



BACKGROUND

On any given day in 2019, there were an estimated 48,000 juveniles confined due to juvenile or criminal justice system involvement.¹ That same year, there were nearly 700,000 juvenile arrests.² Involvement in criminal and juvenile justice systems causes children lasting harm that can limit their potential to thrive in adulthood. When justice-involved children are not offered alternatives such as restorative justice, or do not receive rehabilitative support such as community treatment, they are at higher risk of school dropout, substance abuse disorders, and future offending.³ These harms are not experienced equally — with Black youth 5.8 times, Native youth 2.5 times, and Hispanic youth 1.7 times more likely than white youths to be incarcerated and to experience resulting collateral consequences.⁴

The reflexive use of punitive sanctions against youth does not promote public safety in the long run.⁵ Study after study has proven what common sense has long shown: children's neurological and developmental immaturity often leads to poor decision-making.⁶ Providing children with trauma-informed, developmentally appropriate responses to offending can improve their sense of security and connection to their communities. The data bears this out: while juvenile incarceration has fallen 66 percent nationwide from 2008 to 2018, we have also seen a 65 percent decline in youth crime over that same period.⁷ We can reduce unnecessary youth incarceration and crime at the same time.

RECOMMENDATIONS

RECOMMENDATION 1: RAISE THE AGES OF CRIMINAL AND JUVENILE COURT RESPONSIBILITY AND STOP AUTOMATIC TRANSFERS OF YOUTH TO THE ADULT CRIMINAL JUSTICE SYSTEM

The prosecution and incarceration of juveniles as adults fails to meet their developmental needs, adversely affecting youth rehabilitation.⁸ As many in law enforcement have recognized, states should raise the age of criminal responsibility to 18, end automatic transfers of youth to adult court, and raise the minimum age of juvenile court jurisdiction to at least 14, consistent with international norms.⁹

Despite the national trend of raising the age of criminal responsibility to 18, three states have yet to do so.¹⁰ In addition, most states have laws that allow or require prosecutors to automatically transfer

children to adult courts for more serious offenses and under certain conditions.¹¹ In many states, children as young as 13 and 14 can be automatically tried as adults.¹² However, these automatic transfer laws are both ineffective at reducing crime and harmful to rehabilitative goals. Juveniles who are prosecuted as adults are more likely to recidivate, commit more serious new offenses upon release, and reoffend more quickly than youth processed through the juvenile justice system.¹³ Further, trying young people as adults fails to account for their evolving capacities and can limit chances for rehabilitation.¹⁴ Such practices undermine extensive scientific research showing that adolescents tend to make poor decisions because they are cognitively less able to regulate their behavior and

¹ Wendy Sawyer, *Youth Confinement: The Whole Pie*, Prison Policy Initiative, 2019, <https://www.prisonpolicy.org/reports/youth2019.html>.

² *Juvenile Arrests*, OJJDP Statistical Briefing Book, accessed January 14, 2021, <https://www.ojjdp.gov/ojstatbb/crime/qa05101.asp?qaDate=2019&text=yes>.

³ Barry Holman and Jason Ziedenberg, *The Dangers of Detention*, Justice Policy Institute, 2006.

⁴ Vincent Schiraldi, *Can We Eliminate the Youth Prison (And What Should We Replace It With?)*, The Square One Project, 2020, 19.

⁵ Lawrence W. Sherman et al., *Preventing Crime: What Works, What Doesn't, What's Promising*, National Institute of Justice, 1998; "Statement on Ending Youth Prisons," Youth Correctional Leaders for Justice, July 20, 2020.

⁶ Staci A. Gruber and Deborah A. Yurgelun-Todd, "Neurobiology and the Law: A Role in Juvenile Justice," *Ohio St. J. Crim. Law* 3 (2005): 321, 330; *21 Principles for the 21st Century Prosecutor*, Brennan Center for Justice, 2018.

⁷ Schiraldi, *supra* note 4, at 11.

⁸ Ian Lambie and Isabel Randell, "The Impact of Incarceration on Juvenile Offenders," *Clinical Psychol. Rev.* 3 (2013): 448, 450–55.

⁹ National Sheriffs' Association, National Sheriffs' Association Resolution on Youth Tried as Adults (2018); Major Cities Chiefs Association, Policy Statement: Youth in the Adult Criminal Justice System (2017); *Raise the Minimum Age for Trying Children in Juvenile Court*, National Juvenile Justice Network, 2020.

¹⁰ Rachel Marshall, *Removing Youth from Adult Jails: A 50-State Scan of Pretrial Detention Laws for Youth Transferred to the Adult System*, Campaign for Youth Justice, 2019, 9 (Georgia, Wisconsin, and Texas have yet to do so); Daniel Nichanian, "As Michigan Raises the Age, Advocates Vow to Press for More Change," *The Appeal*, November 14, 2019 (Michigan raised the age in 2019).

¹¹ Anne Teigen, "Juvenile Age of Jurisdiction and Transfer to Adult Court Laws," *National Conference of State Legislatures*, July 1, 2020.

¹² Jeree Thomas et al., *Raising the Floor*, Campaign for Youth Justice, 2019, 12.

¹³ Robert Hahn et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, Center for Disease Control and Prevention, 2007.

¹⁴ See Lambie, *supra* note 8, at 450 (noting that involvement in sensation-seeking and risk-taking behaviors peaks during adolescence).

that youth neurological development continues until around 25 years of age.¹⁵

RECOMMENDATION 2: REDUCE RELIANCE ON INCARCERATION AND INVEST IN PREVENTION AND COMMUNITY-BASED TREATMENT

Incarcerated juveniles experience disproportionate rates of mental illness and a higher risk of self-harm.¹⁶ Further, juvenile detention disrupts psychological development and youths' capability to "age out" of delinquency.¹⁷ As a result, incarcerated youth are more likely to recidivate than those placed in community-based rehabilitation and probation programs.¹⁸ Incarcerated youth are also less likely to graduate from high school and face diminished job opportunities, limiting their future earning potential and further increasing their likelihood of recidivism.¹⁹ States should design juvenile justice systems around the goals of diversion and rehabilitation — with the ultimate aim of closing youth prisons, as has been called for by dozens of current and former correctional leaders of youth justice agencies.²⁰

RECOMMENDATION 3: PROVIDE COUNSELING, MEDICAL CARE, AND APPROPRIATE PROGRAMMING TO INCARCERATED YOUTH

Psychological research demonstrates how important it is for states to reduce juvenile incarceration, which can severely exacerbate youth's existing mental health problems.²¹ However, when incarceration is necessary for public safety, correctional facilities must create and maintain conditions that protect youth. Youth incarcerated in adult facilities face disproportionate rates of chronic physical and mental health conditions, mortality, suicide, and violence, as well as physical,

sexual, and psychological abuse.²² Even worse, young people placed in solitary confinement — still common in certain states — face severe, sometimes irreversible, psychological damage.²³ And juveniles in adult facilities typically do not have access to the same rehabilitative services as should be available in juvenile systems. To achieve full rehabilitation, it is critical that young people receive educational, mental health, and substance abuse resources tailored to their needs. Youth should only be housed in adult facilities or in solitary confinement as a last resort.

RECOMMENDATION 4: STOP CHARGING YOUTH CRIMINAL JUSTICE FEES AND FINES

Justice-involved youth, many of whom are from low-income households, often bear significant monetary burdens associated with the court system. This includes fees and fines imposed as a result of court proceedings, probation, and rehabilitation programs.²⁴ In at least 26 states, when juveniles fail to pay these costs, they can be incarcerated, even if they pose no threat to public safety.²⁵ Consequently, young people are pushed into inescapable debt, and often pushed further into the justice system for inability to pay.²⁶ As a general rule, children are financially dependent and unable to pay criminal justice fees and fines. They should not be saddled with criminal justice debt or incarceration because their parents cannot afford to pay it. These unfair policies risk wasting scarce law enforcement resources, and also have long-lasting effects — they trap children in poverty and increase their risk of recidivism.²⁷ As New Jersey did in 2020, states should eliminate the practice of imposing juvenile justice fees and fines on youth.²⁸

Juvenile justice policies must reflect the reality that children have unique needs. State, local, and tribal juvenile justice systems should rely less on incarceration and more on providing developmentally appropriate responses in order to advance both juvenile rehabilitation and community public safety goals.

¹⁵ See Gruber and Yurgelun-Todd, *supra* note 6, 321, 330 (“[Adolescents] may make poor decisions because they are cognitively less able to select behavioral strategies associated with self-regulation.”); see also Brennan Center for Justice, *supra* note 6 (neurological development continues until around the age of 25).

¹⁶ Lee A. Underwood and Aryssa Washington, “Mental Illness and Juvenile Offenders,” *Int’l J. of Env. Res. & Pub. Health* 13 (2016): 2–3.

¹⁷ Richard A. Mendel, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, The Annie E. Casey Foundation, 2011, 9–15.

¹⁸ Edward Mulvey, *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, U.S. Department of Justice.

¹⁹ Anna Aizer and Joseph Doyle, *What is the Long-Term Impact of Incarcerating Juveniles*, Vox CEPR Policy Portal, July 16, 2013; Richard B. Freeman, *Crime and the Employment of Disadvantaged Youths*, National Bureau of Economic Res. 3875, 1991.

²⁰ “Statement on Ending Youth Prisons,” Youth Correctional Leaders for Justice. To aid in the development of better programs for youth, states may apply for grants through the federal Juvenile Justice Delinquency Prevention Act, 34 U.S.C.A. § 11102 (2018).

²¹ Linda A. Teplin et al., “Prevalence, Comorbidity, and Continuity of Psychiatric Disorders in a 15-Year Longitudinal Study of Youths Involved in the Juvenile Justice System.” *JAMA Pediatrics*, 2021.

²² Celia Harris et al., *Juvenile Injustice: Charging Youth as Adults is Ineffective, Biased, and Harmful*, Human Impact Partners, 2017.

²³ Andrew B. Clark, “Juvenile Solitary Confinement as a Form of Child Abuse,” *J. Am. Acad. Psychiatry* 45 (2017): 350–357.

²⁴ Jessica Feierman, *Debtors’ Prison for Kids?*, Juvenile Law Center, 2016, 9.

²⁵ Feierman, *supra* note 24, at 10, 23.

²⁶ Feierman, *supra* note 24, at 3.

²⁷ Feierman, *supra* note 24, at 4; see Eli Hager, “Punishing Kids With Years of Debt,” *The Marshall Project*, June 11, 2019; Alex R. Piquero & Wesley G. Jennings, “Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders,” *Youth Violence & Juv. Just.* 15 (2017): 325–340.

²⁸ See S. 48, 218 Leg. (N.J. 2020).