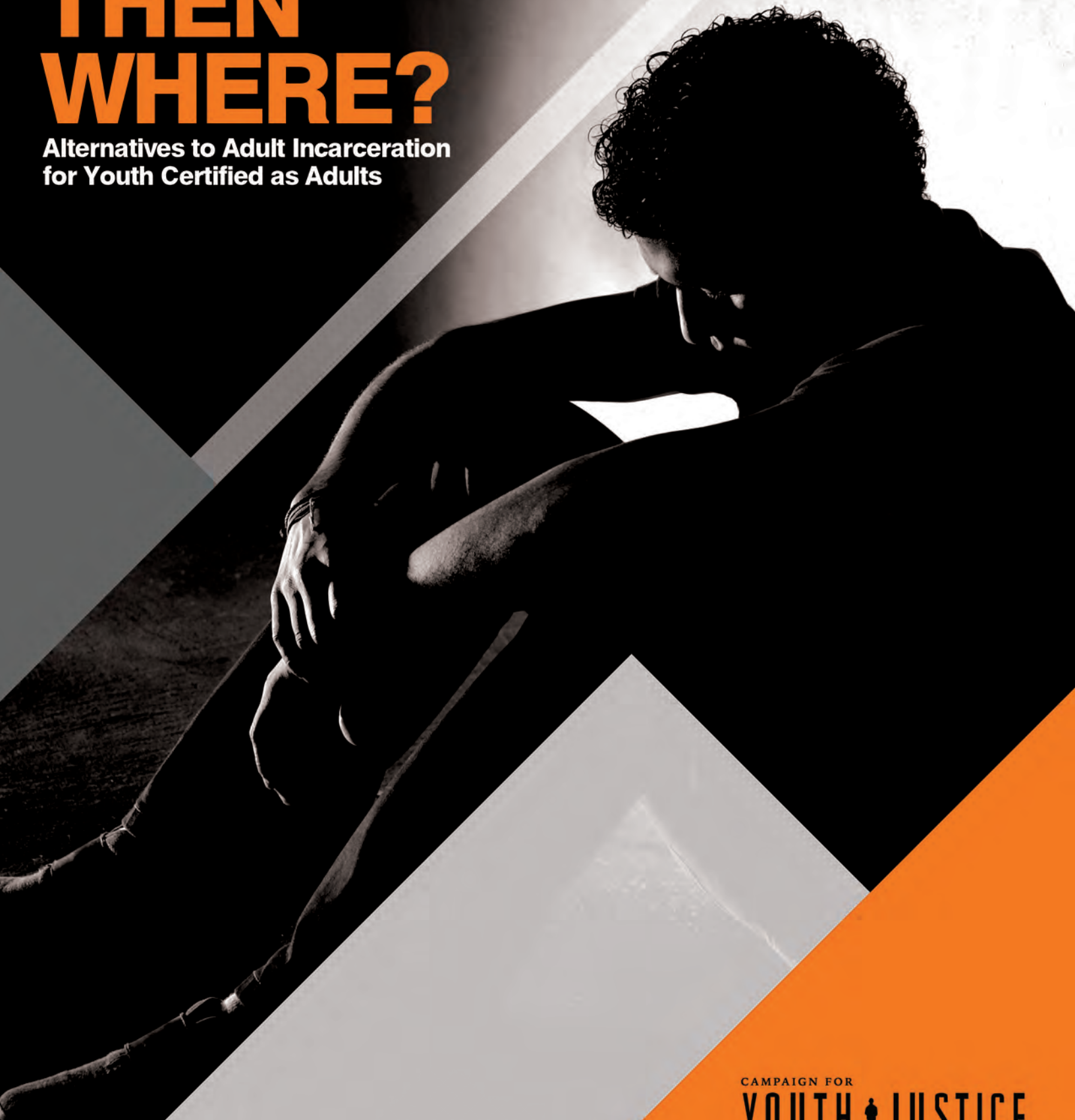


IF NOT THE
ADULT SYSTEM,
**THEN
WHERE?**

Alternatives to Adult Incarceration
for Youth Certified as Adults



CAMPAIGN FOR
YOUTH JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR

Acknowledgements

The Campaign for Youth Justice would like to thank the Justice Policy Institute and the Campaign for the Fair Sentencing of Youth and its Incarcerated Children’s Advocacy Network for their partnership in developing this resource and for their contributions to several forthcoming pieces on current practices for children charged as adults. We also thank the Council of Juvenile Correctional Administrators, the Coalition for Juvenile Justice, the National Partnership for Juvenile Services, and the National Juvenile Justice Network for allowing us to survey or query their members. Input from heads of juvenile justice agencies, juvenile justice specialists, people who have lived through this experience, and advocates led us to much of the information shared in this report, helped us identify gaps in knowledge or practice, and gave us a sense of what “business as usual” looks like for youth charged as adults. We would also like to thank all of the experts who shared their insights with us through interviews or who reviewed and provided feedback on these resources, including:

John Aarons, TFC Consultants, Inc
David Abromowitz, YouthBuild USA
Rev. Rubén Austria, Community Connections for Youth
Wayne Bear, National Partnership for Juvenile Services
Heber Bray, Oregon Youth Authority
Sarah Bryer, National Juvenile Justice Network
Lisette Burton, Boys Town
Robert Clark, YouthBuild Newark (NJ)
Gregg Croteau, UTEC (MA)
Dominique Davis, Community Passageways (WA)
Michael Dempsey, Council of Juvenile Correctional Administrators
Shaena Fazal, Youth Advocate Programs
Albino Garcia Jr., La Plazita Institute (NM)
Angela Irvine, Ceres Policy Research (CA)
Robin Jenkins, PhD (NC)
Jody Kent Lavy, Campaign for the Fair Sentencing of Youth
Jennifer Redman, Washington State Department of Social and Health Services
Dr. Sylvia Rowlands, New York Foundling
Marc Schindler, Justice Policy Institute
Naomi Smoot, Coalition for Juvenile Justice
Keller Strother, MST Services
Dr. Eric Trupin, University of Washington
Anna Wong, W. Haywood Burns Institute for Justice Fairness & Equity

The Campaign for Youth Justice would also like to thank our funders, particularly the Ford Foundation, for generously supporting this work.



Table of Contents



02

ACKNOWLEDGEMENTS

06

INTRODUCTION

10

**LEGISLATIVE CHANGES
ADVANCING AGE
APPROPRIATE REFORMS**

11

**NON-RESIDENTIAL
COMMUNITY-BASED
INTERVENTIONS**

18

**THERAPEUTIC,
LESS RESTRICTIVE
RESIDENTIAL PLACEMENTS**

19

**JUVENILE SECURE
FACILITIES**

22

RECOMMENDATIONS

24

CONCLUSION





Introduction

Over the past two decades, recognizing that youth incarceration is overused, expensive, and ineffective at reducing recidivism and preparing youth for re-entry, the youth justice system has shifted from large youth prisons to investments in community-based alternatives to detention and smaller secure placements.¹ Many youth justice systems also have begun relying on tenets of adolescent development,² building developmentally appropriate continuums of care and ensuring that responses to youth criminal behavior have been individualized. However, since the 1990s tens of thousands of youth have been prosecuted as adults each year and completely excluded from juvenile court jurisdiction, therefore not benefitting from these advancements. Some state laws allow prosecutors to file youth directly to adult court and to statutorily exclude some youth from juvenile court based on their charge and age. In other states, the age of criminal responsibility was set below the age of 18 when the juvenile court was established, nearly 100 years ago. This means that the majority of youth charged as adults have entered the adult system without a juvenile court reviewing their case or assessing their risks and needs. Too often, youth charged as adults are left out of the youth justice continuum entirely.

There has been some progress. Over the past 13 years at least 37 states and the District of Columbia have passed laws to keep more youth in the juvenile justice system. As a result, the number of youth in adult facilities has decreased about 58 percent nationally; down from 10,000 per night in 2000 to 4,700 in 2016.³ Recognizing that the juvenile system is best equipped to respond to youth in developmentally appropriate ways that can prevent future justice involvement, these laws have raised the age of juvenile jurisdiction, limited which offenses are automatically sent to adult court, and required more judicial oversight over transfers to the adult system. At the federal level, both the Juvenile Justice and Delinquency Prevention Act⁴ and the Prison Rape Elimination Act's Youthful Inmate Standard⁵ incentivize states to remove youth under 18 from the harmful realities of adult jails and prisons.

This progress is not enough, however. Too many youth aged 17 or younger are still classified as adults, and too many children still sleep in adult facilities every night. Overwhelmingly, they are African American, Latino, and Tribal youth, with 2016 showing the largest racial disparity in three decades.⁶ Too many youth still face extreme sentences and harsh and inhumane treatment in

It is important to recognize that the term “violence” has been expanded greatly in the past three decades. It can include crimes where no other person is involved, and definitions vary by jurisdiction.⁹ Higher incarceration rates have been shown not to correlate with lower incidence of violent crime,¹⁰ and the most “serious” offenses often are associated with the lowest recidivism rates.¹¹

a system designed to punish adults. These young people are trapped between two systems — too often rendering them invisible and forgotten.

While at least 76,000 youth per year are charged as adults prior to their eighteenth birthday,⁷ we know that many aren't ending up in adult jails and prisons. The number of youth in adult jails has dropped by close to half in the past five years, and those in prison have dropped even more dramatically by 75 percent.⁸ Some of this decrease is the result of falling crime rates and reforms that raise the age of criminal responsibility to age 18, at least for youth with low-level offenses and misdemeanors. However, these numbers imply that even youth charged as adults with more serious or “violent” charges aren't necessarily ending up in adult secure facilities. Youth charged or certified as adults are less than two percent of the population in adult facilities and five-to-ten percent of youth in juvenile facilities. This means that many youth charged as adults are either getting their cases dismissed or are placed on probation, raising the question of why they are in the adult system to begin with.

To identify alternatives to adult incarceration for youth, the Campaign for Youth Justice (CFYJ) is learning from stakeholders across the country about their efforts to serve youth charged as adults across a continuum of care. These efforts include:

- Changes to state laws for how and when youth are sent to the adult system;
- Non-residential community-based initiatives;
 - Offering diversion opportunities to more youth, including those charged with felonies
 - Deploying community-based therapeutic interventions well into adolescence
- Residential and less restrictive facilities that are more developmentally appropriate;
- Allowing youth charged and sentenced as adults to remain in juvenile facilities and offering appropriate services to them.

The youth justice continuum of care already includes language about children who commit serious or violent crimes. Many key stakeholder groups, including those representing heads of state juvenile justice systems, judges, attorneys, and police chiefs acknowledge, through policy statements and/or survey instruments, that most youth certified as adults “belong” in the youth justice system.¹² Furthermore, recent research also has found that many victims of crime want children to have access to the rehabilitative services provided by juvenile court.¹³ That said, not all stakeholders agree, and some are proposing a return to a more punitive response to youth crime. This is simply not supported by research: There is no evidence that punitive approaches reduce recidivism or lead to better public safety outcomes. We must explore ways to replicate ways that administrators and line staff have successfully welcomed certified youth back to juvenile jurisdiction and have an honest dialogue about what struggles exist in serving youth. In addition, while some components of the continuum are available for youth, resources often scale toward the highly expensive and ineffective “deep end” of the system. Jurisdictions need to do more to redirect resources back to the community, including youth eligible for transfer into the adult system. Furthermore, we need to know more about certified youth who are served in their home communities already — what programs work, who is supervising them, and what supports are necessary to ensure their success?

In this report, we share current and emerging practices for better serving youth charged as adults, along with insights from practitioners about what makes for successful programming for this population. We also offer specific recommendations for policy and practice change, and re-affirm our willingness to support policymakers and stakeholders in achieving these changes.

Quick Facts

Youth crime and youth incarceration are declining.

**Juvenile arrests
have dropped**

70%

since 1996.

**Youth incarceration
has dropped**

57%

since 1997.¹⁴

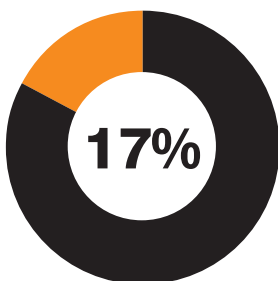
**Youth charged as adults
have dropped almost**

70%

**from 250K in 2005¹⁵
to 76K in 2017.¹⁶**

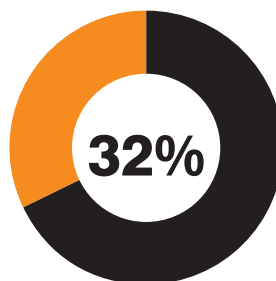
While there are no national statistics for youth charged as adults, state-level data show that the majority are not sentenced to jail or prison time.

Maryland



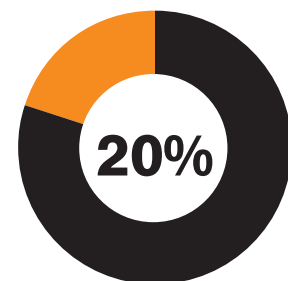
of youth who were excluded from juvenile jurisdiction due to age or offense, received a sentence of adult jail or prison time.¹⁸

Nebraska



of youth prosecuted as adults received jail or prison time. 68% were sentenced to probation or released.¹⁷

New York State



of youth charged as adults for felonies were sentenced to jail or prison.¹⁹



Most youth sentenced as adults are home by the time they age out of adolescence:

- 85% of youth sentenced as adults are home by the time they are 21 and
- 95% by the time they are 25.²⁰
- Forty-four states and D.C. serve youth up to age 21 in their juvenile justice system already.

Youth who are committed to the adult system are 34% more likely to recidivate, and with more serious behavior, than youth who are in the juvenile justice system.²¹

Youth transfer and sentencing as adults falls heavily on youth of color²⁵

- Black youth were 53.1% of youth transferred to adult systems for person offenses in 2015, despite the fact that black and white youth each made up approximately 40% of youth charged with person offenses.²²
- Latino youth are 43% more likely to be transferred to the adult system than white youth and 40% more likely to be sent to adult prison.²³
- Native youth are 1.5 times as likely as white youth to be transferred to adult court, and this number is increasing.²⁴
- 43% of the girls waived to adult court in 2016 were girls of color.²⁶

Legislative changes advancing age appropriate reforms

Thanks to “raise the age initiatives,” many states passed laws resulting in a decrease in the number of youth prosecuted as adults. Since the creation of a separate juvenile court system, states have established their own “age of criminal responsibility.” While the majority chose age 18, more than a quarter of states (14) set that bar lower at age 16 or 17. In the past decade, this has changed dramatically. There are now only four states that set the age of criminal responsibility at age 17 and have not passed legislation to raise the age in the near future. Several have active legislation to raise it to 18. While most of these laws fail to protect every child under the age of 18 from adult prosecution (most create carve outs for children charged with violent or serious offenses), this has been the single most effective legislative strategy to reduce the number of children in the adult system. States that have implemented these laws have done so without increasing confinement or costs and without jeopardizing public safety.²⁷

Some states are also trying to let youth enter the juvenile justice system at later ages, recognizing that adolescence lasts past age 18. Vermont recently passed legislation to extend its age of original jurisdiction for the juvenile justice system to age 20,²⁸ and legislators in Massachusetts, Illinois, and Connecticut are considering similar changes.²⁹

Beyond raising the age of criminal responsibility, states are also allowing youth certified as adults to remain under the custody or jurisdiction of juvenile court for longer periods of time, removing them from harmful adult jails and prisons. There are only six states whose extended age of juvenile jurisdiction ends before a child’s 21st birthday; the vast majority of states allow adjudicated youth to remain in their system well beyond age 18 (whether in custody or on probation).³⁰ However, in many states, certified youth historically have been treated differently — either fully excluded from juvenile justice systems or housed in a juvenile out-of-home placement but only until they turned 18 (unlike the youth who were adjudicated as juveniles but stayed through the extended age). In recent years, this has begun to change. First, more states are allowing certified youth to remain under the custody of juvenile facilities before their 18th birthday (11 states in the past three years have adopted this practice).³¹ Seventy-one percent of youth charged as adults are detained in juvenile facilities pre-trial.³² Some states are going even further. For example, Washington State allows youth who are arrested for offenses committed before they turn 18 to remain under the jurisdiction of the juvenile system (including youth who need residential treatment) until

age 21. Under a 2015 law, HB 1674, youth certified as adults are allowed to remain in juvenile facilities until they turn 21 and receive developmentally appropriate treatment, academic opportunities, and other services. In 2018 the U.S. Congress passed the Juvenile Justice Reform Act,³³ which will provide federal incentives for all states to remove youth from adult jails.

Finally, states are quietly, but consistently, rolling back transfer laws. Since 2005, 19 states have limited the ability to transfer youth to the adult system. They are raising the lower age for children eligible to be transferred to adult court, rolling back the type of charges eligible for transfer to adult court, and returning discretion to family court judges. In 2018, California ended transfer for anyone under age 16,³⁴ Rhode Island ended mandatory transfer,³⁵ and Delaware returned discretion to judges for several felonies including robbery and weapons charges, and increased the age of transfer for many crimes to 16.³⁶

The vast majority of sentencing reforms have ended juvenile life without parole and other extreme sentencing. There are still 26 states which allow some form of blended sentence for youth, which combines juvenile and adult sanctions.³⁷ A blended sentence means a sentence imposed by a juvenile court that blends a juvenile sentence and an adult sentence for certain serious youthful offenders. From our experience at CFYJ, these sentences vary widely in their application, and all states that have blended sentencing also have transfer mechanisms. As a result, some youth aren’t eligible for any interventions from juvenile court. A review of 10 years of research on blending sentences from the National Center for State Courts suggested that youth of color are more likely to be transferred to the adult system in jurisdictions where juvenile courts have the ability to impose both juvenile and adult sanctions.³⁸ It concluded more broadly that “both transfer and blended sentences should remain very low frequency occurrences because most juvenile offenders are amenable to treatment in the conventional juvenile justice system.”³⁹ Blended sentencing also requires a great deal of coordination between the juvenile and adult systems, which have radically different orientations from staff training, to services offered, and purposes (rehabilitation vs. punishment).

Recently, there has been a movement to more strongly align these different approaches for emerging adults (ages 18-24), adopting the juvenile justice system’s approach to a more developmental, rehabilitative orientation (see: Criminal Justice System “Emerging Adult” Reforms on page 21). More research is needed on outcomes for emerging adults, given the financial, physical space, and training constraints of the adult system.



“ To sustainably reduce youth violence, recidivism, and racial disparities, we must focus on changing the many laws, policies, and practices that prohibit young people involved in a violent crime from taking advantage of effective interventions in a community setting.”

—“Smart, Safe, and Fair,” The Justice Policy Institute & National Center for Victims of Crime

Non-residential community-based interventions

While many states have successfully adopted reforms to keep youth charged with status offenses or misdemeanors out of secure custody in the juvenile justice system, states have been much slower in adopting strategies that allow children charged with felonies or crimes of violence to be served in their communities. However, states have begun to ask whether certified youth should also be eligible for these programs, as some law enforcement, prosecutors, and victims recognize that incarceration does not improve outcomes. Below we highlight successful community-based programs that could be considered for youth charged as adults. Several are widely used and have a deep evidence-base behind them, others are newer interventions we see as innovative and promising in their approaches.⁴⁰ Although they don't currently serve large numbers of youth charged as adults, each serves youth charged with crimes of violence, and each could be a model for giving certified youth appropriate treatment in their homes and communities. Each intervention owes a large part of its success to the fact that it serves youth in their communities with stakeholders who come from those communities, adopts a positive youth development frame,⁴¹ and prioritizes participation from family members.

These programs may not be available in each jurisdiction, but they (or something similar) could certainly be adapted to serve youth anywhere. This paper focuses on the current state of available programs, but it should also be noted that our understanding of how to best serve youth involved with justice systems is ever evolving, and we expect that more effective practices will become available and implemented in coming years. Note that success in using new or established practices in a community, or with a specific youth and family, involves more than simply choosing a “good” intervention. Ensuring a match between service and youth (e.g., risk level), appropriate intensity of services, as well as fidelity to a model and overall ongoing program quality are all essential, as is building capacity and cultural competency in communities and systems, including the recognition of why these practices are so important.⁴² Although there are different benefits and drawbacks to the programs discussed here, they all serve youth without removing them from their homes and communities, which is proven more effective than incarceration for the vast majority of youth.⁴³



Probation in the Juvenile and Adult Systems

Most youth in the justice system (whether charged as juveniles or adults) end up on probation. Probation departments, for both youth diverted from the system and those placed on formal probation, rely on relationships with community-based providers to be successful. In the juvenile justice system, probation departments can and do provide contracted services for youth. In the adult system, these relationships are generally more informal, and often consist of a referral or recommendation, which may be hard for a young person to access, particularly when they need parental permission to partake in services. Agency leaders, public defenders, and community providers in numerous states report that some youth charged as adults will receive probation rather than incarceration, but end up incarcerated later (either for a violation of parole/probation or due to a new offense, sometimes tied to underlying needs that were never addressed during probation). This pushes youth further into the adult system. Although juvenile probation is not without its own limitations,⁴⁴ deeper involvement in the adult system is likely to be harmful for these reasons. The frequent use of probation (often without any incarceration) for youth charged as adults illustrates that these youth are not seen as a public safety risk.

Culturally Relevant Community-based Programs

One of the benefits of partnering with community-based programs is the ability of a community to respond to the specific cultural and ethnic needs of their own youth. Often, these programs are centered in a community “hub” that offers multigenerational services and supports. La Plazita Institute, in Albuquerque, New Mexico, offers a range of culturally-specific services to youth and families, particularly — but not exclusive to — those of Native American and Chicano Heritage. Each youth served by La Plazita may engage in a broad range of cultural, clinical, vocational, and other services, including acupuncture, meditation, sweat lodge services, clinical therapy, case management, support groups, traditional Native American healing, GED classes, and a farming program. They have a formal relationship with the courts, serving as a youth reporting center for the county and receiving referrals directly from youth court judges and probation. However, their executive director, Albino Garcia Jr., is quick to note that they serve all youth in similar ways regardless of referral source, which can include social service agencies, schools, and community members, in addition to courts and probation.⁴⁵ Based on the relationships La Plazita has built and the results they’ve accomplished, they have been successful in receiving a steady stream of referrals, including youth charged with serious and violent offenses, what the courts and probation may consider their “most difficult cases.” La Plazita notes that many of their staff are role models for their clients, because they had similar life experiences before choosing to serve their community. It’s important to note that they do not track (or distinguish between) youth who come to them from the juvenile or the adult justice system.

La Plazita is one of 12 community organizations across the country participating in the EBP+ Collaborative with two research partners, Impact Justice and W. Haywood Burns Institute. Each of these organizations serve youth of color charged with serious and violent offenses in their own communities. As a collaborative, they have developed a model with the ultimate goal of “providing alternatives to incarceration for populations most often excluded from community supports.”⁴⁶ All of the organizations within the EBP+ Collaborative are led and staffed largely by individuals of color who come from the communities they work in. They provide holistic, culturally-appropriate services and value youth leadership and deep relationships with youth and families. The collaborative’s goals are to “elevate youth leadership and expertise; facilitate youth resourcefulness; support youth healing; encourage youth connectedness; and mobilize youths’ forward movement.”⁴⁷ Their work is currently being evaluated through a combination of youth input (pre-and post-participation surveys), researcher site visits, and analysis of recidivism data.



Evidence-based Practices in Juvenile Justice

Multisystemic therapy (MST), Functional Family Therapy (FFT), and Multidimensional Treatment Foster Care Oregon (now called Treatment Foster Care, TFCO) are some of the most commonly used interventions for justice-involved youth. All of these programs were effective at reducing subsequent offenses among youth who have already been adjudicated for delinquency offenses, according to a research review published by the National Institutes of Justice and the Office of Juvenile Justice and Delinquency Prevention.⁴⁸ Blueprints for Healthy Development's registry of evidence-based positive youth development programs has also found these three interventions to be model or model-plus programs for reducing delinquent or criminal behavior, anti-social aggressive behavior, and violence among adolescents with elevated risk levels.⁴⁹

Funding for evidence-based, in-home services can come from Medicaid, child welfare prevention, and family preservation funds, as well as federal juvenile justice funding. Many communities also fund in-home services through state or county funds, including reallocation of cost savings from reduced youth incarceration. It should be noted that in addition to the staffing and related costs of these services, many of these interventions require licensing fees, which can put them out of reach for the most under-resourced communities.

Multisystemic Therapy

Multisystemic therapy (MST) is widely used (in 34 states) and has been proven effective at reducing delinquency and reoffending with youth up to age 18.⁵⁰ Across dozens of studies of MST, outcomes for juvenile-justice-involved youth include 75 percent fewer arrests on violent felony charges, 54 percent fewer arrests overall, and 54 percent fewer out-of-home placements. MST also delivers up to \$23.59 in return on investment for every dollar spent, compared to incarceration and alternative treatments, with a lifetime benefit of up to \$200,000 per youth. Like other successful interventions for youth, MST is community-based and works with entire families to help them build their own capacity to support youth. Keller

Strother, director of MST services, explains that MST works well for juvenile justice because juvenile systems tend to view youth as part of a larger unit and focus on family and ecological factors, while adult (criminal) justice systems treat people as independent individuals.⁵¹ He explains, "If you want to have impacts on kids with serious issues, [treatment] needs to be community-based, keep youth in and work with families." A modified version of MST for emerging adults (age 17-26) is now undergoing rigorous evaluation.

Functional Family Therapy

Functional Family Therapy (FFT) is also often used successfully with justice-involved youth in 45 states across the country. In New York City, the New York Foundling's Families Rising Program provides FFT as an alternative to incarceration to youth tried as adults and charged with felony or high-level misdemeanor offenses. Families Rising has a 73 percent successful completion rate. Of participants who completed treatment and were sentenced, 97 percent avoided having a criminal record and 92 percent avoided serving time in jail.⁵² New York Foundling delivers FFT to youth charged as juveniles as well, but Dr. Sylvia Rowlands, their senior vice president for Evidence-Based Practices, says that 16-, 17- and 18-year-olds (most of whom are still automatically charged as adults in New York) are easier to work with, because "they are a little more mature; a little more brain development has happened so we see a bit less risk-taking."⁵³

The program has a 97 percent rate of families agreeing to work with them, and Rowlands stresses that when it comes to older youth, parents "really understand their role in supporting their young people's healthy development," even when their children are close to the age of legal adulthood.⁵⁴ New York recently raised their age of juvenile jurisdiction from 16 to 18 years; and New York Foundling plans to continue offering FFT to families of older youth who will now be referred through juvenile instead of criminal justice courts as a result of these recent "raise the age" efforts. Dr. Rowlands explains that the only change will be "the door youth are coming in through," as their approach is already based on rehabilitative and youth development principles that often differentiate the juvenile justice system from the adult criminal justice system.⁵⁵



Communities of Color and Evidence-Based Practices

Following a meeting of experts on Evidence Based Practices (EBPs) and communities of color, a report by the W. Haywood Burns Institute for Justice Fairness & Equity found “a broad consensus...that, if used correctly, EBPs are having success as interventions and they are not intrinsically antithetical to adoption in a range of cultural contexts.”⁵⁶ Recognizing that communities of color have been skeptical of the effectiveness and cultural competence of EBPs that were “developed by white people for white people,” the authors noted that there is evidence that supports the use of EBPs when they are chosen and implemented with careful attention to context. It also stated that “some cultural tailoring” is helpful, as long as the interventions remain close enough to their scientifically proven practice. The effectiveness of EBPs in communities of color can be undermined by negative views of the intervention within the community (often triggered by poor initial introduction of the EBP) or by selection of an EBP that is not a good fit for the community or for the provider implementing it. Additionally, there are many things that need to happen for EBPs to be successful in any community, including practitioners who have appropriate training, support and supervision; a good client-to-intervention match (e.g., by age/developmental level); and adequate funding availability. Realistic expectations from juvenile justice stakeholders are also important: EBPs are designed to address specific clinical issues, rather than reduce delinquency generally, and the results they produce will be impacted by the conditions discussed above. The report emphasized that the best response is always to minimize justice system involvement as much as possible, and that youth should never enter the justice system primarily to receive treatment or support, including access to EBPs.

Source: W. Haywood Burns Institute for Justice Fairness & Equity, “An Exploration of the Effectiveness of Evidence Based Practices in Communities of Color,” (2015) <https://www.reclaimingfutures.org/sites/default/files/wp-content/uploads/An-Exploration-of-the-Effectiveness-of-Evidence-Based-Practices-in-Communities-of-Color-1-1.pdf>.



Many of the young people we serve have been both perpetrators and victims of violence. We serve a lot of young people who've done things they are very remorseful about and just want a second chance."

— YouthBuild Newark's CEO Robert Clark

Other Promising Approaches

Community Passageways, a Seattle-based nonprofit founded in 2017, is using community ambassadors to serve youth through a felony diversion program, as well as in prevention and re-entry programs. Community ambassadors 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. The program's founder and CEO, Dominique Davis, explains that he started Community Passageways in response to a perceived increase in violent crimes affecting youth in South Seattle, which inspired him to transition from his work at a misdemeanor diversion program, to working with youth with felony charges. As Community Passageways has proven that their approach works and gained credibility with prosecutors, they continue to get more felony referrals. Davis reports that their staff does not see a difference when working with youth charged as adults or juveniles.

YouthBuild is a program that allows youth ages 16 to 24, who did not finish high school, to learn and practice construction skills while also re-engaging in education and developing leadership and real-life work experience. This program serves youth diverted from the courts, within correctional facilities, and during re-entry.⁵⁷ According to the national support center, YouthBuild USA, Inc., approximately one-third of their youth have been court-involved, and research from the U.S. Department of Labor indicates that their students' recidivism rate one year post-enrollment is just nine percent.⁵⁸ (YouthBuild's work is also discussed in the "re-entry" section of this paper on page 20.)

YouthBuild Newark (YB Newark) estimates that 76 percent of the young people it serves are or have been involved with the juvenile or criminal justice system, including some youth charged as adults.⁵⁹ YB Newark's CEO Robert Clark explains "[Juvenile Detention Alternatives Initiative]⁶⁰ is very present in New Jersey and as a result, a lot of young people are [on electronic monitoring] and have a placement at one of our sites or schools as an alternative to incarceration while awaiting trial."⁶¹ YB Newark sometimes serves as an alternative to

incarceration post-disposition, but Clark explains that they prefer that youth not be court-ordered to participate, because youth benefit more from the program when they choose to participate (even if they choose YB Newark from a list of possible programs). YB Newark serves on the multidisciplinary placement team working on behalf of youth re-entering after secure care, because they have a charter school that welcomes returning youth. Youth who've been excluded from school because of a felony conviction or long-term suspension can access YB Newark's re-engagement center. (YB Newark offers the traditional programs and services that are part of the YouthBuild model, but also engages in a wider array of activities as lead of the Newark Opportunity Youth Network.) YB Newark is supported by a mix of public and private funding (including foundation grants, Department of Labor funds, and public-school funding), but its early years and YouthBuild's statewide expansion were supported by a \$6 million crime prevention investment from the state Attorney General's office, and additional support from the state's Juvenile Justice Commission.

YB Newark serves youth and young adults who come to them with a range of charges and, although they feel it's important to be aware of any unique needs or safety considerations, Clark says, "You can't be a youth development program and be picky about the youth you serve." He explains, "Many of the young people we serve have been both perpetrators and victims of violence. We serve a lot of young people who've done things they are very remorseful about and just want a second chance. Youth come with a ton of emergent circumstances they need help with...and are trying to figure out how to be normal kids as much as is possible given their experiences." In response, YB Newark takes a holistic approach to building a sense of responsibility to family and community and tries to put young people on a path to the future they want. This could include getting a GED or going to college, earning a health career certification, or learning a building trade, but Clark says that "more than anything, you are always going to be part of this community of young people who are striving to build a better self, and to be a better family member and contributor to the community."⁶²



A nonresidential, community-based provider, Youth Advocate Programs offers youth involved in juvenile justice systems a paid, highly trained, and supported advocate; wrap-around services; intensive structure and supervision; and access to 24/7 crisis assistance. With programs in 23 states and Washington, D.C., YAP serves the most challenging youth. “We tell commissioners, give us the kids whose name you know,” explains Shaena Fazal, YAP’s chief of policy, advocacy and external communications. YAP also maintains a “no reject, no eject” policy.⁶³ Fazal explains that this is important — for her program and others — to ensure that “kids with the most complex challenges and severe charges can be safely served in the community.” She suggests that these policies can indicate a program’s readiness to work with youth charged or certified as adults. An evaluation of YAP case file data conducted by John Jay College found that “YAP appears to have the greatest impact on high-risk youth in terms of their living situation.”⁶⁴ Youth with prior out-of-home placements were more likely to be living in their communities after their YAP involvement and experienced large reductions in secure placement rates. Involvement in YAP was associated with a 49 percent reduction in secure placements for youth with felony dispositions, and a 62 percent reduction for youth with misdemeanors.⁶⁵

A program YAP runs in Chicago, called Choose to Change, has been credited with cutting participants’ arrest rates for violent crimes in half, through a combination of intensive mentoring and trauma-focused group therapy.⁶⁶ (Youth are eligible for the program based on their assessed risk of becoming a victim or perpetrator of crime.) Fazal credits YAP’s success in large part to “hiring people with lived experience and whose key expertise is an understanding of how to navigate through the neighborhoods where our young people live.”⁶⁷

YAP is also one of several providers offering the AIM (Advocate Intervene Mentor) program through the New York City Department of Probation. AIM provides mentor/advocates to youth ages 13-18 who are close to violating their probation for lack of compliance or follow through. These youth (who are on probation during their program participation) can access their mentor 24 hours a day, 7 days a week, and each mentor works with no more than four young people at one time. The mentors are from the same community as the young person and often struggled themselves with system involvement. The program has proven effective, with more than 90 percent of youth avoiding felony re-arrest a year after enrollment, and the large majority avoiding out-of-home placements.⁶⁸ YAP is currently working with several other New York counties to offer

These interventions are examples of approaches that could serve youth charged as adults better than incarceration. Because there is no one program that will work for everyone, jurisdictions should offer a range of support and match the youth and family to specific interventions based on their needs and risk factors. These interventions must be offered at sufficient intensity levels and delivered by qualified, well-trained, and supported staff and organizations.

community-based alternatives to incarceration to older youth who will be under juvenile court jurisdiction as a result of the state's recent Raise the Age legislation.⁶⁹

Rubén Austria, executive director of Community Connections for Youth, another community-based provider working with New York City Department of Probation, explains that it's important to blend promising practices with local strengths, and to offer services in a community setting. Often referred to as "Credible Messenger" programs, these community-based alternatives are showing strong signs of effectiveness and system change for youth charged with serious offenses. One example is Arches Transformative Mentoring (Arches), a program for 16-24-year-old young men on probation (including for felony charges). The Arches program contracts with community-based organizations across the city to provide intensive group mentoring services for young men who are at risk of deeper system-involvement.⁷⁰ Each young person also works with a specially trained probation officer who provides case management and assists with youth-directed individualized planning to help prepare the youth for successful

independence.⁷¹ An evaluation by the Urban Institute found that by using "a combination of credible messenger mentoring and an evidence-based curriculum, Arches reduces one-year felony reconviction by over two-thirds and reduces two-year felony reconviction by over half."⁷² The evaluation also demonstrated that 16- and 17-year-olds benefited most from the intervention.⁷³ (As discussed above, New York only recently passed legislation raising the age of juvenile jurisdiction to 18 for misdemeanors and some felonies.) Austria stresses that one of the most important aspects of Arches, and other Credible Messenger approaches, is that "all of the mentors share similar lived experience with the youth—they are individuals from the same ethnic and racial background, mostly from the same neighborhoods, many formerly incarcerated or impacted by the justice system in some way. They are also paid employees, which helps build community capacity and strengthens informal networks of support." He cites Arches as an example of how New York City is sending resources directly back to the community to support young men of color.

As a youth charged as an adult, I believe you *could* be rehabilitated in the community if the right services are in place. We need services that will deal with the whole family and the trauma that we are dealing with.”

— Josh Samuels, youth sentenced to 7 years in adult facility at age 16, Washington D.C.

Therapeutic, Less Restrictive Residential Placements

In addition to serving more youth charged as adults in their own homes, states and local jurisdictions are increasingly placing youth charged with more serious or violent crimes, who are under the jurisdiction of the adult corrections system, in juvenile secure facilities and non-secure residential placements. Several evidence-based models have been shown to effectively serve youth charged with serious offenses without placing them in large, institutional settings.

Treatment Foster Care Oregon (TFCO, formerly called Multidimensional Treatment Foster Care) was developed as an alternative to group homes and state secure correctional facilities. This model places youth in family foster homes (rather than group settings) and provides supports to parents (or other family members) to encourage effective parenting. It has demonstrated positive impacts on arrest rates, engagement in acts of violence, and later incarceration or secure placements (e.g., detentions, hospitals) and is cost-effective.⁷⁴ It is being used in 33 sites in eight U.S. states and seven other countries. Its evidence base includes studies focused specifically on youth who've committed serious offenses, and the only automatic exclusions for the program are youth who are actively homicidal, suicidal, or psychotic. Although TFCO does not currently have any sites serving youth charged as adults, they would welcome the opportunity to help service providers implement TFCO with this population. As John Aarons, president of TFC Consultants (the organization that provides training and technical assistance on implementing TFCO), says, "We've tested the alternative for far too long."⁷⁵

Another ecological model for serving youth is delivered by Boys Town. Boys Town's goal is to keep families together whenever possible, and they offer in-home services, parenting classes, behavioral health clinics, training for educators, and a national crisis hotline for youth and parents. This work is driven by research at Boys Town's Translational Research Center and Center for Neurobehavioral Research. Ninety-five percent of the children who Boys Town serves are helped in their own homes and communities.⁷⁶ For children ages 10 to 18 who cannot safely live at home, however, Boys Town offers placements in a single-family home with a well-trained and supported married couple (called Family-Teachers® in the Boys Town Model®). Placements in family homes can be made through the child welfare or juvenile justice system, and youth who have committed felonies or are charged as adults are eligible. The Boys Town Model® includes teaching youth and families new and life-changing skills and helping them build lasting, healthy relationships. This includes teaching youth how to make positive decisions and setting them on the path to successful development and ultimate independence. As a faith-based organization, Boys Town also supports youth in practicing their faith under the belief that this will "give them stability and guidance in times of difficulty and need." This model has led to positive outcomes for tens of thousands of young people and their families. Boys Town has nine campuses across the country and its largest, in Nebraska, has 60 family homes and includes a day school that serves youth from those homes along with other youth from the community. In some locations, Boys Town contracts directly with juvenile justice agencies or receives court referrals, but due to the broad array of services they offer, they also receive referrals through schools and other community organizations.



Juvenile Secure Facilities

CFYJ believes that children should never be incarcerated in adult facilities. In the rare instances when placement in secure juvenile care is warranted, those facilities must be safe, humane, developmentally appropriate, and effective. While it is widely established that serving youth in their communities is the most effective and ideal setting for rehabilitation, there are some positive innovations taking place inside state-run facilities with youth who previously were subjected to the adult system. While these facilities struggle with a lack of flexibility on how long youth are in their facilities (due to state law requirements), they are bringing children back into their care who previously were considered too “dangerous” or “unamenable to treatment” and were placed in the adult system. We consider this a critical first step until adequate, community-based alternatives are established and funded. These alternatives to adult facilities will become even more important because of changes to the recently re-authorized Juvenile Justice and Delinquency Prevention Act (JJDP A). States receiving JJDP A funding will be required to keep youth, including those awaiting trial as adults, out of adult jails and lock-ups and to ensure sight-and-sound separation from adults when they are held in adult facilities.⁷⁷

In Oregon, almost half (44 percent) of the approximately 500 youth in state juvenile facilities are youth who were waived to the adult system. This large number of certified youth in juvenile placement is due to the enactment of Measure 11, an extremely broad transfer statute that excludes many youth under age 18 from juvenile court and allows them to be subject to lengthy sentences found in adult court. These youth can remain in juvenile facilities until age 25, and the average age of youth in Oregon’s juvenile facilities is 20. Youth sentenced as adults weren’t always held in the Oregon Youth Authority; any misbehavior of older youth used to mean a transfer to an adult facility.

Recently the agency reduced these transfer rates by 60-70 percent. Oregon credits this change to leadership and effective use of research (for example, facility staff were influenced by

learning how much lower recidivism rates were for youth who remained in juvenile facilities compared to those who were transferred to adult facilities). Oregon has not seen a decrease in safety in their facilities as a result of keeping more of their older youth. Heber Bray, operations policy analyst for Oregon Youth Authority (OYA), explains, “The idea that youth charged as adults are more violent in facilities is not true. It is exactly the opposite.” Older youth are more mature, he explains, and generally appreciate the better opportunities that are available to them in the youth system. As such, “they tend to be a stabilizing group of girls and guys...[and] have a good impact on young and impulsive [residents].”⁷⁸

Oregon is also ensuring that they are offering programs specifically designed to meet the needs of this older population of certified youth. OYA policy requires that facilities offer youth who are not enrolled in high school at least one college or college preparatory class each semester, and youth must receive counseling on post-secondary education, with some dedicated funding available to support college costs.⁷⁹ OYA also offers youth in facilities opportunities to develop soft skills that will help them secure and keep employment, as well as technical skills and certifications in a wide range of fields from computer-aided design to horticulture to pet care.⁸⁰

As mentioned earlier, Washington law allows youth charged as adults to remain in juvenile facilities until age 21, and in many cases these youth transition over time from a secure facility to less restrictive facilities, such as residential programs where they are able to gain work experience in the community during the day.⁸¹

In its work with many states reforming the “deep end” of their juvenile justice systems, CFYJ has observed that once the juvenile justice system begins to serve youth who are charged and sentenced as adults, it often leads to an appetite for more systemic reform.⁸² In large part, this is because staff begin to see that there is little or no difference between children certified as adults and their juvenile populations.



Re-entry Programs as Alternatives to Incarceration

Utec is a Massachusetts agency that has demonstrated success in connecting young adults to social and economic success through a range of interconnected programs. Utec serves youth ages 17-25 and recruits participants through street outreach, referrals from other youth, and non-court system stakeholders (e.g., attorneys, county jails' youthful offender units).⁸³ In 2018, Utec was the sole grantee of the Massachusetts Trial Court's new initiative for a Transitional Youth Early Intervention Probation Program, specific to individuals 18-24 who are under community supervision in Middlesex and Essex Counties.^{84/85} This approach could be a promising one for youth charged as adults as well, given Utec's emphasis on connecting youth to individualized support (provided by a transition coach), education, work experience, and civic engagement opportunities to create positive social change in their communities.

YouthBuild, a model of vocational and educational programs for youth ages 16-24, serves many youth exiting incarceration. Its "wraparound" school-year-long model includes supportive education; paid, well-supervised construction work; service to the community; and leadership development. Some YouthBuild programs also offer housing for participants, a key benefit considering the high rates of homelessness among justice-involved youth. YouthBuild programs at over 250 locations in 45 states throughout the country operate independently and work with different populations in rural, small city, and large urban communities. A review of data on YouthBuild participants nationally found that 11 percent of participants had been convicted of a felony, and 30 percent had been adjudicated for a criminal or delinquent offense.⁸⁶ National recidivism (reconviction) rates for YouthBuild students generally is only 10 percent, and an enhanced YouthBuild program focused specifically on juvenile-justice-involved youth had a one-year reconviction rate of only one percent.⁸⁷ Although YouthBuild has often served youth after, rather than as an alternative to, incarceration, some programs have reported that they've worked with young people as an alternative to incarceration or would be open to doing so.⁸⁸

“Emerging Adult” Reforms

On the adult side, there has also been movement to improve conditions for “emerging adults,” those ages 18-22 (or up to 25 in some jurisdictions) who are in the adult correctional population. However, these approaches also tend to exclude youth certified as adults. Connecticut is a prime example: While a pilot of the TRUE unit successfully improved conditions and programs for young adults with lengthy criminal sentences, youth certified as adults (under age 18) remain in a separate adult correctional facility without age-appropriate supports. In 2019, the Connecticut Office of the Child Advocate published a report on conditions of confinement for youth in the state, including use of restraint and isolation, as well as health and educational offerings. In response to the report’s discussion of youth in adult facilities, the Department of Corrections “leadership responded to OCA findings that agency policies and practices are consistent with best practice for adult correctional programs and while they have made some effort to adapt practice for the state’s youngest offenders, they believe youth would be better served outside of an adult correction system.”⁸⁹ While Connecticut has made great strides over the past decade in reforming their laws, on any given day they still detain the seventh largest number of youth under 18 in adult prisons,⁹⁰ calling into question whether they have actually embraced that all children are different from adults.

In New York, where new legislation will raise the age of criminal responsibility from 16 to 18, proposed housing for adolescent offenders (certified youth) will be in separate, smaller detention centers.⁹¹ However, the Department of Corrections will co-run these centers, despite their lack of experience (relative to the juvenile justice system) in delivering adolescent-appropriate services. There are also units, such as the Youthful Offender Unit in Jackson, Mississippi,⁹² or one in Huntsville, Texas,⁹³ that are touted as age-appropriate units

run by correctional staff for certified youth. Middlesex County, Massachusetts, also runs a specialized young adult unit, developed with design and research assistance from the Vera Institute of Justice and UTEC.⁹⁴

While sight-and-sound-separated youth units are an improvement over keeping youth in the general adult population, they are far from developmentally appropriate placements in the juvenile justice system. In addition, there remains a very fine line between improving correctional services so conditions are humane and inadvertently opening the floodgates to welcoming other, younger youth because of “successful programming.”

In Texas, Lone Star Justice Alliance is preparing to introduce a community-based intervention for young people aged 17-25 charged with felonies in the criminal justice system.⁹⁵ Rather than receiving a traditional court adjudication, young people will receive a needs assessment and a multidisciplinary, individualized treatment and services plan. Although this approach seems promising, the reality is that there are only a very small group of service providers offering community-based services to emerging adults who have committed crimes of violence, and their services are rarely extended to include certified youth under age 18.

There is some indication that youthful offender statutes, such as those in the District of Columbia, Vermont, and Washington, can be reformed to support youth through age 25 in more age-appropriate manners beyond housing. These improvements may include alternative sentencing structures, record sealing or expungements, recording sealing or expungement, and increased programming. There has been no comprehensive study of these laws, or their application, and this remains a significant gap in the field.

Recommendations

In November 2018, CFYJ had the unique opportunity to partner with the 45 members of the Incarcerated Childrens' Advocacy Network (ICAN), a network of men and women who were sentenced to life without parole when they were still children that is supported by the Campaign for the Fair Sentencing of Youth. Although juveniles sentenced to life without parole constitute only a small percentage of youth transferred to the adult justice system, and most youth sentenced as adults are back in their home communities by age 21, these men and women have a unique perspective having spent decades in adult prisons, many with no previous experience with the justice system at all. When asked, "If not the adult system, then where?" ICAN members recommended numerous ways jurisdictions could achieve better outcomes for public safety, youth development, and community success. Although these individuals have experienced the "deepest end" of the adult justice system, their recommendations underscored the importance of the alternatives highlighted throughout this document. CFYJ has paired their suggestions with our own specific implementation recommendations for policymakers and juvenile justice agencies.

1. Invest heavily in families and communities before youth come in contact with the law. Families often search for interventions, but don't get the help they need until the courts get involved. ICAN members recognized that this is a backwards approach that harms individual families and the community as a whole. They suggested wrapping services around the whole family the first time there is trauma, and not giving up until the trauma has been healed.

They also suggested hiring formerly incarcerated community members to work in after-school programs, faith organizations, and hospitals. By hiring formerly incarcerated mentors, said ICAN members, programs could reach youth early and show them another way. They also emphasized the importance of building safe spaces in the community that focus on healing.

Implementation: Policymakers and juvenile justice stakeholders should take any cost savings from divestments in deep-end care, and permanently re-allocate them to communities to focus on healing, rebuilding community infrastructure, and age-appropriate services. This is particularly urgent for youth arrested in high poverty, over-policed, under-resourced communities, where often many children of color in the justice system live.

2. Embrace restorative practices and services in the community. ICAN members spoke about long-standing community conflicts and interpersonal violence in the home that is multi-generational. They expressed that restorative practices are good for everyone because they allow the victim to have a voice in solutions as well as the person who caused harm. ICAN members found restorative circles to be healing for the broader community, and better at resolving longstanding conflicts, particularly in places where violence occurs with frequency. They emphasized the rights of the victim to get assurances that they can be safe.

ICAN members also called for programs in communities to create/expand services that youth want to go to and help them develop skills that can help them mature. This includes after school programs that help develop knowledge of finances/credit and helping kids build entrepreneurial skills. They emphasized expanding job and trade programs (e.g. Youthbuild) so young people could work. Finally, they talked about serving as mentors for young people themselves—not mentors that meet monthly, but those who can be there for emergencies at 11pm and those who are there, day in and day out, to point out alternative choices.

ICAN members also pointed out the importance of shifting systems to a restorative approach, saying "Making youth apologize when they have done harm [is important], but we have to acknowledge that many of these youth are also victims who are too often ignored, or worse, not believed, when they say they are victimized." Finally, they pointed out that restoration would require systems to also be held accountable—for the justice stakeholders to see ICAN members' humanity (not just their charge), for organizations to run quality programming, for system leaders to apologize if they made a mistake, etc.

Implementation: Juvenile justice agencies and other relevant stakeholders should ensure juvenile systems “take back” youth charged as adults to the fullest extent possible under state law, and offer those youth the same age-appropriate rehabilitative services that youth under juvenile jurisdiction receive. Services should, wherever possible, be provided in the youth’s home community where they have demonstrated the strongest outcomes, and should include restorative justice opportunities.

3. Create a therapeutic environment for the few children who do need to be removed from their communities for public safety reasons. ICAN members also spoke to the fear and confusion they experienced when placed in adult facilities. The alternatives to an adult jail and prison experience, they suggested included:

- Ensuring children under age 18 (or some said 25 years) are not placed in adult facilities, even initially. Youth and emerging adults should have the opportunity to receive age-appropriate programming, even if they committed serious crimes, including murder. Youth need to spend time outdoors, to connect more often to family, and to have time to heal and develop skills to prepare them for adulthood.
- Postponing sentencing for one year while a young person receives therapeutic interventions. The courts should see the young person’s capacity to change before imposing severe sentences.
- Creating residential care that isn’t institutional—but is more family-like— for youth up to age 25.
- Allow mentoring by older (vetted) incarcerated individuals with this population, especially if they have adult time “over their heads.” ICAN members relied on these older mentors to teach them how to become adults (from folding laundry, to shaving, to learning patience).

ICAN members also stressed that accountability is important. They said, however, that accountability must be more than punishment. Youth need structure and predictability, and accountability should be based on incentives and growth. If a child isn’t following the rules, ICAN members recommended that there should be a quick and clear response that is age-appropriate.

Implementation: Policymakers should amend state law to keep all youth in the juvenile justice system until the state’s upper age of jurisdiction, without automatic transfers to the adult system based on age or offense. Including youth convicted of violent offenses in these reforms is consistent with the information shared above showing that juvenile justice systems and programs can serve these youth well, given appropriate resources, and reflects the understanding that “children are different.”

4. Sentencing for youth should never be “life without parole” or tied to mandatory minimum time. Almost all of the ICAN members discussed the lack of programming or opportunities to improve themselves because they were “lifers” and not seen as “worth the investment.” They suggested that youth receive sentences that are based on the individual young person, not the charge that brought the young person to court. Sentences should recognize the capacity of children to change, allow for meaningful review, and take into account youth’s natural desistance from engaging in criminal behavior as they age. ICAN members recommended:

- Sentencing people to programs instead of time;
- Giving incentives (e.g. earlier parole, family visits, more education) for good behavior;
- Increasing step-down programs that give more flexibility (including stepping down to mentor younger youth or exchanging time for military service).

Implementation: Policymakers and juvenile justice stakeholders should recognize the capacity of children to change and grow, and adjust sentencing to reflect youth’s natural desistance to engaging in criminal behavior as they age.

Enacting these recommendations will require policy and practice changes, as well as interdisciplinary collaboration among juvenile and criminal justice agency officials, community based providers, and those impacted by these laws (both those who break the law and survivors of violence). Together, policymakers, practitioners, and community members must develop and implement a comprehensive continuum of care for all youth, including those charged as adults. This includes public agencies funding community-based interventions at levels that will allow them to serve all eligible youth, at the appropriate level of intensity and the most effective lengths of time. Special attention should be paid to ensuring children of color are benefitting from these policy changes. Successfully developing this continuum will allow stakeholders to achieve their goals, including better outcomes for youth and families, increased public safety, smarter use of public funds, and ultimately, thriving and healthy communities.



Conclusion

Communities across the country are changing their policies and practices to keep youth from entering the juvenile justice system unnecessarily and, when youth do enter their systems, to provide more appropriate responses. States and localities are also considering how to keep youth who would otherwise be charged as adults in the juvenile justice system, resulting in lower recidivism and improved public safety outcomes. State legislatures are passing laws that send fewer youth to the adult system in the first place, in addition to laws that allow juvenile systems to “take back” youth who have already been certified as adults. These states recognize that many youth charged as adults can be safely served in their homes and communities. Several strong, evidence-based, and promising community programs have emerged as successful interventions for older youth and youth who commit more serious crimes, as well as youth charged as adults. However, there are still far too many youth unnecessarily held in the adult system, and there is still much work to be done to ensure that these youth are served appropriately.

In addition to the recommendations above, CFYJ will publish several resources with guidance on why and how youth should be served in the juvenile justice system. We stand ready to work directly with states and localities to achieve these goals. For more information, contact Marcy Mistrett at mmistrett@cfyj.org.

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Suggested citation: Pilnik, L. & Mistrett, M. (2019) "If Not the Adult System Then Where? Alternatives to Adult Incarceration for Youth Certified as Adults," Campaign for Youth Justice (Washington, DC).