the Federal Government do anything to track or follow these children, as they are placed sometimes with relatives, sometimes not, sometimes with putative relatives, to make sure that those children are safe, okay? Anything else?

Ms. VAUGHAN. After release, there is almost no monitoring that occurs by the government on these placements and what happens to these kids. The sponsors can refuse contact with the government to give an update on the child's welfare. Essentially, the government loses track of them. The kids can move to other households. Many of them don't show up for their immigration proceedings, and we definitely lose track of them.

Mr. BIGGS. Thank you. My time is up. Thank you, Madam Chair.

Ms. JACKSON LEE. The gentleman's time is up. The gentleman's time has expired.

I now recognize the gentleman from Rhode Island. The gentleman is Congressman Cicilline, for 5 minutes.

Mr. CICILLINE. I want to thank you, Chair, for holding this hearing today.

We cannot effectively approach desperately needed criminal justice reform in this country unless we address how the current system is affecting our youth. I feel particularly connected to today's hearing since my first job as an attorney was a public defender right here in the District of Columbia in the juvenile division. It was my job to defend young people caught up in the system who very often had been failed by the system. It was my experience that very often the effort was really made to just sort of shove these kids away, so they wouldn't have to deal with them, rather than really rehabilitate them. It was, actually, what caused me ultimately to enter politics, because I thought we have got to figure out a better way to take care of our kids.

Sadly, as I listened to some of the discussion today, you wouldn't think it is our responsibility. I think we have no greater responsibility than the care and well-being of our children in this country.

So, I want to, first, say to Brian Stevenson and Marsha Levick, thank you for your inspiring and heroic work on behalf of America's children. Words cannot describe how grateful I am for all that you have done.

I know there has been a lot of discussion about costs and fees and extreme sentences and excessive punishments and conditions of confinement. All of that is convincing to me. I agree with every single thing that has been said.

What I want to focus on instead is, how do we prevent young people and children from getting into the system in the first place? Because when we are dealing with costs and fees and extreme conditions of confinement, we have already failed them. They are already in the system. So, all that is fine and we have got to fix it, but what I would like to focus on is, what kinds of models are there that actually identify some of the trauma that you have described, Mr. Stevenson, or factors that would indicate the level of trauma that kids are experiencing today is just unbelievable? The fact that

we don't have more children in the juvenile justice system is kind of remarkable.

So, are there any states that have a model that we should look at that actually intervenes early before kids get into either the criminal justice system or the juvenile justice system that can provide support services at a moment to prevent their entry into a system which is going to gobble them up and very often not do much good for them? So, Mr. Stevenson first, and then Ms. Levick.

Mr. STEVENSON. Yeah, I think that is a really important question. I began my comments about the trauma crisis, because I agree with you that we do better work at interacting with young kids, with dealing with trauma, at the very early stages. I actually think we need trauma-informed care at Pre-K and first grade, and we can do it. There are great models.

Bruce Perry at Northwestern has done some exciting work improving outcomes for children dealing with trauma. There are a host of programs. Purpose Built Communities that was organized in Atlanta, and spread around the country, what they do is they focus on care and treatment to try to help kids feel safe, and then they provide environments that help them deal with that. Even when they can't isolate these children from the trauma they face at home, they see remarkably better outcomes for those kids.

So, we do have models that are out there that are very effective at disrupting the consequences of unaddressed trauma. If we embrace those, we will see the kinds of consequences that you are talking about.

Mr. CICILLINE. Thank you.

Ms. LEVICK. Yes. Of course, I echo Mr. Stevenson's sentiments. I would also add, there are innovative programs in Georgia; there are innovative programs in Philadelphia that are really pulling kids back into their communities rather than pushing them into the justice system for school-related conduct.

I think that, as we think about, unquestionably, the importance of investing in communities and investing in families and in young people, one of the other ways that I think we are addressing this issue through this hearing today, it is also about shrinking the youth justice system. So, when we talk about raising the age of criminal responsibility, raising the age of juvenile court jurisdiction, I think the role that the Federal Government can play in incentivizing the closing of youth prisons, all of that can shrink the system and I think get at some of the very harms that you have identified.

Mr. CICILLINE. Yeah, thank you so much.

Mr. Toleafoa, I hope I pronounced that correctly. I want to thank you for being here and for the courage you have shown and the work that you have done, and to come before this committee. When I was listening to you, it was like listening to a professor. You had so much wisdom. So, thank you for being here.

I just wonder if you might comment on whether or not the kinds of interventions that I am speaking about might have made a difference in your life and the conditions that you find yourself in. Finally, how important it is for the voices of young people to be heard throughout this process. We don't listen enough. We speak a lot to young people and I think don't listen enough to them.

Mr. TOLEAFOA. Yeah, I think really any intervention is great for youth. Then, also, for youth here, I think really what I just echo every time, I get the opportunity to speak in front of people is just being able to do what a lot of people out here in Washington are doing, which is coming into the system and finding ways to interact with the youth, get to know them. Give them a space, a headspace, to really let them mentally escape the confinement that they are in. So, thinking about just ways to let them be themselves, and things like that I feel are really key when we speak about these.

Mr. CICILLINE. Thank you so much.

My time has expired. I yield back, Madam Chair.

Ms. JACKSON LEE. The gentleman yields back. Thank you for your inquiry.

I am now delighted to yield to the gentlelady from Texas, Congresswoman Escobar, for 5 minutes.

Ms. ESCOBAR. Madam Chair, thank you so much for this important hearing today.

I want to thank the colleagues and witnesses who have chosen to engage on this issue in a serious and thoughtful manner.

I also, Madam Chair, want to register my objection to the continued selection by the minority party of witnesses who belong to an anti-immigrant hate group whose sole purpose it is to spread misinformation and poisonous xenophobia. I represent a district that, unfortunately, knows only too well that poisonous xenophobia has deadly consequences. This kind of behavior in our Committee hearings is disrespectful of our serious panelists. It is disrespectful of other Members and disrespectful of the Americans watching our hearings remotely, because they are looking to us to lead on the topics that we have announced will be the focus of our hearings.

I am going to focus on our hearing, which is the topic is children in our country and the juvenile justice system. I come from local government. I served in local government for almost a dozen years. In county government, we did some really remarkable things when it came to juvenile justice. I am very proud of the emphasis that we placed on rehabilitation and on ensuring that we offered what we called wrap-around services with the young people in our custody.

Our panelists who have given us so much wisdom, I want to thank you all so much for what you have shared with us.

Aaron, I want to turn to you because I would love for viewers and colleagues to listen to your thoughts on how we can best wrap our arms around young people from the time of birth on forward. Some of my colleagues have stated that the Federal Government doesn't have a role in juvenile justice. We have a role in creating a country that offers access to health care, mental health care, education, housing, quality child care, and so many other things. Aaron, can you share with us and with those folks watching this hearing, where in your life do you think we could have, as a community, as a society, done better to help you have more opportunity or a better chance, a different path, so to speak?

Mr. TOLEAFOA. So, just reflecting on back when I was out, I think I started going, so to speak, downhill when I was in school and I wasn't doing so good. I think, right then and there, I could

have been identified as at risk, and someone could have come and helped me and said, what's going on?

Just the school system, how it was, I wasn't really able to just sit there. I am more energetic, and I like to be hands-on and do things. I think a lot of guys that I'm here with, they would say that their favorite class in school was PE. You're able to actually do what you're learning. So, just thinking about the different styles of learning.

Also, one thing that is funny, when we talk about learning, some people don't know how to learn, or which way of learning is best for them. So, teaching someone how to learn, which sounds funny, but it's a thing to teach young people what they are best at, how to learn as effective as possible.

So, this prevention period really in many ways I feel like I could have been helped. Thinking about being where I am from, how I was raised and brought up, and seeing the things that I have seen, and really thinking like this is what it is for me. So, I am going to repeat what my cousins and older siblings were doing. So, thinking about giving youth a different environment or a different person to look up to, and seeing different outlets of their situation.

Ms. ESCOBAR. Thank you, Aaron. I really appreciate you sharing that with all of us.

Mr. Stevenson, I am running out of time, but I really do appreciate—I wanted to ask you about what you mentioned with regard to bias. What we continue to see in our country, unfortunately, is a poisoning of the public against certain groups and certain individuals. We are seeing that in this hearing with a desire to create an image that immigrants are criminals, associated with criminals, this desire to link certain groups in the most negative way, but we will get into that another time.

I thank all of you so much for sharing your wisdom, your brilliance, and your compassion.

I yield back.

Ms. JACKSON LEE. The gentlelady yields back.

I have some clarifying questions, but I am going to yield to the Ranking Member for his time, and I will be very brief on two or three witnesses for the record to clarify.

Thank you.

Mr. Biggs, you are recognized.

Mr. BIGGS. Thank you, Madam Chair. I appreciate that, and I appreciate the opportunity because what I just heard from a member of our Committee accusing the minority's witness as being racist and xenophobic, that is such a canard in today's world. If you oppose illegal immigration, somehow that makes you a racist or a xenophobe. That is outrageous.

This country is very welcoming. There isn't anybody I know that doesn't support at least some form of legal migration. What we have seen last year even during COVID, 1.7 million people legally were brought into this country; the year before, 2.2 million. That is the way this works.

I appreciate the Chair because what she is trying to get at is to show deference and respect to the witnesses who appear here, who come, make efforts to come, and put themselves out. It cannot be easy to sit in front of so many Members of Congress, who we all

have our egos; we have our political ambitions or political motivations that drive us. It can't be easy. It is not easy for anybody here who has come and testified today. I am very appreciative for everybody. I am trying to find what I agree with out of everyone, but, this kind of denigration right after our own Chair has, essentially, I won't say reprimanded, but made comment about one of my own Members, to have the very next member of this Committee make those outrageous and inflammatory statements about our witness, I think is ridiculous and absurd, and it is unfortunate.

The reality is many of us on the minority side, we looked at this as what I have characterized before, is this notion that it is a State issue. Most of what this is having is a State issue. We have seen Utah has done great. I could go through reforms Arizona has made. I could go through the Arizona data. I have pulled it up and looked at it. I mean, we could talk about that, but that really belongs to the states.

Trying to find the unique things that belong within our jurisdiction, that is what I would be more willing to do. At the same time, what is in our jurisdiction, clearly, this particular committee, sub-committee, as well as our overall committee, is what is happening on the border.

I just got back from the border again last week. I cannot tell you how many times I have been on the border this year. I will be back on the border next week. I will be back down on the border the following week. It is a real issue, and it deals with juvenile criminality and the system that we have dealing with juvenile crime, whether it is good or bad. It, unfortunately, flows right into it. That is why I mentioned that, if you were to look at Arizona data, you are going to see at least a very small number of official discharges to ICE, but there will be, also, not broken out is demographic groups that come from people who are illegally in this country that have somehow found themselves in our system in Arizona.

These things are important. To ignore them when—and I cannot stress this enough. In April, 178,000 encounters. That means apprehensions. Known getaways, about 40,000. Unknown getaways estimated to be an additional 100,000. If you have 300,000 people coming into your country every month, like we have had for the last three months, and which are projected for the next six months, that is virtually going to impact every system that you have in your society, including your juvenile system.

That is why we raised it today. I am unapologetic for raising it today. I appreciate the witnesses who have testified. You have given me seeds for thought and consideration, and I appreciate that.

I thank you, Madam Chair, for letting me have this few minutes to clarify.

Ms. JACKSON LEE. Mr. Ranking Member, I hope that we will come away from this hearing where all of us will say that we are committed to helping children. You indicated such.

I want to take this moment and I am going to pose some very quick, clarifying questions within my timeframe. So, if the witnesses can listen, so that we will conclude the hearing, but I do think it is important, again, to State that gangs and immigrants are not synonymous. ICE's own data belies that prior Administra-

tion's attempt to criminalize immigrants. Historical data on ICE gang enforcement operations show that 60 to 80 percent of alleged gang Members are U.S. citizens. So, claiming that unaccompanied minors or others contribute to the gang problem, I think that we can find ways to resolve this in a different manner.

We understand the crisis, and some of us have the perspective that the Biden Administration is working on it in a humanitarian way. I want us to focus on where we are today.

I thank the Ranking Member and his Members for being here.

I want to pose this to Mr. Stevenson and Ms. Levick, very, very keenly focused on Miller and what we have done with this Jones decision in terms of juveniles' life without parole. What kind of inhumane impact does this have on a child when they have this kind of sentencing? If you might, in the juvenile system that we have today, not talking about states that have done well, if we don't correct it, how many of our children will we lose?

Mr. Stevenson first.

Ms. LEVICK. I have a quick question for you, Mr. Peterson, and a quick one for you, Aaron. I hope that I will be able to get it within my time.

Mr. Stevenson first.

Mr. STEVENSON. Yes, I don't think there is any question that life without parole for a child is devastating. When we sentence someone to life without parole, we don't actually allow them to have programming. We don't allow them to get access to education. We don't allow them to participate in the rehabilitation programs that exist. That is one of the reasons that Justice Kennedy was so oppositional to this kind of sentence for a child.

We do have lots of states that have continued to use this sentence. We have hundreds of people who have been released as a result of Miller, and 90 percent of them have done extremely well. That is the evidence that, I think, supports what the Court did in Miller and why what the Court indicated in Jones is something that should be pushed away, as we continue to eliminate and abolish life without parole for all children in this country.

Ms. JACKSON LEE. Thank you, Mr. Stevenson.

Ms. Levick, very quickly.

Ms. LEVICK. Yes. I think the good news is that the vast majority of men and women who have been resentenced since Miller and Montgomery have not been resentenced to life without parole. Hundreds of them have come home and are doing incredibly well, and many of them are contributing to their communities.

I think that what Jones does is it certainly makes it easier to impose a life without parole sentence going forward. That is a sentence to die in prison, and I think that the solution to that is to abolish life without parole.

Ms. JACKSON LEE. I thank you.

Mr. Peterson, your State has been stupendous, but we are the only country that has not ratified the Convention on the Rights of Children. Can you talk about the idea of human rights for children and the idea that we have not, in essence, ratified it, from your context, the importance of human rights for children?

Mr. PETERSON. Yeah, I think it is critically important. At the end of the day, these are children. They are kids. When you spend time

with them—and I heard Congressman Owens reference his time in our facilities, and he has seen Aaron here today—that is what you recognize. You come to hear their voice. You recognize and identify that need for the acknowledgment of human rights for all children.

Ms. JACKSON LEE. Aaron, you are going to be, besides my voice—excuse me—Mr. Toleafoa, our last voice because you are our important voice. Help us understand. If you want to share a little bit about what you did, but more importantly, how you are different today than you were at the time that generated the actions, the acts, that caused you to be in prison or in jail, in your facility today. How are you different today, Mr. Toleafoa? Tell us from your heart.

Mr. TOLEAFOA. So, yeah, back when my crime was committed, I was reckless. I was doing stupid things. In the end, affecting my victims how I did, it was horrible. I think, for me, so I was sentenced to 21 years, but, for me, thinking about my victims, it wasn't that, okay, I was sentenced to 21 years and that is it. For me, it was more of, okay, I can easily go through my whole entire 21 years and just come out and be the same person that I was when I walked through those doors.

For me, it was, how can I become better, so that I can effect change upon others? So, when they get out, victims like mine, people aren't going to be experiencing what they experienced. So, it was just a matter of really reflecting back on my actions and thinking I didn't want that to happen to anyone else.

So, how I could repay my victims, how I could attempt to restore that, is by bettering myself, not becoming worse while you are inside the system, but becoming better. So, when I return to the community, I can help people who were once in my shoes not repeat those actions. So, it is just that a passion of mine.

So, when I see youth come in here, I am just like, you know what? You have got two choices. You can either return back to the streets and be on your way right back in or you can better yourself. So, that was just the journey that I had to really go forward on and just really think about my past actions and what do I want for myself, and how can I better myself for my victims. That way, I am not just serving this time just to get out and return right back to the institutions.

Ms. JACKSON LEE. Mr. Toleafoa, your last voice, your strong voice, indicates why we came here today on the Juvenile Justice Pipeline and the Road Back to Integration. It also emphasizes why we, as Americans, why this Nation has to be able to save our youth.

I am grateful to the witnesses who have come and given us that pathway.

Mr. Stevenson, continue your fight for equal justice, and we will work alongside of you.

Ms. Levick, continue your journey, and we will stand alongside of you. I believe we can do it in a bipartisan manner.

Mr. Peterson, you have a unique and effective approach in Utah. I believe we can follow that on the federal level.

Mr. Toleafoa, again, most eloquent and powerful, I wanted you to have the last word.

Ms. Vaughan, we welcome all opinions in this Committee.

At this time, with no further business, the Committee now stands adjourned.

[Whereupon, at 1:06 p.m., the Subcommittee was adjourned.]



## **APPENDIX**

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I'm speaking to you from the state of Washington where I've been incarcerated since the age of 15. Going through the system I've learned that this system was created for us but the thought of us being involved in the creation itself had not occurred. In other words, the system wasn't built by us and therefore it makes sense that the system doesn't work for us. I say us, directed at people of color and people from poor communities who are disproportionately impacted by the system.

Many people who I've worked with and as well as myself have tried to stress the importance of bringing individuals who were and are currently incarcerated to the table when making decisions that may impact them or decisions that would make sense to have their input. Without authenticity, real change doesn't exist. So including those with lived experience alongside community outreach programs and organizations, is the most effective way to ensure our youth are properly provided the tools and are equipped with the skills to succeed wherever they are. For example, here in Washington State for Asian and Pacific Islander youth like myself, we have an organization from my community called Tuff Love that come into the facility to meet with the youth. In our group meetings that we have we learn about our culture and where we come from. We learn the values and morals and ways of our culture that we've been so out of touch with. We learn from someone who comes from a similar background as us and when you find more about who you are, you get a sense that you belong, and how many times do youth try to belong but find themselves looking in the wrong places?

Since the beginning of COVID, those inside of the system have experienced isolation even more. Knowing the impact isolation has on brain development, you can assume right that incarcerated youth are experiencing a heightened amount of stress and anxiety because of the many outlets and ways of coping were closed off, due to the pandemic. When we speak about rehabilitation, we need to ask ourselves how exactly do we expect our youth to find rehabilitation in a prison setting. We're essentially hoping, the at times hopeless and for the most part helpless youth to find hope and help within the environment they are thrown into. It's almost as if we're hoping a flower to bloom in a dark room. We have to become the light for our youth to grow and not the dark room that prevents growth.

How our country can do this is through understanding things like generational trauma, understanding what rehabilitates as much as what de-habilitates, understanding that its duty to the individual doesn't end upon release, this as well as introducing love and care into the lives of youth who have been deprived of those essentials growing up, and what i feel is very important is actually talking to the youth who are incarcerated.

We see that our system does a good job at holding those inside accountable for their actions but what about the rehabilitation and re-entry parts which are just as important for not only our communities but the youth themselves.

Many students change out of school clothes to prison jumpsuits. On any given day, around 48,000 youth sit inside of our system. Most of these youth come from public schools. In our school districts many youth are arrested on or near campus for status offenses. That is where we put youth in contact with the system where youth are more likely to then to end up more frequently or later on in their lives'. Due to "Zero tolerance" policies, youth have been suspended and expelled at dramatic rates over the past decade. When suspended or expelled, youth are not given the opportunity to receive education for that time being. During this idle time is where youth are likely to commit an offense. This is where students are funneled through the school to prison pipeline. Youth who struggle in school need a

helping hand, not hand-cuffs. Sending youth from our schools to our justice system should never be an option. Instead, we need to provide our youth with proper care and support in hopes for them to succeed.

Our youth who enter the system may often leave the system as legal adults. Not knowing how to function as an adult in society is a big factor in why they experience recidivism. If we hope to stop our youth who become young adults from re-offending upon release, we need to offer them real help. For youth with no money, we need to give them help financially. This means financial literacy programs and jobs where they can actually earn money. For youth with no housing, we need to offer them housing or they are literally just being thrown out onto the streets. As someone who entered the system at a young age, I think of how different it will be when I'm out. The last time I was home, I had been a teenager and now I'll be an adult with adult responsibilities. I know that if I'm not prepared to take on those responsibilities I am more likely to return to jail. This is why I know from living experience that programs or trainings that help me even when I am released is essential in any youth's time while incarcerated.

Youth who are sentenced as adults get one message from the system that is very clear that they don't care about you. Our youth should be kept in the juvenile justice system and not sent to the adult system which puts them through more trauma than they have already been through. Being a part of passing legislation in my state, I have seen the positive impacts extending the age a youth is able to spend in the juvenile system to their 25<sup>th</sup> birthday has had. Instead of being shipped off to the Department of Corrections the youth are able to make the best with the opportunities that the juvenile institutions offer. Also, instead of going to prison for a short amount of time where recidivism rates are tripled once an individual walks through the door, youth are able to possibly enter a community placement program where they can get a job and attend school. By keeping youth out of the adult system, we offer them better outcomes in their future.

When it comes to changing how this system operates and what it looks like by passing bills into law, instead of talking about why it shouldn't work, we should ask how it will work.

Thank you.

FILED  
JULY 9, 2020  
In the Office of the Clerk of Court WA  
State Court of Appeals Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

STATE OF WASHINGTON,	)	No. 37349-5-III
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
AARON ATA TOLEAFOA,	)	
	)	
Appellant.	)	

PENNELL, C.J. — Aaron Ata Toleafoa appeals his sentence, arguing it was unconstitutionally imposed without proper recognition of his mitigated culpability. We disagree and affirm.

FACTS

In 2014, Aaron Toleafoa engaged in a crime spree that ended with a near-fatal shooting. He was 15 years old at the time. Mr. Toleafoa was charged with eight felonies and two misdemeanors. The juvenile court declined jurisdiction and Mr. Toleafoa

No. 37349-5-III  
*State v. Toleafoa*

The trial court acknowledged Mr. Toleafoa's youth and the progress he had made toward rehabilitation. It determined a mitigated sentence was appropriate. The court imposed a total sentence of 192 months, along with the restitution amounts that had been imposed in 2016.<sup>2</sup> The sentence imposed by the court was 68 months lower than the original term of incarceration, but it would still result in Mr. Toleafoa being in custody past the age of 25.

Mr. Toleafoa brings this timely appeal from that judgment and sentence. His case was administratively transferred from Division Two to Division Three of this court and considered without oral argument.

#### ANALYSIS

Mr. Toleafoa challenges the constitutionality of the trial court's sentencing procedure. This is the type of issue that can be raised for the first time on appeal. *State v. Osman*, 157 Wn.2d 474, 481-82, 139 P.3d 334 (2006); RAP 2.5(a). Nevertheless, the substance of Mr. Toleafoa's claims fail on the merits.

Because he was under 18 years of age at the time of his offense and determined to have diminished culpability due to youth, Mr. Toleafoa claims he should have been sentenced according to Washington's standards for juvenile court. Mr. Toleafoa

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<sup>2</sup> The court waived discretionary legal financial obligations.

No. 37349-5-III  
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culpability. *State v. Watkins*, 191 Wn.2d 530, 538, 423 P.3d 830 (2018). The right to proceed under juvenile court provisions is purely a creature of statute. *See id.* at 536, 538. Once the juvenile jurisdiction is lawfully declined in accordance with applicable procedures, no further rights exist under the JJA. *Id.* at 538.

Recent decisions setting constitutional guideposts for sentencing juvenile offenders do not compel a different result. In *Houston-Sconiers*, the Washington Supreme Court recognized the Eighth Amendment to the United States Constitution requires judges have maximum flexibility when sentencing juveniles in adult court. 188 Wn.2d at 21. But that flexibility is in reference to the SRA, not the JJA. *See id.* When sentencing a juvenile defendant in adult court, a sentencing court has “absolute discretion to depart” below the “otherwise applicable SRA ranges” based on the defendant’s reduced culpability. *Id.* at 9 (emphasis added).

Mr. Toleafoa was declined into adult court. He has not challenged this decision. Accordingly, the JJA no longer governed Mr. Toleafoa’s case and the court was not required to consult it any further.

The only statutory provision governing Mr. Toleafoa’s sentencing hearing was the SRA. Once the court found Mr. Toleafoa’s offense was mitigated by transient immaturity, *Houston-Sconiers* empowered the court to depart downward from the sentencing range

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CONCLUSION

The judgment and sentence is affirmed.<sup>4</sup>  
A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

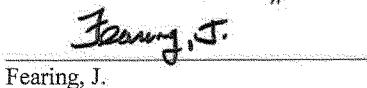


Pennell, C.J.

WE CONCUR:



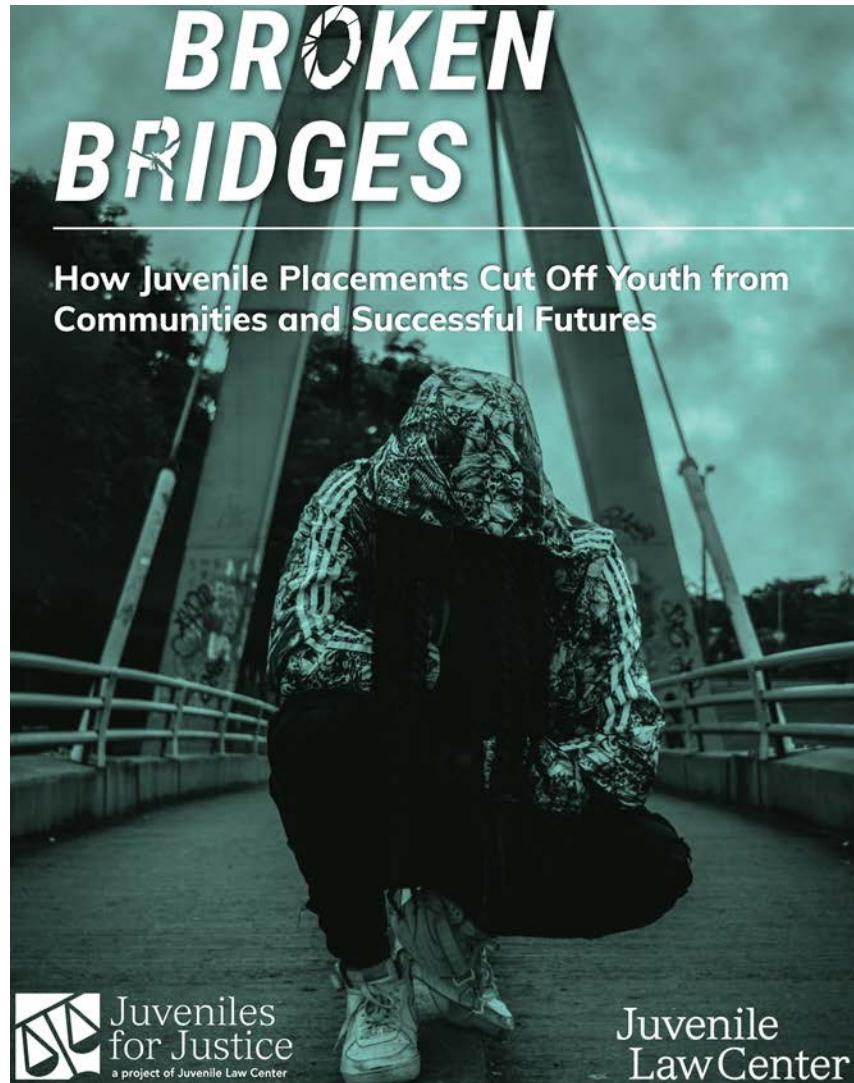
Lawrence-Berrey, J.



Fearing, J.

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<sup>4</sup> Mr. Toleafoa has filed a statement of additional grounds for review that fails to detail any assignments of error. As such, it will not be reviewed. *See RAP 10.10(c).*



# **BROKEN BRIDGES**

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## **How Juvenile Placements Cut Off Youth from Communities and Successful Futures**

A publication of Juveniles for Justice & Juvenile Law Center. Youth advocates in Juveniles for Justice created this publication during the 2017-2018 youth advocacy program year, in collaboration with Juvenile Law Center staff.

**Juveniles for Justice, Class of 2017-2018:** Alex, Anahi, Ange, Bree, Don, Hid, Jaheem, Lilly, Nigee, Qilah  
**Youth Advocacy Team:** Cathy Moffa, MSS, MLSP; Marcia Hopkins, MSW; Raina Satija, MSS

**Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the foster care and justice systems.**

Founded in 1975, Juvenile Law Center is the first non-profit, public interest law firm for children in the country. We fight for youth through litigation, appellate advocacy and submission of *amicus* (friend-of-the-court) briefs, policy reform, public education, training, consulting, and strategic communications. Widely published and internationally recognized as leaders in the field, Juvenile Law Center has substantially shaped the development of law and policy on behalf of youth. We strive to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values. For more information about Juvenile Law Center's work, visit [www.JLC.org](http://www.JLC.org).

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Photo by Nicolas Ladino Silva on Unsplash.

## PREFACE

At Juvenile Law Center, we believe in the power of youth voice. We believe that individuals most affected by institutions can make effective change when they have a seat at the table to offer solutions.

The members of Juveniles for Justice who are featured in this book have exhibited immense vulnerability by sharing their experiences and offering solutions for a better system to facilitate growth and end harmful practices.

Their stories do not represent the experiences of all youth in facilities or all formerly incarcerated people. This book is just a glimpse into what happens to incarcerated youth.

The goal of this book is to give youth space to share their truths and highlight youth-developed recommendations for a better, more supportive system. As you read these stories, we hope you see the youth as they are: children with dreams, hopes, and aspirations.

They are so much more than their involvement in the juvenile justice system and have so much to offer the world. We hope you are all inspired by their stories and work!

### Our Hopes for Our Readers

- **For youth who have faced similar experiences,** we hope this empowers you to share your truth. There are people out there who want to help you.
- **For lawyers, social workers, advocates, and activists,** you do wonderful work. We hope you continue the fight, even when it gets tough, and do not falter when youth struggle to share their truths with you.
- **For agency stakeholders, facility staff, and policymakers,** we hope you hear these stories and understand that our system is harming youth instead of protecting and rehabilitating them. We want to work together as a community to ensure this doesn't continue and to find more alternatives to support youth and keep them from ever entering the prison system.
- **For the public,** we hope you listen to these stories and are inspired to learn more.

Cathy Moffa, MSS, MLSP  
Youth Advocacy Program Manager

Marcía Hopkins, MSW  
Youth Advocacy Program Manager

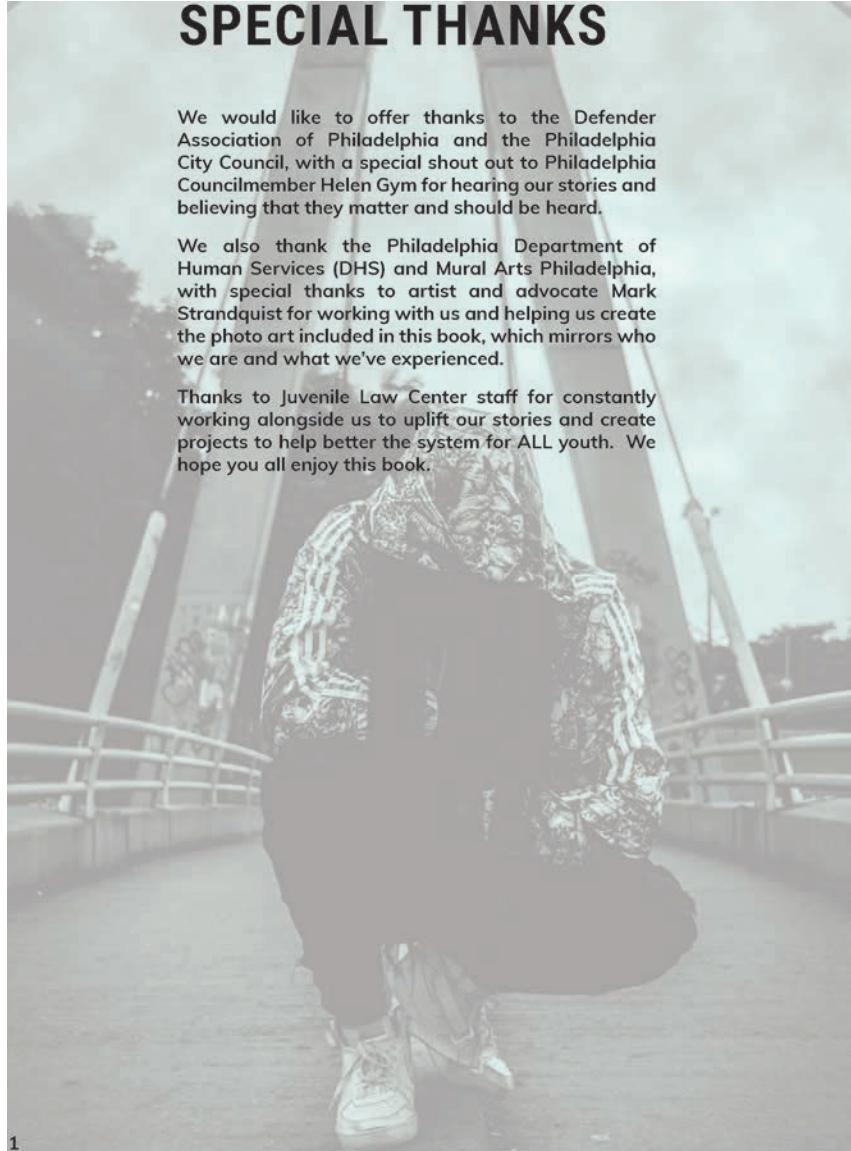
*A mistake is a season. It comes and goes.*  
- Nigeer

## SPECIAL THANKS

We would like to offer thanks to the Defender Association of Philadelphia and the Philadelphia City Council, with a special shout out to Philadelphia Councilmember Helen Gym for hearing our stories and believing that they matter and should be heard.

We also thank the Philadelphia Department of Human Services (DHS) and Mural Arts Philadelphia, with special thanks to artist and advocate Mark Strandquist for working with us and helping us create the photo art included in this book, which mirrors who we are and what we've experienced.

Thanks to Juvenile Law Center staff for constantly working alongside us to uplift our stories and create projects to help better the system for ALL youth. We hope you all enjoy this book.



## WHAT'S IN THIS BOOK?

This is a guide for stakeholders to understand the experiences of young people in placement facilities. This publication is one piece of Juveniles for Justice's 2017-2018 project which seeks to address harsh, harmful practices the youth advocates experienced in these facilities.

Visit our website to learn more about their project and policy advocacy work on this important issue: [www.jlc.org/youth-advocacy](http://www.jlc.org/youth-advocacy).

This book contains narratives of the youth advocates' experiences in placement, their recommendations for change, and sample questions for advocates and courts to use to gather information about young people's experiences in facilities.

## WHO ARE WE?

We are Juveniles for Justice (J4J)—youth who have been involved in the juvenile justice system and are working to improve it. We have experienced a lot by just being in the system.

This year, we elected to address the often harsh, harmful practices we experienced in placement to create better policies and practices in facilities. In this book, you will find a snapshot of the many challenges that we faced while in placement facilities in Pennsylvania.

We are sharing our stories with the hope that people listen and understand that being in placement hurt us and the things we experienced will forever affect us. We hope that by sharing our stories, we not only uplift our experiences but also advocate for other youth experiencing what we faced.

Thank you for listening.

## Juveniles for Justice

**CLASS OF 2017-2018**

**LILLY** I am a sophomore in high school. I love to shop, dance, be with my family and have fun.



I have many plans for the future, including attending college for criminal justice, joining the S.W.A.T. team, and becoming a lawyer and an advocate for foster youth.

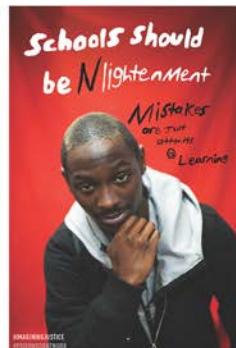
Before going to placement, I used to play basketball, but when I came home I wasn't allowed to go back to my old school and had to do school online. This meant I couldn't do activities anymore. When I was on probation, I couldn't hang out with my friends or go shopping at the mall.

This year I started working as a Youth Advocate at Juvenile Law Center. I am also part of the DHS Achieving Independence Center, and I am getting support from my case manager and parents to stay active and seek out new hobbies.



**ANAHÍ** I have been involved in Juveniles for Justice for three years. I enjoy reading books about different people's cases and writing poetry. I enjoy quality time with my family and going to different places together, like amusement parks. Currently, I intern at Mighty Writers. I just graduated high school, and I plan to attend college and eventually become a politician. I am interested in continuing youth advocacy work and getting support from my mentors and my foster parent.

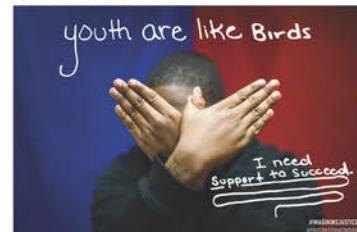
**NIGEE** This is my third year in Juveniles for Justice. I have a lot of talents: I sing, do poetry, and run track. I am looking forward to going to college and having a career helping children and adults who are experiencing life difficulties. My family and friends help me realize these goals. When I was sent to an adult prison, I picked up new hobbies like spiritual readings. When I came home, I wanted to join the track team; however they said I was too late to join. Luckily, I didn't have to stop going to the programs I was in before prison.



**ANGE** I have been involved in Juveniles for Justice for two years. I enjoy cooking and am hoping to become a chef and have my own house and car in the future. I also like to spend time with my family. I was involved in track and field before placement, however I don't do them anymore. I would like to get more involved in kickboxing.

**HID** I am an artist, athlete, and father. I love playing sports and video games. Currently, I am involved in the Evening Reporting Center, and this is my first year as a Youth Advocate. I am interested in cyber security and the military. I really enjoy playing basketball.

Before placement, I was playing basketball and football, but when I got out, I couldn't go back to my old school and couldn't play. It was kind of nice that while in placement I got to play basketball on the court, but there wasn't a team.



**JAHEEM** This is my second year in Juveniles for Justice. I wanted to be part of the program to improve how kids are treated in this system. I hope that in five years, I have a job as an EMT and have my own house and car. I like to cook, spend time with my family and my daughter, and go shopping with my friends. When I came home from placement, I found a community football team and joined it to keep myself busy. With the support of my brother, I signed up for Job Corps and am excited to be starting on the path toward my career.



**QILAH** I am so excited to have been part of Juveniles for Justice for the first time this year. I have gotten to learn about advocacy and what I can do to help. I would really like to use my DHS experiences to become a youth mentor/counselor and mentor other youth who may be going down the same path I was. Currently, I work at PowerCorps PHL.



Before I was in placement, I used to enjoy cheerleading and doing makeup, but I could not continue when I was sent to placement. While in placement, I started playing cards—speed, spades, and black jack. I would play staff and other youth for snacks and other things. Now that I'm home, I want to be more involved in civic engagement with other youth in the child welfare and/or the juvenile justice systems. To achieve my goals, I am getting a lot of support from my case worker and the Achieving Independence Center.

**BREE** I have been involved with Juveniles for Justice for two years. I like to write poems, dance, crochet, and play spades. I am an artist, and my art has been featured in several Juveniles for Justice projects. I am currently in school for cosmetology. I would also like to take up forensic science because I am interested in how crime scenes are solved.

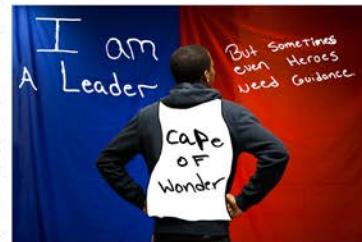


**ALEX** I am a second-year Youth Advocate. I am also an actor and have directed a student-created play about being a teenager in Philadelphia.

I have a daughter named Adrianna, whom I love to spend time with and make laugh. I have a goal of getting my own apartment and a job to provide for my family.

Before placement, I played volleyball. I learned how to crochet in placement and still do it. I also enjoy acting and am currently working on a play.

**DON** I am a first-year Youth Advocate and have enjoyed having an opportunity to make a change. I play basketball and draw very well. I also like video games, pizza, Sprite, and know how to do a back flip. I like spending time with my family, watching movies. I was playing basketball before I went to placement. When I came home I couldn't continue to play basketball for my school. I couldn't pick up new hobbies because I was so busy with probation, house arrest, and restricted service. I am playing baseball for my school now. In the future, I see myself owning a business, and my goal is to go back to school to get a master's degree.





# HOW JUVENILE PLACEMENTS SEPARATE YOUTH FROM COMMUNITIES AND SUCCESSFUL FUTURES

The United States incarcerates youth at more than double the rate of any other country in the world. On any given day, almost 50,000 young people are locked up in juvenile facilities across the country.

Although overall juvenile incarceration rates have been falling, Black youth are still over five times more likely than their white peers to be detained or committed to an institution.

We know these institutions—many of which are over 100 years old—are part of a punitive corrections-oriented approach that does not work for youth.

Research shows that institutional settings harm young people developmentally, psychologically, and—far too often—physically. Yet our country continues to rely on this outdated model as the backbone of its juvenile justice system.

We must commit to fixing this broken system and ensure that all young people have a chance for a bright future.

## SEPARATION FROM FAMILY

A sense of “connectedness”—to family, community, peers, and supportive adults—is essential for adolescents and young adults. This is a time when youth are naturally developing relationships and forming their own identity. Strong relationships and community connections help keep young people engaged, supported, and on track. Incarceration disrupts these connections to family, peers, and community—isolating youth in harsh environments, hindering their natural growth, and leaving young people without a support network when they return to their community.

### Our Experiences



**BREE** When I was placed in the facility, I was told that I could not get a home pass because I was only going to be there for a month. I was upset and hurt, both mentally and emotionally.

Being in a facility is a lot. A month is a long time to go without seeing my parents, siblings, and family members.



**NIGEE** I wasn't aware that I would be going to prison and was being tried in the adult court. I found out the same day of my first court hearing and was in an adult prison for three months. I also found out that you do not receive home passes when you're sent to adult court, so my family could only visit me once in a while. It made me angry that I couldn't see them more often. Thankfully, my case was sent back to juvenile court, and I was happy to go home.

*“A month is a long time to go without seeing my parents, siblings, and family members.”*



**ANAHÍ** When I was first going to placement, I didn't actually know when I was being placed. I did not know where or how long I would be there, either. I was not allowed home passes when I was there for about three months. I lost contact with my adoptive parents while I was in placement and couldn't return home with them. I also stopped talking to my friends and other people in my life because I couldn't keep in touch when I was there.



**JAHEEM** Getting support from my family helped me move forward after being in placement. I was on house arrest, so I couldn't hang out with my friends anymore. Being on house arrest meant I had a lot of things to attend, like having to meet with my advocate. When I came home, having to go to my child advocate helped me get out of the house and stay out of trouble.



**ALEX** On my way to court, right before I got there, my worker told me I was not going home. They did not tell me how long I was staying. I was 14; I didn't know anything. I was happy, but sad at the same time. At the facility, I got day passes, and the facility staff dropped me off and picked me up to go back home. I cried a lot because I missed my brothers and sister and their kids. I only had three friends, and I still talked to them. They knew everything that was going on. After this experience, I don't trust people. I'm quick to fight over anything, and I'm very impatient.



**HID** The judge let me know that I would be in placement for several months. I did not believe the length of time I was given was reasonable because I did not participate in the activity I was being sent to placement for. My family came to visit while I was in placement, and it made me feel bad that they had to visit me in there. After coming home, I am glad that my relationship continues to get stronger with my family and some of my friends. I needed that.

*"I was glad that my relationship continues to get stronger with my family and some of my friends. I needed that."*

**LILLY** They told me that for my first placement I would be staying for a month. In my second placement, they never told me how long I was staying. After they diagnosed me with depression, I was put on a medication dosage that was too high for me. I then had breathing problems and panic attacks. I ran away from Child First because I missed my parents and family. I didn't get home passes because I ran away and was on lock down for 30 days. I didn't see my parents at all, and it made me feel alone. I felt like I didn't have anybody that loved me around. Not feeling that love and being away from home is the worst feeling—I can't describe it.



This experience changed me. I was quiet and didn't want to be around anybody else. I was too scared to open up and talk. I didn't think anyone would believe me, and I didn't think anything would be done if I did speak up. I have trust issues with adults now. One positive thing I was glad about when I came home was that I was getting all the love that I was missing from my family for all those months I was away.

**QILAH** Part of my experiences going in and out of the juvenile justice and child welfare systems were related to truancy and for violating my probation by being late to school. What should have happened in my story is that someone should have asked me why I was always late to school or why I felt I had to violate my probation. Instead, no one asked me, and I was sent away.



When I was being taken to a placement facility I didn't even get a chance to say goodbye to my family—not my little brother or sister. I had to leave my school. Then, when I first arrived, I could not see my family or receive any home passes until after 30 days, when the judge approved them. I missed my family and my younger siblings a lot.

After coming home from placement, my family still sometimes treats me as if I did something wrong and like I'm different—like I'm a criminal. Going away impacted my life so much: my family, not being able to finish school on time, no longer having the same friends, and now being in both systems.

*"I lost contact with my adoptive parents while I was in placement and couldn't return home with them."*

## STRIP SEARCHES

Although definitions vary, the term "strip search" generally refers to a search that requires a person to remove clothing to permit visual inspection of the person's breasts, buttocks, or genitalia.

**Highly invasive for anyone, strip searches are particularly traumatic for adolescents and young adults, who tend to be more self-conscious about their bodies and may even experience the search as a form of sexual abuse.** This risk is heightened for youth in the juvenile justice system, the majority of whom have histories of exposure to traumatic events.

Yet youth in juvenile facilities are routinely strip searched, often in situations where no one has reason to believe they are hiding anything. For instance, youth may be strip searched upon admission, after visits with family or their attorneys, when placed in solitary, or when transported to or from the facility. As the stories below show, these searches are dehumanizing, degrading, and humiliating—they can cause real, lasting damage to youth the system is supposed to help.

### Our Experiences



**BREE** When I was processed through admissions at the detention center, the staff had to take off my clothes and started patting me down, touching me, and making me feel uncomfortable. I felt violated, like I wasn't even a human being anymore.



**DON** I was stripped searched in the placement facility. It felt weird being stripped in front of another man; it also felt a little strange. I don't think youth should be strip searched unless in they're in a really bad predicament.



**JAHEEM** I got strip searched when I first got locked up, and then again every time I had visits. After I had a visit with my family, I was strip searched. It felt weird because I was around other youth and staff.



**HID** When I first entered the placement facility, I refused to be strip searched, and they called a code. They pulled me into another room with five or six guards, and a few of them held me while one guard forcibly searched me. This happened more than once because I refused every time. There were also pat downs after visitation.



**ANGE** Strip searches happened when I first entered and when I came back from a home pass. I wasn't with other youth when I got strip searched, just staff, but I still I felt a little uncomfortable because I didn't know them like that.



**NIGEE** After visitation, all the youth would be strip searched at the same time, and it was very uncomfortable.



**LILLY** I didn't like being strip searched at all. I didn't want anyone to see me naked, and it was very uncomfortable.



**ANAHÍ** When I first came to the detention center, I was strip searched. They made us do squats in front of a female guard. We were taken in the back, away from everyone else. The guard didn't touch me when I squatted, but they would make us squat with our pants off, and it kind of make me feel uncomfortable. Then, when I was sent to a placement facility, they did a strip search after every visit with my family, and they would pat us down every time we would go off grounds and come back. They would shake out our bras and touch around our waist and make us take our shoes off. For higher security places, they don't need to do this when there is already heightened supervision of the youth.

*"They pulled me into another room with five or six guards, and a few of them held me while one guard forcibly searched me."*

## PHYSICAL RESTRAINTS

The act of being physically restrained is an extremely common experience for youth in juvenile facilities. Restraints take many different forms, including mechanical restraints – such as handcuffs and shackles – and manual restraints where staff physically restrict a youth's movement, sometimes for long periods of time.

Almost by definition, restraints are physically harmful to youth, and they can easily escalate to dangerous or abusive situations. Current standards in the field of juvenile corrections recommend significant limits on using restraints because of the risk of harm to youth and staff, calling instead for developmentally appropriate de-escalation techniques.

Yet as the stories below show, youth continue to routinely experience harsh and sometimes violent uses of physical restraints, often in response to incidents that reflect typical adolescent behavior and could have been de-escalated in other ways.

### Our Experiences

**LILLY** If I acted out, the staff at the placement facility put my hands behind my back and threw me on the floor. A staff burned my skin with a flat iron so badly, my judge moved me to another floor. When she burned me, I yelled at her because it hurt so bad, and I was placed in a small room by myself for yelling.



Another time, I had gotten body slammed for yelling at a staff person and was put into a room for about a day but because I had refused to go into the room, they didn't let me eat. I had eaten breakfast before 9:00 am, and I wasn't given any food until after 3:30 pm. I also felt that even if the staff didn't like you, they could do what they wanted. Staff fought girls, and male staff restrained female youth, which didn't feel right to me.

*"For higher security places, they don't need to do this when there is already heightened supervision of the youth."*



**DON** In placement, I witnessed youth getting physically restrained if staff believed they looked like they were about to fight another youth. It also happened sometimes when youth talked back to the staff.



**ANGE** In placement, youth can get restrained for getting into trouble—like when people fought, both would get restrained. One girl got arrested for fighting staff. They argued first, and then the girl got restrained. The staff person also tried to hit the girl back. For fighting, everyone had to stand in the middle of an empty room and do an apology and analyze what we did wrong. If you moved while talking, you would get restrained. I've seen people get restrained the whole time at the juvenile placement facility I was in, one person a day would be restrained. I've also seen youth in shackles.



**ANAHÍ** I saw some people get restrained for fighting, and if the child would keep moving, the staff would slam them on the wall or floor. Usually, staff would hold people back for fighting, but sometimes the staff would also get physical with the youth if they weren't cooperating.



**HID** I was in one placement facility for two to three months. I witnessed youth being restrained even for talking back and refusing to do something. When staff yelled and argued with you, they decided they were finished arguing and suddenly they get physical and then they will call "code black" or "code blue" and would jump on the youth. It wasn't common, but it happened when a staff person had a problem with one of the youth.

Staff felt like they had to respond excessively to any behavior they felt was wrong. If one person didn't do something like cleaning up, the unit got locked down for a week or more. Everyone had to be in their room and could only come out to eat and shower, and then it was lights off. After this, once everyone came out they would be upset, angry, raged and ready to fight.

## PHYSICAL ABUSE

As numerous studies have documented, maltreatment and abuse are commonplace in large, institutional youth placements. For instance, one national survey of facility staff members showed that, over a three-year period, there were approximately 13,000 allegations of abuse in juvenile facilities around the country. Other studies have documented evidence of widespread maltreatment in at least 29 states.

The abuse youth experience includes violent assaults by staff and youth, sexual victimization, and systemic maltreatment. These experiences cannot be written off as the product of individual bad actors—they pervade our juvenile justice system and have persisted despite many efforts at reform. The abuses described below, and similar experiences of countless young people around the country, highlight how our correctional model is inherently flawed and must be fundamentally changed to support, not harm, young people.

### Our Experiences

**LILLY** At my lockdown placement, I saw that youth could yell, not listen and sometimes fight each other because some staff would let them fight. There were times staff physically fought with youth, too. I had also heard about someone being pepper sprayed in response to telling a staff person "no."



When a staff member intentionally burned me with a flat iron while she was straightening my hair, I was in a lot of pain and asked to see the nurse, but she wasn't there because she was only part-time. I never got to see a doctor until I went to court four or five days later. By that time, it was all scarred. When my judge saw what happened, she moved me to a different floor. I was really upset I had to stay at the same facility all because the other placement where I was supposed to go didn't have a bed available yet.

*"No kid should be beaten up by staff at the facility, especially not for refusing to do class work that's not on our level."*

**HID** When I was at my first juvenile placement facility, a lot of people were physically injured by staff. I had gotten a busted lip and broken ribs from a guard, so my social worker took me to the hospital and I was removed from this facility.



One time, I was on social media during school hours and when they caught me, they tapped me on my shoulder and told me to step out of class. As soon as I stepped out of the room, one guard held me, and another punched me, then they made me go back to class.

I never told anyone at the facility because the staff who punched me would bribe me and other youth with snacks to not tell the CFO, or when it happened to me, they told me to not tell when I went to court.

If people really knew what I faced behind those walls, they would understand how horrible it was for me. No kid should be beaten up by staff at the facility, especially not for refusing to do class work that's not on our level. If this happened in regular school, teachers could be arrested and fired.

**QILAH** In a holding facility, I had been having a hard time sleeping and was having menstrual cramps, so I did not feel up to eating breakfast. I was tired, and I refused to go to breakfast.



When I refused, the staff grabbed and twisted me up out of the bed. Because it was hurting, I resisted. When I did, the staff woman swung me around and punched me. When I defended myself, the staff facilitator who was nearby and saw what was happening, threw her walkie-talkie at my head. After this happened, I tried reporting what happened between me and both the staff but there was no disciplinary action for the staff's behavior. Instead, I lost all my phone time with my family and was put in solitary for one day. One of the biggest parts of this experience that hurts was that I was punished for what happened to me and they took away my phone time, and it meant that I could not talk to my family.

## SOLITARY CONFINEMENT & EXTENDED ISOLATION

Neurological research and sociological studies have confirmed what common sense tells us: that solitary confinement has devastating, long-term effects on young people. The practice exacerbates mental health problems, disrupts normal adolescent development, and undermines the rehabilitative goals of the juvenile justice system. It has also been found unconstitutional by numerous courts.

Yet solitary confinement—also known as “isolation,” “room confinement,” “disciplinary detention,” or other euphemisms—remains common in juvenile facilities around the country.

In a national survey of juvenile defenders conducted by Juvenile Law Center, more than two-thirds of respondents reported that they have clients who spent time in solitary. The conditions these young people experience are often appalling: youth in solitary may spend 22-23 hours a day in cells by themselves, sometimes without basic necessities such as mattresses, sheets, showers, eating utensils, and mental health treatment.

Exposure to these conditions not only harms young people—it is also counterproductive. Facilities and jurisdictions that have reduced reliance on solitary confinement have seen corresponding decreases in rates of violence.

### Our Experiences



**QILAH** While I was in placement, often the whole group would get punished for behavior of one person. One time, I was placed in solitary confinement for one day for defending myself when a staff person threw a walkie talkie in my face. Another time at a holding facility, I was put in solitary for about 3-4 days. When I was in solitary, there was only a metal chair in the room and a table nailed to the floor. A person brought me food throughout the day and brought me a pen and paper for me to write to my family.

*“It shouldn’t be that if one youth acts out in a facility, we are all punished.”*



**ANGE** In general, you can't talk to anyone or look at anyone (in a silly way) or you would get in trouble. I was placed in isolation rooms for being considered a "threat" because I moved too quickly while talking to staff.



**HID** I was in solitary for one week once, and the room was cushion—a sponge-like substance. They put me there because someone in the cafeteria was looking at me and I felt threatened. They thought that we both might get into a fight because we were staring at each other, so we were both put into solitary.

They only checked on me when it was time for meals, and they brought my class work to me, otherwise there was nothing for me to do and no one for me to interact with. I slept, looked at the wall, worked out in the room, and I ate—that's it, for a whole week.

At first, I didn't think it would affect me, but after being in the room with nothing to do for even a few minutes it started to bother me. It made me feel weak because there was nothing I could do to get out. There was only really me, the walls, and the floor.



**JAHEEM** At the detention center, if there was a fight everyone would be on lock down for some hours or a full day. It depended on the situation, like if a youth was in a unit fight, we would all be on lock down for 24 hours. We also would not be able to see our families if a lockdown happened. This was upsetting because it felt as if we were all being punished for someone else's behavior. This was also frustrating because if I had court the same day the lockdown happened, my court date got pushed back, sometimes almost a month. It shouldn't be that if one youth acts out in a facility, we are all punished even when we did not cause any trouble.

*"When I was placed in solitary for three days, there was only a metal chair in the room and a table nailed to the floor."*

## EDUCATION

Youth in juvenile facilities face countless barriers to educational success. Placement in a facility usually requires a youth to change schools, and the educational programs provided in facilities typically lack the academic rigor of community-based schools. Youth may be assigned to the wrong grade, given coursework below grade level, or simply placed in front of a computer and expected to teach themselves. Although a large percentage of youth in the juvenile justice system are eligible for special education, many facilities fail to provide mandated services.

When they are discharged from facilities, youth often struggle to transition back to community schools. Many find that they are unable to transfer the credits they earned or that all their courses are counted as elective hours. **Unsurprisingly, these barriers lead to abysmal educational outcomes: a majority of youth do not return to school after release from custody, and only 1% of justice-involved youth graduate from college.**

These outcomes are particularly tragic given that many youth enter the justice system due to school-related issues, such as truancy or school-based offenses. Rather than help youth meet their educational goals, system involvement sets them further behind.

### Our Experiences

**ANAHÍ** I was assigned worksheets when I was in one placement facility. The work was too easy for me and not on my grade level. They had different teachers every day who came to teach us at different times. In another facility, the school work was the same—too easy and only one teacher who actually taught.



When I was released, I was not able to go back to my regular school and ended up going to an alternative school. My credits were not transferred, and I had to start from scratch.

This experience impacted my education because I didn't get the right grade work in the placement facility. It made it harder for me to learn when I got back to a regular school and pushed me back.

*“My credits were not transferred, and I had to start from scratch.”*

*“I would get in trouble for doing normal teen things, like playing around.”*

**ANGE** Worksheets and reading assignments were too easy in the placement facility. During my time there, I was taught with worksheets and books. While I thought the teachers were good, they didn't teach as much, and it was not the appropriate grade level. It was also really strict—I couldn't fool around or get in trouble. When I got in trouble, I was separated from the other students. If I got into trouble, they would give me a warning, pull me out of school, and I

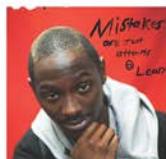


would have to explain what I did wrong and what I was going to do to fix it. If I wasn't good in this "interview," I had to sit in a room by myself. When I was being goofy in class, the teacher got mad and told me to get out. I had to work separately in an empty room but the next day I could go back to class.

When I got home, my credits transferred from the facility to my neighborhood school. This was great, so I went to a neighborhood school first and returned to my grade level, but I didn't do well. I couldn't keep up with the pace of the work because I hadn't learned the things the other kids learned from my previous school, so I had to leave my neighborhood school to attend an alternative school. This experience at the alternative school affected me a lot because I was used to "normal" school and having more freedom. When you attend alternative school, it's so different, you can't carry anything—no pens, pencils, it's not like regular school at all. I believe if I didn't have this experience at the alternative school, I would probably have graduated on-time.



**LILLY** After coming back home, I tried to go back to the charter school I had attended for two years before going to the placement facility, but they wouldn't let me back in. My only option was to do a cyber program. I didn't learn anything while I was in placement and to this day I'm still having trouble in school. I ended up having to take eighth grade classes that I should have already known, like pre-algebra.



**NIGEE** In the adult facility, the worksheets I had were on my level, and all the assignments were both hard and easy. We had a teacher who came in and gave us work. She talked to us and helped us with worksheets and reading assignments. I'm glad I had her help and got the work I needed while I was there. This made it easier when I came home, and I was able to go to the school I used to attend. All my credits transferred from the adult facility back to my community high school.

*"It messed my education up. Going to school was hard too because I didn't go for so long and when I did go it was only for 3-4 weeks."*



**HID** It seemed like they only gave us work to keep us busy from doing anything. The work really didn't teach me anything. In the facility, I had access to a teacher and computer. But I wasn't really interested in the school work because they kept giving me work that wasn't at my grade level. One time I got ten punches by a guard for not doing the school work. When I came back home, I had to be homeschooled because no school in the Philadelphia School District would accept me back. My credits from the placement facility didn't transfer when I tried to go to a regular school outside of Philly, so I had to be homeschooled to start 12th grade on time.



**ALEX** We had teachers and two body guards in every class. The teachers didn't interact with us they just gave the papers and sat at the desk on their phones. I had to repeat grades when I left the facility because I didn't get the proper work, which made it harder for me because I didn't know the things that I should've known. I could've finished school this year (2018). I feel like I wasted my time for three years. When I came home even though I was not able to go to my neighborhood school, I could go to a school in Philly designed for youth with experience in foster care. I think it's the best school I have ever been in.



**DON** Once, I was told I had to leave the class because they thought I wasn't going to be safe and was arguing. I was sent to my room for half the day, and I had to make my work up another day.

*"We had a teacher who came in and gave us work. She talked to us and helped us with worksheets and reading assignments."*

*"I was not able to go to my neighborhood school, but CB is the best school I have ever been in."*

## CLOSING

We have shared our stories to shed light on the harm we experienced and to identify solutions to the challenges that many of us faced.

We are encouraging our community members, stakeholders, and local agencies to prevent youth from going into facilities and make sure they get services while staying with their families and communities. If youth must go into placement, their safety and well-being should be prioritized.

### Why Is This Important?

All young people deserve the opportunity to grow up in safe environments that promote development. Going to placement, even for a short time, is an interruption to young people's ability to grow within their own community. It interrupts their family life, education, and development.

Being in placement often changes young people in a way that isn't rehabilitative even though one of the primary goals of the juvenile justice system is to rehabilitate youth. To help address the challenges youth face in placement facilities, we developed a set of recommendations designed to guide courts, facilities, and advocates in their efforts to reform the juvenile justice system.

We believe children should have and deserve opportunities to stay in or close to their communities, or if they are in the juvenile justice system, that it is supportive, safe and rehabilitative. We must accomplish these goals to ensure children are given a second chance.

## Recommendation 1: Keep Youth in Their Communities

1. Provide community-based resources to youth and families to help keep kids out of the system.
2. Invest in more diversion programs to keep youth out of placement.
3. In the rare instances when placement is deemed necessary, place youth in facilities within their communities or close to their homes. This includes:
  - a. Ensuring that all placements are safe and supportive, and
  - b. Training staff on up-to-date trauma-informed practices

## Recommendation 2: Connect Youth to their Families while in Placement

1. Never punish youth by denying them access to visits or phone calls with their families.
2. Give guardians contact information of staff who can provide information about the youth and their adjustment to the facility and make arrangements to communicate (e.g. accommodating language barriers).
3. Involve family members in education, behavioral management strategies, and medical and mental health service decisions about their child at the facility.

## Recommendation 3: Improve Oversight, Accountability, and Reporting of Abuse

1. Designate a point person to follow-up with youth about reports of abuse and unsafe conditions.
2. Require responses to youth reports of abuse or unsafe conditions within 24-48 hours.
3. Train facility staff on how to look for and report abuse. Provide a safe way for staff to report concerns about abuse.
4. Hold staff accountable when reports are not made, particularly if youth are sexually or physically abused.

5. Ensure youth and their families fully understand and are able to access the facility's grievance procedure by:
  - a. Thoroughly orienting youth to the grievance procedure when they first enter a facility;
  - b. Using language that youth and the family can understand;
  - c. Providing direct information of who to contact about grievances at the facility;
  - d. Following up after incidents to ask if a youth wants to file a grievance or report abuse; and
  - e. Supporting youth in completing documentation and contacting the appropriate person.

## Recommendation 4: Develop Alternatives to Physical Restraints

1. Thoroughly train staff on alternatives to physical restraints, including de-escalation techniques and other restorative justice practices. These trainings should be a requirement for all staff upon starting and should be continuously offered.
2. Require staff to exhaust all other de-escalation tactics before resorting to physical restraints.
3. Prohibit staff from restraining youth unless staff have been properly trained on the purpose and appropriate use of physical restraints and the use of the least harmful restraint tactics.

## Recommendation 5: Use Restorative Techniques to Help Youth with Behavior Management

1. Instead of relying on solitary confinement for behavior management, offer individualized programming, including positive behavior support, to address behavior concerns.
2. Train all staff on the use of less restrictive alternatives, including de-escalation.
3. Ensure solitary confinement is never used for punishment, discipline, or convenience.
4. Never isolate youth for more than a three-hour period for any reason, and release youth from isolation as soon as they have regained self-control. If a youth requires further support after a three-hour "cool down" period, seek other positive, individualized interventions to address the youth's needs.

## Recommendation 6: Provide Quality Education to Youth in and Returning from Placement

1. Allow youth to attend school in their communities or in the community where a facility is located, rather than inside an institutional juvenile justice placement.
2. Make sure youth have the information and power to make decisions about their own education and future.
3. Require on-grounds schools at juvenile facilities to have the same, if not better, standards and resources as community schools in terms of curriculum, supplies, work, discipline, and meeting youths' individualized needs.
4. Provide appropriate school work that is based in the youth's grade, age, development, special education, language, and any other needs.
5. Have appropriate, positive and affirming responses to classroom misbehavior. Denial of education should not be used as punishment.
6. Provide youth with supports and opportunities to get post-secondary credit while in placement, prepare for post-secondary when they leave placement, and participate in career pathways programs that prepare youth for living wage employment.
7. Have meaningful reentry planning, led by youth and supported by invested adults.
8. Provide a plan for the youth's transition out of placement that includes a plan to transfer school credits, and make sure the youth ends up in the appropriate school and classes, to avoid gaps in education.

## Recommendation 7: Eliminate Strip Searches

1. Prohibit all strip searches unless there is probable cause that a youth is hiding dangerous contraband that could not be discovered in a less intrusive search.
2. Train staff on graduated response techniques before any search that requires contact with a youth's body.
3. Ensure searches are not conducted in a degrading or humiliating manner. For instance, youth should not be searched in front of other youth and should not be asked to strip in front of staff.

## APPENDIX

### Sample Standard Questions for Lawyers and Advocates to Ask Youth

As youth in placement, we didn't know that lawyers and advocates had a limited time with us. We didn't know it was important to tell them everything that was happening in placement. We were scared about retribution, did not think we would be believed, and did not know what could or would be done.

In addition, sometimes, we didn't feel we could trust our lawyers because we didn't know them well enough to tell. However, regardless of time constraints, we believe lawyers and advocates should always attempt to ask youth questions. This is important to ensure that we feel safe and our mental and emotional health is well while we are in facilities and when we come home.

To help youth to share their stories, we developed a set of questions that we feel are the most important to ask young people in placement. We know some of these are hard questions for youth to respond to, so the more rapport advocates develop with young clients, the more likely youth will disclose difficult information. We believe building rapport and trust with us and continuously asking some of these questions each time you see us will help us open up. Building trust is key to helping us to disclose information and to ensuring we are safe in facilities.

We hope our recommendations and these sample questions will help to one day eliminate the harm youth face in facilities.

**SAMPLE QUESTIONS TO ASK YOUTH IN INSTITUTIONAL PLACEMENTS**

1. How are you? Do you feel mentally and physically safe?
2. How many meals are you eating a day?
3. Do you feel you are being mistreated by any staff?
4. Have you talked to your family or seen them? When was the last time?
5. Have you ever been forced to do something you didn't want to do?
6. What school subjects are you learning? Do you feel you're learning the right work?
7. Have you ever been held in a room by yourself for a few hours or more? How long?
8. What other services here have been offered to you, for example therapy?

**ADDITIONAL QUESTIONS THAT ARE IMPORTANT TO ASK YOUTH.**

1. What happens in the facility when a youth is in trouble?
2. How do you feel you're being treated?
3. Have you, or do you feel threatened by anyone?
4. Were you ever on lockdown? Do you know why? For how long?
5. How do staff handle conflicts they may have with youth? How do staff handle conflicts that arise between two or more youth?
6. Where are you currently being housed? What is your room like?
7. What did you expect when you entered?
8. How do you feel like you're being treated in placement compared to the other youth in the facility?
9. Do you know who to talk to if you have a complaint or something bad happens?
10. Do you have questions about your next court hearing or when you are scheduled to return home?

*We separated our top 8 questions we feel youth should always be asked.*

*These questions should be reviewed for wording to ensure questions are not leading and adhere to attorney client standards.*

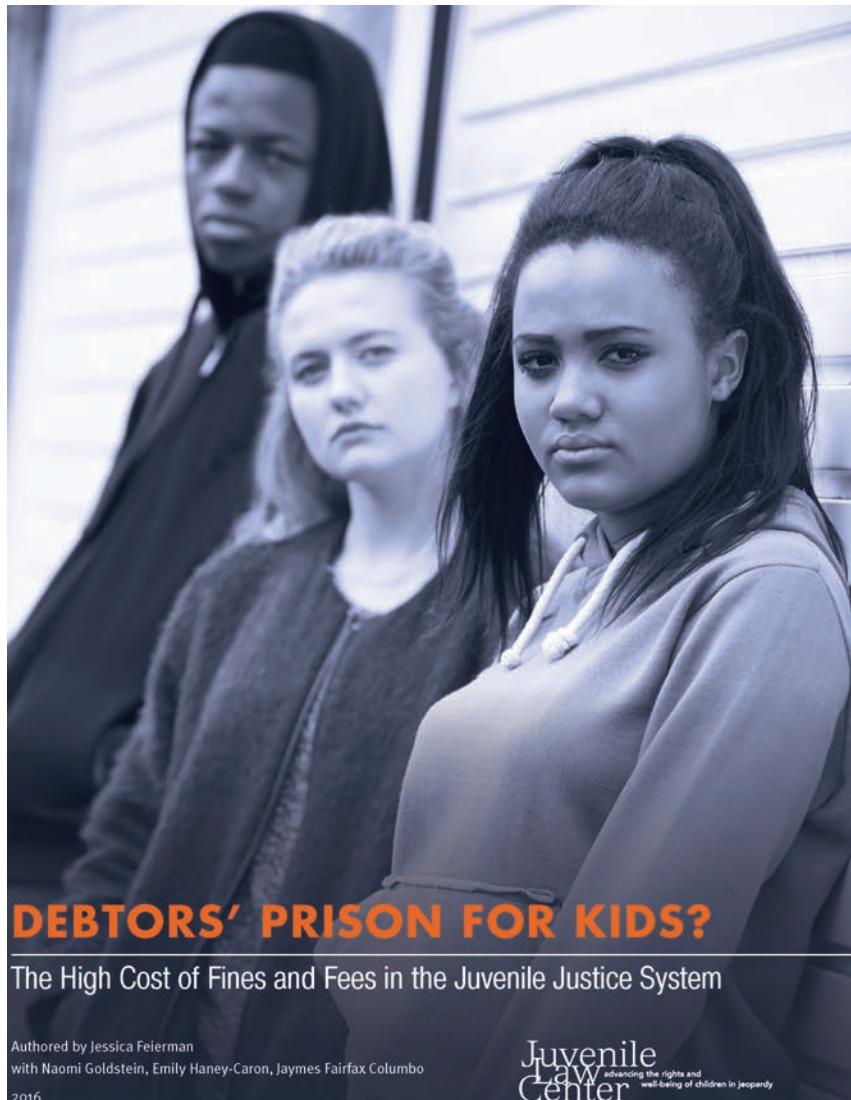
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## DEBTORS' PRISON FOR KIDS?

The High Cost of Fines and Fees in the Juvenile Justice System

A Publication of Juvenile Law Center

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Juvenile Law Center is the oldest public interest law firm for children in the United States. Juvenile Law Center uses an array of legal strategies and policy advocacy to promote fairness, prevent harm, ensure access to appropriate services, and create opportunities for success for youth who come into contact with the child welfare and justice systems.

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## **ACKNOWLEDGEMENTS**

The authors give special thanks to Emily Blumenstein, Tiffany Faith, Ruth Friedman, Emily Keller, Marsha Levick, Chelsea Lewis, Karen Lindell, Susan Vivian Mangold, Kacey Mordecai, Robert G. Schwartz, Riya Saha Shah, Whiquitta Tobar, and Joanna Weiss for their insights and assistance, which have been instrumental in shaping this publication.

Work on this project was made possible by a grant from the Laura and John Arnold Foundation. Points of view or opinions in this document are those of the authors and do not necessarily represent those of the Laura and John Arnold Foundation.

## INTRODUCTION

Across the country, youth and their families, including many in poverty, face monetary charges for a young person's involvement in the juvenile justice system. Too often, the inability to pay pushes the young person deeper into the juvenile justice system and exacerbates the family's economic distress. This report examines how and when youth and families face financial obligations, briefly looks at the economic consequences, and considers the legal consequences for failure to pay.

In Part A, the report provides an overview of the problem: the widespread imposition of costs, fines, fees, and restitution on youth; the significant legal consequences for failure to pay, including further juvenile justice system involvement and incarceration; the financial stress on youth and their families; the unique challenges young people face in attempting to pay fines because they are too young to work, must attend school, or can't find employment even if age-eligible; and the exacerbation of racial and economic disparities in the juvenile justice system resulting from such financial obligations.

In Part B, the report looks in detail at eight types of costs imposed on youth and families, including: probation/supervision, informal adjustment/diversion, evaluation/testing, cost of care, court costs, fines, expungement costs, and restitution. For each type of cost, we identify which states impose such costs by statutes, provide initial data on how widespread the practice is based on survey responses, and when possible, further illustrate the issue with stories from youth or families.

In Part C, the report documents the harms that costs may impose on youth living in poverty. For example, youth who can't pay for alternative programs may enter the juvenile justice system when a wealthier peer would not; youth may be charged with violations of probation for failure to pay costs; youth may be unable to expunge a juvenile record because they owe money to the court; and youth or their parents may be held in contempt, incarcerated, or have driver's licenses suspended for failure to pay. Court costs and fees can also cause families to go into debt and strain family relationships. In other words, children from families living in poverty may face harsher consequences than their more affluent peers, be deprived of diversion programs and rehabilitation options, and be pushed deeper into the juvenile justice system just because they cannot afford to pay court costs, fines, and fees.

In a companion publication, authored by criminologists Alex Piquero and Wesley Jennings, we present a case study, based upon data collected from Allegheny County, Pennsylvania, which specifically examines the inter-relatedness of these court-imposed financial obligations, recidivism, and key demographic characteristics such as race.<sup>1</sup>

While this report focuses on a problem—the imposition of costs on youth and families who cannot afford to pay and its relationship to recidivism—it also highlights solutions. Within each section, the publication identifies promising practices, as well as legislative remedies that could be replicated across the country. We also highlight jurisdictions which recently stopped imposing court costs, fees, and fines in the juvenile system.

*Youth who can't pay for alternative programs may enter the juvenile justice system when a wealthier peer would not.*

## A. OVERVIEW

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Significant research establishes that court costs, fees, and fines exacerbate poverty for individuals in the adult criminal justice system and their families.<sup>2</sup> The United States Department of Justice, for example, has recognized that

the harm caused by unlawful practices [imposing costs without adequate due process] ... can be profound. Individuals may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape. Furthermore, in addition to being unlawful, to the extent that these practices are geared not toward addressing public safety, but rather toward raising revenue, they can cast doubt on the impartiality of the tribunal and erode trust between local governments and their constituents.<sup>3</sup>

Little is known, however, about these practices in the juvenile justice system nationally. To address this gap, Juvenile Law Center reviewed statutes in all 50 states and the District of Columbia to assess the legal framework for financial obligations placed on youth in the juvenile justice system and their families. We also conducted a national survey of lawyers, other professionals, adults with previous juvenile justice involvement, and families to collect information about local practices.<sup>4</sup> We received responses from 183 individuals in 41 states; in each of these states, respondents reported on the imposition of costs, fines, fees or restitution, and harms to youth or families as a result. In addition, we engaged in conversations with attorneys and young adults who had experiences with the juvenile justice system to further understand how cost of justice issues play out in practice. Again, we heard that costs were regularly imposed and that they posed significant problems for youth and families.

We conclude that the imposition of costs, fees, and fines is widespread and poses significant problems for youth and their families. Approximately one million youth appear in juvenile court each year.<sup>5</sup> In almost every state and the District of Columbia, youth may be charged for multiple court-related costs, fines, and fees. Across the country, the inability to make these payments subjects youth and families to possible incarceration, suspension of driver's licenses, an inability to expunge or seal records, and economic and social stress, among other consequences.

In 1899, the Illinois legislature established the first separate juvenile court system.<sup>6</sup> The new system was designed to recognize that youth are different from adults, and to respond with a focus on rehabilitation and child development.<sup>7</sup> Over the course of the next century, the idea of a separate juvenile system became firmly entrenched nationally.<sup>8</sup> While state juvenile justice systems have changed over time, they still maintain core goals of supporting youth, assisting rehabilitation, developing youth competency, and improving outcomes.<sup>9</sup> Juvenile court fines, fees, and costs risk undermining the core goal of the juvenile court system by increasing wealth disparities in the system, pushing youth deeper into the system based on inability to pay, penalizing youth well into adulthood, and heightening family stress.

Policymakers and professionals aiming to ensure that the juvenile justice system is structured to support positive outcomes for youth and families should take a hard look at the consequences of monetary sanctions on youth. They should safeguard the due process rights of youth and families and ensure that the juvenile justice system, designed primarily to support and rehabilitate, does not instead impose undue harm on youth and their families.

### 1. State Laws

This report provides an analysis of statutes in 50 states and the District of Columbia which impose myriad financial obligations on youth and families when young people enter the juvenile justice system. Our analysis is based on statutory provisions contained in state juvenile justice or children's codes only, and does not identify judicial interpretations of these statutes, rules of procedure, or statutes found outside the state's juvenile or children's code. Our research reveals that across the country, courts may require youth, parents,<sup>20</sup> or both to pay:

- court expenses (including witness fees, transportation, cost of prosecution, cost of court operations);
- fees for a public defender, sometimes even after a determination of indigence;
- costs for evaluations and testing;
- probation supervision fees and costs;
- fees and costs for participation in diversion programs (designed to keep youth out of the juvenile justice system);
- child support to the state;
- treatment costs, including mental health treatment and rehabilitative programming;
- health care costs;
- the cost of GPS monitoring;
- cost of care generally; and
- fines.

Many of these costs, including court expenses, public defender fees, and costs for evaluations and testing, may be imposed before the court has made a delinquency determination. Even if the individual is not adjudicated, the youth or family does not recoup the money paid.

In addition, every state juvenile justice system allows courts to impose restitution on youth or their parents or guardians. Because restitution is designed to make the victim whole rather than to fund courts or agencies, this report considers it separately from other costs, fines, and fees. However, restitution is part of the larger story about how poverty can push young people deeper into the juvenile justice system. As a result, the publication considers the structure and impact of restitution policies and provides examples of promising practices to support victims' rights without sacrificing youth rehabilitation.

In almost every state, youth and families are likely to pay not just one, but multiple costs for juvenile court involvement. As shown in Appendix A, most states have statutory provisions permitting the imposition of costs at numerous points in the delinquency system. In Arkansas, Kansas, Michigan, Montana, Oregon, Texas, and Washington, for example, statutes permit at least seven different categories of costs to be imposed on youth or families.

Even within one category of cost, an individual may be required to make multiple payments for different purposes. In some states, for example, where youth or families must pay for the "cost of care," a close look at the statutes reveals that they must pay for the cost of placement *and* the cost of programming or treatment. Indeed, there are often numerous "cost of care" statutes in any state.<sup>21</sup>

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*"Some of these families are teetering on the brink [financially] when their children enter the juvenile justice system.... The added costs push them further."*

Youth and families may also face additional costs not reflected in our detailed state-by-state analysis. For example, in a number of states, youth or families are charged costs or fees for public defenders, or are asked to reimburse the cost of counsel, even if they have been determined indigent. An analysis of these charges will be included in a forthcoming publication. In addition, survey respondents noted that the costs of system involvement itself—including transportation costs and the cost of phone calls for youth in placement—created serious financial burdens for low-income families.

## **2. State Practices**

Because costs, fines, and fees are often established at the local level, we surveyed public defenders, other professionals, family members with juvenile justice-involved youth, and adults with previous involvement in the juvenile justice system to gather information about the prevalence of monetary sanctions and their impact on youth and families.

Although further research is needed, our survey suggests that costs, fines, and fees are often imposed, even in the absence of relevant statutes. In each section, we have highlighted states where survey respondents reported that the practice exists even though our legal research makes clear there is no statutory provision authorizing it.

In addition, our research suggests that in the many instances where costs, fines, or fees are discretionary under state law, they are frequently imposed on youth or families. One survey respondent, for example, reported that, even though the state statute requires judges to assess whether individuals are able to pay particular costs, in practice all families must pay regardless of their financial circumstances.

Conversations with advocates indicate that the county or municipality, rather than the state, often determines whether to impose a financial obligation. Since this study focused on state statutes and did not examine local court or agency rules, the burdensome cumulative costs presented in this report likely underestimate the extent of costs charged to youth and families.

## **3. The Burden of Legal Financial Obligations**

Costs, fines, fees, and restitution may be burdensome individually; when considered cumulatively, they can be overwhelming to already financially stressed youth and families. Research on adults has shown that monetary sanctions in the criminal justice system exacerbate poverty for indigent adults and their families<sup>12</sup> and interfere with defendants' capacity to find permanent housing, manage drug or alcohol addictions, and maintain strong social bonds.<sup>13</sup> For young people, the consequences may be as harmful, if not more so.

Juvenile justice-related cost can be highly burdensome. One report in Alameda County, California, for example, concluded that the total fees to families for juvenile involvement, including investigation, GPS monitoring, placement, and public defender fees, added up to approximately \$2,000 for an average case.<sup>14</sup> For young people incarcerated for extended periods of time, the costs can be significantly higher.<sup>15</sup> For a single-parent family making federal minimum wage, even the average payment constitutes approximately two months' salary.<sup>16</sup> While public assistance levels vary by state, in any state such payments would constitute several months of public benefits.<sup>17</sup>

Even seemingly minimal payments may require families to choose between buying basic necessities, such as groceries, and paying fees. Survey respondents reported that costs and fees cause families difficulty "surviving on a day to day basis" and that "[s]ome of these families are teetering on the brink [financially] when their children enter the juvenile justice system and the added costs push them further. I have seen single moms, which describes many of these cases, have difficulty scraping together 10 to 15 dollars out of their monthly budget

*Debtors' Prison For Kids? The High Cost of Fines and Fees in the Juvenile Justice System*

to pay on these fees, fines, and costs.” Even that low cost “means the difference to some [families] between eating for a day or two.” Another respondent indicated that even a single type of cost (e.g., cost for informal adjustment) “results in families not having funds for rent, food, groceries...”

Another survey respondent indicated that the costs imposed for juvenile justice involvement impact youths’ siblings: “It can determine if another child in the family goes to college or not. Gets school clothes or not. Get[s] to do anything else other children get to do because money is being spent on the juvenile system.”

The financial burden also undermines family relationships. One survey respondent explained that:

The debt in effect creates a rift between parents and their children. I...spoke to a family where a grandmother had taken custody of her grandson but when facing these insurmountable fees, she was told (by a county employee) that the only way she could avoid paying was to hand over custody. Given her limited income, she has seriously considered giving up custody of her grandson, which would make him a ward of the state....

For young people, the consequences of costs and fines can be particularly devastating. Youth and families who cannot pay fees face criminal contempt, civil judgments that follow them into adulthood, probation violations, additional fees, incarceration, property liens, and ineligibility for expungement.

It is particularly problematic that youth who would otherwise remain at home with their families may be incarcerated because they can’t afford fees even if they pose no public safety risk and have no need for services.<sup>19</sup> This, in turn, puts youth at risk of lasting harm. Youth facilities aren’t safe, with high rates of physical<sup>20</sup> and sexual violence.<sup>21</sup> Youth in facilities are typically subjected to correctional practices that may be uniquely traumatizing to youth, including strip searches, restraints, and solitary confinement.<sup>22</sup> Youth placed in facilities tend to fall further behind in school and often drop out upon reentry into their communities.<sup>23</sup> Placement as a juvenile also increases a youth’s chances of reoffending and future incarceration as an adult.<sup>24</sup> Ironically, juvenile justice placement is itself highly expensive<sup>25</sup> – and often the state places still further financial burdens on youth and families by charging them for the cost of placement or care.<sup>26</sup>

Even in the absence of incarceration, costs and fees undermine the juvenile justice system’s rehabilitative goals. In *High Pain, No Gain*, a recent report on juvenile fees and costs in Alameda County, California, the authors quote probation officers in more than one California county recognizing that the stress and strain of fees may hamper efforts to support positive outcomes for youth and families.<sup>27</sup> In our companion criminology study, criminologists Alex Piquero and Wesley Jennings demonstrate that costs and fees, and the amount of costs and fees owed, significantly increase the likelihood of recidivism.<sup>28</sup>

Not surprisingly, many youth simply have no way to obtain the money to pay costs and fines. Some youth in the system are not old enough to work at all, or at least cannot work full time under state and federal law,<sup>29</sup> and those who are old enough may have unique difficulty finding employment as significant numbers of teenagers are shut out of the labor market.<sup>30</sup> This is particularly true of youth from families living in poverty, who tend to have more difficulty finding employment than their more affluent peers.<sup>31</sup>

Ensuring opportunities to work, however—even if feasible—wouldn’t wholly solve the problem. Pushing youth to work too much, too soon may lead to long-term negative consequences, including lower grades and increased school drop-out rates.<sup>32</sup> Although youth with higher economic status may be more likely to have jobs, those from more disadvantaged backgrounds tend to work longer hours.<sup>33</sup> Financial obligations that push young people into such work experiences may therefore further undercut the juvenile justice system’s rehabilitative goals.

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Financial obligations in the juvenile system also exacerbate the system's existing economic disparity. Children from families in poverty are over-represented in the juvenile justice system. Multiple factors contribute to these disparities, including unequal access to quality counsel, a "needs-based delinquency system" that allows children with access to private services to avoid justice system involvement entirely, high rates of crossover youth entering the juvenile justice system from the child welfare system, and disproportionate entry into the system by youth in highly policed schools and neighborhoods.<sup>33</sup> When an inability to pay deprives a young person of the opportunity to be diverted from the juvenile justice system, is considered a violation of probation, or otherwise results in heightened system involvement, it intensifies economic inequalities in the system. Juvenile costs and fees lead to inherently unequal treatment for youth in poverty.

Costs, fines, fees, and restitution also exacerbate racial disparities in the juvenile justice system. A recent Sentencing Project report shows that while the most stark racial disparities in the juvenile justice system arise in the context of arrest, such disparities are also evident at multiple decision points in the delinquency system, including diversion (away from formal court processing), detention (prior to hearing), probation, and commitment to placement.<sup>34</sup> These disparities persist despite similar offending rates among youth of color and white youth for most common juvenile offenses.<sup>35</sup> In our companion publication, criminologists Alex Piquero and Wesley Jennings present a study showing that youth of color in Allegheny County, Pennsylvania were more likely to have costs or fees owed after case closing, which, in turn, was related to higher recidivism rates, even after controlling for a host of other demographics and case characteristics.<sup>36</sup> Fee structures that push young people deeper into the system for failure to pay may contribute to racial disparities in the juvenile justice system nationally.

Problematic policies on costs, fees, and fines create, in some instances, modern-day debtors' prisons. As described in Part C, some state laws explicitly establish that youth or families may be incarcerated for failure to pay. Others establish that youth who fail to pay may have probation revoked, be turned away from diversion programs, or be held in contempt of court. Still other states revoke or suspend the driver's licenses of youth or parents. As one survey respondent explained, such suspensions "result in financial hardships to families and youth during periods of suspension as well as in costs associated with restoration privileges." We explore below how the imposition of such serious penalties—including a loss of liberty—for failing to pay costs, fines, and fees raises serious constitutional questions.

#### 4. Changing the Story

If costs, fines, and fees cause harm to youth and families, what are the alternatives? A few jurisdictions have already taken steps to make their juvenile court systems more equitable. In Alameda County, California, a report examined the fiscal impact of court costs and fees and concluded that the county garners minimal benefit from fees. Although the county collects approximately \$400,000 annually from families, it expends approximately \$250,000 in collections, in addition to county personnel time spent on administration of fees.<sup>37</sup> After learning of the real harms to families and the minimal or negligible financial benefit, the county repealed the policy of imposing fees and costs in the juvenile justice system.<sup>38</sup> Other counties in California have also limited reliance on costs, fines, and fees.<sup>39</sup>

In Washington State, the legislature passed the Year Act, which eliminates juvenile diversion fees, juvenile court costs and appellate costs, collection fees for juvenile financial obligations, adjudication fees, and certain fines. The bill also permits youth to petition the court for modification or relief from legal financial obligations and directs the court to consider such factors as ability to pay, other debts, and restitution owed. In addition, it gives judges the discretion to consider a youth's ability to pay restitution and allows young people to have their juvenile records sealed if they have made a good faith opportunity to pay restitution.<sup>40</sup>

Counties and states across the country should consider a similar approach—eliminating harmful costs, fines, and fees, and ensuring that any orders of restitution are reasonable and effectively balance the victim's need to be made whole with the financial reality of youth and their families. For some states, the first step will be a fiscal analysis, like the one done in Alameda, to assess what kind of alternate revenue sources will be needed. Ultimately, however, state and local policymakers should establish more sustainable and effective models for funding court systems instead of attempting to get “blood from a turnip,” as one of our survey respondents described it, by imposing costs on youth and families who just can't afford to pay.

## B. TYPES OF LEGAL FINANCIAL OBLIGATIONS

In each section below, we provide the number of states with statutes authorizing or requiring such costs to be imposed. We also report on the number of states with survey respondents reporting youth or families making such payments. Because costs and fees can be imposed as a matter of practice, these survey responses sometimes identify costs imposed in states with no relevant statute.

### 1. Fees for Probation or Supervision

- **Statutes:** 20 states have statutes linking payment to probation or supervision. (See Table 1)
- **Practice:** Survey respondents in 18 states reported youth or families making such payments.<sup>41</sup>

Youth in the juvenile justice system or their families are often required to pay a cost or fee for probation or other supervision. In most jurisdictions, parents or youth are required to pay fees for the cost of supervision. In a small number of jurisdictions, they may instead be forced to put up a surety and then lose the money if the young person violates the terms of probation.<sup>42</sup>

These costs are often assessed monthly,<sup>43</sup> and failing to pay the fee each month can be treated like any other probation violation and constitute grounds for revocation of probation.<sup>44</sup> In addition, youth may be required to pay restitution, court costs, or other fees as a condition of probation.<sup>45</sup> Such additional costs are not reflected in this chart. As a result, youth who cannot meet the financial obligations imposed by probation fees or supervision costs risk being pushed further into the juvenile justice system, ultimately being placed outside the home when they otherwise would not have been. Of survey respondents who reported that youth or families were charged for probation, 62% reported that difficulty paying caused not only heightened juvenile justice system involvement, but also more frequent court contact, family debt, driver's license issues, and family stress and strain.

Among attorneys and other professionals surveyed, respondents in seven states reported that failure to pay probation costs can result in juvenile justice placement. As one survey respondent explained, if a young person can't afford the treatment ordered while he or she is on probation, "the juvenile is often charged with a probation violation, which results in a new sentence even though it's not the fault of the juvenile." Another noted that failure to pay could extend a youth's probation, creating a risk of additional probation violations that otherwise would not have occurred.

This extremely harsh consequence may create impossible choices for parents; one survey respondent (from a state in which failure to pay can result in probation revocation) reported, "I have seen families use their food budget to pay these fees." Accordingly, the best practice in this area is to not charge parents or children for probation or cost of supervision. In jurisdictions that persist in charging supervision fees, inability to pay should not be considered a probation violation, and failure to pay should never result in the youth being sent to placement.

**TABLE 1: STATUTES ON PROBATION OR SUPERVISION FEES OR COSTS**

<b>STATUTES IMPOSING PROBATION OR SUPERVISION FEES OR COSTS ON YOUTH</b>		
<b>STATUTE</b>	<b># OF STATES</b>	<b>STATES</b>
Mandatory fees for probation	3	Colorado (37% or greater surcharge on fines imposed), Illinois, Massachusetts (minimum state costs as a condition of probation supervision)
Judicial determination*	10	Arkansas (monthly fee up to \$20), California (cost of probation supervision), Georgia (initial fee of \$10-200 and monthly fee of \$2-30 for all youth under court's supervision), Indiana (initial fee of \$25-100 and monthly fee of \$10-25), Louisiana (monthly supervision fee of \$10-100), Ohio (reimbursement of actual costs), Oregon (supervision fee), Oklahoma (up to \$25/month), Texas (up to \$15/month, court may waive for inability to pay), Washington (probation bond, with \$10 nonrefundable)
<b>STATUTES IMPOSING PROBATION OR SUPERVISION FEES OR COSTS ON PARENTS</b>		
<b>STATUTE</b>	<b># OF STATES</b>	<b>STATES</b>
Mandatory fees for probation	4	Arizona (monthly fee), Idaho (monetary fee of \$1,000 for each breach of probation contract), Indiana (parent must pay for supervision costs), Kansas (parent is liable for cost of providing youth with probation services)
Judicial determination	14	California (cost of probation supervision), Connecticut (cost of supervision for youth on probation, including monthly fee), Florida (\$1/day supervision fee for youth on probation or in nonsecure detention, waived or reduced for financial hardship), Georgia (initial fee of \$10-200 and monthly fee of \$2-30 for all youth under court's supervision), Illinois (up to \$50/month), Indiana (initial fee of \$25-100 and monthly fee of \$10-25), Kentucky (surety of up to \$500 if parent's failure to control child was proximate cause of delinquency), Louisiana (monthly supervision fee of \$10-100), Montana (as condition of consent agreement), North Carolina (fee for probation supervision), Oklahoma (up to \$25/month), Oregon (supervision fee), Texas (up to \$15/month, court may waive for inability to pay), Washington (probation bond, with \$10 nonrefundable)

\*Throughout this report, we use the category "judicial determination" to refer to a statute that is discretionary, presumptive, or mandates payment only if individual is financially able.

Youth in poverty...may be incarcerated while those able to pay benefit from community-based treatment.

## 2. Fees for Informal Adjustment/Diversion

- **Statutes:** 22 states have statutes on costs or payment at informal adjustment or diversion. (See Table 2)
- **Practice:** Survey respondents in 26 states reported youth or families making such payments.<sup>46</sup>

Research has shown that when young people are diverted out of the juvenile justice system and into effective diversion programs or informal adjustment programs, they have better outcomes and are less likely to recidivate than their peers who are formally processed.<sup>47</sup> Diversion also allows young people to avoid the stigma of the juvenile justice system, reduces costs, and improves access to treatment.<sup>48</sup>

In a significant number of states, youth or their guardians are charged a fee for the youth to be diverted away from formal processing. This may be a one-time fee<sup>49</sup> or may be recurring, with a monthly charge until the informal adjustment or diversion conditions have been completed.<sup>50</sup> Diversion fees are often imposed as a matter of practice; in 14 states with no relevant statute, survey respondents reported that youth or families are charged for diversion.<sup>51</sup>

Fees for diversion or informal adjustment function as a gatekeeping mechanism, leading youth in poverty into formal processing, while youth who can afford the fees remain in the community and avoid further system involvement. Youth may be required to pay a fee to participate in a program, or failure to pay may constitute a violation of the terms of the informal adjustment agreement that results in formal processing of the case.<sup>52</sup> Additionally, in some states, parents or youth may be required to comply with restitution or make other payments as a condition of diversion.<sup>53</sup> These additional costs are not included in our tally of diversion fees. Thus, youth in poverty may end up being processed formally instead of accessing diversion programs; they may be incarcerated while those able to pay benefit from community-based treatment.

Survey respondents in 14 states indicated that inability to pay for diversion sometimes resulted in a formal petition being filed, and respondents in 6 states reported that it resulted in youth being put in juvenile justice placements. In two additional states, respondents noted that youth who cannot afford to pay for diversion cannot participate in the programs. One survey respondent explained that “[d]iversion usually requires a theft offender class, substance abuse treatment, etc., which cost money that our low-income client population cannot afford. Diversion becomes more of a privilege for those who are privileged.” Additionally, at least one survey respondent noted that paying for diversion can result in families not having funds for basic necessities such as rent and groceries.

Of survey respondents who reported that youth or families were charged for diversion, 60% reported consequences flowing from difficulty paying. In addition to facing formal juvenile justice system processing, respondents reported a variety of other consequences, including more frequent court visits, longer placement times, and conversion of the payment into a civil judgment.

Typically, diversion fees are charged in tandem with restitution (required as part of diversion in some states)<sup>54</sup> and costs of counseling or other rehabilitative programming.<sup>55</sup> As a result, even when diversion fees are minimal, the true costs of being diverted may be quite high for any one youth, potentially exceeding what the family could pay.

The best practice is to not charge a fee at all for participation in diversion programs. In jurisdictions that do charge a fee for diversion, fees should be based on a determination of ability to pay,<sup>56</sup> with clear guidelines to judges making such a determination; youth should not be denied access to diversion because they cannot pay;<sup>57</sup> and failure to pay should never be grounds for revocation of an informal adjustment agreement. As described in Part C, when youth face possible incarceration for failure to pay, due process protections must be put in place.

**TABLE 2: STATUTES ON INFORMAL ADJUSTMENT OR DIVERSION FEES OR COSTS**

STATUTES IMPOSING DIVERSION FEES OR COSTS ON YOUTH		
STATUTE	# OF STATES	STATES
Mandatory	4	Idaho (if county isn't insured), Illinois, Michigan, Nebraska
Judicial determination	15	Arkansas, Illinois, Indiana, Iowa, Louisiana, Mississippi, Nevada, Oklahoma, Pennsylvania, South Carolina, Texas, Utah, Washington, West Virginia (municipality or county has discretion to impose mandatory fee policy), Wisconsin
STATUTES IMPOSING DIVERSION FEES OR COSTS ON PARENTS		
STATUTE	# OF STATES	STATES
Mandatory	6	Indiana, Nebraska, New Hampshire, New Jersey, Oklahoma, Washington
Judicial determination	8	Arizona, Arkansas, Indiana, Montana, Nevada, Oklahoma, Pennsylvania, Wisconsin

### 3. Evaluation and Testing

■ **Statutes:** 31 states have statutes on costs of evaluation or testing. (See Table 3)

■ **Practice:** Survey respondents in 26 states reported youth or families making such payments.<sup>58</sup>

Although fees for exams or assessments—including mental health evaluations, drug and alcohol assessments, tests for sexually transmitted diseases, and DNA or blood tests—are not designed to be punitive, they place youth who cannot pay at risk of juvenile justice placement, as well as family strain and financial debt.

Of survey respondents who stated that youth or families had to pay for drug and alcohol testing or other testing, approximately 60% reported that such fees caused problems.<sup>59</sup> One survey respondent explained that “failure to obtain a mental health, offense specific evaluations ... can result in a failure to be given a bond....” This means that the youth “can’t go home” but “has to remain in placement.” In addition, failure to pay may constitute a violation of probation, leading the youth to be “resentenced through no fault of his own.” Requiring youth or families to pay for these court-ordered evaluations adds to the existing financial burden from other costs, fines, and fees. Because these costs may create financial strain without serving any penological purpose, the better policy is to establish by statute that testing is paid for by the state or local entity.<sup>60</sup>

**TABLE 3: STATUTES IMPOSING EVALUATION AND TESTING COSTS**

<b>STATUTES IMPOSING EVALUATION AND TESTING COSTS</b>		
<b>STATUTE</b>	<b># OF STATES</b>	<b>STATES*</b>
Assessments, generally <sup>61</sup>	20	Alabama (mandatory for parents), Connecticut (parents), District of Columbia (parents), Hawaii (parents), Idaho (parents or youth), Iowa (parents), Louisiana (parents), Maine (parents), Mississippi (parents), Montana (parents), Nebraska (parents), New Hampshire (parents or youth – parent liable for parent's own evaluation, youth liable for youth's evaluation), North Carolina (parents), North Dakota (parents), Oregon (parents, for certain weapons possession charges, youth, for cost of evaluation for fitness to proceed), South Carolina (parents), Tennessee (parents), Virginia (county may seek reimbursement from parents), Wisconsin (parents), Wyoming (parents or youth)
Substance abuse evaluation or assessment	11	California (parents or youth), Indiana (mandatory for parents), Kansas (youth), Minnesota (youth, if determined to be a major traffic offender), Mississippi (parents), Nevada (parents or youth), New Hampshire (parents or youth – parent liable for parent's own evaluation, youth liable for youth's evaluation), Ohio (youth, if youth was adjudicated for a drug abuse offense), Washington (youth), Wyoming (parents)
DNA or blood tests	5	Arkansas (youth, for enumerated offenses), Michigan (mandatory for youth, if felony conviction), Oregon (parents or youth, for enumerated offenses), Texas (parents or youth), Utah (youth, for sex offenses)
HIV or STI test	4	Kansas (mandatory for youth if adjudicated for offense involving sexual act), New Jersey (youth if victim or other person suffered prick from needle if there is probable cause to believe that youth is an intravenous drug user, or there was contact involving likely transmission of bodily fluids), Oregon (parent or youth if act involves sexual act or transmission of bodily fluids), Wisconsin (parents)

\*Statutes permit judicial discretion or allow judge to take into account ability to pay unless marked as mandatory.

#### 4. Cost of Care

- **Statutes:** 47 states have statutes on cost of care, which can include the cost of child support, placement, programming, health care, and other support. (See Table 4)
- **Practice:** Survey respondents in 31 states reported youth and families paying for the cost of care.<sup>62</sup>

Almost all states charge parents for the care and support of youth involved with the juvenile justice system; a small but significant number place such charges on juveniles. Such charges may also occur at the local level: in 4 states without relevant statutes, survey responses indicated that youth or their families were paying for the cost of care. Cost of care charges include general funds for “expense and maintenance including food, clothing, shelter and supervision of the child,”<sup>63</sup> child support payments to the state,<sup>64</sup> charges for a child’s custody,<sup>65</sup> detention,<sup>66</sup> confinement,<sup>67</sup> or placement in a residential facility.<sup>68</sup> Many states also have statutes specifically requiring the parent or child or both to pay specific costs related to the child’s treatment; case management;<sup>69</sup> education programs;<sup>70</sup> tobacco, drug, and alcohol testing or programs;<sup>71</sup> and other program fees.<sup>72</sup> In addition, many states require youth or families to pay for a child’s physical or mental health care while the child is in the custody of the juvenile justice system.<sup>73</sup>

Inability to pay for treatment can result in youth being deprived of treatment, held in violation of probation, or even facing extended periods of incarceration. Approximately half of respondents who reported such charges also stated that difficulty paying caused problems for youth and families.<sup>74</sup> One survey respondent explained that “if the family cannot pay for court-ordered treatment, and does not have insurance that can pay, sometimes the court-ordered treatment is simply not provided, leading to other complications in the child’s behavior or increased seriousness of the child’s condition.”

A family’s inability to pay for community-based treatment may force the youth to remain in placement longer. One survey respondent explained that youth remained in secure custody longer when the “family couldn’t afford [the] cost of [the] treatment center” and the judge would not release youth until “appropriate treatment” was found. Another noted that inability to pay caused a “longer stay in detention because [the] family couldn’t afford outpatient treatment.”

The cost of medical treatment for families raises some unique challenges. While parents are responsible for medical care for children living with them at home, statutes imposing such costs on parents for youth in juvenile justice custody create different legal consequences, including contempt orders, for failure to pay.<sup>75</sup> Moreover, medication costs for families may be higher in detention than they would be in the community, leading to dangerous interruptions in medication. One survey respondent explained:

Our juvenile placement facilities will NOT accept medication for the child when he is taken into detention. The family must bring prescription orders to the detention center, which then orders daily doses to be delivered from their own pharmacy, usually at a much higher cost than what the family was paying, and without insurance price reductions, and then those costs are billed back to the family. If the family does not have copies of the prescriptions, they have to either figure out how to obtain them or ask for the child to be reevaluated at the facility so that a new prescription can be obtained. In addition to the huge costs that are charged back to the family, this sometimes causes as much as a week’s interruption in critical medications, which can create serious medical problems, especially for a child with asthma or diabetes. This

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issue is aggravated when the child is moved from one facility to another, as any extra prescriptions are thrown away rather than transferred with the child, and then the family is left with the challenge of getting medications properly set up at the next facility. Also, prescriptions are not kept between visits, so the problems are repeated with chronic offenders.

While statutes on health care costs for juvenile justice-involved youth typically impose liability on parents, at least two states also hold young people responsible for the costs of their own health care.<sup>76</sup>

Additionally, in a number of states, youth or families may be charged for multiple “costs of care,” creating a particularly serious financial burden.<sup>77</sup>

The best practice is to improve coordination with health insurance whenever possible to avoid gaps in care and to eliminate any charges on parents for cost of care that cannot be covered by insurance. If such costs *are* imposed, however, state policy should ensure that a failure to pay does not result in a denial of treatment, a violation of probation, or incarceration.

**TABLE 4: COSTS OF CARE**

**STATUTES IMPOSING COSTS OF CARE ON YOUTH**

TYPE OF COST	# OF STATES	STATES
Mandatory	3	California (substance abuse treatment upon reaching age 18), Iowa, Oklahoma
Judicial determination	14	Arizona, California, Colorado, Iowa, Idaho, Kansas, Michigan, Minnesota, Montana, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Virginia, Wisconsin

**STATUTES IMPOSING COSTS OF CARE ON PARENTS**

TYPE OF COST	# OF STATES	STATES
Mandatory	12	Alabama, Alaska, Arizona, Arkansas, Connecticut, Indiana, Kentucky, Minnesota, Nevada, Ohio, Oklahoma, Virginia, Washington, Wisconsin
Judicial determination	44	Alaska (for parent's own treatment), Arizona, Arkansas, California, Connecticut, Colorado, Delaware (but only if the parent/guardian refuses to take custody of the child and the child enters detention), District of Columbia, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming

### 5. Court Costs and Fees

■ **Statutes:** 25 states have statutes on court costs and fees for juveniles. (See Table 5)

■ **Practice:** Survey respondents in 28 states reported that youth or families were charged court costs or fees.<sup>78</sup>

Court costs and fees range from a designated amount, which may be quite limited,<sup>79</sup> to an obligation to cover a broad array of costs for service, notice, deposition, travel expenses, prosecution costs, and other legal expenses, which could create a financial burden of thousands of dollars.<sup>80</sup> In a few states, costs are not imposed at trial, but youth or parents must pay for any appellate costs,<sup>81</sup> which may have a chilling effect on appeals.

Because court costs and fees are not designed for punishment, restitution, or rehabilitation, they serve no penological function. However, as with other financial obligations, such costs place significant stress on youth and families. As described earlier, one survey respondent noted that debt for such fees created a "rift" between parents and children. Another explained that certain court costs are assessed to youth on every adjudication and that youth are required to pay in cash, not community service. As a result, "[p]robation is sometimes extended so that the [youth] can come up with the money.... This causes there to be even more monthly probation supervision fees, more court appearances and more lost work for parents." Of survey respondents who reported youth or families being charged court fees, 65% reported that difficulty paying had caused problems for youth or families, the most common of which were debt, additional court visits leading to missed work or school, and the youth's case remaining open longer than it would have. Nonetheless, a significant number of state statutes include either mandatory or discretionary court cost provisions.

Even minimal costs, arising from either statutory obligations or local practice, may place youth and families at risk of serious legal consequences for failure to pay. For example, Wisconsin requires youth to pay a victim and witness assistance surcharge of \$20 when disposition is imposed; failure to pay this surcharge may result in suspension of the youth's driver's license for at least 30 days and up to 5 years.<sup>82</sup> In Indiana, the statute mandates families to pay all court costs;<sup>83</sup> failure to pay any costs or fees ordered by the court can trigger a finding of contempt and the entering of a judgment for the outstanding amount.<sup>84</sup> Even when costs are discretionary or established as a matter of local practice, they may be imposed on youth or families who cannot afford to pay.<sup>85</sup> For these reasons, best practice is not to impose court costs on youth or families. If states do impose such costs, they must also explicitly provide that youth cannot be denied access to certain programs or services because of an inability to pay costs or fees.<sup>86</sup>

**TABLE 5: COURT COSTS AND FEES**

#### STATUTES IMPOSING COURT COSTS AND FEES ON YOUTH

STATUTE	# OF STATES	STATES
Mandatory	5	Indiana (but may be assessed against parents), Kentucky (but may be assessed against parents), Michigan, Mississippi, Texas
Judicial determination	12	Arkansas, Delaware, Kansas, Maryland, Massachusetts (for certain appeals only), Montana, Ohio (but shall not be held in jail for failing to pay), Oregon, Pennsylvania, South Dakota, Wisconsin, Wyoming

#### STATUTES IMPOSING COURT COSTS AND FEES ON PARENTS

STATUTE	# OF STATES	STATES
Mandatory	3	Alabama, Indiana, Texas
Judicial determination	18	Arkansas, Georgia, Hawaii, Iowa, Kansas, Kentucky (unless parent is a victim of the offense), Maryland, Missouri, Montana, Nevada, New Mexico, Oregon, Pennsylvania, South Dakota, Tennessee, Wisconsin, Wyoming (witness fees, travel expenses, service of process, other costs)

## 6. Fines

■ **Statutes:** 43 states have statutes designating fines for youth in the juvenile justice system or their parents. (See Table 6)

■ **Practice:** Survey respondents in 29 states reported youth or families paying fines.<sup>87</sup>

The vast majority of states impose fines on youth in the system, a significant number impose such costs on parents when the parent has played some role in the child's delinquency,<sup>88</sup> and some impose costs on parents without a separate requirement of parental responsibility. Fines may be imposed only for designated offenses, such as truancy,<sup>89</sup> established as an alternative to incarceration,<sup>90</sup> or available as a general dispositional option.<sup>91</sup>

At first blush, imposing a fine seems like a logical alternative to removal of the young person from his or her family and community, subjecting a youth to incarceration, or requiring costly services. However, this approach only works if the law doesn't penalize young people for economic disadvantage. Given the significant link between poverty and justice system involvement,<sup>92</sup> imposing fines on this population is often highly problematic.

Even when fines are not mandated by statute, they may be treated as mandatory in practice. In Arkansas, for example, there is a discretionary fine of up to \$500 for truancy. One individual who had been in the juvenile justice system there reported that he spent three months in a locked facility at age 13 because he couldn't afford the truancy fine. He appeared in court without a lawyer or a parent and was never asked about his capacity to pay or given the option of paying a reduced amount. He assumed he had to either pay the full fine or spend time in jail. He explained, "my mind was set to where I was just like forget it, I might as well just go ahead and do the time because I ain't got no money and I know the [financial] situation my mom is in. I ain't got no money so I might as well just go and sit it out." He didn't want his mother with him in the courtroom because "I didn't want her to see me the way I was looking. I didn't want her to see her son being in the situation he was in...."<sup>93</sup> Of survey respondents who reported the imposition of fines on youth or families, 70% stated that difficulty paying had exacerbated financial hardship, increased court contact resulting in missed school or work, or led to deeper juvenile justice system involvement.

The best practice is to eliminate fines entirely. States that do continue to charge fines should consider setting low caps on fines,<sup>94</sup> assessing fines only after a determination of ability pay, allowing youth to participate in community service in lieu of paying a fine,<sup>95</sup> and maintaining a focus on rehabilitation.<sup>96</sup> These approaches can mitigate the harsh consequences of imposing fines in the juvenile justice system.

**TABLE 6: FINES**

<b>STATUTES IMPOSING FINES ON YOUTH</b>		
<b>STATUTE</b>	<b># OF STATES</b>	<b>STATES</b>
Mandatory	10	California (restitution fine – fine imposed when restitution imposed); Delaware (driving on a revoked license), Idaho (for violation of curfew), Michigan, Mississippi (for youth in work program), Nevada, Oklahoma, Rhode Island (for youth ages 16-18 who habitually spend time in poolrooms, bars, and houses of ill-repute), South Carolina (for youth misrepresenting age at theater), Wisconsin
Judicial determination	40	Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia (for traffic offenses), Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts (for traffic offenses), Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota (for specific vehicular offenses), Ohio, Oklahoma, Oregon (presumptive), Pennsylvania, South Carolina, South Dakota, Tennessee, Texas (for graffiti), Virginia, Washington, West Virginia, Wisconsin (forfeiture), Wyoming
<b>STATUTES IMPOSING FINES ON PARENTS</b>		
<b>STATUTE</b>	<b># OF STATES</b>	<b>STATES</b>
Mandatory	2	Delaware, Nevada
Judicial determination	16	Alabama, Arizona, Arkansas, Massachusetts, Michigan, Mississippi, Nebraska (for child's absenteeism), Nevada (for fine imposed on child under 17), New Hampshire, Oklahoma, Oregon, Rhode Island, Tennessee, Texas (for graffiti), Virginia, Wisconsin

A lack of funds makes it hard for young people to seal or expunge their juvenile records and move forward in their education, employment, and housing.

#### 7. Expungement/Sealing

■ **Statutes:** 11 states explicitly link payment to sealing or expungement by statute.

(See Table 7)

■ **Practice:** Survey respondents in 20 states reported payment requirements associated with sealing or expungement.<sup>97</sup>

Juvenile records have the potential to stymie a young person's path to economic independence by making it difficult for him or her to get into college, get a job, or find housing.<sup>98</sup> Juvenile records can also affect a young person's credit rating, further hampering the road to economic independence.<sup>99</sup> While many people assume that juvenile records are automatically sealed, expunged, or otherwise protected, that is generally not the case.<sup>100</sup> Rather, in most states, youth need to petition the court to seal or expunge their records. For the many youth who need an attorney's help with the complicated task of filing a petition, expungement may often be unaffordable.

Even for young people proceeding without counsel, sealing and expungement can be costly. States may impose fees to file petitions seeking sealing or expungement, to obtain criminal history reports, and to effectuate sealing or expungement. This usually means that the youth must pay the fees before the request for sealing or expungement can be processed. Fees may be set by statute established through a statewide fee schedule<sup>101</sup> or established as a matter of local practice. Survey respondents in 12 states with no explicit legislation reported that youth were nevertheless required to pay a fee before they could have their records expunged. Such fees and costs dissuade many young people from seeking sealing or expungement, creating yet another barrier to employment and other opportunities.

Additionally, at least six states explicitly state that expungement will not be granted if the individual has remaining restitution or court costs.<sup>102</sup> The practice is likely much more widespread, as many other state statutes require that all conditions of probation be met, and payment of fees, fines, and restitution are common probation terms.<sup>103</sup> While requiring probation terms to be met prior to expungement may seem reasonable, conditioning expungement on obligations that fall unequally on youth based upon ability to pay allows poverty to pose a barrier to expungement.

Of survey respondents who reported that youth or families were charged for expungement, 57% reported that inability to pay had prevented the expungement of a juvenile record. A lack of funds makes it hard for young people to seal or expunge their juvenile records and move forward in their education, employment, and housing.

Best practice is to explicitly clarify by statute, as some states have done, that no fee will be associated with juvenile expungement<sup>104</sup> and that fees or restitution will not be considered in determining rehabilitation or eligibility for record sealing/expungement.<sup>105</sup> States should also consider establishing automatic sealing and expungement<sup>106</sup> so that youth are not dependent on counsel for filing.

**TABLE 7: STATUTES LINKING EXPUNGEMENT AND SEALING TO PAYMENT**

STATUTE	# OF STATES	STATES
Expungement/Sealing only if previous fees are paid, filing fee is paid, or both	11	Arizona, Colorado, Delaware, Florida, Illinois, Kansas, Michigan, New Jersey, Oregon, Rhode Island, Utah

#### 8. Restitution

■ **Statutes:** All 50 states and the District of Columbia have statutes providing for juvenile restitution. (See Table 8)

■ **Practice:** Survey respondents in all states reporting on this question confirmed that youth or families paid restitution charges.<sup>107</sup>

Every state juvenile code has a provision on restitution, including a few that mandate restitution payments.<sup>108</sup> A significant number of states place restitution obligations on parents in addition to youth.<sup>109</sup> Restitution may be imposed at various points in the juvenile justice system: as a condition of a diversion program designed to keep youth out of the juvenile justice system, as a probation condition, or as part of the child's disposition (the equivalent of a sentence in an adult case). Some states have multiple restitution statutes. For example, restitution may be a mandatory component of diversion programs, but optional at disposition; or it may be optional for some categories of offenses, but mandatory for others.

Although restitution can play an important role in holding juvenile offenders accountable and making their victims whole,<sup>110</sup> it can also undermine the rehabilitative purpose of the juvenile justice system. Youth living in poverty, in particular, may be driven deeper into the juvenile justice system for inability to pay restitution.

Of reporting respondents, 76% stated that difficulty paying restitution led to risk of more court visits, deeper contact with the juvenile justice system, debt, driver's license issues, or family stress and strain.

One survey respondent, for example, explained that “[t]he court has developed a special calendar to collect restitution. If the youth fails to appear and has not made a monthly payment a bench writ is issued for the youth's arrest.” Moreover, even when a young person is not incarcerated, the financial obligation may create an emotional strain that undermines rehabilitation.

Restitution statutes should be carefully tailored to support positive outcomes for victims within the rehabilitative framework of the juvenile justice system. While further research is needed to assess the impact of varying restitution approaches, some promising approaches in state statutes that may make victims whole while still supporting youth rehabilitation include:

- (1) Restitution determined at a judicial hearing with all parties.<sup>111</sup> All parties, including parents if they will be liable, are represented by counsel.
- (2) Restitution imposed on parents only when they had a role in the delinquent act.<sup>112</sup>
- (3) Work programs are available as an alternative to payment, and:
  - don't interfere with a child's education;<sup>113</sup>
  - are time limited;<sup>114</sup>
  - are developmentally appropriate;<sup>115</sup>
  - teach skills;<sup>116</sup>
  - allow youth to keep some portion of their earnings; and<sup>117</sup>
  - pay at least minimum wage.<sup>118</sup>

- (4) As an alternative to a work program, probation may assist youth in finding a job, and the youth may then retain some portion of his or her wages.<sup>119</sup>
- (5) Restitution offsets any civil liability so that youth or parents are not required to make payments both through the juvenile justice system and a civil court.<sup>120</sup>
- (6) Failure to pay restitution does not lead to automatic probation revocation<sup>121</sup> or to incarceration.
- (7) Restitution is capped at a reasonable amount tied to the youth's ability to pay, balancing the need to make the victim whole with the potential lasting burdens on youth and families in poverty.<sup>122</sup>
- (8) Restitution has reasonable time limits in keeping with the rehabilitative goals of the juvenile justice system.<sup>123</sup>

**TABLE 8: RESTITUTION**

<b>STATUTES IMPOSING RESTITUTION ON YOUTH</b>		
<b>STATUTE</b>	<b># OF STATES</b>	<b>STATES</b>
Mandatory	9	Alaska, Arizona (full or partial, taking into account ability to pay), Colorado, Michigan (though parents may be ordered to pay if juvenile is unable and parents are able), Nevada, New Hampshire, Oregon, Texas, Washington
Judicial determination	47	Alabama, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming
<b>STATUTES IMPOSING RESTITUTION ON PARENTS</b>		
<b>STATUTE</b>	<b># OF STATES</b>	<b>STATES</b>
Mandatory	4	Alaska, Michigan, Nebraska, Nevada
Judicial determination	30	Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Kentucky, Maryland, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, West Virginia, Wisconsin, Wyoming

### C. PENALTIES AND CONSEQUENCES

When a failure to pay fines is punished with incarceration, it needlessly pushes youth deeper into the juvenile justice system. When failure to pay results in driver's license revocation or further fines, it pushes youth and families deeper into poverty. When it precludes young people from expunging their records, it poses an obstacle to education, employment, and self-sufficiency. Additionally, when youth or families are incarcerated or deprived of driver's licenses as a result, the penalties may not only be problematic, but also unconstitutional, as described below.

State statutes designate a wide variety of penalties and consequences for failure to pay costs, fines, fees, or restitution. Some statutes, for example, authorize courts to charge additional interest payments or fines on youth or families for previous nonpayment.<sup>124</sup> For youth without the money to make the initial payments, added interest can cause serious financial and emotional stress.

Many state statutes explicitly designate that a youth's payment for restitution or other costs, fines, and fees, can convert into a civil judgment,<sup>125</sup> allowing the financial obligation to extend even after the juvenile court no longer has jurisdiction over the case. Having a civil judgment itself can also put youth at risk of eviction, wage garnishment, a lien on property, and serious credit problems that may interfere with their ability to get loans for education or housing.<sup>126</sup> In a number of states, rather than transferring collection of the debt to a separate civil court, the juvenile court retains jurisdiction into the child's adulthood for the purpose of collecting payment for fines, fees, costs, or restitution.<sup>127</sup> The juvenile justice system was designed to give young people a chance to grow, mature, and move on from adolescent mistakes; these policies may burden youth well into adulthood and hinder their education and their employment opportunities.

Many statutes establish that youth can be incarcerated or otherwise face a loss of liberty when they fail to pay. The most problematic laws are those establishing incarceration as a consequence for nonpayment. Some states explicitly list incarceration as a consequence of failure to pay,<sup>128</sup> while others note that youth may be held in civil or criminal contempt<sup>129</sup> or may be found to have violated probation<sup>130</sup> for failure to make payments. Significant research has shown that juvenile justice placement, especially for low-level and non-violent offenses, makes youth more likely to recidivate than their peers.<sup>131</sup> Placing youth in facilities for failure to pay undermines the rehabilitative goal of the juvenile justice system while also imposing a serious financial burden on the state or county.<sup>132</sup> As discussed in the overview, these statutes exacerbate racial and economic disparities by increasing juvenile justice system involvement for youth of color living in poverty, while allowing their peers to avoid such contact.

Parents, too, face potential incarceration or further system involvement for failure to make payments. In a number of states, parents, like youth, may be found in contempt, either civil or criminal, for failure to pay.<sup>133</sup> Parents may also face increased financial liability through collection fees and interest accruing on payments,<sup>134</sup> as well as civil judgments for failure to pay.<sup>135</sup> Research has shown that strengthening families leads to better outcomes for youth involved with the juvenile justice system.<sup>136</sup> When parents face incarceration or mounting debt for failure to pay, they have even fewer resources to devote to educating, helping, and supporting their children.

In a few states, youth charged with certain tobacco-related offenses may be ineligible for a driver's license or may have a license suspended or revoked for failure to pay.<sup>137</sup> Such suspensions can make it difficult for youth or parents to get to school or work or to take care of their families.<sup>138</sup>

Finally, as described in the expungement section, an inability to pay off fees, fines, costs, and restitution may hinder a young person's ability to have a record expunged. This, too, can limit a youth's education and employment prospects.<sup>139</sup>

*The juvenile justice system was designed to give young people a chance to grow, mature, and move on from adolescent mistakes; these policies may burden youth well into adulthood and hinder their education and their employment opportunities.*

Our surveys for attorneys, professionals, and community members were designed to provide a preliminary assessment of the prevalence of certain consequences for failure to pay. In the 41 states with survey respondents, participants widely affirmed that youth experience these consequences:

- Case remained open longer (33 states<sup>140</sup>)
- Youth was sent to juvenile justice placement (26 states)
- Youth remained in juvenile placement longer than he/she otherwise would have (26 states)
- Family took on debt (31 states)
- Additional court visits leading to missed school or missed work (34 states)
- Youth couldn't get records expunged (24 states)
- Civil judgment imposed (25 states)
- Formal petition filed for failure to pay diversion costs (15 states)

We also asked an open-ended question to gather information about additional consequences youth or families experience. Survey respondents echoed the concerns raised by statutes: they reported that youth or families faced extended probation; youth or parents had a driver's license suspended or revoked or were prevented from obtaining a license; youth were deprived of treatment; youth or parents were held in contempt; and youth faced arrest warrants. They also reported that families experienced added financial and familial stress; families were unable to visit youth in placement; and parents faced possible loss of custody or parental rights.

While it is beyond the scope of this publication to explore constitutional implications in detail, it is worth noting that the United States Supreme Court has made clear that an individual may not be incarcerated for nonpayment if the court does not first conduct an indigence determination and establish that the failure to pay was willful.<sup>141</sup> The Supreme Court has also held that courts must consider "alternative measures of punishment other than imprisonment"<sup>142</sup> for indigent defendants. Nonetheless, some states require neither willfulness nor capacity to pay in statute,<sup>143</sup> and only a few explicitly limit or prohibit incarceration for failure to pay.<sup>144</sup>

Additionally, the Supreme Court has held that "courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees."<sup>145</sup> This right is even more important for children, who lack both the developmental capacity and the legal knowledge to represent themselves.<sup>146</sup> Several states, such as Arizona and Wyoming, expressly provide access to counsel in contempt proceedings, and should serve as a model for state statutes that comply with constitutional standards;<sup>147</sup> the majority of states have no such provisions.

Further research is needed regarding the constitutional implications of imposing penalties on youth for failure to pay fines, fees, costs, and restitution. This research should take into account the United States Supreme Court's repeated admonition that constitutional protections must be calibrated to the unique developmental needs of adolescents.<sup>148</sup>

Policymakers and other professionals should consider these and other constitutional considerations as they develop policy and practice moving forward. Additionally, policies should ensure that youth are not pushed deeper into the juvenile justice system simply for failure to pay; such policies undermine both the rehabilitative goals of the juvenile justice system and the chances of youth becoming self-sufficient, productive adults. For youth still of school age and not old enough to work, financial burdens serve little or no benefit and impose serious stress, strain, and harm.

## **CONCLUSION**

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The juvenile justice system in each state is designed to help young people meet their potential, get back on track, and become productive members of their communities. Across the country, however, the imposition of costs, fines, fees, and restitution hinders these goals. For the many youth and families who cannot afford these payments, consequences can be dire, including recidivism (as shown by criminologists Piquero and Jennings), incarceration, and significant financial strain. As Piquero and Jennings also demonstrate, these policies have a racially disparate impact. This means that youth in poverty and youth of color may face harsher consequences and receive less rehabilitative treatment than their more affluent peers. Moreover, while further research is needed, existing studies suggest that court costs, fees, and fines have limited, if any, fiscal benefit to states and counties, given the difficulty in collecting from families in poverty and the high administrative costs in trying to do so.

It is time to re-focus the juvenile justice system on approaches that work: eliminating costs, fines, and fees placed on youth who are not yet old enough to enter into contracts or take on full-time work; prioritizing restitution payments that go directly to victims and are within the youth's ability to pay; and ensuring that restitution policies are developmentally appropriate by thoughtfully addressing the needs of victims in the context of the juvenile justice system's rehabilitative model. These approaches can hold youth accountable, ensure public safety, and support youth in realizing their own potential.

## ENDNOTES

- <sup>1</sup> Piquero, A.R., & Jennings, W.G. (2016). *Juvenile System Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*. Final Report submitted to the Juvenile Law Center, Philadelphia, PA.
- <sup>2</sup> See, e.g., Alexes Harris, *A Pound of Flesh: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR* (2016).
- <sup>3</sup> Letter from United States Department of Justice, Civil Rights Division, Office for Access to Justice (Mar. 14, 2016) at 3, available at <https://www.justice.gov/crt/file/832461/download>.
- <sup>4</sup> Available survey results are included throughout. For survey methodology, please see Appendix B. Because of the exploratory nature of the survey, the great variation in practices across counties, and the sample size, the results do not present a complete picture of costs and practices in any one state or even county. Instead, we present the number of states in which at least one respondent reported a particular cost. Additionally, we provide quotes from survey responses to illustrate the impact of costs and fees on individual children and families. It is impossible to draw a conclusion from states with no response regarding a particular cost. Such responses may be because we didn't connect with individuals in that state, because there are no costs imposed, or because survey respondents were not familiar with the costs charged.
- <sup>5</sup> Sarah Hockenberry & Charles Puzzanchera, Juvenile Court Statistics, 2013 (National Center for Juvenile Justice) 2015 at 6, available at [www.ojjdp.gov/ojstatbb/njcda/pdf/ics2013.pdf](http://www.ojjdp.gov/ojstatbb/njcda/pdf/ics2013.pdf).
- <sup>6</sup> *A Century of Juvenile Justice* 42 (Margaret K. Rosenheim et al. eds., 2002).
- <sup>7</sup> *Id.*
- <sup>8</sup> *Id.* at 69.
- <sup>9</sup> See *OJJDP Statistical Briefing Book*, [http://www.ojjdp.gov/ojstatbb/structure\\_process/qao4205.asp?qaDate=2012](http://www.ojjdp.gov/ojstatbb/structure_process/qao4205.asp?qaDate=2012) (released on August 05, 2013); see also: Monahan, K., Steinberg, L., & Piquero, A.R. (2015). Juvenile justice policy and practice: a developmental perspective. In M. Tonry (Ed.), *Crime and Justice: A Review of Research* (vol. 44, pp. 577-619). Chicago: University of Chicago Press.
- <sup>10</sup> We use the term "parents" here to refer to parents, guardians, or others legally responsible for youth. Definitions vary slightly from state to state, but generally place financial responsibility on the adults legally responsible for the care of the child.
- <sup>11</sup> In Arizona, for example, statutes permit youth or their families to be charged for the cost of detention in a DUI offense, Ariz. Rev. Stat. Ann. § 8-343(M), the cost of medical and mental health care for youth committed to the custody of the department of juvenile corrections, Ariz. Rev. Stat. Ann. § 8-243(B), the cost of food, clothing, shelter, and supervision in a detention facility, Ariz. Rev. Stat. Ann. 8-§ 243(C), the cost of family counseling, Ariz. Rev. Stat. Ann. § 8-263 (A), (C), and the cost of foster care, treatment, or education in a setting other than a state institution for a juvenile, Ariz. Rev. Stat. Ann. § 8-243(A).
- <sup>12</sup> See generally Saneta deVouono-powell et al., *Who Pays?: The True Cost of Incarceration on Families* (2015), available at <http://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf> (finding that costs often amount to one year's worth of income for families and may force families into significant debt).
- <sup>13</sup> See *A Pound of Flesh*, *supra* note 2 at 52-73.
- <sup>14</sup> Myles Bess, *Double Charged: The True Cost of Juvenile Justice*, YOUTH RADIO (May 8, 2014), <https://youthradio.org/news/article/double-charged-fines-and-fees/>.
- <sup>15</sup> *Id.*
- <sup>16</sup> The federal minimum wage is \$7.25 per hour. 29 U.S.C. § 206 (2012). For a single parent making \$7.25 an hour, it would take 276 hours, or approximately seven 40-hour work weeks, to pay off justice costs of \$2,000.00.
- <sup>17</sup> Ife Floyd & Liz Schott, *TANF Cash Benefits Have Fallen by More than 20 Percent in Most States and Continue to Erode*, Ctr. Budget Pol'y Priorities (Oct. 15, 2015), <http://www.cbpp.org/research/family-income-support/tanf-cash-benefits-have-fallen-by-more-than-20-percent-in-most-states>.
- <sup>18</sup> As described above and explored further in Part C, this may happen because a failure to pay constitutes civil or criminal contempt, because incarceration is a direct consequence of a failure to pay, because youth must pay for alternative diversion programs to avoid juvenile justice system involvement, or because failure to pay constitutes a violation of probation.
- <sup>19</sup> See John R. Vivian et al., *Assaults in Juvenile Correctional Facilities: An Exploratory Study*, 30 J. CRIME & JUST. 17 (2007).

20 See Romona R. Rantala & Allen J. Beck, *Survey of Sexual Violence in Juvenile Correctional Facilities, 2007-12 – Statistical Tables* (2016), available at <http://www.bjs.gov/content/pub/pdf/ssvfc0712st.pdf>.

21 See Richard A. Mendel, Annie E. Casey Found., *No Place for Kids: The Case for Reducing Juvenile Incarceration 5-22* (2011), available at <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFull-Report-2011.pdf>; see generally Richard A. Mendel, Annie E. Casey Found., *Maltreatment of Youth in U.S. Juvenile Correction Facilities: An Update 1* (2015), available at <http://www.aecf.org/m/resourcedoc/ae-cf-maltreatmentyouthuscorrections-2015.pdf>.

22 Anna Aizer & Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital, and Future Crime: Evidence from Randomly Assigned Judges*, Q. J. ECON. 780-84 (2015).

23 *Id.* at 784-89.

24 Justice Policy Inst., *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration 16-19* (2014), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker\\_shock\\_final\\_v2.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf).

25 See *infra* Section B.4.

26 Jeffrey Selbin & Stephanie Campos, *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California 15-17* (2016), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2738710](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2738710).

27 *Supra* note 2.

28 The Fair Labor Standards Act sets 14 as the minimum age for most non-agricultural work. 29 C.F.R. § 570 (2012); see also U.S. Dept. Labor, *Fact Sheet # 43: Youth Employment Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations* (2010), available at <https://www.dol.gov/whdregs/compliance/whdfs43.pdf>. While youth under 14 may work in a few designated jobs (such as babysitting or having a paper route), the vast majority of youth under 14 are simply can't earn the money they would need to pay off even minimal fees and costs.

29 While older youth may be legally capable of work, recent reports show that they are increasingly unable to access employment. One recent study found that the number of jobs held by teenagers between ages 14 and 18 shrank by 33% between 2001 and 2014. Career Builder, *The Changing Face of U.S. Jobs: Composition of Occupations by Gender, Race, and Age from 2001-2004 13* (2015), available at <http://careerbuilder-communications.com/pdf/changing-face-of-us-jobs.pdf>. Another study found that the youth employment rate in 2011 was 26%, the lowest since World War II. JP Morgan Chase & Co., *Building Skills Through Summer Jobs: Lessons from the Field 4* (2015), available at <https://www.jpmorganchase.com/corporate/Corporate-Responsibility/document/54887-jpmc-summer-youth-aw2.pdf>. Teens seeking jobs are now in competition with college graduates, workers over 55, and others competing for the same entry-level roles. Andrew Soergel, *Why Teens are Getting Shut out of the Workforce*, U.S. News & World Rep. (Mar. 26, 2015, 4:30 PM), <http://www.usnews.com/news/blogs/data-mine/2015/03/26/studies-suggest-teens-getting-shut-out-of-workforce>.

30 According to a report from the Center for Labor Market Studies at Northeastern University, only 21% of teenagers from low-income families worked at all, while 38% of wealthier teens had jobs. Andrew Sum et al., Ctr. Labor Mkt. Studies at Northeastern Univ., *The Dismal State of the Nation's Teen Summer Job Market, 2008-2012, and the Employment Outlook for the Summer of 2013 4* (2013), available at [https://repository.library.northeastern.edu/downloads/neu:mo406v8n?datastream\\_id=content](https://repository.library.northeastern.edu/downloads/neu:mo406v8n?datastream_id=content).

31 According to one study, youth who work more than 20 hours a week "may have lower grade point averages and are more likely to drop out of school than those who work fewer hours." The study notes that "Overall, the negative effects of employment appear to be linked, not to whether students work, but how often and how long." Child Trends Data Bank, *Youth Employment: Indicators on Children and Youth 2* (2015), available at [http://www.childtrends.org/wp-content/uploads/2012/05/120\\_Youth\\_Employment.pdf](http://www.childtrends.org/wp-content/uploads/2012/05/120_Youth_Employment.pdf).

32 *Id.* ("[s]ome studies show that longer work hours are more prevalent among minority and other disadvantaged students").

33 For a more detailed discussion of these and other factors leading to economic disparities in the system, see Tamar Birkhead, *Delinquent by Reason of Poverty*, 38 Wash U. J. L. & Pol'y 53 (2012).

34 See The Sentencing Project, *Racial Disparities in Youth Commitments and Arrests*, 6 (2016), available at <http://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf>.

35 *Id.*

36 *Supra* note 1.

37 Selbin & Campos, *supra* note 13, at 12-13.

38 Press Release, Alameda County is the First in State to Repeal Juvenile Justice Fees (July 12, 2016) (available at <http://ebclc.org/in-the-news/ac-first-in-state-to-repeal-juv-fees/>).

39 Selbin & Campos, *supra* note 13, at 16.

40 S.B. 5564, 64th Leg., Reg. Sess. (Wash. 2015).

41 In 18 of 38 states with respondents answering this question, at least one survey participant reported such a cost. The states are: Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, New Jersey, Ohio, Pennsylvania, Tennessee, Texas, Wisconsin, and Wyoming.

42 See, e.g., *Idaho Code Ann.* § 20-522 (monetary fee of \$1,000 for each breach of contract).

43 See, e.g., 705 Ill. Comp. Stat. Ann. 405/5-615(10) (requiring a \$50/month supervision fee charged to youth or parents). Other jurisdictions use other payment schemes, including costs accruing daily. See, e.g., Fla. Stat. Ann. § 985.039 (mandating a \$1/day charge for parents of youth on probation or under other non-secure supervision).

44 See, e.g., Ark. Code Ann. § 9-27-339. This statute establishes that "nonpayment of restitution, fines, or court costs may constitute a violation of probation, unless the juvenile shows that his or her default was not attributable to a purposeful refusal to obey the sentence of the court or was not due to a failure on his or her part to make a good faith effort to obtain the funds required for payment." Although this statute essentially creates an exception when the juvenile is unable to pay, the burden is on the juvenile to show that inability, and judges are given discretion in determining what constitutes a "purposeful refusal."

45 text: See, e.g. Del. Code Ann. tit. II § 1009A, Del. Code Ann. tit. II § 4218(a)(2).

46 In 26 of 38 states with respondents answering this question, at least one survey respondent reported youth or family paying this cost. The states were: Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming.

47 Holly A. Wilson & Robert D. Hoge, *The Effect of Youth Diversion Programs on Recidivism: A Meta-analytic Review*, 40 Crim. Just. & Behav. 497, 504-09 (2012).

48 Models for Change, *Juvenile Diversion Guidebook* 11-12 (2011), available at <http://www.models-forchange.net/publications/301>.

49 See, e.g., Ariz. Rev. Stat. Ann. §8-321(N).

50 See, e.g., Ind. Code Ann. § 31-37-9-9. Or, as in Illinois, a minor may be required as a condition of diversion or "continuance under supervision" to "contribute to his or her own support at home or in a foster home." 705 Ill. Comp. Stat. Ann. 405/5-615(5)(f).

51 In each of the 16 states, at least one survey respondent reported these fees imposed.

52 See, e.g., Okla. Stat. Ann. tit. 10A, § 2-2-104 (indicating that an informal adjustment agreement may include a requirement for payment of a fee, and establishing that failure to carry out the terms of the informal adjustment agreement may result in revocation).

53 See, e.g., Nev. Rev. Stat. Ann. 62E.210.

54 See, e.g., Alaska Stat. Ann. § 47.12.060(b)(3) (indicating that informal adjustment is not successfully completed unless the youth agrees to pay or has finished paying restitution).

55 See, e.g., Ind. Code Ann. § 31-37-9-9.

56 See, e.g., Ark. Code Ann. §9-27-323.

57 See, e.g., Wash. Rev. Code Ann. §13.40.085.

58 26 of 38 states with respondents answering this question had at least one respondent reporting the costs imposed. The states were: Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Tennessee, Texas, Virginia, Washington, Wisconsin, Wyoming. This includes data aggregated across two survey questions; respondents in 23 states reported youth or families are charged for drug or alcohol screening, and respondents in 18 states reported youth or families are charged for other types of assessments.

59 Drug and alcohol screening costs were reported problematic by 59% of respondents, and other assessments by 61% of respondents.

60 *See, e.g.*, Va. Code Ann. § 16.1-278.8:01 (the cost of such (drug or alcohol) testing ordered by the court shall be paid by the Commonwealth from funds appropriated to the Department for this purpose").

61 This includes a wide variety of assessments used for juvenile justice purposes, including behavioral assessments, mental health assessments, and general provisions around "examinations." It excludes medical exams for medical treatment purposes.

62 In 31 of 38 states with respondents answering this question, at least one survey respondent reported youth and families paying these costs. The states include: Alabama, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming. This includes data aggregated across two survey questions; respondents in 24 states reported youth or families are charged for child support or cost of care, and respondents in 29 states reported youth or families are charged for court-ordered treatment.

63 Ariz. Rev. Stat. Ann. § 8-243.

64 *See, e.g.*, Alaska Stat. Ann. § 47.12.230; Ind. Code Ann. § 31-40-1-5; Kan. Stat. Ann. § 38-2319; S.C. Code Ann. § 63-19-1680; Tenn. Code Ann. § 37-1-151; Tex. Fam. Code Ann. § 54.06; Vt. Stat. Ann. tit. 33, § 5116; W. Va. Code Ann. § 49-4-714(b)(4).

65 Wis. Stat. Ann. § 938.275.

66 Mont. Code Ann. § 41-5-1525; Ga. Code Ann. § 15-11-36.

67 Wash. Rev. Code Ann. § 13.40.220.

68 N.C. Gen. Stat. Ann. § 7B-2704.

69 *See, e.g.*, Me. Rev. Stat. tit. 15, § 3314-B.

70 *See, e.g.*, Ariz. Rev. Stat. Ann. § 8-243; Iowa Code Ann. § 232.141; Wash. Rev. Code Ann. § 13.40.220.

71 *See, e.g.*, N.H. Rev. Stat. Ann. § 169-B:21; Wis. Stat. Ann. §§ 938.34(f)(4); 938.361(2); Miss. Code. Ann. § 43-21-605; Okla. Stat. Ann. tit. 10A, § 2-2-509; Utah Code Ann. § 78A-6-1207; Wash. Rev. Code Ann. § 13.40.165; Wis. Stat. Ann. § 938.34(6)(b).

72 *See, e.g.*, Nev. Rev. Stat. Ann. 62E.210 (programs for arts, sports and physical fitness); N.H. Rev. Stat. Ann. § 169-D:17 (after-school or evening programs); N.J. Stat. Ann. § 2A:4A-71:1 (remedial education and counseling); S.C. Code Ann. § 63-19-1430 (youth mentor program); Utah Code Ann. § 78A-6-1207; Wash. Rev. Code Ann. § 13.40.640.

73 *See, e.g.*, Nev. Rev. Stat. Ann. § 62B.110 (West) ("If a child becomes subject to the jurisdiction of the juvenile court and the child receives ancillary services that are administered or financed by a county, including, but not limited to, transportation or psychiatric, psychological or medical services, the county is entitled to reimbursement from the parent or guardian of the child for all money expended by the county for such services."); Ariz. Rev. Stat. Ann. § 8-243(B) (parents liable for cost of medical and mental health care for juveniles committed to department of juvenile justice, based on their ability to pay); Ark. Code Ann. § 9-27-602(d)(1)-(2) (parents liable for cost of out of state mental health services, based on ability to pay).

74 Specifically, 47% of respondents aware of such costs reported cost of care/child support charges cause problems, and 54% reported that costs for treatment are problematic.

75 *See, e.g.*, S.D. Codified Laws § 26-7A-42 (Establishing parental liability for health care costs and stating that "[t]he court may issue such orders as necessary and appropriate to secure the payment of the costs of treatment of the child under this section ....); *See also* Miss. Code. Ann. § 43-21-615(2) a parent who willfully refuses to pay medical expenses may be proceeded against for contempt).

76 *See* Minn. Stat. Ann. § 260B.188 (West) (county of residence is entitled to reimbursement from the child or the child's family for payment of medical bills to the extent that the child or the child's family has the ability to pay for the medical service); Ariz. Rev. Stat. Ann. § 8-243(B).

77 For example, Alabama statutes permit judges to require parents to pay for the cost of healthcare, detention/placement, child support, and other undefined costs for juveniles. Ala. Code § 12-15-109; Ala. Code § 12-15-215(f).

78 In 28 of 40 states with respondents answering this question, at least one survey respondent reported youth or families were charged court costs or fees. The states reporting such practices are: Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Nebraska, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming.

79 Ark. Code Ann. § 9-27-330(a)(6) (imposing a \$35.00 court cost).

80 See, e.g., Ga. Code Ann. § 15-11-36(c). In some states, youth may also incur separate costs for taking appeals., e.g., Mass. Gen. Laws Ann. ch. 231, § 118.

81 See, e.g., Mass. Gen. Laws Ann. ch. 231, § 118.

82 Wis. Stat. Ann. § 938.34(8d).

83 Ind. Code Ann. § 31-32-16-9.

84 Ind. Code. Ann. § 31-40-4-1.

85 In 12 states where statute gives judges discretion to impose costs, and in 14 states that have no statute on point, survey respondents reported that youth or families paid court costs or fees.

86 See, e.g., Okla. Stat. Ann. tit. 10A, § 2-2-507.

87 In 29 of 39 states with respondents answering this question, at least one survey respondent reported that youth or families were paying fines. This included three states with no relevant statute on point. The states are: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, Wyoming.

88 For example, Alabama imposes fines on parents if they interfere with the performance of duties by juvenile probation officers, Ala. Code. § 12-15-112, or if contribute to the delinquency, dependency, or need supervision of children. Ala. Code § 12-15-111.

89 See, e.g., Ark. Code Ann. § 9-27-332(a)(7)-(8).

90 See, e.g., Conn. Gen. Stat. Ann. § 46b-141a(b).

91 See, e.g., Ala. Code § 12-15-215.

92 See N.C. Dep't Pub. Safety, Family, School, Community and Economic Factors Associated with Juvenile Crime in North Carolina: A System Impact Assessment, available at <https://www.nccrimecontrol.org/div/gcc/juvcorr.htm>.

93 Telephone Interview by Whiquitta Tobar with E.B. (Apr. 13, 2016).

94 Tennessee, for example, limits fines to \$50 per offense. Tenn. Code Ann. § 37-1-131(a)(5).

95 Ohio Rev. Code Ann. § 2152.20.

96 See, e.g., Ky. Rev. Stat. Ann. § 635.085 ("The imposition of a fine for an offense committed by a child shall be based upon a determination that such disposition is in the best interest of the child and to aid in his rehabilitation. Any such order shall include a finding that the child is financially able to pay the fine.").

97 In 20 of 41 states with respondents answering this question, at least one survey respondent reported youth paying a fee for expungement petitions. The states reporting such issues are: Alabama, California, Colorado, Delaware, Florida, Idaho, Illinois, Kansas, Louisiana, Massachusetts, Minnesota, New Jersey, North Carolina, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, Wyoming.

98 Riya Saha Shah & Jean Strout, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records 9-11* (2016), available at <http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf>.

99 *Id.* at 13-15.

100 *Id.* at 6-9.

101 See, e.g., fee schedule for Georgia at [https://gbi.georgia.gov/sites/gbi.georgia.gov/files/related\\_files/document/GCICFees.pdf](https://gbi.georgia.gov/sites/gbi.georgia.gov/files/related_files/document/GCICFees.pdf); fee schedule for Nebraska at <https://supremecourt.nebraska.gov/self-help/7240/filing-motion-seal-juvenile-criminal-record>.

102 Colorado (Colo. Rev. Stat. § 19-1-306(7)(e)); Arizona (Ariz. Rev. Stat. § 8-349); Washington (Wash. Rev. Code Ann. § 13.50.270(1)(v)); Iowa (Iowa Code § 232.150(1)(c)); Rhode Island (R.I. Gen. Laws § 12-1-3-3(b)(1)); Utah (Utah Rev. Stat. § 78A-6-1105(c)(3)).

103 *See, e.g.*, 42 Pa.C.S. 9123(a)(3) (establishing by statute that individuals are eligible for expungement five years after final discharge from probation) and Pa.R.J.C.P. 631 (establishing by court rule that probation is complete when all restitution, fines, and costs have been paid in full).

104 *See, e.g.*, Cal. Welf. & Inst. Code § 781(D)(2) and (D)(3); Ohio Rev. Code. §§ 2151.356(C)(1).

105 *See* Cal. Welf. & Inst. Code § 781(D)(2) and (D)(3).

106 *See, e.g.*, N.M. Stat. § 32A-2-26.

107 In 39 of 39 states with respondents answering this question, at least one survey respondent reported youth or families being charged restitution. These states are: Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming.

108 Still others have separate provisions creating parental liability for damages for the actions of their children. *See, e.g.*, Neb. Rev. Stat. § 43-801. Unless the provisions explicitly state that such liability can become a part of the disposition order, they are not included here.

109 Additionally, some states require parents to engage in “community restitution,” which are work programs. Because those don’t have an explicit financial liability component, they are not included here. *See, e.g.*, Ariz. Rev. Stat. Ann. § 8-341(S); Ariz. Rev. Stat. Ann. § 8-234(E)(3).

110 Indeed, a number of survey respondents reported that restitution should be considered separately from other costs because of its function of making the victim whole.

111 Ky. Rev. Stat. Ann. § 635.060.

112 *See, e.g.*, Conn. Gen. Stat. Ann. § 46b-140; Utah Code Ann. § 78A-6-1113.

113 Me. Rev. Stat. tit. 15, § 3314.

114 *Id.*

115 *Id.*

116 Nev. Rev. Stat. § 62E.580.

117 *See, e.g.*, Nev. Rev. Stat. Ann. § 62E.580; 42 Pa. Cons. Stat. Ann. § 6352.

118 Okla. Stat. Ann. tit. 10A, § 2-7-801; 42 Pa. Cons. Stat. Ann. § 6352.

119 R.I. Gen. Laws Ann. § 14-1-32.

120 Or. Rev. Stat. Ann. § 419C.450.

121 *See, e.g.*, S.D. Codified Laws § 26-8C-14; *See, e.g.*, Cal. Welf. & Inst. Code § 730.6(m).

122 *See, e.g.*, N.Y. Fam. Ct. Act § 353.6 (N.Y. Fam. Ct. Act § 758-a).

123 *See, e.g.*, Miss. Code. Ann. § 43-21-605.

124 *See, e.g.*, Fla. Stat. Ann. § 985.0301(5)(d); Fla. Stat. Ann. § 775.089(5) (establishing that an order of restitution may be enforced in the same manner as a judgment in a civil action; defendant is responsible for any interest, and costs and attorney’s fees resulting from civil enforcement).

125 *See, e.g.*, Alaska Stat. Ann. § 47.12.170(a); Ariz. Rev. Stat. Ann. § 8-221(G); Cal. Welf. & Inst. Code § 730(6); Colorado § 18-1-3-701; Fla. Stat. Ann. § 985.0301(5)(d); Fla. Stat. Ann. § 775.089(5); Me. Rev. Stat. tit. 15, § 3314; Nev. Rev. Stat. Ann. § 62B.420; N.D. Cent. Code Ann. § 27-20-31.2; Okla. Stat. Ann. tit. 10A, § 2-2-503 (c) (5); Or. Rev. Stat. Ann. § 419C.203(5); Or. Rev. Stat. Ann. § 419C.600; Tenn. Code Ann. § 37-1-131 (b)(2)(A); Vt. Stat. Ann. tit. 33 § 5235(k)(1) – (2); Wis. Stat. Ann. § 895.035; Wash. Rev. Code Ann. § 13.40.080(b)) (Wash. Rev. Code Ann. § 13.40.192(1)).

126 Kathryn A. Sabbeth, *The Prioritization of Criminal over Civil Counsel and the Discounted Danger of Private Power*, 42 Fla. St. U. L. Rev. 889, 913-14 (2015). Indeed, rather than converting the judgment into a civil judgment, some states make these consequences explicit. *See, e.g.*, Utah Code Ann. § 78A-6-1101 (The court may enforce orders of fines, fees, or restitution through garnishments, wage withholdings, supplementary proceedings, or executions).

<sup>127</sup> See, e.g., Ala. Code § 12-15-117(c) (juvenile court shall retain jurisdiction over an individual of any age for the enforcement or modification of any prior orders requiring the payment of fines, court costs, restitution, or other money ordered by the court until paid in full); Florida (Fla. Stat. Ann. § 985.0301(s)(d) (the court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied); Mo. Ann. Stat. § 211.185 (11) (a judgment of restitution ordered against a child may be executed upon after the child attains the age of 18); Oklahoma (Okla. Stat. Ann. tit. 10A, § 2-7-504(D)) (the court may retain jurisdiction over a child adjudged delinquent beyond the age of 18 to the extent necessary for the child to complete payment of court costs); Wash. Rev. Code Ann. § 13.40.300 (in no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment).

<sup>128</sup> See, e.g., Wash. Rev. Code Ann. § 13.40.200(2)) (If the court finds that a respondent has willfully violated the terms of an order [including an order to pay a penalty assessment] ..., it may impose a penalty of up to thirty days' confinement; Ala. Code § 12-15-117(d) (the juvenile court can incarcerate individuals 18 or older who have failed to pay fines, court costs, restitution, or other money ordered by the court).

<sup>129</sup> See, e.g., Ala. Code § 12-15-117(d) (the juvenile court can use any of the remedies available for the punishment for contempt to enforce any order requiring the payment of fines, court costs, restitution, or other money ordered by the court); Me. Rev. Stat. tit. 15, § 3314) (The court must give notice of its ability to enforce orders through contempt powers. For nonpayment of fine, court may use "in addition to its contempt powers" civil judgments); Oklahoma (Okla. Stat. Ann. tit. 10A, § 2-7-504(D)) (court may institute contempt proceedings against any person adjudged delinquent and ordered to pay court costs who neglects or refuses to pay).

<sup>130</sup> Although these statutory provisions typically require a finding of willfulness, the wide discretion afforded judges to make determinations regarding willfulness or ability to pay may still result in probation violations for youth unable to afford payments. See, e.g., Ark. Code Ann. § 9-27-339(f)) ("Nonpayment of restitution, fines, or court costs may constitute a violation of probation, unless the juvenile shows that his or her default was not attributable to a purposeful refusal to obey the sentence of the court or was not due to a failure on his or her part to make a good faith effort to obtain the funds required for payment."); Cal. Welf. & Inst. Code § 730.6(m) ("Probation shall not be revoked for failure of a person to make restitution pursuant to this section as a condition of probation unless the court determines that the person has willfully failed to pay or failed to make sufficient bona fide efforts to legally acquire the resources to pay").

<sup>131</sup> Justice Policy Inst., *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* 16-19 (2014), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker\\_shock\\_final\\_v2.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf).

<sup>132</sup> Justice Policy Inst., *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* 4 (2014), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker\\_shock\\_final\\_v2.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf).

<sup>133</sup> See, e.g., Minnesota (Minn. Stat. Ann. § 260B.331 (A parent or custodian who fails to pay without good reason may be proceeded against for contempt, or the court may inform the county attorney, who shall proceed to collect the unpaid sums, or both procedures may be used).

<sup>134</sup> See, e.g., Alaska Stat. Ann. § 47.12.170. (If the restitution recipient enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded. If the state on the restitution recipient's behalf enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded, up to a maximum of twice the amount of restitution owing at the time the civil process was initiated.)

<sup>135</sup> See, e.g., Alaska Stat. Ann. § 47.12.170. (A recipient of a restitution order, or the state on behalf of the restitution recipient, may enforce a restitution order against the minor and the minor's parent by any procedure authorized by law for enforcement of a civil judgment); Arizona (Ariz. Rev. Stat. Ann. § 8-221(G)) (if the court finds that the juvenile or parent or guardian has sufficient financial resources to reimburse, at least in part, the costs of an appointed attorney, the court will order payment and the order may be enforced as a civil judgment); Colo. Rev. Stat. § 19-2-114 (Any order for payment toward the cost of care entered by the court pursuant to subsection (1) of this section shall constitute a judgment which shall be enforceable by the state or the governmental agency that would otherwise incur the cost of care for the juvenile in the same manner as are civil judgments).

<sup>136</sup> See generally Lili Garfinkel, *Improving Family Involvement for Juvenile Offenders with Emotional/Behavioral Disorders and Related Disabilities*, 36 Behav. Disorders 52 (2010).

<sup>137</sup> Nevada (Nev. Rev. Stat. Ann. 62E.440(4)) (no hearing required, but requires willful non-payment); Oklahoma (Okla. Stat. Ann. tit. 10A, § 2-8-224(B)) (no hearing requirement); Wisconsin (Wis. Stat. Ann. § 938.34(8)) (no hearing requirement).

<sup>138</sup> Harris, *supra* note 2.

<sup>139</sup> See *supra* Part B, Section 7.

<sup>140</sup> For each of these consequences, at least one survey respondent, and often more, in this many states reported the designated consequences.

<sup>141</sup> *Bearden v. Georgia*, 461 U.S. 660 (1983). In *Bearden*, the Court opined that “punishing a person for his poverty...would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment.” *Id* at 671-73. See also Letter from United States Department of Justice, Civil Rights Division, Office for Access to Justice (Mar. 14, 2016) at 3, available at <https://www.justice.gov/crt/file/832461/download>, reiterating the importance of this principle.

<sup>142</sup> *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

<sup>143</sup> See, e.g., S.D. Codified Laws § 26-7A-98. Several other states are silent on the issue of willful non-payment or indigency. See, e.g., Indiana (IND. CODE ANN. § 31-40-4-1), Michigan (Mich. Comp. Laws Ann. § 712A.18b), New Mexico (N.M. Stat. Ann. § 32A-2-28(C)), Tennessee (Tenn. Code Ann. § 37-1-151), and Utah (Utah Code Ann. § 78B-6-310).

<sup>144</sup> See Me. Rev. Stat. tit. 17-A, § 1301-A (requiring courts to always consider the imposition of a fine instead of imprisonment for failure to pay, and preventing courts from incarcerating an individual based on inability to pay); Nev. Rev. Stat. Ann. Rev. Stat. Ann. § 62B.420(2) (preventing indigent individuals from being incarcerated due to failure to pay).

<sup>145</sup> United States Department of Justice, *supra* note 3, at 5. (relying on *Mullane v. Cent. Hanover Bank & Trust Co.* and other Supreme Court cases regarding the constitutionality of incarcerating a defendant without counsel.)

<sup>146</sup> See *In re Gault*, 387 U.S. 1 (1967) (explaining that youth need the “guiding hand of counsel” to ensure their rights are met).

<sup>147</sup> See Ariz. Rev. Stat. Ann. § 8-221(G); Wyo. Stat. Ann. § 14-6-242) (requiring representation in accordance with Wyo. R. Crim. P. 42(c)(4)).

<sup>148</sup> See generally *Roper v. Simmons*, 534 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011); *Miller v. Alabama*, 132 S. Ct. 2455 (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). See also Monahan, Steinberg, & Piquero, *supra* note 8.

## APPENDIX A - CUMULATIVE COSTS

	RESTITUTION	EXPUNGE	FINES	COURT	CARE	EVALUATION	DIVERSION*	PROBATION*	TOTAL
AL	•					•			5
AK	•								2
AZ	•	•	•				•	•	6
AR	•	•	•	•	•	•	•	•	7
CA	•	•	•					•	5
CO	•	•	•		•			•	5
CT	•	•	•		•	•		•	5
DE	•	•	•	•	•				5
DC	•	•	•		•	•			5
FL	•	•			•			•	4
GA	•	•	•	•	•			•	5
HI	•		•	•	•	•			4
ID	•	•	•		•	•	•	•	6
IL	•	•	•		•		•	•	5
IN	•		•	•	•	•	•	•	6
IA	•			•	•		•		6
KS	•	•	•	•	•	•		•	7
KY	•	•	•	•	•			•	5
LA	•	•	•	•	•	•	•	•	6
ME	•	•	•		•	•			4
MD	•	•	•	•	•				4
MA	•	•	•	•	•			•	5
MI	•	•	•	•	•	•	•		7
MN	•	•	•	•	•	•			4
MS	•	•	•	•	•	•	•		6
MO	•	•	•	•	•				4
MT	•	•	•	•	•	•	•	•	7
NE	•	•	•	•	•	•	•		5
NV	•	•	•	•	•	•	•		6
NH	•	•	•	•	•	•	•		5
NJ	•	•	•		•	•	•		5
NM	•	•	•	•	•				4
NY	•								1
NC	•	•			•	•		•	5
ND	•	•	•		•	•			4
OH	•	•	•	•	•	•		•	6
OK	•	•	•	•	•		•	•	5
OR	•	•	•	•	•	•		•	7
PA	•	•	•	•	•		•		5
RI	•	•	•		•				4
SC	•	•	•		•	•	•		5
SD	•	•	•	•	•				4
TN	•	•	•	•	•	•			5
TX	•	•	•	•	•	•	•	•	7
UT	•	•				•	•		4
VT	•				•				2
VA	•	•	•		•	•			4
WA	•	•	•		•	•	•	•	7
WV	•	•	•		•		•		4
WI	•	•	•	•	•	•	•		6
WY	•	•	•	•	•	•	•	•	5
<b>TOTAL</b>	<b>51</b>	<b>11</b>	<b>43</b>	<b>25</b>	<b>47</b>	<b>32</b>	<b>22</b>	<b>21</b>	

\*This table identifies a state as having a statute on probation or diversion only if the statute designates a cost for those specific purposes. Youth or families may also be required to pay other costs, fines, fees, or restitution as a condition of probation, or a condition of participation in a diversion program. Because those costs are captured elsewhere in this chart, we have not listed them here.

## APPENDIX B

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### Survey Methodology

To complement the statutory research presented in this report, researchers in the Psychology Department at Drexel University (Naomi Goldstein, PhD and Emily Haney-Caron, MS, JD) conducted a survey of professionals and non-professionals.

### Participants

Survey respondents were 183 individuals, comprised of 96 attorneys, 50 other professionals working with justice-involved youth, 3 individuals with former juvenile justice system involvement, 13 family members of justice-involved youth, and 21 participants who did not identify with one of the above categories (including 4 students, 6 advocates, 2 educators, 1 researcher, 1 law enforcement officer, 1 academic researcher, and 2 individuals identifying with more than one role). Respondents are presented in two samples: the first, comprised of attorneys and other professionals, totaled 146 participants, and the second, comprised of all other respondents, totaled 37 individuals. An additional 12 participants discontinued immediately after indicating they agreed to participate. Among attorneys and other professionals, 19 participants (9 attorneys, 10 other professionals) discontinued immediately after selecting their role. In the second sample, 4 participants (1 formerly juvenile justice-involved individual, 1 family member, and 2 "other") discontinued immediately after identifying their role. All other respondents completed at least some of the substantive questions.

The sample of attorneys and other professionals ranged in age from 24-70 (mean = 46.98, standard deviation = 12.12). The sample was 72.8% female and 23.3% male (3.9% preferred not to answer). Participants identified as White (53.7% of respondents), Black or African American (4.1% of respondents), Asian (2% of respondents), American Indian or Alaskan Native (1.4% of respondents), and Native Hawaiian or other Pacific Islander (.7% of respondents); 5.4% identified as Hispanic or Latino, 53.7% as not Hispanic or Latino, and the remainder chose not to answer. Participants reported working in 39 states and at least 78 distinct counties.

The second sample, comprised of formerly juvenile justice-involved individuals and friends or family of justice-involved youth, ranged in age from 25-75 (mean = 45.25, standard deviation = 12.67) and was 70.4% female. Participants identified as White (40.5% of respondents) and African American (27.0% of respondents), with the remainder choosing not to answer; 2.7% identified as Hispanic or Latino, 54.1% as not Hispanic or Latino, and the remainder chose not to answer. Participants reported living in 15 states, and at least 25 distinct counties.

Including lay and professional participants, we received responses from 41 states and the District of Columbia.

### Procedures

Participants were recruited via professional and family advocacy listservs, social media, and word of mouth. Participants were provided with information about the survey and were asked to either agree or decline to participate. Participants were asked to complete an online, anonymous survey approximately 10 minutes in length. Data were collected using Qualtrics, a software platform designed to conduct online research. Two slightly different survey versions were used: the first, for attorneys and other professionals, asked additional questions inappropriate for lay respondents (e.g., citations for relevant statutes); the second, for all other respondents, provided more explanation as needed regarding the meaning of legal terms included in questions. Attorneys and other professionals were asked to provide information about the juvenile justice system in the jurisdiction in which they work. All other respondents

were asked to provide information about the juvenile justice system in the county in which they live. All participants were asked questions about the frequency of costs related to 11 aspects of juvenile justice involvement (expungement, restitution, fees, fines, child support or cost of care, treatment, probation, diversion or informal adjustment, drug and alcohol testing, other assessments or testing, and phone calls and visits to/from placement) and the impact those costs have on youth and families. Participants were also asked about problems resulting from inability to pay each type of cost, including cases remaining open, youth being put in placement or staying in placement longer, family debt, additional court visits resulting in missed school or work, youth being prevented from having juvenile records expunged, civil judgments extending into adulthood, and other (with space for participants to write in additional problems resulting from each cost). Additionally, for diversion costs, respondents were asked about inability to pay resulting in a formal petition being filed. Finally, participants were asked demographic questions.

#### **Method of Analysis**

Because of the exploratory nature of this survey, only descriptive data are presented. The purpose of the survey was to collect preliminary information about the frequency and impact of various types of costs on juvenile justice-involved youth and their families to supplement the statutory analysis. Given the limited sample size and the approach to participant recruitment, as well as the varying policies and impacts across counties, the descriptive data cannot provide a complete picture of any jurisdiction, but does provide initial information regarding the perspectives of individuals working in and experiencing the juvenile justice systems regarding the costs imposed by those systems on youth and families.

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# UNLOCKING YOUTH

## Legal Strategies to End Solitary Confinement in Juvenile Facilities



Authored by Jessica Feierman, Karen U. Lindell, and Natane Eddy  
2017

Juvenile  
Law Center  
advancing the rights and  
well-being of children in jeopardy

201

# UNLOCKING YOUTH

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Legal Strategies to End Solitary Confinement in Juvenile Facilities

**A Publication of Juvenile Law Center**

**Authored by:**

Jessica Feierman  
Karen U. Lindell  
Natane Eaddy

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Juvenile Law Center is the oldest public interest law firm for children in the United States. Juvenile Law Center uses an array of legal strategies and policy advocacy to promote fairness, prevent harm, ensure access to appropriate services, and create opportunities for success for youth who come into contact with the child welfare and justice systems.

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### ACKNOWLEDGEMENTS

The authors wish to acknowledge with gratitude Elton Englada, Tiffany Faith, Shaena Fazal, Lisa Geis, Nancy Glass, Jennica Janssen, Marsha Levick, Chelsea Lewis, Emily Liu, Jennifer Lutz, Stella Lyubarsky, Kacey Mordecai, Katy Otto, Diane Smith Howard, Richard Ross, Dina Sarver, Mark Soler, Emily Steiner, Jason Szanyi, Whiquitta Tobar, Patrick Took, and Jeremy Zacker for their invaluable insights and assistance in this project.

To Peter Forbes, Linda Janes, Kim Jump, Harvey J. Reed, Bob Stinson, and Ginine Trim, thank you for your commitment to ending solitary confinement in your systems and facilities, and for your willingness to speak with us about your efforts.

To Eddie Ellis and all the young people and family members who spoke with us, thank you for your courage, wisdom, and generosity in sharing your experiences and insights.

Work on this project was made possible by a grant from the Annie E. Casey Foundation and the Chubb Rule of Law Fund.



photo © Richard Ross

## I. INTRODUCTION

*I would tell a legislator—think about these kids' futures. You may be really destroying these kids emotionally and mentally before they have a chance to mature as people. Some of these kids may not be able to recover. These experiences are very detrimental to ... these kids, and to the community.*

*If we don't build on these young people, we're reducing these young people emotionally. If we can't grow with our emotions, what kind of person are we? We're being hindered in so many ways. But to compound everything by being in solitary confinement, being by ourselves, not being able to socialize with other people. You're taking away young people's ability to socialize with others and to understand the importance of socializing.*

—EDDIE ELLIS, FOUNDER OF ONE BY 1,  
A NON-PROFIT DEDICATED TO SUPPORTING YOUTH AND PREVENTING INCARCERATION,  
REFLECTING ON HIS OWN EXPERIENCES IN JUVENILE SOLITARY CONFINEMENT.<sup>1</sup>

The American criminal justice system adopted the use of solitary confinement in the mid-1800's as a means to "inspire true regret in the hearts of convicts."<sup>2</sup> But the practice of holding individual prisoners alone in their cells ostensibly to promote rehabilitation quickly raised constitutional and humanitarian concerns, and the experiment failed. Almost immediately, jails and prisons that had adopted the practice began reporting widespread mental health consequences; early studies raised similar concerns.<sup>3</sup> Indeed, as early as 1890, the United States Supreme Court granted relief to a death row inmate subjected to solitary confinement, citing studies showing that prisoners exposed to isolation, even for a short time, often fell into "a semi-fatuous condition," "became violently insane," or committed suicide.<sup>4</sup>

And yet, more than 125 years later, the United States still routinely subjects some of the most vulnerable members of our society—youth involved in the juvenile justice system—to the harmful effects of solitary confinement. In the century since the Supreme Court first expressed concerns about the practice, our understanding of its harms—particularly for youth—has only grown. Research confirms that youth are uniquely vulnerable and that they are at a heightened risk of long-term harm from time spent in solitary confinement.<sup>5</sup> Many correctional experts now agree that solitary confinement is counterproductive to the aims of the juvenile justice system,<sup>6</sup> and there is a growing consensus among medical professionals and correctional administrators that solitary confinement of children must end.<sup>7</sup> Policymakers in many states have responded, imposing significant restrictions on the practice,<sup>8</sup> and in 2016 President Obama banned the use of solitary confinement for youth in federal prisons.<sup>9</sup>

### WHAT IS SOLITARY CONFINEMENT?

*The practice of placing a youth alone in a cell is referred to by many different names. For purposes of this report, solitary confinement is the "involuntary restriction of a youth alone in a cell, room, or other area for any reason other than a temporary response when youth behavior presents an immediate risk of physical harm."<sup>10</sup> Throughout this report, the terms "isolation" and "room confinement" are used interchangeably and refer more broadly to all instances of involuntary placement of a youth alone in a cell.*

Despite this progress at the federal level and in a growing number of states, solitary confinement of youth remains widespread, with a disproportionate impact on youth of color (predominantly Black and Latinx youth), gender non-conforming youth, LGBTQ youth, and youth with disabilities. Moreover, we still lack comprehensive data on the use of solitary confinement in juvenile facilities, sufficient information about effective alternatives, and input from youth, families, and the communities most affected. This report relies on legal research, psychological research, surveys of public defenders and state protection and advocacy agencies, and conversations with youth, families, and advocates to fill those gaps and to offer recommendations for reform.

Although this report focuses on reforms *within* facilities, it is worth noting that the most effective way to end the practice is to keep youth at home with their families and in their communities, providing quality supports and services when necessary. Moreover, as described throughout the report, thoughtful partnerships with families, community members, and other advocates can help align efforts to end solitary confinement with broader de-incarceration efforts.

**Our reform recommendations include:**

■ **Policy Reforms:**

*Ensure that policies prohibit, rather than alter or ameliorate, solitary confinement.* Reform must include a ban on solitary confinement for any reason other than to prevent immediate harm, with clear limits on its use even under emergency circumstances; a clear definition of the term; support for positive alternatives and de-escalation tactics; and requirements for data collection.

■ **Litigation Strategies:**

*Argue for a doctrinal analysis under the Eighth or Fourteenth Amendments that incorporates current scientific research regarding children and adolescents, rather than parroting the adult constitutional analysis.* Several recent solitary confinement cases have successfully relied upon the series of decisions from the Supreme Court recognizing the effect of adolescent development research on constitutional standards.

*Bring education claims in support of ending solitary confinement.* Claims challenging the failure to provide a meaningful education can be a key part of litigation seeking to end solitary confinement. However, the goal must be to get youth out of solitary confinement, not to improve the conditions by adding educational opportunities to youth in room restriction, and litigation strategies must all support this ultimate goal.

*Challenge discriminatory policies and practices.* Federal disability law can offer a more protective standard than classic conditions of confinement claims, and other discrimination claims should be considered when appropriate.

■ **Strong Juvenile Defense:**

*Ensure post-disposition representation.* Many, if not most, uses of solitary confinement in juvenile facilities occur post-adjudication in juvenile correctional facilities, making post-dispositional representation an essential advocacy strategy.

**Ask targeted questions.** Youth and families may not immediately share information about harsh conditions of confinement unless defenders ask specific questions and invite discussion on the issue.

**Visit local facilities.** By visiting their clients' placements, witnessing conditions, and reviewing facility records, defenders can better advocate for clients and can also serve as a vital source of information to other stakeholders and advocates.

**Enlist the court.** Raising constitutional and statutory challenges to solitary confinement in individual cases can be an effective form of advocacy, and court orders can assist in getting youth appropriate services or supports.

**File licensing complaints and grievances.** By reporting uses of solitary confinement that may violate facility policy, licensing requirements, or other regulations, advocates create a written record of the problem and can potentially prompt an investigation or other responsive action.

**Work with advocates engaged in system reform.** By partnering with other organizations, such as the local Protection & Advocacy (P&A) agency, defenders can expand the resources available to challenge uses of solitary confinement.

■ **Community Partnerships:**

**Work with youth, parents, and other community advocates.** Such collaborations are essential to any reform effort. Community groups can help defenders, litigators, and policy advocates identify abuses, shape the broader reform effort, and elevate issues not easily presented as legal arguments.

## **II. BACKGROUND: WHAT WE KNOW ABOUT SOLITARY CONFINEMENT IN JUVENILE FACILITIES**

*It's very secretive, and they don't talk to parents about the conditions their kids are under. The families get the letters and they listen and they read the letters. And they feel helpless because there is limited access to knowing how your kid is living. How would you know? I didn't know this before my son's situation.*

—K.G., MOTHER OF A YOUNG MAN WHO WAS HELD IN SOLITARY CONFINEMENT.<sup>11</sup>

To effectively challenge the use of solitary confinement in juvenile facilities, advocates must understand the circumstances under which it is imposed, what makes it so harmful, and the available alternatives. Unfortunately, data on the use of solitary confinement is limited, and even family members and lawyers for youth often lack access to vital information about youth experiences in juvenile facilities.

This section describes the current research on the prevalence and impact of solitary confinement in juvenile facilities, including reports from juvenile defenders on local practices around the country, accounts from youth who have experienced solitary confinement, and interviews with correctional experts who have essentially eliminated the use of solitary confinement in their jurisdictions.

#### KEY ADVOCACY TOOLS AND RESOURCES

- **Stop Solitary for Kids:** A partnership among four national juvenile justice reform organizations, this national campaign uses public education, research, legislative education and other strategies to end solitary confinement of children in juvenile and adult facilities. The campaign's website is a valuable source for news, current data, and other resources relating to solitary confinement of youth.<sup>i</sup>
- **Advocacy Toolkit: Ending the Solitary Confinement of Youth in Juvenile Detention and Correctional Facilities:** This 2014 toolkit developed by the ACLU National Prison Project and the ACLU Center for Justice includes messaging materials, sample interview questions, advocacy resources, and national standards to aid in the design of state or local campaigns to end youth solitary.<sup>ii</sup>
- **Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation:** This 2015 toolkit was developed for states to use as a guide to reduce the use of isolation in juvenile facilities. It demonstrates the widespread recognition in the juvenile correctional field of the harms of solitary confinement. It can also help advocates understand why facilities use solitary confinement and how to advocate for effective alternatives.<sup>iii</sup>
- **51-Jurisdiction Survey of Juvenile Solitary Confinement Rules in Juvenile Justice Systems:** This 2016 survey by the Lowenstein Center for the Public Interest provides each state's laws and regulations governing the use of solitary confinement in juvenile correctional facilities. It is a helpful resource for understanding the legal framework in different states, with a primary focus on laws and regulations pertaining to punitive solitary confinement.<sup>iv</sup>

#### A. Solitary Confinement in Juvenile Justice Facilities Remains Too Widespread

Far too many children are still locked up in solitary confinement in juvenile facilities around the country.<sup>12</sup> Although current data is insufficient to pinpoint the precise number of youth confined in solitary each year, a 2010 national report revealed that more than a third of the roughly 100,000 youth placed in juvenile residential facilities spent time in solitary confinement—many for days or weeks at a time.<sup>13</sup> Since then, the total population of youth in juvenile facilities has decreased by almost half, and many more states now have policies imposing limits on the use of solitary confinement.<sup>14</sup> But many of these policies contain significant loopholes, and no state has entirely eliminated solitary confinement of children.<sup>15</sup> According to a 2016 data snapshot from the Office of Juvenile Justice and Delinquency Prevention, almost half of juvenile detention facilities and training schools reported that they isolate youth for more than four hours to control behavior.<sup>16</sup> And, despite the lack of hard data, anecdotal reports from advocates around the country suggest reliance on the practice is still too common throughout the juvenile justice system.

To better assess the prevalence of solitary confinement, Juvenile Law Center conducted two surveys: one of juvenile defenders around the country and another of Protection and Advocacy (P&A) organizations, the agencies in each state federally mandated to enforce the rights of individuals with disabilities. Results from both surveys confirmed the excessive use of solitary confinement. More than two-thirds of public defender respondents reported that they had clients who spent time in solitary confinement for periods ranging from just a few hours to seven months.<sup>17</sup> The reported reasons for solitary confinement varied among states and facilities—defenders explained that youth are isolated for punitive reasons, protective purposes (avoiding harm to the youth or others), or administrative reasons, such as during shift changes or when a youth is first confined.<sup>18</sup> P&A agencies around the country also reported frequent use of solitary confinement of youth, including in states that have been working to eliminate the practice.<sup>19</sup>

i <http://www.stopsolitaryforkids.org/>.

ii <http://njdc.info/wp-content/uploads/2014/10/ACLU-Advocacy-Toolkit-Ending-the-Solitary-Confinement-of-Youth-in-Juvenile-Detention-and-Correctional-Facilities.pdf>.

iii <http://cjca.net/attachments/article/751/CJCA%20Toolkit%20Reducing%20the%20Use%20of%20Isolation.pdf>.

iv <https://www.lowenstein.com/files/upload/51-Jurisdiction%20Survey%20juvenile%20Solitary%20Confinement%20Rules.PDF>.

**From the Field**  
Juvenile Defenders Report on Solitary Confinement

**Solitary confinement of youth is...**

**Common** .....



**More than two-thirds** of respondents reported that they had clients who spent time in solitary confinement.

**Imposed for many different reasons** .....

Discipline <input type="checkbox"/>	In case of emergency <input checked="" type="checkbox"/>
Prevention of self-harm <input checked="" type="checkbox"/>	Understaffing <input checked="" type="checkbox"/>
Protection of others <input type="checkbox"/>	Administrative convenience <input checked="" type="checkbox"/>



**Imposed with few due process protections** .....



**More than two-thirds** of respondents reported youth "never" receive a hearing before placement in solitary confinement



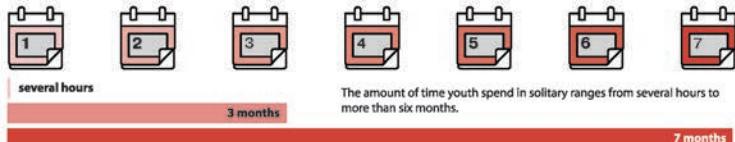
**None** reported that youth "always" receive a hearing

**Called by different names** .....



Room confinement	Administrative detention
Lockdown	Isolation
Time out	Programming
Special management	Disciplinary detention
The hole	

**Applied unevenly around the country** .....



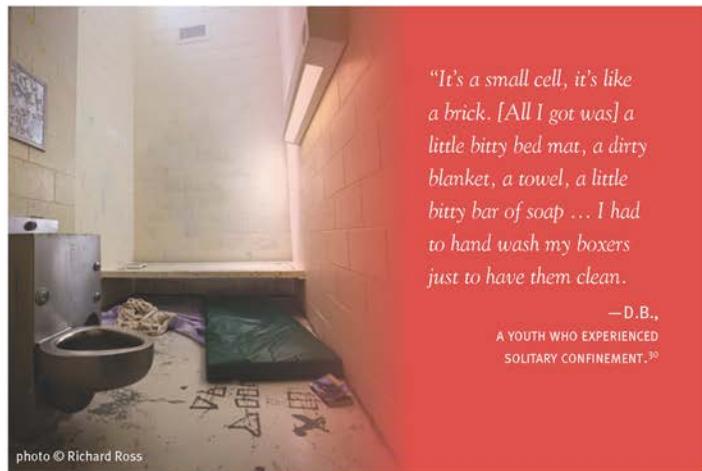
The amount of time youth spend in solitary ranges from several hours to more than six months.

This information is based on responses to Juvenile Law Center's 2016 national survey of juvenile defenders. Juvenile Law Center received 56 survey responses via SurveyMonkey.

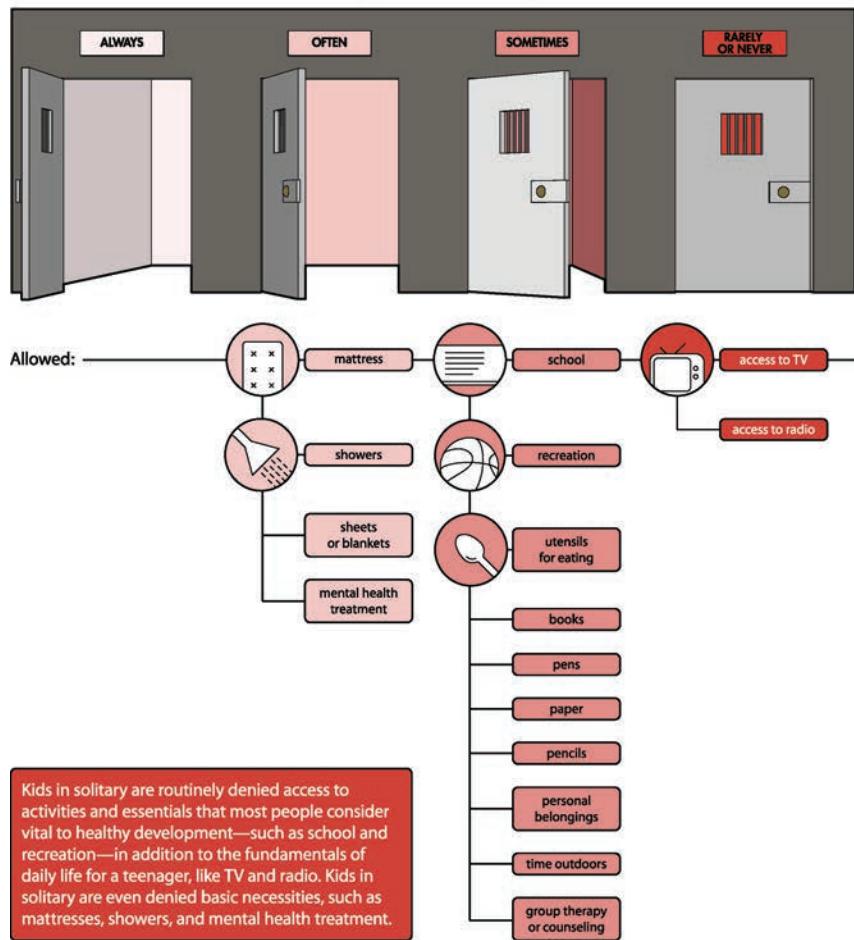
Individual cases and media reports have also exposed alarming uses of solitary confinement on youth. In 2017 alone, advocates in at least four states have been working to address particularly abusive practices. South Carolina's P&A organization issued a report demonstrating that up to 20% of the children housed in one juvenile facility are held in segregation.<sup>20</sup> The ACLU of Washington has filed suit on behalf of a 16-year-old repeatedly held in a padded cell or isolation room in a juvenile detention facility,<sup>21</sup> and Colorado advocates have shown that the state's Division of Youth Corrections continues to rely on solitary confinement despite new legislative limits.<sup>22</sup> The ACLU of Wisconsin and Juvenile Law Center also recently won injunctive relief in a suit against two Wisconsin juvenile facilities after investigations revealed extreme uses of solitary confinement, restraints, and pepper spray to control youth behavior.<sup>23</sup>

The conditions experienced by youth in solitary confinement can be truly appalling. The recent Wisconsin investigation revealed that youth in solitary confinement spend 22-23 hours per day in a continuously illuminated eight-by-ten foot cell.<sup>24</sup> Many are forced to spend their one hour of "exercise" chained to a table. They are also deprived of virtually all personal property or educational materials.<sup>25</sup>

Unfortunately, too many youth must endure these conditions. In Juvenile Law Center's survey, juvenile defenders reported that their clients in solitary confinement are routinely deprived of basic necessities such as mattresses, sheets, showers, utensils for eating, and mental health treatment.<sup>26</sup> Youth subjected to solitary confinement are rarely or never permitted personal belongings, pens or pencils, or access to any electronic devices, including TV, radio or computers.<sup>27</sup> Young people we spoke with echoed these findings. D.B., for example, described his cell this way: "It's a small cell, it's like a brick. [All I got was] a little bitty bed mat, a dirty blanket, a towel, a little bitty bar of soap ... I had to hand wash my boxers just to have them clean."<sup>28</sup> P&A advocates expressed similar concerns, also noting that facilities regularly deprive youth in solitary confinement of educational opportunities, undermining the rehabilitative mission of the juvenile justice system.<sup>29</sup>



## A Kid's Life In "The Box": The Harsh Reality of Solitary Confinement



SOURCE: Juvenile Law Center, Attorney Survey on Solitary Confinement (2016).

### B. Solitary Confinement is Harmful

Not only is the practice of solitary confinement widespread—its effects are often devastating and long-lasting. Even brief periods of solitary can cause an individual to “become impaired,” “incapable of processing external stimuli,” or “hyperresponsive” to his or her surroundings.<sup>31</sup> Solitary confinement often leads to the onset of debilitating mental health conditions, deprivation of social interactions, or, at worst, loss of life. The consequences for youth are particularly troubling. This section explores these unique risks for youth.

*It was all brick walls, metal bed, chrome-looking sink. We was behind a door, not bars. We could see out of the door. There was a little window. You could hear other people screaming out the door, talking to each other. A lot of times it was so loud, people trying to talk to each other.*

*A lot of us wasn't held as long. I didn't know why. I didn't understand how the system works. Some people went out sooner than other people, and some people didn't. To this day, I really don't know why.*

*The average day was a miserable day. I tried to work out. I tried to exercise. I always felt sad. I just wanted to lay down and be to myself. When we did get to come out once a day or once every other day, it was like going in this pit of hell, that's what I felt like.*

*Most of the detention center staff treated us right. Some tried to verbally be aggressive toward us. Some of us asked questions, some of them tried to push us around physically, threaten to hold our food longer than they held other people's food because we asked questions.*

*To me it was very depressing. I was wondering why these adults were treating us like this. We were asking when we would go to court. Some kids were asking when they would go home. They hadn't been in the system long enough to understand how the system works.*

*I didn't feel safe in solitary, not when it came to some of the officers. I was concerned about unnecessary aggression from the officers. We would come out, they would curse us, push us, tell us to stop walking slow, just do your time.*

*It was one of the breaking points for me as a young person ... Me realizing now, it was one of the first times I really knew I was depressed. I really didn't want to do anything, I didn't have an appetite. I became really frustrated and angry for being in there. I can't come out, I can't be around my fellow residents. As a kid, never been through this, it's a very traumatic experience ... I became depressed again, knowing I gotta go back into the cell ... That's when I started verbally lashing out at staff because of my frustration being in there and being held in there for no reason that I thought was important. You don't understand, you don't get the answers you're looking for. Getting in trouble. I responded in negative ways, because [of] being held for so long ...*

—Eddie Ellis<sup>32</sup>

#### Risk of harm to a youth's neurological development

The human brain continues developing until an individual is in his or her mid-20s.<sup>33</sup> During adolescence, the brain reaches what is referred to as the “second period of heightened malleability,” characterized by enhanced neuroplasticity.<sup>34</sup> An advantage of increased neuroplasticity is that the brain is responsive to environmental changes. However, increased neuroplasticity can also make it difficult to recover from adverse experiences.<sup>35</sup> As a

result, during adolescence and emerging adulthood, youth are particularly susceptible to environmental influences, which can impact social, psychological, and neurological growth.<sup>36</sup> Researchers have found that if there is “[a] lack of stimulation or aberrant stimulation” for youth during this period, the results can lead to “lasting effects on physical and mental health in adulthood.”<sup>37</sup> For this reason, researchers suggest that solitary confinement may be particularly problematic for youth and young adults.<sup>38</sup>

Adolescents are also vulnerable to heightened emotional reactions as a result of solitary confinement. Youth typically react more impulsively than adults because, during this stage of life, the limbic system—the brain’s emotional center—is highly active, but the frontal lobe, which governs rational decision-making, is not yet fully developed. Youth therefore process information in an “emotionally charged” manner,<sup>39</sup> making them particularly susceptible to increased frustration and anger, which are typical responses to solitary confinement and can also be used as reasons by facility staff in recommending that a youth be placed in isolation.<sup>40</sup> For instance, one youth who spent almost six months in confinement at Mecklenburg County’s Jail North in Charlotte, North Carolina, reportedly damaged his cell and flung human waste at the correctional facility’s staff, leading to an extension of his time in “disciplinary detention.”<sup>41</sup> When the youth was asked why he reacted in such a manner, his response was that “he gets bored in there.”<sup>42</sup>

Solitary confinement may also cause or exacerbate many of the mental health conditions that commonly emerge in adolescence and early adulthood, including severe depression, post-traumatic stress disorder, paranoia, and psychosis.<sup>43</sup> Studies have shown that youth exposed to solitary confinement may be at heightened risk of suicidal ideation.<sup>44</sup> Indeed, more than 50% of suicides in juvenile justice facilities occur while a young person is in a room by him or herself.<sup>45</sup>

Youth we spoke with consistently described feeling lost, confused, and depressed. D.B. explained:

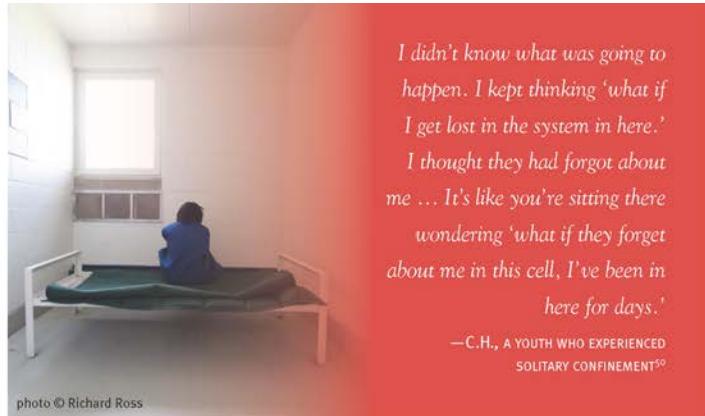
I was lost. I didn’t know what was going on. I was confused ... I didn’t get to contact nobody. No family, none of that ... Am I getting out? They don’t let you know nothing ... I didn’t leave out the cell not one time ... I didn’t go to class or nothing. During that 72 hours I ate, I took one shower, the rest of the time I laid down ... I was messed up. I was just sleeping it out. I was like, “I just can’t wait till somebody comes here.”

I was talking to my cousin through the vent. It’s so dusty in there. I’m talking to my cousin. He was like, “Cuz, I can’t do this man. I’m gonna throw up.” I was like, “Man, just lay down and go to sleep. Just sleep it out. They going to have to let us go.” Three o’clock in the morning and he was waking up. He ain’t never been in no trouble.<sup>46</sup>

Eddie Ellis also described how solitary confinement led to lethargy and depression:

It had to be 10, 12, 13 hours a day that I would sleep. For me, I was a very energetic person. Played sports all my life, loved sports, couldn’t stand still. For some reason, being in there just took all the energy out of me ... As a teen, for me, I was dealing with some depression, a little bit. But when I got locked up, the depression became tenfold. I couldn’t talk to anyone that I needed to function.<sup>47</sup>

S.J. had a similar reaction after having been in solitary for a week, not even coming out for a shower. She explained, “It’s frustrating because I’m not used to being in a room for so long and can’t come out, can’t shower or anything like that ... [I wore the same clothes for a whole week]. I was ... frustrated. I couldn’t do nothing so I was just sitting there ... I slept, like, all day.”<sup>48</sup> C.H. also felt lost and afraid: “I didn’t know what was going to happen. I kept thinking ‘what if I get lost in the system in here.’ I thought they had forgot about me ... It’s like you’re sitting there wondering ‘what if they forgot about me in this cell, I’ve been in here for days.’”<sup>49</sup>



Youth have varying reactions to solitary confinement. Many, however, describe it as a time when they lost their sense of self,<sup>51</sup> often in ways that persisted into adulthood.<sup>52</sup> As Eddie Ellis explained, "When I came home, out of nowhere I started having mini-panic attacks and things like that. It used to depress me. That's when I started smoking weed, trying to take that depression away."<sup>53</sup> As an adult, Eddie was diagnosed with PTSD. He explained, "I still deal with it. I confine myself to my room a lot."<sup>54</sup> Josh reported that he "started to feel like [he] was going crazy" while he was in solitary.<sup>55</sup> After his release from isolation, he explained that he continued to have "irrational thoughts," developed "low self-esteem" and left the system "hardened."<sup>56</sup>

In short, the developmental differences between youth and adults create heightened risks of harm for youth subjected to solitary confinement.<sup>57</sup>

#### Risk of harm to a youth's social development

Research confirms the importance of healthy social interactions for youth. By depriving youth of human interaction, solitary confinement impairs a young person's ability "to develop a healthy functioning adult social identity."<sup>58</sup> Individuals explore and begin to understand the complexity of relationships, including peer pressure and rejection, during this stage of life.<sup>59</sup> Exclusion from interaction with others "threatens four fundamental psychological needs: self-esteem, belonging, control, and a sense of meaningful existence."<sup>60</sup> Social isolation, such as the experience of solitary confinement, can "impact how adolescents interact in social situations."<sup>61</sup> Youth are even less likely than adults to recover from isolation given that "they are in an uncertain, unformed state of social identity."<sup>62</sup> Moreover, for youth with trauma histories, placement in solitary confinement may often result in more pronounced reactions to being isolated.

The youth we spoke with confirmed that solitary confinement undermined their social connectedness even after their release. C.H., for example, explained that:

Being arrested from school and put into solitary made me not want to go back to school. I kept associating school with being put on hold [for] 72 hours. I had never been in trouble before. I'm not that type of kid, I kind of stay to myself. To be taken from school and put in that situation made me afraid to go to school because any given day they could accuse me of something and I'd have to go back to being alone in that cell for like three days.<sup>63</sup>

Similar responses are also evident in the case law. T.D., who was known for being social, “decompensated and demonstrated grave mental health problems” while being held in isolation for 180 days.<sup>64</sup>

These reactions to confinement highlight the importance of social interactions for youth that permit them to navigate complex relationships and develop the decision-making skills they need to mature into healthy adults. Social interactions help youth “readjust to the broader social environment” and “reintegrate into the broader community upon release from imprisonment,” fulfilling a major goal of the juvenile justice system—rehabilitation.<sup>65</sup>

#### PROFESSIONAL ASSOCIATIONS OPPOSING SOLITARY CONFINEMENT

*In light of the significant risks of harm to youth who experience solitary confinement, a growing number of professional associations and other organizations have condemned the practice or called for significant reforms, including:*

**National Task Force on Children Exposed to Violence:** Recommends abolishing solitary confinement for youth.<sup>v</sup>

**American Academy of Child & Adolescent Psychiatry:** Policy statement approved in April 2012 opposes disciplinary solitary confinement for youth, noting that the majority of suicides in juvenile facilities occur when a youth is isolated or in solitary confinement.<sup>vi</sup>

**American Correctional Association:** Opposes disciplinary solitary confinement for youth, permitting solitary only “to prevent immediate harm to the youth or others.”<sup>vii</sup>

**American Medical Association:** Opposes disciplinary solitary confinement for youth, permitting solitary confinement only in extraordinary circumstances such as those that involve protection of the juvenile, staff, or other detainees.<sup>viii</sup>

**American Psychological Association:** Supports efforts to eliminate youth solitary confinement, including the bipartisan MERCY Act, which would prohibit disciplinary solitary confinement and limit solitary confinement to three hours if there is a serious risk that a youth may harm another person, or 30 minutes if there is serious risk that the youth may engage in self-harm.<sup>ix</sup>

**American Public Health Association:** Issued a policy statement opposing solitary confinement for youth under age 18 in juvenile or adult correctional facilities.<sup>x</sup>

**National Commission on Correctional Health Care:** 2016 position statement opposes all solitary confinement for youth.<sup>xi</sup>

**Council of Juvenile Correctional Administrators:** Opposes solitary confinement as punishment and believes that any form of isolation should be for a short period and supervised.<sup>xii</sup>

**National Council of Juvenile and Family Court Judges:** Adopted a resolution on August 8, 2016, opposing solitary confinement for youth except where absolutely necessary for the safety of the youth, others, or the facility.<sup>xiii</sup>

v: <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

vi: [http://www.aacap.org/aacap/Policy\\_Statements/2012/Solitary\\_Confinement\\_of\\_Juvenile\\_Offenders.aspx](http://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx).

vii: <http://www.stopsolitaryforkids.org/wp-content/uploads/2016/04/ACA-Support-Letter.pdf>.

viii: <http://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2014.12b13>.

ix: <http://www.apa.org/about/gr/pi/news/2015/juvenile-confinement.aspx>.

x: <https://www.apa.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/14/13/30/solitary-confinement-as-a-public-health-issue>.

xi: <http://www.ncchc.org/solitary-confinement>.

xii: <http://cjca.net/attachments/article/751/CJA%20Toolkit%20Reducing%20the%20Use%20of%20Isolation.pdf>.

xiii: [http://www.ncjfcj.org/sites/default/files/Final\\_SolitaryConfinementResolution\\_8\\_6-2016.pdf](http://www.ncjfcj.org/sites/default/files/Final_SolitaryConfinementResolution_8_6-2016.pdf).

### C. Solitary Confinement is Unfairly Applied

Although solitary confinement is harmful to all youth, a youth's race, sexual orientation or gender identity, and disability status may influence his or her likelihood of being placed in solitary, as well as his or her experience once there.

#### Race

Racial bias within the American criminal justice system compromises our governing principles of fair and equitable justice for all.<sup>66</sup> Juvenile justice data consistently show a disproportionate number of minority youth in detention and other correctional facilities, including camp programs, in comparison to White youth.<sup>67</sup> Disparities persist even where youth are charged with similar offenses.<sup>68</sup> According to a report by The Sentencing Project, “[youth of color remain far more likely to be committed than White youth,”<sup>69</sup> and the most recent federal OJJDP Survey of Youth in Residential Placement from 2010 found that more Black youth were in correctional placements than youth of other races or ethnicities.<sup>70</sup> Thus, simply as a result of disparities at other decision points in the juvenile justice system, from arrest through adjudication, youth of color are at heightened risk of being placed in solitary confinement.<sup>71</sup>

No national data tracks placement in solitary confinement by race. The limited research regarding adult facilities suggests that individuals of color are subject to disparate treatment within facilities, including disparate exposure to solitary confinement. Adult minorities, specifically Black and Latinx individuals, have been found to be “overrepresented in solitary confinement compared to the general prison population” and also subjected to “longer intervals” in isolation.<sup>72</sup> A study from the 1980s found that the race of an individual “was correlated with the disciplinary decisions of correctional officers”<sup>73</sup> and that “implicit bias [by correctional staff] could lead to enhanced or more severe punishments for Black inmates than for White inmates committing the same violation.”<sup>74</sup> While further research is needed, we know that implicit racial bias also pervades the juvenile justice system,<sup>75</sup> suggesting similar disparate treatment would likely be found in the use of solitary confinement in juvenile facilities as well.

#### Gender, Gender Identity, and Sexual Orientation

Lesbian, gay, and transgender youth are overrepresented in the juvenile justice system,<sup>76</sup> and research suggests they are at a heightened risk of solitary confinement. One study found that 7.3% of individuals in solitary confinement in adult correctional facilities identified as transgender,<sup>77</sup> in contrast to 0.6% of the general population who identify as transgender.<sup>78</sup> Transgender individuals are often inappropriately placed in isolation to protect them from harm,<sup>79</sup> despite the serious harm caused by solitary confinement itself.

While boys still outnumber girls in the juvenile justice system, increasing numbers of girls are entering the system and being placed in juvenile justice facilities.<sup>80</sup> Once in solitary confinement, girls and gender non-conforming youth may be at a particularly high risk of harm.<sup>81</sup> One report specifically examining female youth in detention and other correctional facilities found that “[t]he juvenile justice system remains under-equipped to handle the increased presence of girls.”<sup>82</sup>

Another report found that young women who were subjected to solitary confinement were more likely to engage in self-harm than young men in confinement.<sup>83</sup> Solitary confinement may also place girls and gender non-conforming youth at increased risk of physical or sexual abuse. Bianca, who remained in solitary for six months, felt that isolation was less safe than being in the general population, because “there are no cameras” to document abuse.<sup>84</sup> Lino described her experience in isolation as “a waking nightmare,”<sup>85</sup> and Maverick emphasized that solitary confinement “collapse[s] you emotionally.”<sup>86</sup>

Girls and gender non-conforming youth are also particularly likely to enter the justice system with histories of physical and/or sexual abuse and other trauma, and such trauma may cause youth to

behave in ways that are perceived as “non-compliant.”<sup>87</sup> Transgender youth are almost “twice as likely to have experienced family conflict, child abuse, and homelessness as other youth.”<sup>88</sup> For F.T., who “was molested by her father and has struggled with psychiatric illness and drug abuse,” being held in isolation triggered several attempts of self-harm.<sup>89</sup> She believed that no one cared about her and being in solitary only encouraged her to reflect on her “problems.”<sup>90</sup> Experiencing solitary confinement can “re-traumatize [youth] and further impede their rehabilitation.”<sup>91</sup>

#### **Disability Status**

A disproportionate number of youth with developmental, physical, and/or intellectual disabilities are placed in detention and other correctional facilities.<sup>92</sup> Approximately “65-70% of youth in the justice system meet the criteria for a disability, a rate that is more than three times higher than the general population.”<sup>93</sup> Youth with disabilities may be at a heightened risk of being placed in solitary confinement, particularly when deprived of needed mental health services. Individuals with physical disabilities have sometimes been placed in isolation “because there were no available cells that could accommodate them in a less restrictive environment.”<sup>94</sup> Facilities also justify the use of solitary confinement to protect these youth from the general population or from self-harm.

However, placement in solitary confinement fails to account for a youth’s specific needs,<sup>95</sup> may at times exacerbate underlying conditions,<sup>96</sup> and risks causing further harm to a youth’s ability to function.<sup>97</sup> Youth are often deprived of rehabilitative services while in solitary confinement, including essential special education and mental health supports.<sup>98</sup> The ACLU of New Jersey recently filed a lawsuit alleging, among other things, that the education of youth with disabilities in solitary confinement in adult prisons consisted “of receiving worksheets” and not the educational services they are entitled to under the law.<sup>99</sup>

While more research is needed to better understand the particular experiences of youth with disabilities in solitary confinement, advocates and policy-makers should be aware of the unique risks youth with disabilities likely face.

#### **D. Solitary Confinement is Unnecessary and Counterproductive**

In addition to being harmful, solitary confinement of youth is also unnecessary and counterproductive. Solitary confinement may often make facilities less safe for both youth and staff. In contrast, alternatives to solitary confinement can decrease violence and disruption in juvenile facilities. The following examples illustrate that juvenile justice systems can be run safely and effectively without reliance on solitary confinement.

All federal facilities in the United States are prohibited from using solitary confinement against youth.<sup>100</sup> The practice is also banned internationally. Uruguay, Uganda, Brazil, and France, for instance, have all banned solitary confinement for youth under any circumstances,<sup>101</sup> and France prohibits solitary confinement for youth under the age of 15. Domestically, recent reforms highlight how shifting perspectives, responding to data, and providing evidence-based interventions can allow facilities to eliminate solitary confinement and *increase* safety for both youth and staff.

In Ohio, where solitary confinement has been drastically limited, its use dropped 88.6 percent between 2014 and 2015;<sup>102</sup> during the same time period, rates of violence decreased by over 20 percent.<sup>103</sup> Massachusetts also recently changed their policies, resulting in an average confinement of less than an hour.<sup>104</sup> For both states, reducing reliance on solitary confinement required a significant culture shift. Harvey J. Reed, Director of the Ohio Department of Youth Services, explained, “Our biggest effort was to get our staff to treat these kids like they are our kids. Once they did that, it got embedded in what we do every day, and that has been a game-changer.”<sup>105</sup> Peter Forbes, Commissioner of the Massachusetts Department of Youth Services reinforced this point: “You can’t think if you just eliminate room confinement, you’ve won the war. The war is really about running quality programs ... You need a good environment, strong programs.”<sup>106</sup> He explained that their goal was to “hold kids accountable, and still treat them as kids.” In contrast, he explained, the old system of docking points all day “was a toxic strategy where 25% of kids didn’t buy into it—couldn’t invest, couldn’t figure it out.”<sup>107</sup>

Eddie Ellis's experience demonstrates how harsh practices like solitary confinement can have this "toxic" effect. He explained: "When I left [the juvenile facility], I really didn't have any energy to think about doing right. I just didn't care ... Now I wanted to rail against the system ... Now I want[ed] to throw something in the system's face. It wasn't hurting the system, it was hurting me. But as a kid, I didn't think that way. I just thought "you already locked me up, so what more can I do."<sup>108</sup> Assistant Director of the Ohio Department of Youth Services Linda Janes explained that the key was engaging youth "in a more positive way," rather than having them "sitting around all day."<sup>109</sup>

To decrease reliance on solitary confinement, Ohio's Department of Youth Services scheduled activities seven days per week and provided religious services; apprenticeship programs; increased visiting hours; access to family contact through webcams and video calls; a "Baby Elmo" program teaching young fathers how to involve their children in their lives; life skills courses about budgeting, managing checking accounts, turning on utilities; enhanced educational programming; and more short-term incentives youth actually want, such as movie nights, football games, and guest speakers.<sup>110</sup> Massachusetts increased staff training on de-escalation, motivational interviewing, and adolescent development.<sup>111</sup>

Data confirms that reducing the use of solitary confinement makes facilities safer.<sup>112</sup> It can also be key to gaining staff support for reforms.<sup>113</sup> In Massachusetts, real-time data available to the administration also allowed them to track problematic patterns and intervene immediately to make needed changes.<sup>114</sup>

Both jurisdictions also relied on evidence-based therapeutic models as key components of their culture shift. Massachusetts, for example, uses Dialectical Behavioral Therapy (DBT) as a strategy to help youth manage their own behavior and gain insight about their decision-making.<sup>115</sup> DBT combines cognitive behavior therapy strategies with dialectical philosophy (acceptance of clients while working toward change) and mindfulness practice.<sup>116</sup> This model encourages therapists to start where the youth is emotionally "while also acknowledging that they need to change in order to reach their goals."<sup>117</sup> Research has shown that DBT has positive outcomes in reducing recidivism rates, decreasing aggression, and "improving social and global functioning."<sup>118</sup> DBT is also effective in reducing suicidal behavior, as well as non-suicidal self-injury.<sup>119</sup> Not only do Massachusetts facilities have DBT groups for youth, they also have DBT signage, and staff—even those who are not therapists—with a working knowledge of the approach.<sup>120</sup> Similarly, Ohio provides Cognitive Behavioral Therapy (CBT) to youth under their supervision, teaching youth to identify negative beliefs and restructure them into positive and healthy beliefs.<sup>121</sup> Ohio also employs social workers, psychiatric nurses, psychologists, and occupational therapists as an integrated team to address issues affecting youth in secure placement.<sup>122</sup>

While the goal should always be to treat youth in their homes and communities, for those youth in facilities, these therapeutic approaches do the least harm possible. They minimize anger, frustration, and violence, and create opportunities for youth to develop problem-solving skills.



### III. USING THE LAW FOR REFORM

*Why was [T.D.] in that hallway [instead of locked in a cell]? Are you kidding me? The minute they found out [the youth] were represented and not just doing it by phone, there was a tremendous drop [in] kids being put in isolation ... "Call my lawyer" gave kids power. And they didn't abuse it.*

—Lisa Geis, ATTORNEY, REFLECTING ON HER EXPERIENCES  
PROVIDING POST-DISPOSITIONAL REPRESENTATION AS A FELLOW IN THE  
RUTGERS LAW SCHOOL CHILDREN'S JUSTICE CLINIC<sup>123</sup>

The need for reform is urgent. Legal advocacy can be a powerful lever for change, whether in pursuit of policy reforms, civil litigation, or legal defense in individual cases. Moreover, these strategies are interconnected. Frequently, juvenile defenders have information about institutional practices that warrant impact litigation or policy reform. Impact litigation often triggers policy reform. Engaging and working with youth, their families and other supports, as well as community activists and organizations, is crucial to identifying abuses, clarifying a vision for change, and providing pressure on policy makers. Early conversations with and among key stakeholders can facilitate a successful path to reform.

#### A. Policy Reforms

The primary goal of juvenile justice reform should be to keep youth in their communities whenever possible. If youth are placed in secure settings, advocates should work for comprehensive reforms to eliminate solitary confinement.

Policy change should be carefully crafted to prohibit, rather than modify, solitary confinement. Few jurisdictions ban solitary confinement entirely. Many jurisdictions that have reformed their solitary confinement policies still permit the practice when a youth poses a risk of physical harm to him or herself or others. In 2016, the Lowenstein Sandler Center for the Public Interest found that "of the 29 states that ban punitive solitary confinement, at least 25 continue to use solitary confinement for other purposes, such as safety concerns," and that many permit indefinite extensions of time limits.<sup>124</sup> Since the Lowenstein survey, California has prohibited solitary confinement for disciplinary purposes and D.C. has enacted a law that prohibits the use of room confinement against a youth "for the purposes of discipline, punishment, administrative convenience, retaliation, or staffing shortages."<sup>125</sup> The following recommendations focus on eliminating the use of solitary confinement for more than three hours regardless of the circumstances or the purposes for confinement.

### DEINCARCERATION: THE BEST POLICY REFORM

*While beyond the scope of this report, the most effective way to eliminate solitary confinement is to keep youth at home with their families or in their communities, with appropriate services and resources as needed. Keeping youth close to home decreases recidivism and increases positive youth outcomes,<sup>126</sup> which also keeps communities safer. Limiting placement also keeps youth safe from the hazards and trauma posed by institutions.<sup>127</sup>*

*Reliance on large, congregate facilities has “resulted in scandalous abuses, unconstitutional conditions, and poor public safety outcomes almost since their inception, sometimes despite yeoman efforts to improve them.”<sup>128</sup> The model is “inherently flawed,” as it undermines rehabilitation.<sup>129</sup> Moreover, the adverse consequences of institutional placement fall disproportionately on youth of color.<sup>130</sup>*

*To reduce institutionalization, advocates should seek reforms that close youth facilities, narrow the offenses eligible for incarceration of youth, decrease length of stay, eliminate fines and fees in the youth justice system, and develop monitoring and enforcement mechanisms or procedures.<sup>131</sup>*

*With approximately 60,000 youth incarcerated in the United States daily, legislation to end solitary confinement is still vital. Advocates working to end solitary should coordinate with others working to reduce incarceration to ensure that these efforts—and related communication and messaging—are mutually supportive.*

Effective policies on solitary confinement should ensure that:

- (a) **Solitary confinement is clearly and comprehensively defined.** The definition of solitary confinement must cover all separation or exclusion of youth from the facility's general population, regardless of whether a youth can communicate to another through an opening, such as a door or window, or if a youth remains in their “own” cell.

EXAMPLE: The MERCY Act, bi-partisan federal legislation, provides that “the term ‘room confinement’ means the involuntary placement of a ... juvenile alone in a cell, room, or other area for any reason,”<sup>132</sup> and sets forth clear restrictions on such room confinement.

EXAMPLE: The settlement agreement in a 2013 lawsuit against a juvenile facility in Contra Costa County, California, specified in its definition of “room confinement” that a youth is considered “alone” “even where there are sporadic short visits or check-ins” on the youth, and it made clear that short visits or check-ins do not extend the time caps placed on room confinement.<sup>133</sup>

- (b) **Solitary confinement is prohibited for disciplinary or punitive purposes, for administrative convenience, and for any reason other than when necessary to prevent immediate harm.** Solitary confinement should not be permitted for administrative convenience, discipline, punishment, to address a young person's threats of self-harm, or for protective custody. If suicide is a concern, staff should provide a heightened level of supervision, engage youth in social interaction and provide appropriate supports and services, and allow youth the opportunity to participate in school and other activities.<sup>134</sup> For other safety concerns, the facility should develop an individualized plan for youth rather than resorting to isolation.<sup>135</sup>

EXAMPLE: Massachusetts law provides that youth may only be kept “involuntarily in a room during non-sleep hours” to “calm a youth who is exhibiting seriously disruptive or dangerous behavior”; “for population management”; “for the

safety and security of a youth"; and "for the investigation of an incident." The law also places clear limits on those uses of solitary confinement, providing that confinement to calm a youth may only be used "for the least amount of time required for the youth to regain control"; that "involuntary room confinement shall never be used as a sanction for non-compliance or punishment"; that confinement for population management or for incident investigation may only last for "the amount of time reasonably necessary" to resolve the issue; and that "involuntary room confinement shall not be used with any youth who is on any suicide watch status."<sup>136</sup>

- (3) Solitary confinement is limited to no more than three hours; youth are released as soon as they are calm and safe to exit the cell.** Youth should not be placed in solitary for a period that exceeds a brief "cooling off" period and should be released as soon as they have regained self-control. Supports, such as a social worker who regularly works with youth, should be notified and made available to speak with the youth to assist him or her in calming down. In no circumstances should solitary confinement extend beyond three hours. If the youth is still in solitary confinement after three hours and still poses a serious risk of physical harm, a different intervention is needed—including possible referral to a different facility or location—with guidance from a licensed mental health professional.

EXAMPLE: The MERCY Act provides that, if a juvenile is placed in solitary confinement because of a serious risk of physical harm, the juvenile shall be released "immediately when the covered juvenile has sufficiently gained control" or "not later than" three hours after being placed in room confinement. If there is still a risk of harm after the maximum period of confinement, the juvenile must be transferred to another facility where services can be provided or referred, with the guidance of a mental health professional, to a location that can meet the juvenile's needs.<sup>137</sup>

EXAMPLE: In Washington, D.C., the Comprehensive Youth Justice Amendment Act provides that after six hours of room confinement, a youth must be returned "to the general population, transported to mental health facility upon the recommendation of a mental health professional, transferred to the medical unit in the facility, or provided special individualized programming" that provides "concrete goals that the juvenile understands and that he or she can work toward to be removed from special programming."<sup>138</sup>

EXAMPLE: Pennsylvania regulations make clear that "a restrictive procedure [such as solitary confinement] shall be discontinued when the child demonstrates he has regained self-control."<sup>139</sup>

- (4) Staff must use the least restrictive alternatives, including de-escalation.** Before any room confinement may be imposed, de-escalation strategies that do not involve the use of physical restraints, such as CBT or de-escalation teams, must be employed to help calm a young person.<sup>140</sup> Staff must be trained in such strategies.

EXAMPLE: The REDEEM Act, proposed federal legislation, provides that, "[b]efore a staff member of a juvenile facility places a covered juvenile in room confinement, the staff member shall attempt to use less restrictive techniques, including—(i) talking with the covered juvenile in an attempt to de-escalate the situation; and (ii) permitting a qualified mental health professional, or a staff member who has received training in de-escalation techniques and trauma-informed care, to talk to the covered juvenile."<sup>141</sup>

EXAMPLE: Pennsylvania regulations make clear that before a child may be subject to a "restrictive procedure" such as room confinement, "(i) every attempt shall be

made to anticipate and de-escalate the behavior using methods of intervention less intrusive than restrictive procedures; (2) a restrictive procedure may not be used unless less intrusive techniques and resources appropriate to the behavior have been tried but have failed.”<sup>142</sup>

**(5) Facilities must offer individualized services that address persistent behavior concerns to avoid use of solitary confinement.** Individualized programming, including positive behavior support, must be available to address persistent behavior problems. Solitary confinement cannot be used as a substitute for such programming.

EXAMPLE: Under the Contra Costa settlement agreement, staff are required to “develop special individualized programming for youth ... [that] includes the following:

- a. Development of an individualized plan designed to improve the youth’s behavior, created in consultation with the youth, County Mental Health staff, and the youth’s family members, when available.
- b. The plan identifies the causes and purposes of the negative behavior, as well as concrete goals that the youth understands and that he or she can work toward to be removed from special programming.
- c. In-person supervision by and interaction with staff members.
- d. In-person provision of educational services.
- e. Involvement of the youth in other aspects of the facility’s programming unless such involvement threatens the safety of youth or staff or the security of the facility.
- f. A guarantee that the youth will not be denied any of his or her basic rights.
- g. Daily review with the youth of his or her progress toward the goals outlined in his or her plan.”<sup>143</sup>

**(6) Comprehensive data collection, analysis, and dissemination is essential.** Data must track the use of solitary confinement, including the length of time in confinement, the reasons for the use of isolation, and youth demographics—age, gender, gender identity, gender expression, sexual orientation, race, ethnicity, and disability status, among others. Such information should be made publicly available, while still protecting the identity of youth. Policies should make clear how corrective action will be taken if problematic practices or trends are uncovered.

EXAMPLE: A 2015 settlement agreement with the Illinois Department of Juvenile Justice in the case *R.J. v. Jones*, No. 12-cv-7289 (N.D. Ill.), requires that the Department “maintain cumulative data on all confinement decisions.”<sup>144</sup>

EXAMPLE: Nebraska’s Revised Statute, Chapter 83, §134.01 (2016) provides that “[t]he juvenile facility shall submit a report quarterly to the Legislature on the number of juveniles placed in room confinement; the length of time each juvenile was in room confinement, the race, ethnicity, age, and gender of each juvenile placed in room confinement; facility staffing levels at the time of confinement; and the reason each juvenile was placed in room confinement. The report shall specifically address each instance of room confinement of a juvenile for more than four hours, including all reasons why attempts to return the juvenile to the general population of the juvenile facility were unsuccessful.”<sup>145</sup>

Codifying these provisions in federal, state and local policy through statutory and regulatory reform will protect youth from the harms of solitary confinement and guide facilities to rely on safer and more effective strategies for interacting with youth.

## B. Litigation Strategies

Litigation is a key component of any campaign to eliminate solitary confinement. While legal challenges to solitary confinement and other harsh conditions of confinement achieved some success in the 1970s,<sup>146</sup> the subsequent “tough on crime” era produced few legal victories. The Supreme Court’s recent rulings recognizing how children are developmentally different from adults for the purposes of sentencing under the Eighth Amendment<sup>147</sup> present new opportunities for legal challenges today. Advocates in several states have successfully challenged the use of solitary confinement in juvenile facilities, including obtaining injunctive relief proscribing its use for punitive purposes or reaching settlement agreements imposing strict limits on the practice. Below are promising legal strategies emerging from those cases.

### Argue for a Child-Specific Constitutional Standard

Solitary confinement of youth is generally challenged as an unconstitutional condition of confinement, either because it is “cruel and unusual punishment” under the Eighth Amendment or because it “amounts to punishment” under the Fourteenth Amendment.<sup>148</sup> These two constitutional standards are similar in that each requires demonstrating that solitary confinement is harmful to children and that corrections officials acted with a sufficiently culpable state of mind.<sup>149</sup> The primary difference between the standards is that the Fourteenth Amendment is more protective—it prohibits conditions or restrictions intended to punish or humiliate, rather than just those that rise to the level of “cruel and unusual,” and the defendants’ intent can be analyzed using an objective, rather than a subjective, standard.<sup>150</sup>

There is a strong argument that the Fourteenth Amendment provides the appropriate standard for juvenile conditions of confinement cases. The Supreme Court has held that the Fourteenth Amendment standard applies in situations where the primary purpose of the confinement is not punitive, such as when inmates are detained pretrial or when individuals with mental health conditions are involuntarily committed.<sup>151</sup> In light of the rehabilitative purpose of the juvenile justice system, many courts have concluded that the more protective Fourteenth Amendment standard, rather than the Eighth, protects juvenile offenders from harsh conditions of confinement.<sup>152</sup>

Using this standard, some courts have identified a right to rehabilitative treatment for youth in state custody, which can provide yet another legal avenue to challenge the use of solitary confinement.<sup>153</sup> For instance, a Wisconsin district court recently concluded that juvenile offenders have “a right to rehabilitation and . . . the use of solitary confinement violates” that right. The court explained that solitary confinement not only disrupts rehabilitative programming, it also “engenders antisocial behavior and it aggravates mental illness” in a way that “fundamentally interferes” with the rehabilitation of youth.<sup>154</sup>

Regardless of which constitutional provision applies, however, the Supreme Court has been clear that courts must take into account the distinctive developmental characteristics and particular needs of adolescents in a host of constitutional contexts; advocates should rely on these arguments in challenging juvenile solitary confinement. Beginning with its 2005 decision in *Roper v. Simmons*, the Supreme Court has repeatedly held that juveniles enjoy greater constitutional protections than adults under the Eighth Amendment, emphasizing in each case that adolescents differ from adults in their maturity, susceptibility to outside influences, and capacity for change.<sup>155</sup> More generally, the Court has repeatedly reaffirmed that youth “have a very special place in life which law should reflect,” and it has applied this principle in a diverse array of constitutional contexts.<sup>156</sup>

This emphasis on the unique developmental characteristics of youth—including their heightened vulnerability to psychological harm—has particular relevance in challenges to the use of solitary confinement. Youth are more vulnerable than adults in myriad social, emotional, psychological and physical ways, and the risk of serious harm posed by solitary confinement is more substantial for youth than for adults. Therefore, conditions that courts may find constitutionally acceptable for adults may be unduly harsh or harmful for youth under either the Eighth or the Fourteenth Amendment standard.

Furthermore, juvenile corrections officials arguably have a greater duty to understand adolescents' developmental characteristics and appreciate the risk of harm posed by practices such as solitary confinement. As a result, the rule in adult cases requiring a showing of deliberate indifference based on actual knowledge and disregard of harms may not be controlling in cases involving juveniles, where it should be sufficient to show that correctional officials should have known about the harms.<sup>157</sup> Courts have found developmentally based arguments such as these persuasive in at least three recent solitary confinement cases (see below). Widespread media coverage of the use and harms of solitary confinement can also be useful in showing deliberate indifference. For examples of media coverage, visit <http://www.stopsolitaryforkids.org/articles-short-form/>.

#### **Bring Education Claims in Support of Ending Solitary Confinement**

Education is often denied to youth placed in solitary confinement. Using the denial of educational programming—either regular education or special education—may be a wedge issue to force administrators to address more fully their use of solitary confinement and the conditions under which children are held. Education claims should not be viewed as a means of improving the conditions of solitary confinement, however, but rather as a way of hastening its demise.

When challenging the denial of education, the Individuals with Disabilities Education Act ("IDEA"), which entitles students with disabilities to many educational rights, has been a successful driver of reform in several legal challenges (see examples below). IDEA claims may include failure to identify and provide services for students with disabilities; failure to provide students with disabilities with a "free appropriate public education"; procedural problems with the development of a student's Individualized Education Program ("IEP") or failure to implement the services provided for in the IEP; and violations of the requirement that students with disabilities be educated in the "least restrictive environment" possible.<sup>158</sup> Similar claims may also be brought under Section 504 of the Rehabilitation Act of 1973, which broadly precludes the exclusion of individuals with disabilities from programs or activities receiving federal financial assistance on the basis of that disability.<sup>159</sup>

For students without disabilities, legal challenges to deprivations of education can be more difficult, as there is no explicit federal constitutional right to education. Some states have codified this right either in statute or their state constitution, and state claims in this area have been a part of successful solitary confinement litigation.<sup>160</sup> More generally, denial of opportunities may be subsumed in the overall claim that the conditions of confinement that youth experience are harsh and pose a substantial risk of harm.

#### **Challenge Discriminatory Policies and Practices**

A strong federal legal framework supports challenges to disability-based discrimination in solitary confinement. Both the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act prohibit discrimination on the basis of a disability—the ADA in the context of employment, public services, and public accommodations, and Section 504 in the administration of programs and activities that receive federal financial assistance.<sup>161</sup> Under these protections, facilities cannot place individuals in isolation because of their disabilities.<sup>162</sup> Facilities are also required to make "reasonable modifications" to their programs to accommodate the needs of a person with a disability.<sup>163</sup> Based on these requirements, youth with disabilities could challenge aspects of the process that resulted in their placement in solitary—including lack of appropriate mental health treatment—or could request modifications to their conditions while *in* solitary. Placement of youth with disabilities in solitary confinement can also violate the ADA's "integration mandate," which requires that public entities administer services in "the most integrated setting appropriate to the needs" of the individual.<sup>164</sup> These claims each potentially offer a legal standard that "bans conditions milder than those reachable by an Eighth Amendment deliberate indifference lawsuit."<sup>165</sup>

Other federal anti-discrimination laws, such as Title VI of the Civil Rights Act of 1964 and the equal protection clause of the Fourteenth Amendment, may support challenges to solitary confinement practices that discriminate on the basis of race, ethnicity, or national origin, as well as potentially gender, gender identity, or sexual orientation.<sup>166</sup> Although there are many legal and factual hurdles to bringing these claims—in particular, the evidence necessary to prove discriminatory intent is often elusive or difficult to obtain—there have been some successful examples. For instance, adult transgender inmates have successfully challenged prison policies that automatically place transgender inmates in segregation for their protection.<sup>167</sup> Additionally, raising these legal arguments can illustrate the significant disparities and underlying biases around race or gender identity that pervade the justice system, thus supporting policy reform efforts.

#### RECENT CASE HIGHLIGHTS

- *J.J. v. Litscher*, Western District of Wisconsin (case filed 2017, oral ruling on June 23, 2017): This class action, brought by the ACLU of Wisconsin and Juvenile Law Center, raises Eighth and Fourteenth Amendment challenges to the widespread use of punitive solitary confinement, pepper spray, and mechanical restraints at two juvenile facilities in Wisconsin. In an oral ruling finding that plaintiffs are entitled to preliminary injunctive relief on all claims, the court held that the facilities' use of solitary confinement violates the Fourteenth Amendment right to rehabilitative treatment. The court further held that defendants' policies and practices reflect deliberate indifference to a substantial risk of serious harm under the Eighth Amendment, concluding that defendants had "demonstrated a callous indifference to the acute and permanent harm that residents [of the facilities] are suffering."<sup>168</sup>
- *Doe v. Hommrich*, Middle District of Tennessee (case filed 2016, preliminary injunction issued March 22, 2017): This class action brought Eighth and Fourteenth Amendment conditions of confinement claims against the Rutherford County Detention Facility. Plaintiffs emphasized the developmental vulnerabilities of adolescents and the international condemnation of solitary confinement of children. Relying on the Supreme Court's recent decisions in this area, the district court agreed that plaintiffs had shown they were likely to succeed on their claims that youth "being detained in solitary confinement or isolation for punitive or disciplinary purposes constitutes ... inhumane treatment," in violation of the Eighth Amendment. The preliminary injunction barred all solitary confinement of youth as punishment or discipline.<sup>169</sup>
- *V.W. v. Conway*, Northern District of New York (case filed 2016, preliminary injunction issued February 22, 2017): This case involved Eighth and Fourteenth Amendment challenges to the Onondaga County Justice Center's use of solitary confinement on 16- and 17-year-old inmates and detainees in adult facilities, and it included a subclass of youth with disabilities bringing IDEA claims. In addition to emphasizing the harms of solitary on all youth, plaintiffs highlighted the lack of specific educational services available to youth with disabilities while they were held in solitary confinement. The court found that the local school district had failed to provide educational services in accordance with the youths' specific IEPs and that youth with disabilities were held in isolation "in violation of the 'manifestation hearing' requirement of the IDEA." Additionally, the court explicitly noted the disproportionate use of disciplinary isolation against youth of color in the facility. The court concluded that punitive solitary confinement of youth violates the Eighth Amendment, citing the "broad consensus among the scientific and professional community that juveniles are psychologically more vulnerable than adults."<sup>170</sup>

■ *G.F. v. Contra Costa County*, Northern District of California (case filed 2013, settlement reached in 2015): This case challenged the use of solitary confinement and corresponding educational deprivations on behalf of a class consisting of all youth with disabilities detained at the facility. Plaintiffs brought claims under the IDEA, the ADA, Section 504, and California state education law. There were no federal constitutional claims. The case resulted in two settlement agreements—one with the county administering the facility and one with the local education department—that require broad reforms to the practices and services provided to youth with disabilities. Under the terms of the settlement, the county agreed not to “use room confinement for discipline, punishment, administrative convenience, retaliation, staffing shortages or reasons other than a temporary response to behavior that threatens immediate harm to the youth or others.”<sup>171</sup> Where confinement is used, in accordance with the settlement agreement, youth cannot remain in isolation for more “than four hours.”<sup>172</sup>

### C. Strong Juvenile Defense

Juvenile defenders play a key role in eliminating the use of solitary confinement by zealously advocating for their individual clients and raising awareness of the issue generally. Here are a few strategies to consider:

#### Ensure Post-Disposition Representation

Although youth have the right to counsel in delinquency proceedings, that right often ends at adjudication, leaving youth without counsel once sentenced. Yet post-disposition is the point at which youth are most likely to be placed in solitary confinement. The National Juvenile Defender Center (NJDC) hosts a comprehensive database with resources that can guide defenders who are interested in assisting their clients through post-dispositional proceedings.<sup>173</sup> In jurisdictions with post-dispositional representation, such as Massachusetts and Pennsylvania, defenders can ask key questions and take needed steps to advocate on conditions of confinement, as outlined below.<sup>174</sup> In jurisdictions without such representation, defenders can work toward policy reforms or identify law school clinical partners or others who may be able to offer representation pro bono. For example, advocates in Illinois and New Jersey created legal clinics at local law schools to assist youth with post-dispositional representation.<sup>175</sup>

#### Ask Targeted Questions

A key aspect of effective representation involves regular communication between an attorney and his or her client. Speaking directly with youth is the best way to gather data and information about the use of solitary confinement in a particular jurisdiction. Defenders should not expect a client or his or her parents to volunteer information about time spent in solitary confinement. Youth may avoid talking about such a difficult subject or may not label their experience as “solitary confinement.” Defenders should be prepared to ask several questions to elicit information from the young person about the day-to-day experiences of confinement. As Juvenile Law Center’s survey of juvenile defenders revealed, attorneys are often left in the dark about what their clients are experiencing on a day-to-day basis. Attorneys should find out how much time youth spend by themselves and under what conditions, inquire frequently about mental health concerns or other disability issues, and craft questions with sensitivity to the risk of retraumatizing youth. While attorneys should speak with their clients directly, they should also talk to the youth’s parents and other supports, such as teachers or caseworkers. If permissible, they should also make inquiries directly to facility staff. Moreover, defenders should request and review the facility’s records of their clients.

### QUESTIONS FOR YOUTH

Potential questions juvenile defenders can ask youth include:

- Do you ever spend time in your room or cell by yourself? How often does that happen? How long do you usually spend there?
- What's the longest time you've ever had to spend in a room or cell by yourself?
- Do you ever spend all day, or almost all day, in your cell? Are you by yourself?
- Is there anything called "the box," "the hole," or the SHU in your facility? Have you ever spent time there?
- What happens to kids who get in trouble? Has that ever happened to you?

For more guidance on talking to youth about solitary confinement, see the youth interview guide in the [ACLU's toolkit on ending the solitary confinement of youth in juvenile detention and correctional facilities](#).<sup>176</sup>

### Visit Local Facilities

Another way to find out whether and to what degree youth may be exposed to solitary confinement is to visit the facilities where youth are placed. Understanding and viewing the conditions of a facility, in addition to requesting and reviewing facility documentation related to youth, can enhance a defender's representation strategy at trial. An attorney can better speak to whether the facility will be able to or has met the youth's needs. By regularly visiting placements and educating themselves about their practices and policies, defenders can also serve as a vital source of information to other stakeholders in the system, including judges and policy advocates. If a facility refuses access to specific records related to an attorney's client, seeking a court order or submitting a Freedom of Information Act request can be effective in soliciting necessary information to further ensure a youth's rights are not violated.

### QUESTIONS FOR FACILITY STAFF

Potential questions juvenile defenders can ask during a facility visit include:

- What is the policy for addressing youth who may be considered disruptive or non-compliant? How do staff determine what constitutes a disruption or non-compliant behavior?
- Is there a team of health professionals (including medical, behavioral, mental, dental, etc.) available to meet the needs of youth on-site? If not, how are these services accessed for youth both in emergency and non-emergency situations?
- Have all correctional staff been trained on how to use de-escalation techniques? What specific de-escalation techniques do staff use?
- Is room confinement used at the facility? For what purpose and for how long?
- What is the facility's grievance policy and process for youth, parents, attorneys, or other interested parties? How long does it take for a grievance to receive a response?

A useful resource in understanding how to navigate facilities and ask facility staff specific questions about room confinement is the [Juvenile Detention Alternatives Initiative's Guide to Juvenile Detention Reform](#).<sup>177</sup>

#### **Enlist the Court**

When a youth is placed in solitary confinement, or if an attorney is concerned that a client may be isolated, these concerns should be brought to the attention of the court. At a disposition or review hearing, defenders can ask the judge to issue an order that a client not be placed in isolation as punishment or that the judge be notified in writing if the youth is placed in isolation. Judges can also order staff to notify defenders and provide written copies of all disciplinary reports. This will allow defenders to gain more access into the often hidden practices inside facilities. All of the same constitutional and statutory arguments described above are available in individual cases as well, and can be highly effective at keeping individual youth out of solitary. Additionally, requesting court orders can be effective when there are difficulties getting appropriate services or supports for youth. These services can help avoid placements in solitary and can force institutions to address the underlying problems that result in the use of such harmful practices.

Moreover, the National Council of Juvenile and Family Court Judges (NCJFC) has shown its support in reducing the use of solitary confinement through its 2016 resolution.<sup>178</sup> Among the NCJFC's resolutions that defenders may consider using to enlist the court's assistance is that judges should "continually review policies and practices related to solitary confinement of youth."<sup>179</sup>

#### **File Licensing Complaints and Grievances**

When a facility's use of solitary confinement violates facility policy, licensing requirements, or other regulations, defenders should use the available complaint or grievance mechanisms to report the issue. Defenders can also assist youth or families in filing grievances or making complaints. Using these complaint mechanisms calls attention to the issue, creates a written record of the problem, and can potentially prompt an investigation or other responsive action. Youth may also be required under the Prison Litigation Reform Act (PLRA) to make use of available grievance processes at the facility before litigation challenging solitary confinement can be brought.<sup>180</sup>

#### **Work with Advocates Engaged in System Reform**

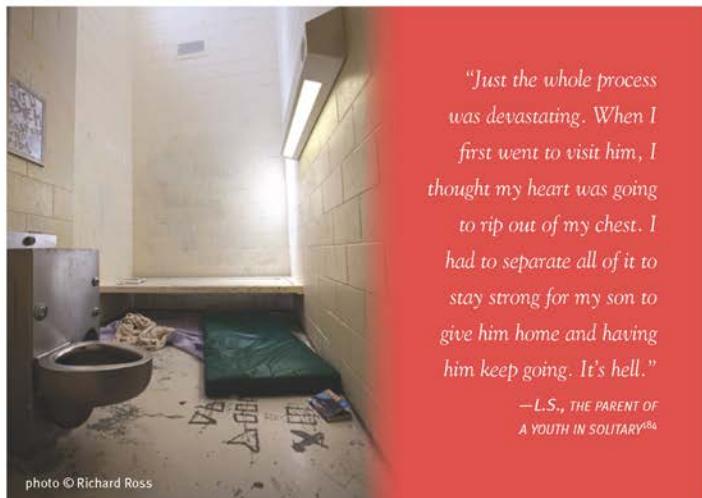
In a defender agency without the capacity for significant system reform efforts, connect with local advocacy groups, including impact litigators, Protection & Advocacy (P&A) agencies, and others to move the agenda. Notably, P&A agencies, which exist in each state, have both the investigative authority to enter facilities that house individuals with disabilities *and* the ability to file legal challenges or take other actions to enforce disability laws. Juvenile Law Center also serves as a resource to advocates around the country.

### **D. Community Partnerships**

Working in partnership with youth, parents, and other community advocates is essential for any successful reform effort. Community groups can help identify abuses and can make a record that helps litigation. Often, parents, youth, and engaged community members identify facilities with particularly abusive practices. For parents in particular, having a child taken from home and held in a harmful environment can be highly distressing. As one parent explained: "Just the whole process was devastating. When I first went to visit him, I thought my heart was going to rip out of my chest. I had to separate all of it to stay strong for my son to give him home and having him keep going. It's hell."<sup>181</sup> Yet this same connection to youth means that families are experts and key partners in "designing new approaches aimed at helping youth succeed."<sup>182</sup> Similarly, no one understands the experience youth in the system better than youth themselves. For this reason, it's vital to "[e]ngage youth as advocates ... by integrating their voice and vision as agents of change in their own lives, among their peers and in their communities."<sup>183</sup>

Working in collaboration with others, attorneys will be better able to demonstrate that correctional officials have been “deliberately indifferent” to the need for reform—a necessary standard to meet under many of the potential claims in solitary confinement litigation.

Community partners and grassroots activists also play a vital role in helping to determine the role of conditions litigation in broader reform efforts. For example, conditions litigation can support local and national movements to close youth prisons and bring youth home to their communities. This is particularly true when community partners and legal advocates work together on communication and messaging strategies. In some circumstances, however, the timing of litigation or the goal of a narrower policy win on solitary confinement may unintentionally undermine community efforts to close facilities. By reaching out early and often to community-based advocates, discussing the advantages and challenges of litigation, and collectively deciding on strategies, attorneys can identify the optimal time, location, and case to pursue.



Working with community partners can also elevate and shed greater light on the issues associated with the use of solitary confinement that do not fit easily into the legal arguments. In particular, racial disparities and other disproportionate uses of solitary confinement may not be readily translated into legal claims, but they are integral to understanding the harms of the practice on individuals and communities. Here, again, community advocacy and communications strategies can add depth to the reform efforts otherwise at risk of being circumscribed by the legal framework. Where troubling patterns and practices—such as racial disparities or discrimination against LGBTQ youth—emerge, defenders should actively engage and connect with grassroots organizations, parents, youth, and impacted communities to learn about youth experiences from a different perspective and collaborate on reforms. Attorneys should be mindful of their role in helping with reform efforts. That is, a reform approach may not always require formal legal advocacy, and attorneys should be responsive to youth, family members, and community members in determining the most effective strategies.<sup>185</sup>

#### IV. CONCLUSION

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Legal advocates should seize this moment to push for the elimination of solitary confinement of youth. The field is ripe for reform: research confirms the distinctive vulnerabilities of youth; medical, correctional, and other professional organizations support elimination of the practice; and the Supreme Court has recognized that children deserve heightened constitutional protections. As one youth concluded, “we need to come out more, contact our people more.” Being in solitary “messes with your head.”<sup>186</sup> By shedding light on the harms of solitary confinement and of youth incarceration generally, and by implementing legal strategies for reform, advocates can work to ensure that no child is forced to spend days, weeks, or months locked away in isolation from their peers, families, and communities.

## ENDNOTES

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- 6 See *infra* Section II.C.
- 7 See *infra* p. 13.
- 8 See, e.g., S.B. 1143 (Cal. 2016), enacted Sept. 27, 2016, [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1143](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1143); H.B. 17-1329 (Col. 2017), [http://leg.colorado.gov/sites/default/files/documents/2017A/bills/2017A\\_1329\\_enr.pdf](http://leg.colorado.gov/sites/default/files/documents/2017A/bills/2017A_1329_enr.pdf); D.C. Act 21-0238 (D.C. 2016), <http://ilms.dccouncil.us/Download/35539/B21-0683-SignedAct.pdf>.
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- 18 See *Attorney Survey*, *supra* note 17; see also *Alone & Afraid*, *supra* note 13, at 6-7.
- 19 Juvenile Law Center, *Protection & Advocacy Agency Survey on Solitary Confinement* (2016) [hereinafter *P&A Survey*]. Juvenile Law Center received 9 survey responses via SurveyMonkey, see [www.surveymonkey.com](http://www.surveymonkey.com).
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147 See *Miller v. Alabama*, 132 S. Ct. 2455, 2475 (2012) (striking down mandatory imposition of life without parole sentences for juveniles); *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011) (adopting a “reasonable child” standard for determining the scope of the *Miranda* protections, in recognition that children “are more vulnerable or susceptible to ... outside pressures” than adults” (quoting *Roper v. Simmons*, 543 U.S. 551, 569) (alteration in original)); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (striking down life without parole sentences for juveniles convicted of nonhomicide offenses); *Roper v. Simmons*, 543 U.S. 551, 578-79 (2005) (striking down the juvenile death penalty as unconstitutional); *see also Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016) (holding *Miller* retroactive on collateral review).

148 See *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (articulating the general Eighth Amendment conditions of confinement standard); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (holding that exposing pretrial detainees to conduct that “amount[s] to punishment” violates the Fourteenth Amendment’s due process protections).

<sup>149</sup> See *Farmer*, 511 at 834 (describing the Eighth Amendment deliberate indifference standard); *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982) (describing the standard under the Fourteenth Amendment)

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<sup>153</sup> See *Nelson v. Heyne*, 491 F.2d 352, 358, 360 (7th Cir. 1974) (identifying a "right to treatment" under the Fourteenth Amendment for juveniles in state custody that includes the "right to minimum acceptable standards of care and treatment for juveniles" and "the right to individualized care and treatment").

<sup>154</sup> Transcript Excerpt from Second Day of Motion Hearing at 6-7, *J.J. v. Litscher*, No. 17-CV-47 (W.D. Wis. June 23, 2017); see also Patrick Marley, Judge: 'Ted Kaczynski Has Less Restrictive Confinement' Than Lincoln Hills Teen Inmates, MILWAUKEE JOURNAL SENTINEL (June 23, 2017), <http://www.jsonline.com/story/news/2017/06/23/federal-judge-rule-case-wisconsins-lincoln-hills-teen-prison/423051001/>.

<sup>155</sup> See *supra* note 147.

<sup>156</sup> *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring); see also *J.D.B.*, 564 U.S. at 272 ("[O]ur history is replete with laws and judicial recognition' that children cannot be viewed simply as miniature adults." (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982))).

<sup>157</sup> For further reading on this analysis, see Levick et al., *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment through the Lens of Childhood and Adolescence*, 15 U. PA. J. L. & Soc. CHANGE 285 (2012).

<sup>158</sup> For a detailed description of using the IDEA in juvenile conditions of confinement litigation, see OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, EDUCATIONAL ADVOCACY FOR YOUTH WITH DISABILITIES, <https://www.ojjdp.gov/pubs/walls/sect-03.html>.

<sup>159</sup> 29 U.S.C. § 794(a).

<sup>160</sup> For example, the Contra Costa litigation included state education claims. See, e.g., Contra Costa Settlement, *supra* note 133.

<sup>161</sup> See 42 U.S.C. § 12131(2) (defining "qualified individual with a disability" to mean "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices ... meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity"); 42 U.S.C. § 12132 ("[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."); 29 U.S.C. § 794(a) ("No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ...").

<sup>162</sup> See 28 C.F.R. § 35.130(b)(1).

<sup>163</sup> 28 C.F.R. § 35.130(b)(7).

<sup>164</sup> 28 C.F.R. §§ 35.130(d), 35.152.

<sup>165</sup> MARGO SCHLANGER, HOW THE ADA REGULATES AND RESTRICTS SOLITARY CONFINEMENT FOR PEOPLE WITH MENTAL DISABILITIES 2, ACS ISSUE BRIEF 2 (May 19, 2016), [https://www.acslaw.org/sites/default/files/How\\_the\\_ADA\\_Regulates\\_and\\_Restricts\\_Solitary\\_Confinement.pdf](https://www.acslaw.org/sites/default/files/How_the_ADA_Regulates_and_Restricts_Solitary_Confinement.pdf).

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167 *See Medina-Tejada v. Sacramento Cnty.*, No. Civ.S-04-138FDC/DAD, 2006 WL 463158, at \*8 (E.D. Cal. Feb. 27, 2006); *Tates v. Blanas*, No. S-00-2539, 2003 WL 23864868, at \*9-10 (E.D. Cal. Mar. 11, 2003).

168 *Supra* notes 23 & 154

169 *Doe v. Hommrich*, No. 3:16-0799, 2017 WL 1091864, at \*2 (M.D. Tenn. March 22, 2017) (mem.).

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172 *Contra Costa Settlement, supra* note 133.

173 *See Post-Disposition Database*, NATIONAL JUVENILE DEFENDER CENTER, <http://njdc.info/practice-policy-resources/topical-issues/post-disposition/>.

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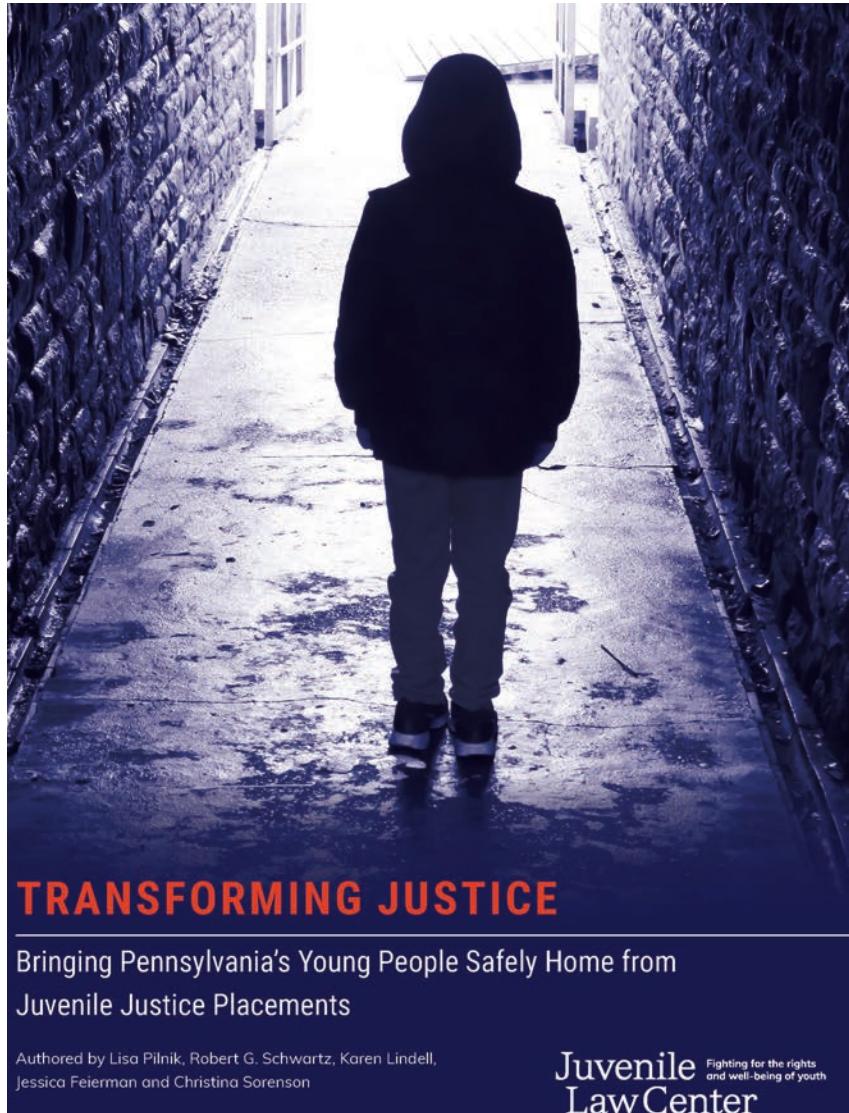
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## TRANSFORMING JUSTICE

Bringing Pennsylvania's Young People Safely Home from  
Juvenile Justice Placements

Authored by Lisa Pilnik, Robert G. Schwartz, Karen Lindell,  
Jessica Feierman and Christina Sorenson

**Juvenile** Fighting for the rights  
Law Center and well-being of youth

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Juvenile Justice Placements

A Publication of Juvenile Law Center

**Authored by:**

Lisa Pilnik, Robert G. Schwartz, Karen Lindell,  
Jessica Feierman and Christina Sorenson



Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the foster care and justice systems.

Founded in 1975, Juvenile Law Center is the first nonprofit, public interest law firm for children in the country. We fight for youth through litigation, appellate advocacy and submission of *amicus* (friend-of-the-court) briefs, policy reform, public education, training, consulting, and strategic communications. Widely published and internationally recognized as leaders in the field, Juvenile Law Center has substantially shaped the development of law and policy on behalf of youth. We strive to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values. For more information about Juvenile Law Center's work, visit [www.jlc.org](http://www.jlc.org).

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## ACKNOWLEDGEMENTS

The authors wish to acknowledge the leadership and vision of Juveniles for Justice and Youth Fostering Change, two programs of Juvenile Law Center engaging young people who have been involved in the justice and child welfare systems in systemic reform efforts. To the youth from Juveniles for Justice who wrote the Broken Bridges report, your words about the harms of placement and your vision of a better system that supports youth have inspired us. To the youth from both groups who reviewed this document and offered your expertise, thank you for your insights, which made the report stronger. We are immensely grateful to the leadership of the Defender Association of Philadelphia, including Leola Hardy, Ellyn Sapper, and Elizabeth Miller. The Defender Association enriched this product not only through their review and perspectives, but through the rich data they collected and analyzed regarding their youth in placement. Deep thanks to Susan Mangold, Marsha Levick, Jennifer Pokempner, Kate Burdick, Stephen Bishop, and Nate Balis for reviewing the document and offering their suggestions, and to Emily Satifka, Tilyn Bell, Julia Sheppard, and John Santoro for their research and citation assistance.

This research was funded by The Annie E. Casey Foundation. We thank them for their support but acknowledge that the findings and conclusions presented in this report are those of the author(s) alone, and do not necessarily reflect the opinions of the Foundation.

## INTRODUCTION

There is broad consensus that incarcerating youth in the juvenile justice system is both dangerous and ineffective. Secure facilities and other juvenile justice placements pose a high risk of short- and long-term harm to children. Placing young people outside their homes disrupts family ties, undermines educational continuity and developmental trajectory, and can cause trauma and undermine a child's developmental trajectory. Recent research has shown that placement also leads to long-term mental and physical health consequences. Moreover, far too many youth sent to "treatment" facilities experience abuse or neglect and fail to receive needed behavioral health services.

Pennsylvania stakeholders have taken important steps to decrease placement rates and improve outcomes for youth—and local and state leadership is already engaged in continuing the reform efforts. At the same time, the need to dramatically change our responses to young people in the justice system is obvious. Where Pennsylvania was widely recognized as a leader in the 1990's and early 2000's, we now lag behind other states in the extent to which we use placement and the extent of our racial disparities.

Wordsworth. VisionQuest. Glen Mills. Luzerne. Year after year, facilities in Pennsylvania are sued or shut down after the horrific treatment of youth in their care comes to light. Each time, children are removed from the placement and additional oversight is imposed to try to prevent a recurrence, and then it happens again. Oversight isn't enough.

To meet its obligations to our children, Pennsylvania must re-examine its reliance on juvenile placements. Working in collaboration with youth in the system and their families, we must create a system that stresses high-quality community-based solutions that are safer for children, promote public safety, and more effectively and efficiently use our resources.

## PART I: BACKGROUND AND CONTEXT

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### A. Juvenile Placement in Pennsylvania

Pennsylvania's Juvenile Act, like others around the country, emphasizes the importance of developing youth competency, keeping young people in their homes, limiting reliance on confinement, and relying on evidence based practices.<sup>1</sup> This approach aligns with recent U.S. and Pennsylvania Supreme Court case law affirming that youth in the justice system must be treated differently from adults, consistent with their developmental and neurological differences.<sup>2</sup>

Pennsylvania stakeholders at the state and local levels have taken numerous steps to improve outcomes for youth involved in the juvenile justice system. For example, during the last decade, the Council of Chief Probation Officers, the Juvenile Court Judges Commission, and the Pennsylvania Commission on Crime and Delinquency launched the Juvenile Justice System Enhancement Strategy (JJSES), which has improved the handling of juvenile justice cases and led to modest, but important, decreases in recidivism.<sup>3</sup> The Commonwealth has focused its juvenile justice funding on evidence-based practices and prevention strategies.<sup>4</sup> The state and local jurisdictions that have engaged in the Juvenile Detention Alternatives Initiative (JDAI) process have focused on reducing reliance on detention.<sup>5</sup> Some Pennsylvania jurisdictions have instituted nationally recognized policies or programs (e.g., Philadelphia's school-based diversion<sup>6</sup> and Allegheny County's Balanced and Restorative Justice work).<sup>7</sup> And our Juvenile Court Judges' Commission tracks and shares data about youth disposition, detention, and placement—providing a key start to transparency and accountability in our process.<sup>8</sup>

Yet there is still much room for improvement. Although arrest rates have declined significantly, these decreases in placement are more modest than the national average.<sup>9</sup> Pennsylvania still uses out-of-home placements far too frequently, costing our citizens dearly while not producing good results. Our rates of racial and ethnic disparities, placement for non-violent offenses, and placements in large facilities are all well above the national average.<sup>10</sup> Additionally, the voices of youth, families, and impacted communities are far too often missing in discussions of the problems and solutions.<sup>11</sup>

Pennsylvania's leadership can channel their vision and commitment to youth by seizing this opportunity to partner with youth and families to create transformative policy reforms to fully support our youth in their homes and communities. This report provides background research, information about other models, and recommendations for change to support these goals.

#### 1. Pennsylvania Placement Practices

There were 7,623 secure detention admissions in Pennsylvania in 2018, a 24.7 percent reduction in use since 2014.<sup>12</sup> There were 2,965 delinquency placements in Pennsylvania courts in 2018.<sup>13</sup> These placements represented 6.2% of all dispositions statewide<sup>14</sup> and a 29% reduction since 2014.<sup>15</sup>

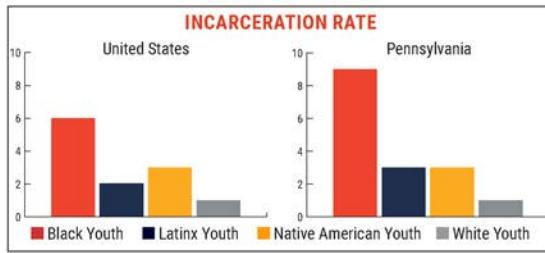
More than half of youth in placements in the Pennsylvania juvenile justice system were in "institutional" placements, per the Pennsylvania Juvenile Case Management System categorization, including General Residential Services (29.6% of youth placements), YDC Secure (9.6%), Secure Residential Services (8.6%), and YDC/YFC Non-Secure (5.5%).<sup>16</sup> Youth were also placed in Residential Treatment Facilities (RTF) (9.6%), Community Residential Service/Group Homes (20.4%), and Drug and Alcohol Programs (14.2%).

Many of these youth were away from home and disconnected from their families and other supports for long periods: 1,870 youth experienced out-of-home placements of more than 28 days in 2018 as a part of a delinquency disposition, and the median length of stay in out-of-home placement was 9.9 months, despite research showing stays that exceed six months do not reduce recidivism.<sup>17</sup> Many youth were also placed far from home, making it difficult to maintain positive supportive relationships, engage in prosocial activities, and benefit from school stability. Geography also plays a significant role in young people's juvenile justice experiences, with placement rates varying widely by county.<sup>18</sup>

## 2. Placement Rates: Areas for Improvement

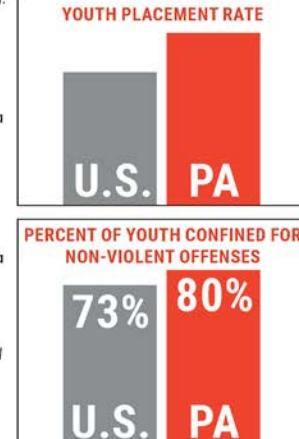
As discussed above, Pennsylvania has seen improvements in the form of declining arrest and delinquency adjudication rates and reduced recidivism. Yet in the context of the larger justice system reforms happening across the country, Pennsylvania has gone from being a leader in the 1990s to trailing national averages, sometimes significantly, on several important measures.

- Significant racial and ethnic disparities exist in juvenile justice systems across the country, but the situation is even more dire in Pennsylvania. Nationally in 2015, Black youth were incarcerated at a rate 6 times the rate of white youth, and Latinx and Native American youth were incarcerated at rates of 2:1 and 3:1 respectively.<sup>19</sup>



In Pennsylvania in 2015, Black youth were 9 times as likely to be incarcerated, with Latinx and Native American youth experiencing a 3 to 1 disparity.<sup>20</sup> Moreover, the data suggest that disparities increase at each stage of the delinquency system. For example, while Black Non-Hispanic youth constitute 14.1% of the state population, they make up 38.1% of delinquency allegations, 43.1% of placements, and 59.5% of all secure placements.<sup>21</sup>

- Pennsylvania frequently places youth for non-criminal acts and has particularly high rates of placement for technical violations. A state-by-state comparison published by the Pew Charitable Trusts in 2018<sup>22</sup> found that Pennsylvania had the fourth highest rate of juvenile confinement for these acts nationally.<sup>23</sup> Approximately 1 in 11 young people in custody for noncriminal acts in the country were confined in Pennsylvania (999 total in Pennsylvania out of 10,885 nationally).<sup>24</sup> According to the Pew report, twenty-six percent of youth in Pennsylvania placements were committed for technical violations (compared to 15% nationally).<sup>25</sup> And over half of delinquency placements statewide (53.7%) were ordered as a result of a disposition review, not a new delinquency adjudication.
- Pennsylvania was also flagged in a report from The Annie E. Casey Foundation for having “the majority of placements into residential custody stem from technical violations and other rule breaking, not new offenses.”<sup>26</sup> The data also suggest high rates of placement for status offenses in juvenile facilities, pointing to a need for additional research as status offenses should primarily be handled through the dependency system or by district magisterial or municipal court judges.<sup>27</sup>
- In 2015, Pennsylvania had 196 youth in juvenile facilities per 100,000 youth in the population, compared to the national average rate of 152 per 100,000.<sup>28</sup> This means that Pennsylvania youth are 29% more likely to be confined than youth around the country.
- In Pennsylvania in 2016, 51% of youth placed in facilities were in large facilities of 100 or more beds, which was twice the national average of 25% that year.<sup>29</sup> Pennsylvania also relies in part on private, for-profit facilities, which increase the harm to youth because of their conflicting service and financial incentives.<sup>30</sup>



- In a one-day count of youth in juvenile residential placements, 12% of committed youth were in placement for simple assault, compared to 8% of committed youth nationally.<sup>31</sup> 80% of committed youth were in placement for offenses not on the violent crime index, compared to 73% nationally.<sup>32</sup>

While we lack reliable Pennsylvania data on placement rates for LGBTQIA youth\*, dependent youth, and youth with disabilities, national research suggests that these youth are at heightened risk of justice system involvement and placement.<sup>33</sup> Data from the Defender Association of Philadelphia confirms significant disproportionalities in placement for youth with dependency histories and youth with disabilities (See text box). Moreover, while boys make up the vast majority of youth in juvenile justice placements in Pennsylvania, a lack of access to services and alternatives for girls may still be leading to unnecessary, longer stays in detention or more restrictive placements for less serious offenses.<sup>34</sup> For example, in Philadelphia, the city's Post Adjudicatory Evening Reporting Center does not serve girls, completely closing off a potential alternative to out-of-home placement.

#### WHO IS IN PLACEMENT? DATA FROM THE DEFENDER ASSOCIATION OF PHILADELPHIA

Data gathered by the Defender Association of Philadelphia provides a snapshot of many of the young people in placement in Pennsylvania. The data below reflect the Defender Association's client in placement on July 12, 2019. Although this data does not capture the experience of all clients in placement across the state, Philadelphia has more young people in placement than any other Pennsylvania county, and the Defender Association's data provides a fuller picture of the young people in placement and their prior experiences than publicly available statewide data provide.

**Demographic information:** Reflecting trends statewide, all but one of the Defender Association's clients were youth of color; 84% were Black and 93% were male. Youth ranged in age from 14 to 20, with most in the 16- to 18-year-old category. No data regarding gender identity or sexual orientation were available.

**Dependency history:** Nearly 42% of the Defender Association's clients in juvenile delinquency placement have had cases in the dependency system.

**Prior placements:** Although many of the youth were in their first delinquency placement, a majority of youth in placement (66%) have previous placement history.

**Reason for current placement:** The vast majority of youth in placement (45 of 73) are in placement for technical probation violations. Only 12 were placed following an adjudication of delinquency. A significant number (16) are in placement because of difficulties in prior placements, either because they failed to adjust to the prior placement or because they ran away.

**Reason for initial adjudication:** A significant number of youth in placement (42%) were initially adjudicated for misdemeanor offense.

**Disability or mental health diagnosis:** A majority of youth in delinquency placement (62%) have a documented disability or mental health diagnosis.

**Special education eligibility:** Over half of youth in delinquency placement (51%) have an Individualized Education Plan for special education needs.

For full data, please see Appendix A. The above data does not include the Defender Association's direct file juvenile clients.



\*LGBTQIA is an inclusive term intended to include individuals with non-mainstream sexual orientation or gender identity, including people who identify as gay, lesbian, bisexual, transsexual, queer, questioning, intersex, and asexual.

### 3. Harms in Placement

Out-of-home placements for youth separate youth from their families and communities; imposes trauma; expose youth to abusive practices, including strip searches, physical and chemical restraints, and solitary confinement; put young people at risk of physical and emotional abuse; and are ineffective in reducing recidivism.

In Pennsylvania, these problems are acute, as reflected in recent devastating examples of youth suffering from abuse in facilities. We must listen not only to adult observers of these abuses but to the young people themselves who lived through these experiences.

At Glen Mills Schools, a private facility for youth who have been adjudicated delinquent, staff repeatedly assaulted youth and encouraged youth to fight each other, creating an environment of fear and toxic stress.<sup>35</sup> The "school" also routinely failed to provide appropriate educational services to youth, particularly those with special education needs.<sup>36</sup> In 2019, the Pennsylvania Department of Human Services found "that youth placed at Glen Mills are at imminent risk and their safety is in jeopardy," and ordered emergency removal of the last young people still confined there.<sup>37</sup>

Youth placed at Wordsworth Academy, a Philadelphia residential treatment facility for youth involved in the juvenile justice or child welfare system, also suffered abuse. Wordsworth was closed in 2016 after David Hess, a 17-year-old boy, died of suffocation after being punched in the ribs by staff; his death was ultimately ruled a homicide.<sup>38</sup> Wordsworth had previously paid to settle lawsuits brought by residents for physical injuries inflicted by staff, including one girl whose jaw was broken and another girl whose arm was fractured.<sup>39</sup> A 2017 investigation by the Philadelphia Inquirer and Daily News found that over a 10-year span, "49 sex crimes have been reported at Wordsworth, including 12 rapes and 23 accounts of sexual abuse."<sup>40</sup> The Inquirer also reported that the facility itself had "holes in the walls, exposed wiring, broken light fixtures, and faulty heaters."<sup>41</sup>

VisionQuest, a controversial program that operates in many states, had a Philadelphia "shelter" that provided short-term placements for youth, including those awaiting adjudication and placement by the juvenile court. State inspections of the facility included reports of dangerous treatment and living conditions.<sup>42</sup> In separate incidents, a staff member struck a child in the face, a child's head went through a wall when a staff member "improperly attempted to restrain the child," and a child was choked and hit by a staff member.<sup>43</sup> Mouse droppings were found in the cafeteria, and bathrooms and eating areas were "corroded with a dirty brown substance."<sup>44</sup> Staff members cursed at and verbally attacked children in their care, saying things like "You're going to be nothing in life."<sup>45</sup> VisionQuest closed the facility in 2017 after their contract ended but may re-open it as a placement for unaccompanied migrant youth.<sup>46</sup> Glen Mills, Wordsworth, and VisionQuest are among the most recent and documented examples of mistreatment of youth in the system, but these stories of abuse echo elsewhere. In April 2019, Disability Rights Pennsylvania filed a lawsuit alleging abuse by staff at several state-run Youth Development Centers,<sup>47</sup> and Philadelphia stopped sending youth to two other residential facilities run by Mid-Atlantic Youth Services that are currently under investigation.<sup>48</sup> A December 2018 report published by Children's Rights, Inc. and Education Law Center exposed dangerous conditions at residential facilities for dependent youth, many of which also house youth involved in the juvenile justice system, including sexual assaults, physical and verbal aggression and maltreatment (including punching and choking youth), and inappropriate use of restraints (many instances of which resulted in physical injury).<sup>49</sup> And perhaps most notably, youth held in private correctional placement as a result of the Kids for Cash scandal in Luzerne

*"When I was at the facility, I was too scared to open up and talk. I didn't think anyone would believe me. I didn't think anything would be done if I ever did speak up. Why should I think anyone would help me if they are sitting there harming me?"*

– Lilly, a Juveniles for Justice Advocate speaking out at City Council Hearing

County suffered devastating and lasting damage from their time in placement.<sup>50</sup> Many youth also choose not to report abuse or end up withdrawing such reports due to fear of retaliation or the (often correct) assumption that authorities will not believe them or nothing will change. In several facilities, the installation of video cameras finally showed incontrovertible evidence that youth were being abused. And the CEO of VisionQuest recently told the *Inquirer*, "complaints of abuse occur at virtually all juvenile-justice centers."<sup>51</sup>

Youth in Juvenile Law Center's Juveniles for Justice Program spoke out about their concerns about safety in their publication, *Broken Bridges: How Juvenile Placement Cut Off Youth from Communities and Successful Futures*: "We and our peers have experienced harsh treatment—like restraints, broken ribs, and being burnt by a hair iron—that has negatively impacted our lives. Instead of being sent to a place that would have to rehabilitate us and provide us support, we endured more damage inside this facility than before we entered."<sup>52</sup> They also emphasized the harms of being separated from family and friends just when they most need connection, and the devastating impact of harmful practices in placement, including strip searches that were traumatizing and degrading; physical restraints and physical abuse, such as being slammed into the wall or floor or punched; placement in solitary confinement where all they could see was "the walls and the floor;" and educational disruption that made it hard for them to complete high school.<sup>53</sup>

#### A NOTE ON PRIVATE PLACEMENTS

A striking feature of Pennsylvania's juvenile justice system is its heavy reliance on private placements. Pennsylvania has more youth in private juvenile facilities than any other state.\* Three quarters of the Pennsylvania youth in placement are in private facilities, compared with less than a third nationally. Pennsylvania's private facilities also house many youth from other states. These facilities vary widely in size, type, and approach, ranging from large institutions run by for-profit companies to small, treatment-oriented group homes.

Private providers can play a key role in the transformation of the justice system. Private providers may have more flexibility than state- or county-run facilities to shift their focus from placement to community-based services, and many providers have already begun this work. We therefore recommend that the state provide sufficient funding, training, and supports to providers and provider associations in making this transition effectively for youth, families, and staff.

The Pennsylvania juvenile justice system's reliance on private providers to provide placement, however, has at times created obstacles to reform. Most notably, private for-profit facilities may increase harm to youth because of their conflicting service and financial incentives.\*\* Moreover, private providers—both for- and non-profit—often have less oversight than state-run facilities, particularly when it comes to education. Finally, youth, families and advocates have noted that the outsized influence of providers at the state and county levels can make it difficult for other voices to be heard. To address these problems, we recommend that the state should ensure that youth, families, and affected communities play a leading role in reform efforts, that the state cease reimbursement for services provided in for-profit facilities, and that all placement providers—public and private—be subjected to tighter regulations, better oversight, and more publicly available information. (For further details on these recommendations, see Part IV)

\*Sarah Hockenberry & Anthony Sladky, Juvenile Resident Facility Census, 2016: Selected Findings, JUVENILE JUSTICE STATISTICS (2018), <https://ojidp.ojp.gov/sites/g/files/xyckuh176/files/pubs/251785.pdf>.

\*\*National Juvenile Justice Network, CONFINING YOUTH FOR PROFIT: POLICY PLATFORM (2015), <http://www.njjn.org/our-work/confining-youth-for-profit--policy-platform>.

## B. Legal and Policy Framework

State and federal policies frame current practices and suggest directions for reform. Pennsylvania's juvenile justice system is largely county-based: county juvenile courts make orders of disposition pursuant to the Juvenile Act; county juvenile probation officers divert youth from the system and supervise those who remain; and county children and youth agencies enter into contracts with service providers. Under state law, costs for these services—including placements in both private and state-run facilities—are shared by the state and the county agency, with the state reimbursing counties on a sliding scale designed to discourage the most restrictive placements.<sup>54</sup> The state also impacts county-level policy through the needs-based planning and budgeting process which requires that each county develop a plan showing the predicted service needs for court-involved youth and the cost of those services. Through this budgeting process and the sliding reimbursement scale, existing state law offers mechanisms to encourage counties to reduce the use of placement and expand community-based programs.

The impact of these existing state-law mechanisms is limited, however, by the wide latitude juvenile court judges have over dispositions. Notwithstanding a county plan to reduce use of placement, a juvenile court judge can commit any youth adjudicated delinquent to almost any out-of-home placement, regardless of cost. The court also has the authority to order any service the court can order for a dependent child; to place the child on probation under whatever conditions it prescribes; and to impose fines, costs, fees, and restitution.<sup>55</sup> Although courts are instructed to follow the "general principle" to confine a child only when necessary and for the minimum amount of time needed to protect the public interest and meet the child's rehabilitative needs,<sup>56</sup> there are few specific statutory limits on the judicial authority to commit a youth adjudicated delinquent to placement. Before committing a youth to an out-of-home placement, the court must provide "the reasons why commitment to that facility or type of facility was determined to be the least restrictive placement that is consistent with the protection of the public interest and best suited to the child's treatment, supervision, rehabilitation and welfare,"<sup>57</sup> but once commitment is ordered it is difficult to challenge on appeal. Juvenile courts review all dispositions at least every six months and may commit a youth to placement during these disposition reviews.<sup>58</sup>

Juvenile probation officers are also afforded wide discretion under the Juvenile Act and the Rules of Juvenile Court Procedure, and juvenile probation has been a key participant in prior reform efforts in the state.<sup>59</sup> But while many county probation departments have been taking note of recent literature on neuroscience and the adolescent brain, the core probation functions in the Juvenile Act still emphasize monitoring over counseling and other supportive interventions.<sup>60</sup>

In addition to the legal parameters imposed by the Juvenile Act and the Rules of Juvenile Court Procedure, other state-level entities wield substantial statewide influence and have shaped prior reform efforts. These entities include, among others, the Juvenile Court Judges Commission (JJC), the Pennsylvania Council of Chief Juvenile Probation Officers (the Chief's Council), the Juvenile Justice and Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency (JJDP), and the Pennsylvania Council of Children, Youth and Family Services (PCCYFS).<sup>61</sup>

Federal law has also been a driver of prior reforms, and recent federal changes continue to shape the legal landscape in Pennsylvania. The newly reauthorized Juvenile Justice and Delinquency Prevention Act (JJDP), for example, requires states to identify and establish a plan to address racial and ethnic disparities in their justice system, strictly limits the extent to which youth who commit status offenses can be placed in facilities for violating a valid court order related to an initial status offense, and creates a focus on data-driven, evidence-based prevention programs.<sup>62</sup> Additionally, the Family First Prevention Services Act, set to be fully implemented in Pennsylvania in October 2020, substantially changes Title IV-E funding for child welfare services, opening up federal entitlement funding for prevention services and limiting the funding available for congregate care.<sup>63</sup>

## PART II: NATIONAL RESEARCH ON THE HARMS OF YOUTH JUSTICE PLACEMENTS

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As noted above, juvenile justice placements harm young people, are ineffective, and can entrench racial disparities. In 2011, The Annie E. Casey Foundation published *No Place for Kids*, establishing that youth incarceration was "(1) dangerous, (2) ineffective, (3) unnecessary, (4) obsolete, (5) wasteful, and (6) inadequate."<sup>64</sup> The report detailed the abuse that adolescents often faced in juvenile correctional facilities,<sup>65</sup> including experiences like those described in Pennsylvania's facilities. Relying on a wide range of research, the report also demonstrated that incarceration produced poor outcomes and was an ineffective use of public funds, as recidivism rates were generally high, despite the high costs.<sup>66</sup> Incarceration is also overused, frequently for youth who do not pose a risk to public safety and despite numerous alternatives to incarceration have been shown to produce better results.<sup>67</sup> Although there is far less research available on non-secure residential programming for juvenile justice involved youth, programs such as boot camps, wilderness programs, and some residential treatment centers have also have been shown to yield poor outcomes for youth.<sup>68</sup>

### A. Youth Placement is Harmful

In a national survey of over 7,000 youth in juvenile facilities, an unacceptably high rate of youth (29%) reported "being beaten up or threatened with being beaten up since coming to their facility."<sup>69</sup> Nearly one quarter (24%) of victims said their assailants were facility staff.<sup>70</sup> Federal Bureau of Justice Statistics also report a high rate (9.5%, nationally) of sexual victimization in juvenile facilities, including victimization by both staff and other youth.<sup>71</sup>

Young people involved in the juvenile justice system have higher rates of past exposure to violence than other young people, and justice system placements can make trauma symptoms worse.<sup>72</sup> The hallmarks of correctional approaches to confinement, including belligerent staff, aggression between youth and staff, lack of privacy, and seclusion and restraint, can trigger trauma-related responses or exacerbate already present traumatic stress symptoms.<sup>73</sup> These consequences are amplified for girls and youth who may already be suffering from Post Traumatic Stress Disorder.<sup>74</sup>

Placement also has long-term impacts on physical and mental health which are exacerbated by lengthier periods of incarceration. A 2017 article in the journal *Pediatrics* found that:

- Even short periods of youth incarceration (less than one month) were associated with depressive symptoms as an adult;
- Youth incarceration for periods of 1 to 12 months were associated with worse general health as an adult; and
- Longer periods of youth incarceration (more than one year) were associated with suicidal thoughts, depressive symptoms, and functional limitations as an adult.<sup>75</sup>

Youth who experience placement also have much poorer educational attainment and employment outcomes as adults.<sup>76</sup> This is disturbing but unsurprising given the educational disruptions they experience during incarceration and low rates of re-enrollment in school after returning home.<sup>77</sup>

### B. Youth Placement Interferes with Positive Transitions to Adulthood

Dr. Laurence Steinberg, a world-recognized expert on adolescence, has shown that juvenile justice system involvement and particularly placement in justice facilities disrupts young people's psychosocial development.<sup>78</sup> Adolescence and young adulthood are a vital time for brain development.<sup>79</sup> Removing youth from their communities, families, and other caring adults and restricting their ability to have age-appropriate experiences and opportunities during this time can delay, limit, or otherwise inhibit their normal development.<sup>80</sup> According to Steinberg, it disrupts the processes that help youth successfully transition to adulthood in multiple ways:

- In the absence of support from parents and other supportive adults, and without opportunities to exert independence and "autonomy, the gradual process of maturation—to learn self-direction, social perspective, and responsibility—may be effectively cut off."
- The separation from key adults and even friends and romantic partners can hinder normal development and reduce incentives "to follow through on conventional goals."
- Early labeling of youth as "delinquents" or "criminals" can cause long-term negative consequences, "as youth may respond to society's recrimination by withdrawing further from conventional activities and seeking support, approval, and esteem" from peers and adults engaging in criminal activity.<sup>81</sup>

Steinberg and colleagues also explain that the typical juvenile justice services a young person receives to develop competency, such as educational and vocational services, are unlikely to give them the skills they need to succeed as adults.<sup>82</sup> For example, a young person "may leave a residential treatment program that offers training in automotive repair with the ability to fix a car but without the psychosocial capacities necessary for being able to report to work on time each day or manage his earnings."<sup>83</sup>

The quality of education provided in juvenile justice facilities is also typically far below the level in community schools and often fails to meet the special education needs of confined youth, setting them on a harmful trajectory as they transition to adulthood.<sup>84</sup>

### C. Youth Placement is Ineffective

Many years of research show that youth placement generally does not reduce re-offense rates or increase public safety. In 2015, Pew Charitable Trusts reviewed wide-ranging research and concluded that:

- **Placing youth in correctional-style facilities does not lead to lower recidivism rates and may actually increase reoffending.** One of the studies reviewed for this finding included longitudinal research on "serious adolescent offenders" in Pennsylvania and Arizona.
- **Longer lengths of stay have also not been proven to reduce recidivism.** In some cases, longer stays in juvenile facilities were associated with higher recidivism rates.
- **Secure residential placements are typically much more expensive than community-based care.** Data from several states indicate that these facilities are "a poor return on public investments."<sup>85</sup>

### D. Youth Placement is Inequitable

Placing youth outside the home also creates and entrenches racial disparities. As No Place for Kids described, "at virtually every stage of the juvenile justice process, youth of color—Latinx and African-Americans, particularly—receive harsher treatment than their white counterparts, even when they enter the justice system with identical charges and offending histories." More specifically, "among youth adjudicated delinquent in juvenile court, African-American youth are more likely than white youth to be placed and, if placed, more likely to be sent to a state youth correctional facility, rather than a private group home or residential treatment center."<sup>86</sup> Youth with disabilities and LGBTQIA youth are also severely overrepresented in the juvenile justice system and in juvenile justice placements.<sup>87</sup> Moreover, once in these placements, these youth are at unique risk of additional harm.<sup>88</sup>

### THE JUVENILE JUSTICE SYSTEM'S LONG HISTORY OF RACISM AND INEQUITY

*"In its early history, the inequitable treatment of youth of color in the juvenile justice system was the result of intentional and blatant race-based policies. Today, our policies are race-neutral, but remain covertly steeped in the same legacy of structural racism."*

—James Bell and Laura John Ridolfi, "Adoration of the Question."

Pennsylvania has a unique opportunity to eliminate racial and ethnic disparities and to create an equitable system of justice. Reforms across the country have too often resulted in reductions in population but increases in disparities. Pennsylvania can establish itself as a leader on this issue by examining the historical roots of these disparities and engaging proactively in addressing them.

Today's inequities in juvenile justice involvement have their roots in cruel and discriminatory practices dating back to the 1800s. The country's earliest juvenile detention facilities, including the Philadelphia House of Refuge, excluded Black children from rehabilitation services that were offered to white youth, believing that it would be "degrading" to the white children or a "waste of resources." Black children were also often placed in adult prisons after being excluded from juvenile facilities housing white children. After the Civil War, Black children and adults were frequently arrested for minor offenses and then forced to work through "convict leasing," often in backbreaking manual labor jobs under terrible conditions.<sup>2</sup> In the early- to mid-1900s, advocates and public officials continued to observe noticeable differences in the services available to and the treatment of children of color, including documenting disproportionality and harsher treatment of Black youth in courts across the county.<sup>4</sup> Compounding the problem was a "child-saving" mentality in which the justice system was purportedly working to help children in need, while simultaneously pulling young people out of their families and communities in ways that were ultimately deeply destructive. This idea still pervades the justice systems.<sup>5</sup>

Although Congress, through the Juvenile Justice and Delinquency Prevention Act, and individual jurisdictions have made numerous attempts to address racial and ethnic disparities, there is still much work to be done. Across the country, the history of racism and mistreatment is still felt in the policies and practices of today. Although youth of color are not explicitly excluded from programming, Black children are significantly less likely to receive diversion and more likely to be incarcerated than white youth.<sup>6</sup> They are also much more likely to be transferred to the adult criminal justice system.<sup>7</sup> Understanding this history is essential in order to "fully understand the entrenchment of racial and ethnic disparities in today's juvenile justice system"<sup>8</sup> and to develop effective policies to right this historical wrong.

\*\*For more on the history of the juvenile justice system's treatment of children of color, see W. Hayward Burns Institute's "Adoration of the Question" (<https://tinyurl.com/yyxnv78v>), and Youth First Initiative's "Jim Crow Juvenile Justice" (<https://tinyurl.com/y45vq2dk>).

1-4 James Bell & Laura John Ridolfi, Adoration of the Question: Reflections on the Failure to Reduce Racial & Ethnic Disparities in the Juvenile Justice System, W. HAYWOOD BURNS INST. (Dec. 2008), <https://www.burnsinstitute.org/wp-content/uploads/2013/12/Adoration-of-the-Question.pdf>.

5 Calli M. Cain, Child Savers, in THE ENCYCLOPEDIA OF JUVENILE DELINQUENCY AND JUSTICE (2017).

6 Joshua Rovner, Policy Brief: Racial Disparities in Youth Commitments and Arrests, THE SENTENCING PROJECT (Apr. 1, 2016) <https://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf>.

7 Jeree M. Thomas & Mel Wilson, The Color of Juvenile Transfer: Policy & Practice Recommendations, NAT'L ASS'N OF SOC. WORKERS (2017), <https://www.socialworkers.org/LinkClick.aspx?fileticket=30n7g-nwam8%3D&portalid=0>.

8 James Bell & Laura John Ridolfi, Adoration of the Question: Reflections on the Failure to Reduce Racial & Ethnic Disparities in the Juvenile Justice System, W. HAYWOOD BURNS INST. (Dec. 2008), <https://www.burnsinstitute.org/wp-content/uploads/2013/12/Adoration-of-the-Question.pdf>.

### Dramatic Reductions in Placement

Lucas County, Ohio transformed their system by making changes in policy and practice, including expanding their continuum of community-based services. Court-led efforts significantly reduced the use of juvenile detention, which led to a significant decrease in commitments to the state juvenile prison system: from 300 in 1988<sup>2</sup> to only 18 in 2018.<sup>3</sup>

In New York City in the mid-1990's, 3,800 youth per year were sent to large facilities either operated by the New York State Office of Children and Family Services (OCFS) or by private providers contracted by OCFS.<sup>4</sup> By 2016, New York no longer sent youth from its family court to state operated prisons. Today, around 100 youth from New York City are placed outside of home, and about a dozen are in a locked facility.<sup>5</sup> In an overview of Close to Home developed by the Columbia University Justice Lab, the authors explain that it "was not purely an initiative that transferred custody for youth from one jurisdiction to another, but rather, a complete reimagining of the City's youth justice system."<sup>6</sup>

1 Shaena M. Fazal, *Safely Home*, YAP (June 2014), <http://www.yapinc.org/Portals/0/Documents/Safely%20Home%20Preview/safelyhome.pdf>.

2 *Id.*

3 2018 Annual Report, Lucas County Juvenile Court (2018), <https://co.lucas.oh.us/DocumentCenter/View/75032/2018-Annual-Report-LCJC?bidId=>.

4 Marsha Weissman et al., *Moving Beyond Youth Prisons: Lessons from New York City's Implementation of Close to Home*, Columbia Univ. Justice Lab (Feb. 2019), [https://justicelab.columbia.edu/sites/default/files/content/Moving%20Beyond%20Youth%20Prisons%20-%20C2H\\_0.pdf](https://justicelab.columbia.edu/sites/default/files/content/Moving%20Beyond%20Youth%20Prisons%20-%20C2H_0.pdf).

5 *Id.*

6 *Id.*

### PART III: APPROACHES TO REDUCING YOUTH PLACEMENT

Recognizing the negative consequences of incarceration naturally leads stakeholders to ask how to reduce incarceration and what to do instead. Researchers and advocates have identified key strategies for bringing about needed change, and although no state or local jurisdiction has a "perfect" juvenile justice system, some jurisdictions have reduced their placement rates to *less than 5%* of their original population of youth in placement (see sidebar).

Avoiding the harms of placement starts well before and continues after the disposition decision. Youth need access to prevention services to help them avoid system involvement, as well as "off-ramps" from the juvenile justice system before formal arrest, during court processing and at disposition, and while on probation. Effective strategies tried elsewhere include:

1. advancing equity;
2. limiting entry points to placement;
3. expanding the continuum of services, including diversion programs;
4. ensuring accountability; and
5. relying on youth and family leadership.<sup>89</sup>

The illustrations of how these approaches have shaped reform in other jurisdictions can also help inform and guide reform efforts here in Pennsylvania.

Placement rates, of course, are significantly influenced by all entry points into the justice system; a young person who never enters the system cannot be placed by that system. Because this report focuses primarily on young people who have already entered the court system, we do not address the broad array of reforms to policing that can further assist the state in minimizing justice system placement.

#### A. Relying on Youth and Family Leadership

States that have successfully reduced their reliance on placement have recognized the importance of engagement and leadership by youth in the system and their families. According to a report by the Youth First Initiative, "the work was dynamic and successful in large part because young people and their families were not tokenized; instead, their expertise took a central role in shaping the direction and strategy of each campaign."<sup>90</sup> Lawyers collaborating on these reforms have recognized that while they might have been inclined to engage in "tinkering around the edges of reform," parents reshaped the conversation and highlighted the importance of closing facilities.<sup>91</sup> Young people, too, recognized that when they shared their experiences and perspectives, other stakeholders began to realize the need for dramatic changes away from youth placement.<sup>92</sup>

In one powerful example, attorneys worked to litigate against devastating abuses at Tallulah Youth Prison in Louisiana, but all stakeholders recognize that the leadership of youth and families was the driver behind the shift in goals from improving to closing the facility.<sup>93</sup> Similarly, youth organizing played a key role in New York City Council's rejection of the Mayor's proposal for 200 detention beds. After youth confronted Mayor Michael Bloomberg about his plans on camera and testified en masse during City Council hearings, the Council pulled the \$65 million from the budget and the detention beds were not added.<sup>94</sup> Organizing by family members and communities was also critical to the passage of legislation requiring the closure of two youth prisons in Wisconsin; their work continues to focus the debate on more comprehensive transformation of the justice system.<sup>95</sup> And young people were also vital to a set of reform bills passed into law in Washington State, including one that limited detention for status offenders.<sup>96</sup>

There is a broader implication here as well—when youth and families play a role, policy reforms themselves are stronger. At the system level, such engagement can facilitate greater policy responsiveness to community needs and improve system effectiveness, accountability, and equity.<sup>97</sup> At the individual level, authentic youth and family engagement promotes positive youth development, engenders a sense of community and purpose, and supports a broad array of positive outcomes.<sup>98</sup>

### B. Advancing Equity

Addressing disparities on the basis of race and ethnicity, LGBTQIA identity, and disability is vital to successful reform efforts. Centering equity goals allows systems to strive for fair treatment and supports dramatic reductions in incarceration.

The Haywood Burns Institute works closely with juvenile justice systems around the country to address disparities on the basis of race and ethnicity. This work has led to significant reductions in youth placement, including reducing African-American youth detentions for school fights by 43% in Peoria, Illinois by piloting a restorative justice project and cutting the number of African-American youth placed in secure detention in Baltimore, Maryland by nearly 50% by creating new policies around youth who fail to appear for court.<sup>99</sup>

Centering race in the decarceration efforts in New York City “forced honest public conversations about who we imprison in this country and why,” which ultimately led to success in the reforms. While advocates are still working to address disparities in the city, they have dramatically reduced the number of Black and Brown youth in the justice system.<sup>100</sup>

To further support the goal of reducing racial disparities, all bodies that receive and manage funds should make equity central to the work. To support this goal, jurisdictions can require racial impact analyses prior to any new legislation or policy, as a number of states have now required by state law.<sup>101</sup> This approach can also be undertaken by administrative bodies, task forces, and other key state stakeholders working toward reform. Similarly, all decision-making should appropriately address equity goals. For example, recent work on risk assessment instruments underscores the importance of carefully tracking and reviewing such tools to ensure that they reduce disparities;<sup>102</sup> decisions by individuals should be similarly subject to review for bias and interventions when needed.

Eliminating fines and fees in the justice system may also enhance both racial and economic equity in the system. Research has shown that fines and fees disproportionately impact Black and Brown youth and, simultaneously, push these young people deeper into the system and their families deeper into poverty.<sup>103</sup> While it is too early to measure the impact on disparities, recent reforms in California and Nevada to eliminate all administrative fees from juvenile court are likely to reduce both economic and racial disparities in those states.<sup>104</sup>

Explicit attention to disparities and bias on the basis of race and ethnicity, class, LGBTQIA identity, and disability will also ensure that all other reforms—including limiting entry points, expanding the continuum of services, and ensuring accountability—lead to more equitable reforms, as discussed below.

### C. Limiting Entry Points

Limiting entry points to the justice system is a key reform in the effort to reduce placement rates. The Juvenile Detention Alternative Initiative (JDAI), one of the most widely recognized of these reform efforts, uses a set of core strategies to reduce entry into juvenile detention prior to a young person's adjudicatory hearing. JDAI presumes that limiting the number of youth placed prior to adjudication will also narrow the population of young people placed post-adjudication,<sup>105</sup> and this thesis has proven true, with more significant reductions in placement in JDAI sites than in other jurisdictions.<sup>106</sup> The JDAI model, which has been used in Pennsylvania, relies on local and statewide collaborations. By further embedding such reforms in statutes, rules, and regulations—for example, by limiting detention only to older youth or to certain categories of offenses—states can further shore up these successes.<sup>107</sup>

Jurisdictions have also explicitly limited the criteria for post-adjudication placement. Some jurisdictions, for example, have categorically prohibited placement for certain offenses as well as certain types of placements. Mississippi prohibits sending youth to placement when they are adjudicated of a non-violent felony or fewer than three misdemeanors.<sup>108</sup> California sets 12 years old as the minimum age for prosecution in juvenile court, except in cases of murder or rape, and emphasizes that youth under 12 should receive school, health, and community-based services.<sup>109</sup> California law also makes clear that curfew violations cannot result in juvenile court jurisdiction and that young people under juvenile court supervision for truancy cannot be placed in secure detention or removed from their parents for any purpose other than education.<sup>110</sup>

Limiting entry to placement also requires identifying and addressing the drivers of such placement. As described in Part I in Pennsylvania, the majority of young people are confined for technical violations of probation. Nationally, the population of youth in placement for technical violations is also disproportionately Black and Brown youth, suggesting that this is an area in which reforms can help address both placement rates and disparities.<sup>111</sup> The National Council of Juvenile and Family Court Judges' resolution encourages juvenile courts to ensure that detention or incarceration is never used as a sanction for youth who fail to meet their probation goals.<sup>112</sup> Transforming probation by narrowing it to only serious offenders and focusing on supports rather than surveillance can further support these goals.<sup>113</sup>

While state legislation can create sustainable and more uniform change, many of these reforms can be launched at the local level and through practice changes. In Lucas County, Ohio, for example, youth with misdemeanors are now either fully diverted from probation and court involvement or are overseen by a special unit of case managers focused on misdemeanors.<sup>114</sup> After an assessment, these youth are referred to community-based services including evidence-based family services, mentoring, or pro-social activities.<sup>115</sup> Although they may have to perform community service or pay restitution, they do not have typical probation requirements like drug testing or regular meetings. Youth are not "punished" or returned to court if they fail to complete their service plan,<sup>116</sup> although new felony charges can lead to court involvement and formal probation.<sup>117</sup> Similarly, the New York "Close to Home" reforms limited out-of-home placements to youth who were both high-risk and had serious felony charges by using risk assessment instruments and structured decision making to promote their goal of limiting unnecessary institutional placement.<sup>118</sup>

### D. Expanding the Continuum

Fiscal incentives and capturing and redirecting money from incarceration into community-based services can play a key role in expanding the continuum of services available to respond to youth in the home and community, promoting community-based services, and decreasing reliance on incarceration. Recent legislative reform in Kansas, for example, created a Juvenile Justice Improvement Fund to directly capture costs savings related to decarceration and direct them into community-based programs for youth. In the first year, over \$12 million dollars has been invested

in these community-based programs.<sup>119</sup> Another strategy is to provide up-front funding to support the cost of shifting from an institution- or placement-focused model to one that relies more heavily on community-based services, as has been done in the California Youth Justice Reinvestment Grant Program.<sup>120</sup>

To further enhance reforms, legislators can directly engage youth in how to spend the money saved through reinvestment strategies. For example, Boston's "Youth Lead the Change" program, created by the mayor's office in 2013, gave youth a direct say in developing parks, playgrounds, and art spaces. Similarly, Seattle's "Youth Voice, Youth Choice" program in 2015, allowed more than 3,000 youth to decide how to spend \$700,000 from the city's budget. These reforms suggest possible new approaches to engaging impacted individuals in budget decisions.<sup>121</sup>

A report by the National Council on Crime and Delinquency researched the impact of budget incentives and budget realignment strategies, analyzing stakeholder responses to legislation enacted in Alabama, California, Illinois, Michigan, New York, Ohio, and Texas. The report concluded that although these legislative and budgetary changes were widely viewed as improvements, during implementation the approaches still fell short. Most notably, although the overall state budget might benefit from reduced spending on youth incarceration, not enough of the savings made it back to the youth and communities who needed them to address the underlying issues that often led to justice system involvement.<sup>122</sup> As discussed in our recommendations below, Pennsylvania should take steps to ensure that savings from reduced out-of-home placements are captured specifically to develop and expand youth services in the community.<sup>123</sup>

The continuum of services can also be expanded through state or local practice changes. Lucas County, Ohio's success in dramatically reducing incarceration is due in large part to the development of an assessment center and related services "so that young people who didn't need to be detained or committed could get the services they needed without being removed from their homes."<sup>124</sup> The assessment center, which is staffed primarily by social workers (and not correctional officers), is part of a larger shift from a punitive to a more rehabilitative approach.<sup>125</sup> Other steps Lucas County took to reduce out-of-home placements and ensure that youth and families could have their needs met in the community included: engaging in staff and community training, expanding diversion options, offering mentors through Youth Advocate Programs (see below), and supporting the provision of family navigators.

Similarly, New York put significant effort into ensuring an array of services to help reduce reliance on out-of-home placement. Even before the Close to Home initiative began, New York, like Pennsylvania, had seen significant drops in placement rates and had worked to expand the available services to meet the needs of young people in their homes and communities.<sup>126</sup> Despite significant reductions in out-of-home placements, "gaps" in services still led to youth who posed no significant public safety risks being placed out-of-home.<sup>127</sup> Before Close to Home, New York had implemented programs that primarily provided family therapy, including the use of evidence-based interventions like Multi-Systemic Therapy and Functional Family Therapy.<sup>128</sup> Although "all stakeholders acknowledged that these programs and services are needed, there was a desire to create a more diverse continuum that included a broader and tailored spectrum of approaches."<sup>129</sup>

Population forecasting was key to identifying those gaps. It was particularly valuable in identifying young people who did not pose a significant risk to public safety but who nonetheless couldn't receive community-based services because they "did not meet the program eligibility criteria, had a different set of needs than the family therapy and evidence-based models available... or lacked viable family resources that could support them."<sup>130</sup> Population forecasting also made clear the high rates of placement for youth who violated terms of probation. "Ultimately, these presentations of data not only helped answer specific questions, but also enabled stakeholders to have deeper conversations about how they envisioned serving youth in the system."<sup>131</sup> Other research has confirmed that identifying needs and gaps within the context of the continuum of services is key to decarceration

efforts.<sup>132</sup> The new continuum established in New York included an intervention that focused on advocacy and mentoring, programming that uses a "life coaching model" and supports youth in transitioning to adulthood, and an education-focused intervention focused on youth who have not succeeded in school previously.<sup>133</sup>

While the crux of the changes in New York focused on the array of community-based services, the model also shifted the understanding of what placement should look like for those few young people placed outside the home.<sup>134</sup> The remaining placements are much smaller and more homelike environments than what young people previously experienced. "[Non-Secure placement (NSP)] facilities are small and home-like, while [Limited Secure placement (LSP)] facilities tend to look and feel more like group homes." For non-secure placements, bed capacity ranges from six to 13, and limited secure placement bed capacity ranges from six to 18.<sup>135</sup> These placements also have significantly better youth-to-staff ratios (3:1 for LSP and 6:1 for NSP).<sup>136</sup> Similarly, limiting length of stay for young people who are placed can be a vital component of reforms.<sup>137</sup>

Although recidivism data is not yet available for Close to Home, data suggests that Close to Home has been highly successful on measures beyond placement reduction. Arrest rates in New York City dropped 52% between 2012 and 2016 (compared to 41% statewide); 91% of youth involved in Close to Home passed their school courses; and 82% of Close to Home youth went to live with a parent or other family member or guardian.<sup>138</sup>

All of these practice and policy changes preceded the passage of the federal Family First Act and the more recent re-authorization of JJDPA. As described above, these federal laws will provide additional opportunities for reform as well as additional sources or funding for community-based services.

### COMMUNITY INTERVENTIONS FOR HIGH-NEEDS YOUTH

Although decision-makers increasingly recognize the importance of community-based services, stakeholders tend to assume that high-risk/high-needs youth cannot be safely served without placement. In truth, many programs around the country are successfully serving these youth in their own homes and communities with strong results:

**Credible Messengers** is a program where "men and women who were themselves justice-involved are hired to engage young people on their own terms in structured and intentional relationships."<sup>1</sup> These paid mentors, facilitating small peer-based groups, are able to reach "some of the most hard to engage youth," because their own shared past experiences allow them to become trusted role models and supporters.<sup>2</sup> Credible Messenger programs have been credited with reducing arrest rates for youth and improving positive life outcomes for participants. The program is also an important model for improving public safety in ways that channel resources into underserved communities, rather than pulling youth out of them.<sup>3</sup>

**Youth Advocate Programs (YAP)**, which was founded in Pennsylvania, now serves youth in 28 states and Washington D.C. through intensive non-residential services anchored by advocates (paid mentors) recruited because they are from and have deep connections to the communities they serve. YAP specializes in succeeding with youth who might otherwise be considered "too difficult" to serve outside of institutions. Researchers from John Jay College have found that YAP involvement was associated with significant drops in secure placements: 49% for youth charged with felonies and 62% for youth with misdemeanor charges.<sup>4</sup> Shaena Fazal, YAP's Chief of Public Policy and Advocacy, says that what allows YAP, and other programs working with youth with intensive needs, to be successful include: providing highly individualized and flexible services to each young person, engaging families in services, and maintaining a no reject/no eject policy.<sup>5</sup> For a discussion of the other elements that are essential for programs serving youth with complex needs in their own homes and communities, see YAP's 2015 publication *Safely Home*.<sup>6</sup> Fazal also points out that having a comprehensive service array is essential—YAP believes that when communities have adequate resources, often as a result of redirecting funds away from incarceration, "anything that can be done in an institution can be done in a community, only better."<sup>7</sup> YAP services are available in some Pennsylvania counties but could be expanded to reach more youth throughout the state.

**Community Passageways**, a Seattle nonprofit, serves youth charged with felonies and lesser offenses through a diversion program, often referred by prosecutors who have developed faith in the program after seeing its successes.<sup>8</sup> Community Passageways' model includes community ambassadors who "work with youth and their families to determine what their needs and interests are, and then help the whole family to get back on the right track, so that the youth can live in an environment that will allow him or her to succeed."<sup>9</sup>

1-3 Ruben Austria & Julie Peterson, *Credible Messenger Mentoring For Justice Involved Youth*, THE PINKERTON FOUNDATION (Jan. 2017), <http://www.thepinkertonfoundation.org/wp-content/uploads/2017/02/Pinkerton-Papers-credible-messenger-monitoring.pdf>.

4 Doug Evans & Sheyla Delgado, *YAP Helps to Keep Youth Out of Secure Facilities*, RESEARCH AND EVALUATION CENTER AT JOHN JAY COLLEGE (June 1, 2014), <https://johnjayrec.nyc/2014/06/01/yapfacts20143/>.

5 Ariana Brill, *Bringing Youth Safely Home: Why It Is Better To Serve Youth In Their Communities Than In Institutions*, JUVENILE LAW CENTER (Aug. 6, 2018), <https://jlc.org/news/bringing-youth-safely-home-why-it-better-serve-youth-their-communities-institutions>.

6-7 Shaena M. Fazal, *Safely Home*, YOUTH ADVOCATE PROGRAMS POLICY & ADVOCACY CENTER (June 2014), <http://www.yapinc.org/Portals/0/Documents/Safely%20Home%20Preview/safelyhome.pdf>.

8-9 Lisa Pilnik, & Marcy Mistrett, *If Not the Adult System Then Where? Alternatives to Adult Incarceration for Youth Certified as Adults*, CAMPAIGN FOR YOUTH JUSTICE (2019), [http://www.campaignforyouthjustice.org/images/ALT\\_INCARCERATION\\_FINAL.pdf](http://www.campaignforyouthjustice.org/images/ALT_INCARCERATION_FINAL.pdf).

### E. Ensuring System Accountability

To ensure that reforms meet key goals around decarceration, equity, and youth participation, they must include accountability measures. This includes collecting data, gathering input from impacted individuals and other stakeholders, ensuring oversight, and making needed adjustments.

A number of reforms supported by The Pew Charitable Trusts ("Pew") provide examples of this approach. For example, in 2017, Utah enacted comprehensive juvenile justice reform legislation designed to reduce out-of-home placements, address racial disparities, and expand use of pre-court diversion and evidence-based practices.<sup>139</sup> In a research brief describing the reforms, Pew explains that after passage of the initial legislation, "Juvenile Justice Oversight Committee members helping with implementation of the law reached out to stakeholders to explain the changes and gather input."<sup>140</sup> As a result of the feedback from over 500 individuals, additional legislation was enacted in 2018 that "clarified some aspects of the 2017 reform law and made minor substantive changes to others."<sup>141</sup>

In Kansas, juvenile justice reforms enacted in 2016 included expanded data collection and sharing requirements and the creation of a statewide committee that meets at least quarterly.<sup>142</sup> The body's charge is "to oversee implementation of the reforms and continue reviewing the system to uncover other areas in need of improvement," including the responsibility to "create and review performance measures to gauge policy outcomes, calculate and recommend investment of savings from incarceration reductions, and study new areas for additional policy reform."<sup>143</sup> Data collection and an oversight body was also a key to reforms enacted in Kentucky, also with Pew's support. The state oversight body continues to use data to evaluate how their reforms and the juvenile justice system are working and what adjustments may be needed.<sup>144</sup>

Data should also assess progress toward race equity goals. For example, although Close to Home reforms dramatically reduced placement in New York City, racial disparities also increased in the years following Close to Home's implementation. For that reason, stakeholders who were essential to those reforms urge other jurisdictions to create an overarching set of measures to track progress toward achieving the reform vision; collect data to capture and report all outcomes by race, gender, LGBTQIA and other characteristics; develop specific strategies to reduce disproportionate confinement of youth of color; and to report data publicly to promote accountability.<sup>145</sup>

## PART IV: RECOMMENDATIONS

The recommendations in this section reflect our analysis of effective reforms in other jurisdictions (as set forth in Part III), input from key stakeholders on where these reforms have fallen short, and insights from young people with experience in the system. The most successful reform efforts have:

1. addressed inequity;
2. limited entry points into the system;
3. expanded the continuum of services;
4. improved system accountability; and
5. relied on youth and family leadership.

Pennsylvania can take steps in each of these areas to transform and design a juvenile justice system that serves and meets the needs of our children, families, and communities. These recommendations are targeted at state-level reforms with roles for all three governmental branches.

### SUCCESSFULLY REDUCING YOUTH INCARCERATION: LESSONS FROM OTHER JURISDICTIONS

From 2012-2013 the National Council on Crime and Delinquency asked stakeholders in jurisdictions that had successfully reduced youth incarceration about their experiences. The recommendations they developed based on that research included many of the same strategies suggested (and illustrated by examples) in this report:

- Take legislative action to redirect funding from facilities to communities.
- Reduce overall out-of-home placements, develop local options, and reduce lengths of stay for those youth who do need to be in an out-of-home setting.
- Improve juvenile supervision to reduce unnecessary oversight and overly harsh responses to violations.
- Better engage impacted youth and family members, including (but not exclusively) through advisory groups; improve relationships between youth and families, community providers, and juvenile probation staff.
- Dig deeper and work more intentionally on eliminating racial and ethnic disparities in juvenile placements and secure custody.

Antoinette Davis, Angela Irvine, & Jason Ziedenberg, Stakeholders' Views on the Movement to Reduce Youth Incarceration, Nat'l Council on Crime & Delinquency (Apr. 2014), [http://www.nccglobal.org/sites/default/files/publication\\_pdf/deincarceration-summary-report.pdf](http://www.nccglobal.org/sites/default/files/publication_pdf/deincarceration-summary-report.pdf).

#### A. Address Inequity

Despite progress in lowering arrest rates and juvenile incarceration, Pennsylvania's record on reducing racial disparities is poor, with our disparities among the worst in the country. Admittedly, no state has yet successfully eliminated racial disparities in their justice system. Our youth reviewers particularly highlighted the importance of representation of Black and Brown staff in the juvenile justice system workforce and as participants in committees addressing these issues. Many of these recommendations reflect or expand upon those set forth in the Juvenile Justice and Delinquency Prevention Subcommittee's 2019 Plan to the Governor, with citations to that plan where relevant. In addition, throughout all of our recommendations, we highlight specific steps that should be taken to address disparities in placement for LGBTQIA youth, youth with disabilities, and youth with prior experience in the child welfare system.

#### Recommendations:

- **Racial Impact Assessments:** Before enacting any legislation or policy reform, Pennsylvania stakeholders should require a racial impact assessment on the likely impact on communities of color. The state should commit to passing only those reforms that will improve outcomes and reduce disparities.
- **Race Equity Task Force:** Pennsylvania should create and support a race equity taskforce to research disparities and identify solutions. The taskforce should include representatives of entities such as JJDPAC and its DMC Subcommittee, the Pennsylvania Commission on Sentencing, the Commissions on African-American and Latinx Affairs, along with individuals with lived experience. The task force itself should be racially diverse. The state should charge the task force with the responsibility to respond to state-level policy and practice proposals.<sup>146</sup>
- **Increase Workforce Diversity:** Pennsylvania should enact policies and practices that expand diversity and inclusion in recruitment, funding, hiring, promotion, and retention to establish state and county juvenile justice workforces with diversity of race, ethnicity, sexual orientation, gender identity, disability, and system experience. The workforce should also increasingly be from the communities they serve.<sup>147</sup>
- **Consider equity issues at every decision point in system reform:** As described below, the state should integrate equity goals in limiting the entry point, establishing a continuum of care, and ensuring accountability.

#### B. Limit Entry Points to Placement

##### 1. Impose Statutory Limits on Detention and Commitment

Pennsylvania has made strides in reducing detention and placement in recent years. To truly tackle this issue, the legislature must update the Juvenile Act to circumscribe permissible justifications for detention or placement. For example, current law permits detention when the young person has no parent or guardian to provide care; this may suggest a need for child welfare intervention but is not a permissible purpose of detention. Similarly, while current law requires judges to state that an out-of-home placement is the "least restrictive placement," it does not provide sufficient guidance as to circumstances that do not warrant placement.

#### Recommendations:

- **Prohibit detention absent specific judicial findings:** The legislature should amend 42 Pa. C.S. § 6325 to prohibit detention unless there is a finding on the record that the youth is likely to fail to appear as evidenced by prior failures to appear in court or to commit a new violent offense prior to adjudication. The provisions permitting detention in cases of property offenses or when a child does not have a "parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required" should be repealed.
- **Limit commitment and detention in specified circumstances:** Pennsylvania should pass legislation limiting the circumstances under which youth can be held in secure detention or placed in an institution or facility at disposition or disposition review. This legislation should include limits on detention and placement for:
  - Youth age 14 and under;
  - Youth charged with a status offense, technical probation violation, misdemeanor, nonviolent offense, or non-payment of fines, fees or restitution;
  - Youth who are low-risk according to a risk instrument validated and reviewed to ensure that it is reducing placement and disparities; and
  - Youth who are pregnant or who have given birth in the past 6 months.

## 2. Improve Disposition Decisions

Many young people who do not fall within the proposed statutory exclusions above could have their needs met in the community. As one of the only states left nationwide that relies exclusively on local, county funding for indigent defense services, Pennsylvania reinforces justice by geography and fails to provide effective representation to all youth. Moreover, given the significant racial disparities in placement, focused attention should be given to reducing bias in decision-making.

### Recommendations:

- **Ensure high quality representation for youth in juvenile court proceedings:** Pennsylvania should elevate the quality of defense representation by establishing a state-based funding stream for juvenile defense<sup>148</sup> by creating a state-level oversight mechanism to ensure adherence to state and national standards of juvenile representation, and by ensuring that compensation rates are adequate to support zealous advocacy supported by full investigation and social work support.
- **Address bias in decision-making:** Pennsylvania should proactively work to address bias in decision-making, including developing and implementing training for all persons working in any aspect of the juvenile justice system on: implicit bias, racial and ethnic disparities, de-escalation, diversion of youth from the system, immigration and juvenile justice, and strategies for community engagement.<sup>149</sup> The Juvenile Court Judges' Commission and the Council of Chief Juvenile Probation Officers should develop specific debiasing techniques for judges and probation. In addition, to the extent that decision-makers rely on risk assessment instruments, they should be reviewed and used only if they are limiting placement and reducing disparities. (See text box.)
- **Transform probation:** The state should establish through legislative, policy, or practice change that probation is only imposed for youth who pose a significant risk for serious reoffending; all other cases should be diverted without ongoing court supervision. When probation is imposed, legislation or court rules should clarify that any youth should have a combined limit of only three probation and court terms, combined. The state must provide sufficient resources and training so that probation departments can shift to intensive and supportive services for youth.

### ASSESSING RISK ASSESSMENTS

While risk assessment instruments can sometimes be used to reduce placement, recent research suggests that such instruments also run the risk of reinforcing disparities. For that reason, such instruments should be reviewed carefully and used only to the extent that they reduce placement, disparities in the system, and reliance on placement.

For more information on risk assessments, see Transforming Juvenile Probation: A Vision for Getting it Right, by The Annie E. Casey Foundation, <https://www.aecf.org/resources/transforming-juvenile-probation/>.

## 3. Eliminate Placements Due to Poverty

The Juvenile Act permits the imposition of fines, costs and restitution. Failure to pay such costs can lead to further system involvement and ultimately to detention or incarceration, and can deepen poverty, increase racial disparities, and increase recidivism rates. Administrative costs, in particular, do not have a penological justification. Moreover, while restitution serves an important goal of making the victim whole, neither the victim nor the young person benefits when the amount imposed is more than a young person can pay and the failure to pay results in further system involvement.<sup>150</sup>

### Recommendations:

- **Prohibit the imposition of administrative court fees and fines on youth and families:** The legislature should repeal all laws that impose the cost of the administration of the justice system

on youth or their families, including costs of confinement or treatment, court costs, and diversion costs. The legislature should also repeal the imposition of fines on youth and ensure that any alternatives to fines do not involve juvenile placement.<sup>151</sup>

- **Limit the imposition of restitution to specified situations:** Legislation should establish that restitution should never be imposed on parents; should never be imposed on a young person jointly and severally with co-defendants; should be imposed only upon proof of actual costs to the victim; and should be imposed only for an amount that the young person can reasonably pay while under juvenile court supervision.
- **Support restitution alternatives:** The state should make funding available for restorative justice programs, for funds to compensate victims of juvenile offenses, and for programs that assist young people to pay off restitution without deepening their involvement in the justice system and without interfering with the youth's education. Judges should be authorized to direct payments from these funds to be made to victims when youth participate in positive activities such as school, after-school programs, and job training. Youth participation in programming tied to repayment and the related debt should always be time-limited and developmentally appropriate.
- **Prohibit deeper system involvement for failure to pay:** The legislature should enact a law ensuring that failure to pay fines, fees, or restitution does not lead to more severe juvenile justice involvement, such as automatic probation revocation or incarceration; and under no circumstances should the youth's failure to pay convert to a civil judgment.
- **Address high rates of referrals from district magisterial and municipal court judges for nonpayment of fines:** Alternatives to fines should be created for district magisterial and municipal court judges to impose on youth. Such alternatives should be time-limited, such as one-day volunteer opportunities or credits awarded for school or after-school participation, and should take the place of referrals to juvenile court.

### C. Expand the Continuum of Services

For Pennsylvania to successfully reduce reliance on juvenile justice placements, the state must ensure that it has a full continuum of community-based services available to meet the needs of youth and families. This continuum must be tailored to the specific needs of the youth involved in or at risk of entering the justice system, and it must include services for youth with high-needs who are charged with serious offenses.

#### MINIMIZING CONTACT WITH THE ADULT CRIMINAL JUSTICE SYSTEM

The juvenile justice system can hold youth who commit even the most serious offenses accountable for their conduct. In contrast, the adult system exposes youth to harm and interferes with their positive development. To the greatest extent possible, youth under age 18 are should be prosecuted in the juvenile justice system; youth who are tried as adults should be protected from the potential harms and most extreme sentencing consequences of that system. We therefore recommend that Pennsylvania:

- Pass legislation requiring all youth charged or convicted as adults to be served in the community or held in juvenile facilities, which would bring Pennsylvania into compliance with the JJDPA.
- Pass legislation to repeal Act 33, eliminating mandatory charging of certain children as adults, so that children are presumed to be children, and judges maintain discretion over whether children should be processed through the adult criminal justice system.
- Pass legislation to amend Section 704.1 of the Public Welfare Code to ensure counties can receive reimbursement for youth charged or convicted as adults who are held in juvenile facilities.

### 1. Assess Services and Service Needs

To ensure that they have the continuum of services needed, Pennsylvania counties should assess both their service needs and the services currently available, so that gaps can be identified and filled. The state can support this effort by coordinating data collection processes and enlisting assistance from state agencies (in addition to DHS) in conducting a service inventory. The recommended assessments below should not be viewed as prerequisites to other system reforms. However, they can be undertaken alongside other changes, such as the proposed legislative exclusions above, to assist in building the continuum at the same time as the state limits entry points.

#### Recommendations:

- **Conduct a comprehensive needs assessment:** The state should coordinate with county agencies to collect and analyze available data on the needs of the youth currently in juvenile justice placements, including their education needs, any mental health or other diagnoses, any prior child welfare involvement, prior contact with the juvenile justice system, and placement history through either system (or the behavioral health system).
- **Conduct a cross-systems service inventory:** State agencies, including OCYF, OMAP, ODP, and OMHSAS, and PDE, should jointly conduct an inventory of community- and family-based services that are or could be available to serve youth in the justice system and their families. This inventory should include available kinship care supports and family foster care resources, including specialized settings such as Medical Foster Care; mental health services, substance abuse treatment, and other services funded through Medicaid; and workforce development programs and pre-employment transition services through WIOA. The inventory should also identify services not currently available and strategies for filling those gaps, such as funding through the Family First Services Act.

### 2. Redirect Resources to Needed

#### Community-Based Services

Pennsylvania should shift its funding structures to support and incentivize community-based services and to recapture funding saved on reducing incarceration for these goals. As discussed above, other states have succeeded with reinvestment strategies, including Reclaim Ohio, Redeploy Illinois, and California's realignment strategy. This reinvestment of resources is essential not only to ensure the availability of necessary services statewide, but also so that current providers can shift their services and business models toward a community-based approach with adequate resources to provide fair wages and support to front-line staff and administrators. Pennsylvania is also well-positioned to build its

### Problems with Electronic Monitoring

Electronic GPS monitoring is increasingly being used by juvenile justice systems to monitor youth and enforce conditions of probation. As Media Justice has explained, "The prison rate is dropping but the use of electronic monitoring is growing. Electronic Monitoring threatens to become a form of technological mass incarceration, shifting the site and costs of imprisonment from state facilities to vulnerable communities and households." Research has shown that electronic monitoring disproportionately impacts Black youth and has a stigmatizing effect that can exacerbate mental health problems, damage family dynamics, and drive families deeper into poverty when they have to foot the bill for repairs and other expenses. We therefore recommend that the state limit use of electronic monitoring to situations where no other intervention (other than placement) could ensure public safety, and require that it only be used in combination with other services and that data be tracked to ensure that it is used equitably along lines of race and class. For additional information on this issue, see <https://mediajustice.org/resource/electronic-monitoring-guidelines/>

continuum of care by claiming federal IV-E dollars for community services, as the state already has a shared case management structure in place to facilitate IV-E eligibility.

**Recommendations:**

- **Further incentivize community-based services:** Current state law uses a sliding reimbursement scale designed to encourage counties to invest in community-based services. The statute could go further by limiting payment to larger, more secure, and farther from home placements.<sup>152</sup>
- **Modify the Needs-Based Plan and Budget guidelines to incentivize counties to reduce out-of-home placement through diversion, prevention, and community-based services:** Pennsylvania DHS, through its Needs Based Budget and Planning guidelines, should provide incentives—in addition to reimbursement—to counties that reduce out-of-home placement through diversion, prevention and community-based services.<sup>153</sup> The budget should also increase funding for special grants, reimbursed at 85-95% depending on the program area, for effective community-based programs that decrease reliance on placement.<sup>154</sup>
- **Provide transition funding to counties that demonstrate a plan for relying less on institutional care and more on community-based services:** Pennsylvania, through DHS, PCCD, or other agencies, should make multi-year transition funding available to counties that demonstrate a plan for relying less on institutional care and more on community-based services to assist them with the costs of converting from institution-based systems to community-based systems.<sup>155</sup>
- **Share savings with counties so they can reinvest those dollars in diversion, prevention, and community-based programs:** The state should share savings from the reduction in reliance on placement with counties. Counties should be authorized to take savings and reinvest them in diversion and prevention services that then become a routine part of future needs-based budgets.
- **Expand funding for family- and community-based alternatives using federal child welfare funding:** Particularly after the passage of the Family First Prevention Services Act ("Family First Act"), there are many ways Pennsylvania could use federal funding through Title IV-E of the Social Security Act<sup>156</sup> to strengthen the continuum of care and expand services for youth in the justice system. In particular, the state should:
  - **Encourage counties to claim Title IV-E dollars for family- and community-based options for eligible youth adjudicated delinquent:** Title IV-E funds can be used for placement and administrative costs if the child is deemed "eligible" and the placement setting is reimbursable. Reimbursable placement settings include many family- and community-based options, including family foster care and community-based small group settings, that could serve as delinquent placements (particularly given that the Juvenile Act permits the full array of dependent services as delinquent dispositions). The state should encourage counties to claim Title IV-E money for eligible youth in the juvenile justice system, taking steps to ensure this does not lead to unnecessary child welfare involvement or oversight.
  - **Make prevention, independent living, and other child welfare services available to youth in the juvenile justice system:** With the Family First Act's extension of Title IV-E funding for prevention services, Pennsylvania could make these services available to youth in the justice system by including such youth in the state's definition of "candidate for foster care." Additionally, current DHS policy permits counties to provide independent living services to youth in the juvenile justice system, and the state could expand availability of these services to justice-involved youth by making that a requirement, rather than an option. Youth for whom the county is able to claim IV-E reimbursement

may also be entitled to additional child welfare services, including transition planning services, which could help support them in their communities.

- **Respond to the group care limitations in the Family First Act by investing in family- and community-based supports and placement options:** As Pennsylvania adjusts its child welfare service array to respond to the Family First Act's limits on funding for group care, it should do so by identifying ways to expand and strengthen family-based settings, which remain reimbursable under Title IV-E, for example by revising and expanding its Medical Foster Care program; strengthening respite programs and other supports available to kinship and other resource parents caring for youth with behavioral health conditions; and financing and supporting recruitment and training for foster parents specializing in older youth.
- **Support providers in converting models away from residential placement:** The state should assist provider associations as well as individual providers through funding, training opportunities, and guidance in the work to convert existing business models away from residential placement and toward community-based services. The state should be attentive to ensuring that providers offer sufficient wages, benefits, and other support to recruit, train, and retain frontline staff.
- **Ensure a wide array of culturally responsive programming:** In all efforts to expand the array of services, Pennsylvania should ensure that such services are culturally responsive and that services exist within a youth's own community/neighborhood.<sup>157</sup> The array of services must meet the needs of youth with disabilities, LGBTQIA youth, youth adjudicated dependent, girls, and pregnant and parenting youth. The state should increase support for grassroots organizations providing community-based services to these youth.
- **Allow youth to continue services without ongoing court involvement:** Services should not be contingent upon continued court involvement. When a young person is receiving an effective service through a diversion or other program, they should be able to continue voluntarily accessing that service without continued court involvement if the need for oversight has ceased.

#### D. Ensure System Accountability

The Juvenile Court Judges Commission tracks and makes public a significant amount of data regarding youth in the justice system, reasons for adjudication, case disposition, and reliance on detention and placement. The data also highlights demographic information that provides information to stakeholders about inequities as well as progress toward a more just system. This gives Pennsylvania a strong starting point in the goal of creating a transparent system in which youth, family members, and all stakeholders can easily track data and in which all stakeholders are held accountable for shared goals of reducing placement, reducing disparities, and improving outcomes. Pennsylvania should build on this system to ensure that the system tracks and shares data about LGBTQIA youth, youth with dependency system involvement, and youth with disabilities. The state should also develop additional oversight and response systems.

##### Recommendations:

- **Collect and report on more comprehensive demographic data:** Pennsylvania, and in particular JCJC, should enhance its data collection to include information about youth with prior or concurrent child welfare experience, youth with disabilities including but not limited to youth with IEPs, and youth who are LGBTQIA. Reports should be made public on placement rates and length of stay for all demographic groups.
- **Collect data on disposition decision-making:** Pennsylvania's Juvenile Case Management System should collect and report on county disposition, disposition review, and probation

revocation hearings so that the reasons for placement are transparent and included in JCJC's annual report.

- **Collect data from youth in the system and their families:** Data should also be collected directly from youth in the system and their family members to track experiences, identify problems, and ensure accountability. This information should be de-identified and then shared with oversight bodies, relevant task forces, and the public.
- **Establish oversight committee:** The executive branch or the legislature should establish an oversight committee to monitor reforms and to review the system to uncover other areas in need of improvement. The oversight committee should include significant membership of youth in the system (or young adults previously in the system) and their family members, in accord with our recommendations on youth and family leadership. The oversight committee should also release a report based on the annual JCJC data and stakeholder input highlighting trends, problems, and suggested responses.

#### **E. Rely on Youth and Family Leadership**

Authentic community engagement recognizes that young people with lived experience and their family members are experts in the justice system whose experience and insights are essential to reform. It also establishes processes to work in partnership with them in efforts to improve and transform the juvenile system. Such engagement has achieved greater policy responsiveness to community needs, improved system effectiveness, and better accountability and equity.<sup>158</sup> At the individual level, authentic youth and family engagement promotes positive youth development, engenders a sense of community and purpose, and promotes prosocial behaviors.<sup>159</sup>

##### **Recommendations:**

- **Establish a statewide youth and family advisory group and support county-level advisory groups:** Pennsylvania should create a state-level commission or advisory board that will advise on the juvenile justice reform and implementation. Members should help design both the process for their involvement and the strategies to improve transparency and communication with families around the state. Members should also provide substantive input into all state level juvenile justice reforms. The board membership should consist of youth and young adults with system involvement and their families.
- **Ensure significant youth and family participation in all stakeholder groups and task forces:** Any reform councils, state advisory groups, or other task forces working on justice reform should include significant participation by youth in the system or young adults with previous system experience and their family members. Asking a single individual to fill this role is insufficient. Youth and families should have the opportunity to participate with peers who can support their full involvement.
- **Fully support youth and family participation:** Stipends and travel costs should be available for any youth or family member participating in justice reform efforts, unless that individual is separately compensated for this work through their employment in another agency or organization. Childcare should also be provided to support meeting attendance. Supports should also be put in place to ensure that youth participants have necessary preparation to participate fully. In addition, the format of the discussion should be designed to maximize input and discussion from individuals with varying backgrounds and experiences.
- **Implement participatory budgeting:** Engage youth and family members in participatory budgeting processes in which directly impacted individuals help to guide juvenile justice investment decisions.

#### YOUTH SAFETY REMAINS PARAMOUNT

Although the best way to ensure the safety of young people at risk of harm in juvenile justice placements is to bring them back to their families and communities, we and the young people we work with recognize the urgency and necessity of also taking steps to protect youth who are currently in placement. While any young people remain in facilities, the state must take utmost care to prevent harm and ensure safety. Therefore, we offer the following recommendations for ensuring the safety of youth in facilities:

- Pass legislation and/or amend state regulations to tighten the limits on harmful practices in facilities, including eliminating seclusion and exclusion, prohibiting strip searches except when based on probable cause, and strictly limiting manual restraints.
- Develop and require facilities to adopt an effective, youth-friendly grievance procedure that provides meaningful relief when abuses occur; engage youth in ensuring the process is user-friendly.
- Encourage counties to conduct standardized exit interviews of all youth after discharge from placement.
- Track and make accessible public information about problems in facilities, including incident reports and licensing violations.
- Require installation of video cameras in facility common areas and regular review of footage by both facility management and county or state oversight agencies.
- Shift away from reliance on large institutions, and encourage counties to contract with small (under 12 beds), high-quality facilities that offer individualized services and community access.
- Cease reimbursement for services provided in for-profit institutional placements.

#### CONCLUSION

Youth in Juveniles for Justice's Broken Bridges report made clear why we need to transform our system:

All young people deserve the opportunity to grow up in safe environments that promote development. Going to placement, even for a short time, is an interruption to young people's ability to grow within their own community. It interrupts their family life, education, and development. Being in placement often changes young people in a way that isn't rehabilitative even though one of the primary goals of the juvenile justice system is to rehabilitate youth.

We believe children should have and deserve opportunities to stay in or close to their communities, or if they are in the juvenile justice system, that it is supportive, safe and rehabilitative. We must accomplish these goals to ensure children are given a second chance.

Their words are grounded in research which clearly shows that youth do better in their homes and communities. Research also shows that by collaborating with youth and families, centering equity in the search for solutions, and shifting funding from placement to investment in communities, we can create a system that supports rather than harms our children. It's time for Pennsylvania stakeholders to join together to make this vision a reality.

**APPENDIX: AGGREGATE DATA – SNAPSHOT OF YOUTH IN DELINQUENT PLACEMENT ON JULY 12, 2019  
(DEFENDER ASSOCIATION OF PHILADELPHIA CLIENTS)**

**TABLE 1: RACE OF DEFENDER YOUTH CLIENTS**

RACE	NUMBER OF YOUTH
Black	102
Black/Latinx	3
Latinx	4
Multi-Racial	3
White	1
White/Latinx	9
<b>Grand Total</b>	<b>122</b>

**TABLE 2: GENDER OF DEFENDER YOUTH CLIENTS IN PLACEMENT**

GENDER	NUMBER OF YOUTH
Female	8
Male	114
<b>Grand Total</b>	<b>122</b>

**TABLE 3: AGE OF DEFENDER CLIENTS IN PLACEMENT**

AGE	NUMBER OF YOUTH
14	2
15	14
16	26
17	36
18	31
19	5
20	8
<b>Grand Total</b>	<b>122</b>

**TABLE 4: DEFENDER CLIENTS WITH DEPENDENCY HISTORY**

DEPENDENCY HISTORY	NUMBER OF YOUTH
No	71
Yes	51
<b>Grand Total</b>	<b>122</b>

**TABLE 5: NUMBER OF PRIOR DELINQUENCY PLACEMENTS**

NO. OF PRIOR DELINQUENCY PLACEMENTS	NUMBER OF YOUTH
0	25
1	27
2	8
3	11
4	1
5	1
0 (DFJ)	21
1 (DFJ)	10
2 (DFJ)	8
3 (DFJ)	6
4 (DFJ)	2
5 (DFJ)	2
<b>Grand Total</b>	<b>122</b>

**TABLE 6: REASON FOR PLACEMENT AT CURRENT DELINQUENCY PLACEMENT – DEFENDER CLIENTS**

REASON FOR PLACEMENT	NUMBER OF YOUTH
Adjudication	12
Adjudication (DFJ)	31
Technical	45
Technical (DFJ)	10
Transfer-AWOL	7
Transfer-AWOL (DFJ)	3
Transfer-Negative Discharge	9
Transfer-Negative Discharge (DFJ)	5
<b>Grand Total</b>	<b>122</b>

**TABLE 7: HIGHEST GRADE OF CHARGE FOR ADJUDICATION OF DELINQUENCY – DEFENDER CLIENTS**

HIGHEST GRADE	NUMBER OF YOUTH
M3	1
M2	8
M1	15
M1 (DFJ)	6
M (ungraded)	7
F3	13
F3 (DFJ)	4
F2	15
F2 (DFJ)	8
F1	4
F1 (DFJ)	26
F (ungraded)	10
F (ungraded) (DFJ)	5
<b>Grand Total</b>	<b>122</b>

**TABLE 8: NUMBER OF MONTHS IN PLACEMENT – DEFENDER CLIENTS**

MONTHS IN PLACEMENT	NUMBER OF YOUTH
0	1
1	12
2	7
3	11
4	3
5	6
6	9
7	10
8	3
9	2
10	5
11	3
17	1

(continued on next page)

**TABLE 8 CONTINUED: NUMBER OF MONTHS IN PLACEMENT – DEFENDER CLIENTS**

MONTHS IN PLACEMENT	NUMBER OF YOUTH
0 (DFJ)	1
1 (DFJ)	10
2 (DFJ)	4
3 (DFJ)	6
4 (DFJ)	8
5 (DFJ)	5
6 (DFJ)	6
7 (DFJ)	1
8 (DFJ)	2
9 (DFJ)	2
10 (DFJ)	1
11 (DFJ)	1
13 (DFJ)	1
14 (DFJ)	1
<b>Grand Total</b>	<b>122</b>

**TABLE 9: DEFENDER CLIENTS IN PLACEMENT WITH DISABILITIES OR MENTAL HEALTH DIAGNOSES**

DISABILITY OR MENTAL HEALTH DIAGNOSIS	NUMBER OF YOUTH
Unknown	46
Yes	76
<b>Grand Total</b>	<b>122</b>

**TABLE 10: DEFENDER CLIENTS IN PLACEMENT WITH IEPS**

IEP	NUMBER OF YOUTH
Unknown	60
Yes	62
<b>Grand Total</b>	<b>122</b>

## ENDNOTES

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- 1 42 PA. STAT. AND CONS. STAT. ANN. § 6301(b) (West).
- 2 For an overview of the history of juvenile incarceration and the evolution of court responses to youth, see Patrick McCarthy, Vincent Schiraldi, and Miriam Stark, *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, New Thinking in Community Corrections Bulletin, Washington, D.C.: U.S. Department of Justice, National Institute of Justice (Oct. 2016).
- 3 Juvenile Justice and Delinquency Prevention Committee (JJDPC), 2019 Pennsylvania Juvenile Justice and Delinquency Prevention Plan (Jan. 2019), <https://www.pcccd.pa.gov/Juvenile-Justice/Documents/2019%20Pennsylvania%20Juvenile%20Justice%20and%20Delinquency%20Prevention%20Plan.pdf>.
- 4 See Pennsylvania Commission on Crime and Delinquency, Juvenile Justice and Delinquency Prevention, <https://www.pcccd.pa.gov/Juvenile-Justice/Pages/default.aspx>.
- 5 Pennsylvania Juvenile Court Judges' Commission, 2018 Pennsylvania Juvenile Court Annual Report, <https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2018%20Juvenile%20Court%20Annual%20Report.pdf>.
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55 42 PA. STAT. AND CONS. STAT. ANN. § 6352 (West).

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CONS. STAT. ANN. § 6304 (West). The Juvenile Act also gives probation officers permission to search youth or their property if they have reasonable suspicion that a youth has violated conditions of probation. *Id.* Juvenile Court Rule 195 reiterates these duties, with a couple qualifications. Probation officers may "perform other functions as designated by the court" and the president judge in each county may "limit the power and duties of its juvenile probation officers by local rule." *Pa. Juv. Ct. R.* 195(A)(13) & (B).

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122 *Id.*

123 Antoinette Davis, Angela Irvine & Jason Ziedenberg, Using Bills and Budgets to Further Reduce Youth Incarceration, National Council on Crime & Delinquency (Mar. 2014), [http://nccglobal.org/sites/default/files/publication\\_pdf/bills-and-budgets.pdf](http://nccglobal.org/sites/default/files/publication_pdf/bills-and-budgets.pdf).

124 The National Collaboration for Youth, Beyond Bars: Keeping Young People Safe at Home and Out of Youth Prisons, [https://www.prisonpolicy.org/scans/national\\_collaboration\\_for\\_youth/BeyondBars.pdf](https://www.prisonpolicy.org/scans/national_collaboration_for_youth/BeyondBars.pdf).

125 *Id.*

126 In a 2018 report on the implementation of Close to Home, the Center for Children's Law and Policy explained that numerous reforms happened before Close to Home, including a significant expansion in alternatives to placement that "demonstrated that New York City youth could be better served by community-based services and supports when officials made the investment in those programs." Jason Szanyi & Mark Soler, Implementation of New York's Close to Home Initiative: A New Model For Youth Justice, Center for Children's Law and Policy, Feb. 2018. This expanded continuum, along with falling arrest rates (like those Pennsylvania is experiencing) meant that New York City was sending about half as many youth to state custody, making it possible for them to institute the changes that today, have been held up as a model for other communities.

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130 Marsha Weissman, Vidhya Ananthakrishnan & Vincent Schiraldi, Moving Beyond Youth Prisons: Lessons from New York City's Implementation of Close to Home, COLUMBIA UNIVERSITY JUSTICE LAB (Feb. 2019), <https://justice-lab.columbia.edu/sites/default/files/content/Moving%20Beyond%20Youth%20Prisons%20-%20C2H.pdf>.

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133 *Id.*

134 *Id.*

135 "For NSP sites, bed capacity ranges from 6 to 13. Young people in NSP attend school offsite at locations with the New York City Department of Education and the Greenburgh Eleven Union Free School District (Westchester). For LSP sites, bed capacity ranges from 6 to 18. In general, while LSP facilities remain homelike in appearance, they are more restrictive, with features such as 24/7 control rooms, sally port entrances, and additional locking mechanisms. Young people in LSP attend New York City Department of Education schools onsite. Both NSP and LSP have specialized facilities that serve youth with developmental disabilities, substance use issues, or those with a history of arson." Marsha Weissman, Vidhya Ananthakrishnan & Vincent Schiraldi, Moving Beyond Youth Prisons: Lessons from New York City's Implementation of Close to Home, Columbia University Justice Lab 37-38 (Feb. 2019), <https://justice-lab.columbia.edu/sites/default/files/content/Moving%20Beyond%20Youth%20Prisons%20-%20C2H.pdf>.

136 *Id.*

137 Jessica Feierman, Kacey Mordecai & Robert G. Schwartz, Ten Strategies to Reduce Juvenile Length of Stay, Juvenile Law Center (Apr. 22, 2015), <https://jlc.org/resources/ten-strategies-reduce-juvenile-length-stay>.

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139 Pew Charitable Trusts, Utah's 2017 Juvenile Justice Reform Shows Early Promise (May 2019).

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144 Ted Alcorn, Making Impactful Juvenile Justice Reform: Lessons from Recent State Efforts, ABELL FOUNDATION, (May 2019).

145 Youth First, Breaking Down the Walls: Lessons Learned from Successful State Campaigns to Close Youth Prisons (Mar. 2019), <https://backend.nokidsinprison.org/wp-content/uploads/2019/03/YF-Lessons-Learned-PAGE-FINAL.pdf>.

146 Juvenile Justice and Delinquency Prevention Committee (JJDPC), 2019 Pennsylvania Juvenile Justice and Delinquency Prevention Plan (Jan. 2019), <https://www.pccd.pa.gov/Juvenile-Justice/Documents/2019%20Pennsylvania%20Juvenile%20Justice%20and%20Delinquency%20Prevention%20Plan.pdf>.

147 *Id.*

148 Juvenile Law Center, Lessons from Luzerne County: Promoting Fairness, Transparency and Accountability: Recommendations to the Interbranch Commission on Juvenile Justice, [https://jlc.org/sites/default/files/publication\\_pdfs/Lessons%20From%20Luzerne%20County%20Report.pdf](https://jlc.org/sites/default/files/publication_pdfs/Lessons%20From%20Luzerne%20County%20Report.pdf).

149 Juvenile Justice and Delinquency Prevention Committee (JJDPC), 2019 Pennsylvania Juvenile Justice and Delinquency Prevention Plan (Jan. 2019), <https://www.pccd.pa.gov/Juvenile-Justice/Documents/2019%20Pennsylvania%20Juvenile%20Justice%20and%20Delinquency%20Prevention%20Plan.pdf>.

150 Juvenile Law Center, Debtors Prison for Kids: The High Cost of Fines and Fees in the Juvenile Justice System, <https://debtorsprison.jlc.org/?#/state/pennsylvania>.

151 *Id.*

152 Pennsylvania's juvenile justice system was once governed by the same financial incentives seen in other states: even though youth were arrested locally and could be managed with local or community resources, it often cost counties less to send delinquent children to distant institutions managed and paid for by the state. This pre-1976 financial architecture meant that counties had little incentive to develop local programs or services for troubled youth; there were thus fewer local treatment options than were needed. Act 148 of 1976 was designed to reverse this incentive. Under Act 148, counties pay a larger part of the cost of confining a child in a state institution than they do for youth in non-secure or community-based settings. The sliding scale of state reimbursement to counties for juvenile justice services encourages counties to develop local programs and services to keep troubled youth at home. DHS reimburses counties for most of the costs of community-based services for children, while counties are required to pay 40% of the cost of confining a child at a state facility. Act 148 provides reimbursement of 80% of the cost of services designed to keep children at home (after-school programs, evening reporting centers, outpatient counseling, case management services). It also reimburses 80% of the cost of group homes and other types of non-secure residential or treatment programs that allow children to attend public schools and hold jobs in their communities. Act 148 sets the lowest reimbursement rates for secure detention in local facilities (50%) and secure residential or institutional commitments (60%). (Prior to 1993, the state reimbursed counties for 55% of the cost of secure residential care.) Thus, the cost of the most restrictive placement is the most onerous for the county because the per diem is high and the state share is low. The Act 148 funding scale is also embedded in DHS regulations, 55 PA Code §§ 3140 et seq. See also A Fiscal and Operational Review of the Youth Development Center/Youth Forestry Camp System, Legislative Budget and Finance Committee, October 2018.

153 Act 148 was amended in the early 1990s to create a system of Needs Based Budgeting and Planning. See 62 P.S. § 704.1 et. seq. With participation and "sign off" by the county juvenile court, each county's child welfare agency develops a plan that shows the predicted service needs for court-involved youth and the cost of those services. Pennsylvania's Department of Human Services (DHS) tallies the approved costs for all 67 counties. The Governor then submits an aggregate budget allocation request to the legislature that includes the state share of county services. The Needs Based Budgeting process requires DHS to consider whether a county's plan and budget is reasonable in relation to past costs, projected cost increases, number of children in the county, number of children served, service level trends, and estimates of other sources of revenue. New initiatives and services must be reasonable. The county must identify cost savings or reduced rates of increase within its major service categories, and indicate whether a new service is less expensive or more effective than the currently available service. Needs Based Budgeting incorporates Act 148's sliding scale of state-county share of services.

154 For information on the special grants program, see Appendix 7 of the OCYF Needs Based Plan and Budget Guidelines FY 2017-18, <http://www.ocfpacourts.us/assets/files/list-10275/file-1684.pdf>. Currently available special grants programs are: Evidence-Based Programs (including Multi-Systemic Therapy, Functional Family Therapy, Treatment Foster Care Oregon Model, and Family Group Decision Making); Pennsylvania Promising Practices; Housing Grants; and Alternatives to Truancy Prevention.

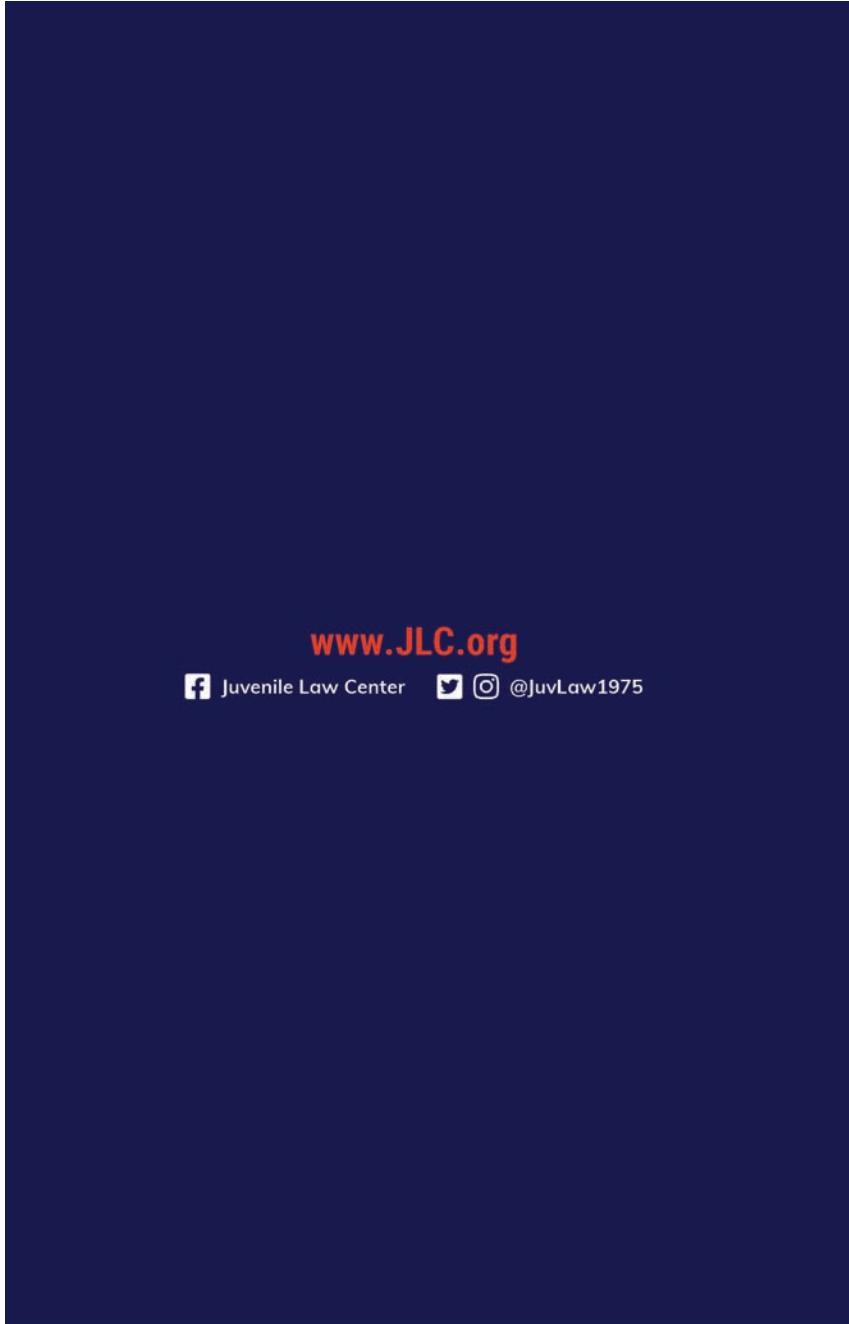
155 Juvenile Law Center addressed the cost of such a system conversion in its 1994 publication, *Building Bridges: Strategic Planning and Alternative Financing for System Reform*. We pointed out that there are often hidden costs to system conversion that must be identified, such as zoning battles, start-up costs for new programs, transportation to get youth to local programs, and paying for institutional beds that aren't used to ensure a smooth transition. Because such a conversion often takes more than one year, the state and local governments will need to do Need-Based forecasting for several fiscal years. While this is a challenge, it is doable. PCCD, for example, often makes grants to support multi-year efforts.

156 The Social Security Act has long been a source of funding for children's services, primarily through Titles IV-B and IV-E. They were first passed into law as part of the Adoption Assistance and Child Welfare Act of 1980. That law, which has been amended several times (most recently as the Family First Prevention Services Act), provides for federal financial participation to state child welfare systems if certain conditions are met. Title IV-B provides a specific allocation of flexible funds to state child welfare agencies that can be used for an array of services, including prevention services. Title IV-E is an uncapped federal entitlement that is provided to the states for the cost of services for eligible children who enter the foster care system, and in some instances for prevention services. It allows states to be reimbursed by the federal government for maintenance payments made to provide shelter, food, and clothing for eligible children. In addition, it covers administrative costs, training of child welfare staff and foster parents, recruitment of foster parents, and data collection.

157 Juvenile Justice and Delinquency Prevention Committee (JJDP), 2019 Pennsylvania Juvenile Justice and Delinquency Prevention Plan (Jan. 2019), <https://www.pccd.pa.gov/Juvenile-Justice/Documents/2019%20Pennsylvania%20Juvenile%20Justice%20and%20Delinquency%20Prevention%20Plan.pdf>.

158 Benjamin Mason Meier, Caitlin Pardue & Leslie London, Implementing Community Participation through Legislative Reform: A Study of the Policy Framework for Community Participation in the Western Cape Province of South Africa, 12 BMC INT HEALTH HUM RIGHTS, 15 (Aug. 25, 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3532148/>.

159 Texas State School Safety Center, The Positive Effects of Youth Community Engagement (Apr. 2013), <https://txssc.txstate.edu/topics/youth-leadership/articles/positive-effects-of-youth-engagement>. Crooks et al. (2010) concluded that youth community engagement is connected to a wide range of positive outcomes such as higher academic performance, lower rates of pregnancy, and lower rates of marijuana use. Some programs have even begun to incorporate youth engagement aspects into intervention/prevention efforts (Altman & Feighery 2004; Wilson et al., 2008).



[www.JLC.org](http://www.JLC.org)

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**The Guardian**

<https://www.theguardian.com/us-news/2021/mar/08/us-juvenile-detention-race-marshall-project>

**Racial inequality in US youth detention wider than ever, experts say**

*Eli Hager for The Marshall Project*

Mon 8 Mar 2021 06.00 EST

White youths were being released from juvenile detention centers at a far higher rate than their Black peers during the early stages of the Covid-19 pandemic in the US, and more people of color are now being detained for longer than they were before the crisis, according to data gathered by a leading children's philanthropic group.

So many kids were freed from jail last year that by late summer, fewer children were incarcerated than at any point since at least the 1980s. But many youth facilities are increasingly holding almost entirely Black and Latino populations of teens, according to interviews with more than a dozen juvenile justice officials and attorneys in seven states.

Though the racial inequality in youth detention has long been stark, it's wider than ever, they say. Experts point to several possible explanations, including bias from judges and other officials, and young people of color being detained for more serious offenses and having fewer resources and alternatives to incarceration in their communities.

"It's fitting that in 2020, the year that juxtaposed Covid and racial justice protests, we saw this shrinking of the system – but also a resistance to doing so for young Black people," said Patricia Soung, a juvenile attorney and former director of youth justice policy for the Children's Defense Fund in California.

By May 2020, detention centers were releasing white youths at a 17% higher rate than Black youths, according to a monthly survey of juvenile justice agencies in more than 30 states conducted by the Annie E Casey Foundation.

And in the months since, while the number of white youths has remained historically low, the number of Black and Latino youths has risen slightly, said Tom Woods, a senior associate and juvenile justice data analyst for the Casey Foundation.

The racial gap in detention is worsening even though teens, including those of color, were arrested less often in 2020, data shows. Police have generally taken a more hands-off approach due to the virus and, because classes have gone virtual, young people have interacted less with school-based officers.

One explanation for the worsening disparity, some juvenile justice officials told the Casey Foundation, is that with fewer juveniles detained this year, a greater portion of them have been locked up for more serious offenses, often involving guns, which teens of color are more likely to be incarcerated for, according to pre-2020 data. The severity of the charges then makes it harder to release them.

This is also anecdotally supported by reports of increased gun violence among young people in majority Black neighborhoods in major cities during the summer and fall of 2020.

“There may be a legitimate public safety reason for a racial disparity,” said Sam J Abed, secretary of Maryland’s department of juvenile services, which reduced its incarcerated population by more than half this year. “But we have to come up with a release plan even for youth where there is some risk, because time spent in detention is truly damaging.”

Other youth justice officials and experts pointed out that prosecutors are more likely to label offenses committed by young people of color as “aggravated” and to charge them with simple gun possession, making it more difficult to argue they should be let out.

Several studies indicate that the judges and probation officers who help decide which kids can go home are disproportionately white and tend to have greater empathy for young people who look like themselves.

During the pandemic, another layer of racial inequity has set in for youths of color, juvenile defense lawyers around the country said. Some judges and probation officers are reluctant to release kids of color because they are more likely to be released to an elderly caretaker vulnerable to Covid-19 – or to a single parent.

Young people of color also have fewer alternatives to detention available in their neighborhoods. Lack of funding and coronavirus concerns have made social services, mental health treatment, extracurricular activities and mentorship opportunities even more scarce. Judges are less likely to approve release for teens who do not have access to such resources.

"The first beneficiaries of a downsizing system are those with somewhere else to go," says James Bell, founding president of the W Haywood Burns Institute, which aims to ensure racial equity in the juvenile justice system. Still, juvenile justice officials told the Marshall Project they are redoubling their efforts to combat the racial disparity amid the pandemic.

The first beneficiaries of a downsizing system are those with somewhere else to go

"We're still releasing more white kids than Black and Hispanic kids, but the rates are going in the right direction now," said Diana Quintana, assistant executive director of the Harris county juvenile probation department in Houston, Texas. "I'm sure we've contributed to it in ways we might not even be aware of."

In the first month of the pandemic alone, the number of children held in detention facilities plummeted by 24% – a greater decline than from 2010 to 2017 combined. (A new report released this week by the Youth First Initiative, an advocacy group, found a similar drop for most of 2020 in the population of youth prisons, where kids are locked up after being sentenced.)

In many ways, this dramatic decline, coupled with a dramatically worsening racial disparity, echoes the trendlines of the past two decades. Since 2000, the US youth incarceration rate has been cut by well more than half, widely considered a major achievement.

However, two decades ago, white kids were locked up more often than Black kids; by 2019, more than 104,000 Black youths were detained, compared with fewer than 82,000 white youths – even though only 13% of Americans are Black.

And for those young people who remain confined this year, the experience has been more harmful than usual. Kids in juvenile jails are more alone than ever, because most in-person visits with their parents and loved ones have been canceled due to the virus, as well as most in-person classes and programs.

Zakiya Reddy-Cherif, a Black mother in Philadelphia whose teenage son has been incarcerated throughout the pandemic, has not been allowed to visit him the whole time, she said. But later this month, he has a court date at

which his public defender will ask the judge for early release, citing Covid-19 concerns.

If he does get out, she just wants to hug him and smell his skin, she said, adding, "I know that's crazy, but I'm a mom."

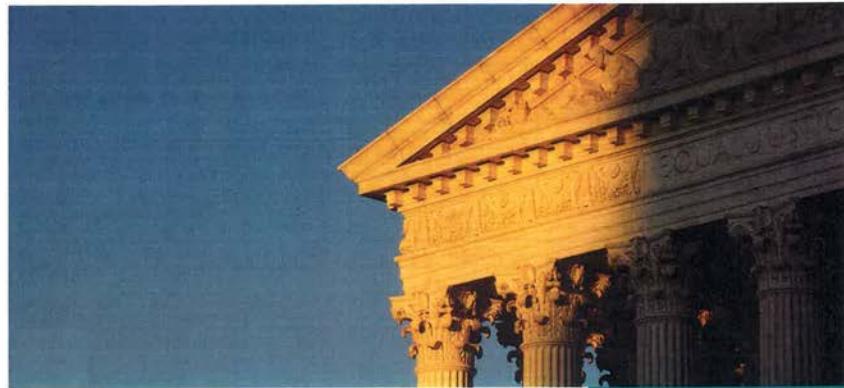
"But whenever I go to the courthouse, everybody there looks like me and everybody's son looks like my son," she said. "So no, I can't say that I am hopeful."

*This article was published in partnership with [the Marshall Project](#), a non-profit news organization covering the US criminal justice system. Sign up for the Marshall Project's [newsletter](#), or follow them on [Facebook](#) or [Twitter](#)*



February 2021

## National trends in sentencing children to life without parole



### U.S. Supreme Court

In four decisions—*Roper v. Simmons* (2005), *Graham v. Florida* (2010), *Miller v. Alabama* (2012), and *Montgomery v. Louisiana* (2016)—the Supreme Court of the United States established that “children are constitutionally different from adults for purposes of sentencing.” *Roper*, *Graham*, *Miller*, and *Montgomery* are critical in defining Eighth Amendment limitations for sentencing a child to die in prison.

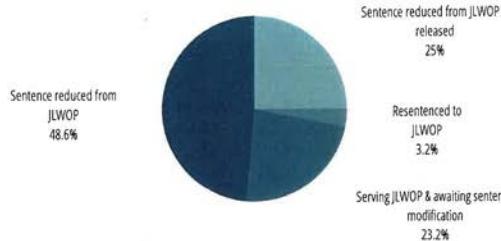
*Roper* struck down the death penalty for children. *Graham* struck down life without parole for children who commit non-homicide offenses, requiring a meaningful opportunity to obtain release. *Miller* struck down life-without-parole sentences for the vast majority of youth who commit homicide—all but those deemed incapable of positive growth and change—and five years ago in *Montgomery*, the Court applied *Miller* retroactively.

“In light of what [the Supreme] Court has said in *Roper*, *Graham*, and *Miller* about how children are constitutionally different from adults in their level of culpability . . . prisoners like *Montgomery* must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.”  
*Montgomery v. Louisiana*

## JLWOP post-*Miller* and *Montgomery*

A majority of the 2,800 individuals serving juvenile life without parole (JLWOP) following *Miller* and *Montgomery* have been resentenced in court or had their sentences amended via legislation, depending on the jurisdiction in which they were convicted.

Yet despite the over 75 percent reduction in people serving JLWOP, jurisdictions have varied significantly in their implementation of *Miller* and *Montgomery*. As a result, relief afforded to individuals serving JLWOP is based more on jurisdiction than on whether the individual has demonstrated positive growth and maturation.



Data on file at the Campaign for the Fair Sentencing of Youth

## Fast facts

### 700

Over 700 people originally sentenced to JLWOP have been released since *Montgomery*

### 30

30 states now ban JLWOP or have no one serving the sentence

### 75%

The national JLWOP population has been reduced by 75 percent in five years

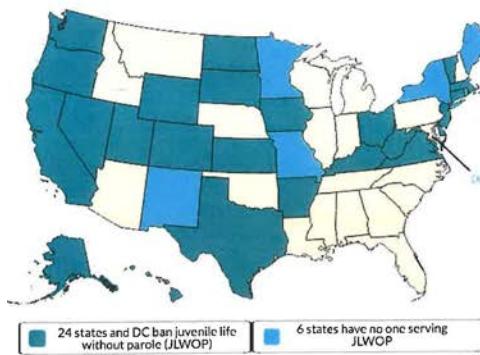
### 61%

Sixty-one percent of children sentenced to JLWOP pre-*Miller* are Black, and the proportion of Black children sentenced to JLWOP has increased in new cases post-*Miller*

## Rapid state-level rejection of life without parole for children

In the nine years since *Miller* was decided in June 2012, the United States has experienced sweeping change in the practice of sentencing children to die in prison. When *Miller* was decided, 45 states and the District of Columbia permitted life without parole as a sentencing option for children. In many states, life without parole was the only sentence available if a child was convicted of homicide.

Remarkably, the number of states that do not allow life without parole to be imposed on children has more than quadrupled since 2012, from five states to twenty-four states and the District of Columbia. And in at least six additional states, no one is serving the sentence for an offense committed as a child. Today a majority of states ban life without parole for children or have no one serving the sentence.



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## Jurisdictions that ban JLWOP

Alaska  
Arkansas  
California  
Colorado  
Connecticut  
Delaware  
District of Columbia  
Hawaii  
Iowa  
Kansas  
Kentucky  
Massachusetts  
Nevada  
New Jersey  
North Dakota  
Ohio  
Oregon  
South Dakota  
Texas  
Utah  
Vermont  
Virginia  
Washington  
West Virginia  
Wyoming

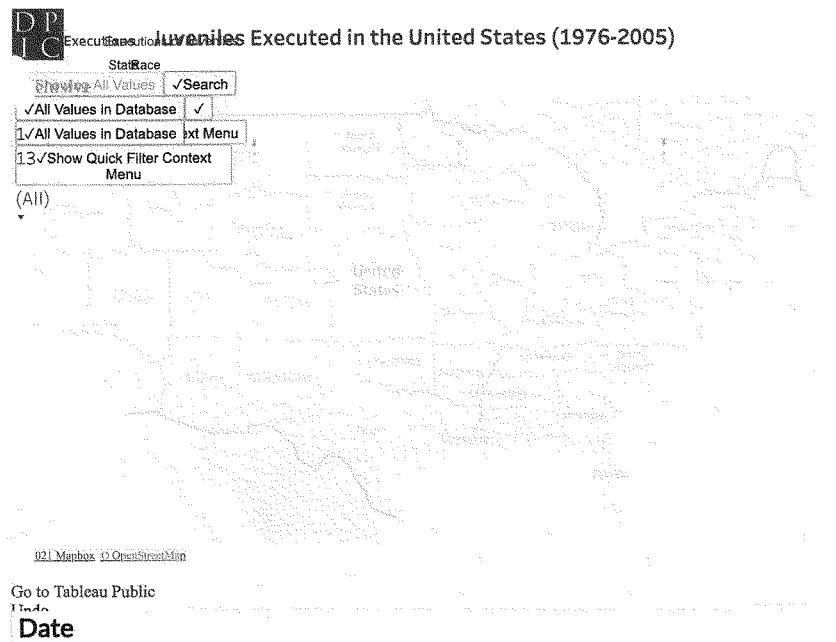


## ENIILES Executions of Juveniles in the U.S. 1976-2005

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In 1642, the Plymouth Colony in Massachusetts executed Thomas Graunger, making him the first juvenile offender put to death in the American colonies. Between then and the March 1, 2005 U.S. Supreme Court decision in *Roper v. Simmons* that ended juvenile executions in the U.S., 365 people confirmed to have been juveniles at the time of their offense were executed. That total constitutes 1.8% of the roughly 20,000 confirmed American executions since colonial times.

Twenty-two juvenile offenders were executed in the United States in the three decades between the Supreme Court decisions upholding the constitutionality of capital punishment in 1976 and the execution bar announced in *Roper* (see map, below). Those 22 executions comprised about 2% of the executions carried out in that time period. All but one occurred in the South and all were in the states that comprised the former confederacy.



09/11/1985	First Name	Charles
	Last Name	Rumbaugh
	Race	White
	Age at Crime	17
	Age At Death	28
	State	Texas
	Race of Victims	1 White
	Execution Method	Lethal Injection
01/10/1986	First Name	James
	Last Name	Roach
	Race	White
	Age at Crime	17
	Age At Death	25
	State	South Carolina
	Race of Victims	2 White
	Execution Method	Electrocution
3/15/1986	First Name	Jay
	Last Name	Pinkerton
	Race	White
	Age at Crime	17
	Age At Death	24
	State	Texas
	Race of Victims	2 White
	Execution Method	Lethal Injection
05/18/1990	First Name	Dalton
	Last Name	Prejean
	Race	Black
	Age at Crime	17
	Age At Death	30
	State	Louisiana
	Race of Victims	1 White
	Execution Method	Electrocution

02/11/1992	First Name	Johnny
	Last Name	Garrett
	Race	White
	Age at Crime	17
	Age at Death	28
	State	Texas
	Race of Victims	1 White
	Execution Method	Lethal Injection
07/01/1993	First Name	Curtis
	Last Name	Harris
	Race	Black
	Age at Crime	17
	Age at Death	31
	State	Texas
	Race of Victims	1 White
	Execution Method	Lethal Injection
/28/1993	First Name	Frederick
	Last Name	Lashley
	Race	Black
	Age at Crime	17
	Age at Death	29
	State	Missouri
	Race of Victims	1 Black
	Execution Method	Lethal Injection
08/24/1993	First Name	Ruben
	Last Name	Cantu
	Race	Latino
	Age at Crime	17
	Age at Death	26
	State	Texas
	Race of Victims	1 Latino
	Execution Method	Lethal Injection

12/07/1993	First Name	Christopher
	Last Name	Burger
	Race	White
	Age at Crime	17
	Age at Death	33
	State	Georgia
	Race of Victims	1 White
	Execution Method	Electrocution
04/22/1998	First Name	Joseph
	Last Name	Cannon
	Race	White
	Age at Crime	17
	Age at Death	38
	State	Texas
	Race of Victims	1 White
	Execution Method	Lethal Injection
7/18/1998	First Name	Robert
	Last Name	Carter
	Race	Black
	Age at Crime	17
	Age at Death	34
	State	Texas
	Race of Victims	1 Latino
	Execution Method	Lethal Injection
10/14/1998	First Name	Dwayne
	Last Name	Wright
	Race	Black
	Age at Crime	17
	Age at Death	24
	State	Virginia
	Race of Victims	1 Black
	Execution Method	Lethal Injection

02/04/1999	First Name	Sean
	Last Name	Sellers
	Race	White
	Age at Crime	16
	Age at Death	29
	State	Oklahoma
	Race of Victims	3 White
	Execution Method	Lethal Injection
01/10/2000	First Name	Douglas
	Last Name	Thomas
	Race	White
	Age at Crime	17
	Age at Death	26
	State	Virginia
	Race of Victims	2 White
	Execution Method	Lethal Injection
1/13/2000	First Name	Steven
	Last Name	Roach
	Race	White
	Age at Crime	17
	Age at Death	23
	State	Virginia
	Race of Victims	1 White
	Execution Method	Lethal Injection
01/25/2000	First Name	Glen
	Last Name	McGinnis
	Race	Black
	Age at Crime	17
	Age at Death	27
	State	Texas
	Race of Victims	1 White
	Execution Method	Lethal Injection

06/22/2000	First Name	Shaka
	Last Name	Sankofa
	Race	Black
	Age at Crime	17
	Age At Death	36
	State	Texas
	Race of Victims	1 White
	Execution Method	Lethal Injection
10/22/2001	First Name	Gerald
	Last Name	Mitchell
	Race	Black
	Age at Crime	17
	Age At Death	33
	State	Texas
	Race of Victims	1 White
	Execution Method	Lethal Injection
1/28/2002	First Name	Napoleon
	Last Name	Beazley
	Race	Black
	Age at Crime	17
	Age At Death	25
	State	Texas
	Race of Victims	1 White
	Execution Method	Lethal Injection
08/08/2002	First Name	T.J.
	Last Name	Jones
	Race	Black
	Age at Crime	17
	Age At Death	25
	State	Texas
	Race of Victims	1 White
	Execution Method	Lethal Injection

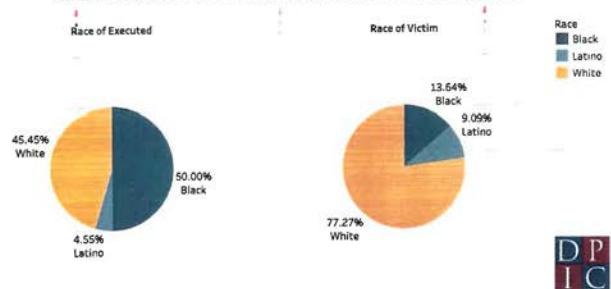
08/28/2002

First Name : Toronto  
 Last Name : Patterson  
 Race : Black  
 Age at Crime : 17  
 Age At Death : 24  
 State : Texas  
 Race of Victims : 3 Black  
 Execution Method : Lethal Injection

04/03/2003

First Name : Scott  
 Last Name : Hain  
 Race : White  
 Age at Crime : 17  
 Age At Death : 32  
 State : Oklahoma  
 Race of Victims : 2 White  
 Execution Method : Lethal Injection

#### Race Breakdown of Juveniles Executed in the United States



#### IN THIS SECTION

[Juveniles](#)

[Extending Roper: Is 18 Too Young?](#)

## DEBTORS' PRISON FOR KIDS?

### The High Cost of Fines and Fees in the Juvenile Justice System

By Jessica Feierman with Naomi Goldstein, Emily Haney-Caron and Jaymes Fairfax Columbo

#### EXECUTIVE SUMMARY

While much is now known about the financial burdens imposed on individuals and families by the assessment of costs, fines, fees, and restitution in the adult criminal justice system, there has been scant attention paid to this issue in the juvenile justice system. To address this gap, with the support of the Laura and John Arnold Foundation, Juvenile Law Center : 1) reviewed statutes in all 50 states and the District of Columbia to assess the legal framework for financial obligations placed on youth in the juvenile justice system and their families; 2) conducted a national survey of lawyers, other professionals, adults with previous juvenile justice involvement, and families to collect information about local practices; 3) interviewed attorneys and young adults who had experiences with the juvenile justice system to further understand how cost of justice issues play out in practice; and 4) solicited a study by criminologists Alex Piquero and Wesley Jennings, who examined the connection between costs and recidivism, and the implications for racial disparities in the juvenile justice system.

As in the criminal justice system, the imposition of costs and fees in the juvenile justice system is widespread across the country. Approximately one million youth appear in juvenile court each year. Costs, fees, fines, or restitution are imposed in every state. These financial penalties increase recidivism, push impoverished young people deeper into the juvenile justice system, exacerbate racial disparities in the juvenile justice system, and heighten economic and emotional distress for families already struggling financially.

The chart below identifies the types of financial obligations imposed and the results of our statutory review and stakeholder survey. In some cases, costs are imposed locally even when there is no applicable state statute. In a forthcoming report, we will consider the additional costs that are imposed when indigent youth are required to pay for counsel.

<sup>1</sup> We received responses from 183 individuals in 41 states; in each of these states, respondents reported the imposition of costs, fines, fees or restitution, and harms to youth or families as a result.

NATIONAL OVERVIEW OF COSTS IMPOSED		
TYPE OF COST	STATES WITH A STATUTE AUTHORIZING OR REQUIRING THE COST	STATES WITH PRACTICE OF IMPOSING COSTS (BASED ON SURVEY RESULTS FROM 41 STATES)
Court costs	25	28
Evaluation and Testing	32	26
Probation and Supervision	21	18
Diversion	22	26
Cost of Care	47	31
Fines	43	29
Expungement	11	20
Restitution	50+DC	All

The inability to pay costs, fines, fees, or restitution often results in harsh legal consequences and contributes to financial stress and family tension. In the 41 states with survey respondents, participants widely affirmed that youth experience these consequences for failure to pay:

- Case remained open longer (33 states<sup>2</sup>)
- Youth was sent to juvenile justice placement (26 states)
- Youth remained in juvenile placement longer than he/she otherwise would have (26 states)
- Additional court visits, leading to missed school or missed work (34 states)
- Inability to get records expunged (24 states)
- Civil judgment imposed (25 states)
- Formal petition filed for failure to pay diversion costs (15 states)

Additionally, respondents in 31 states reported that families took on debt in order to pay their juvenile justice-related financial obligations.

<sup>2</sup> For each consequence, at least one survey respondent in this many states reported the designated consequence. More often, numerous respondents in each state reported the designated consequence.

Our statutory research also revealed significant consequences that we had not posed as survey questions, but which we believe are also widely imposed and require further study. These include:

- Probation extended
- Probation revoked
- Driver's license revoked, suspended, or child barred from applying for license
- Arrest warrants issued
- Child deprived of needed treatment
- Youth or parents held in civil or criminal contempt

Interest fees, collection fees, or other additional fees or fines for failure to pay

Until now, almost no empirical research has investigated the effect of financial costs imposed on juvenile offenders and the extent to which such costs contribute to recidivism or their potential impact on racial disparities in the juvenile justice system. Criminologists Alex Piquero and Wesley Jennings used data from a cohort of 1,167 adolescent offenders in Allegheny County, Pennsylvania to examine 1) how demographics and case characteristics relate to financial penalties imposed by the justice system and 2) the degree to which such monetary penalties are related to recidivism in a two-year follow-up.

Their analysis showed that financial penalties in general—and the sheer amount of financial penalties in particular—significantly increased the likelihood of recidivism, even after controlling for relevant demographics and case characteristics. They also concluded that owing costs upon case closing is significantly related to recidivism. Their analysis suggests that cost and fee policies may contribute to racial disparities in the juvenile justice system as children of color are more likely to owe costs upon case closing relative to their white peers. Moreover, 94% of youth in their sample—over 1,000 youth in just one county—owed costs, fines, fees, or restitution.

While this report focuses on a problem—the imposition of costs on youth and families who cannot afford to pay—it also highlights solutions and identifies jurisdictions that are changing their local or state policies to ensure that the youth are not punished for poverty.

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