

# Expanding Youth Justice In New York



STAND TOGETHER  
FOR YOUTH JUSTICE!

Art: Sid

Report by Youth Represent and  
Children's Defense Fund-New York

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# Introduction

The death of George Floyd at the hands of police in Minneapolis in May 2020 brought thousands of people to the streets across the U.S., calling for an end to racist policing and a divestment from carceral systems. In New York, young people are leading movements demanding criminal justice reform and community investment that de-centers policing from community safety. This is no coincidence. Every year, tens of thousands of youth under 25 are arrested in New York, and the large majority are Black and Latinx. Following on the heels of unprecedented police reform enacted in response to this movement, New York needs a deeper examination of our youth justice system and consideration of bold policies that will promote genuine safety, racial justice, and opportunities for youth.

The process and outcomes for each young person arrested in New York vary widely depending on their age at the time of arrest, the nature of the charge, and even where the arrest takes place. New York's youth justice system is, as in many states, a hybrid of family law and criminal law. In the juvenile system, youth have opportunities for adjustment and diversion, and greater access to rehabilitative programs. Cases are confidential and don't lead to a public criminal record. When youth are detained pre-trial or sentenced to confinement in the family court system, they are held in juvenile settings with greater access to education and stricter limits on the use of isolation than in adult institutions. In the adult system, older teenagers and emerging adults face the risk of criminal records, their cases usually proceed without confidentiality protections, there are minimal programmatic and educational opportunities, and if detained or sentenced to incarceration, college-aged youth 18 to 25 are housed in adult jails and prisons, where they are at risk of physical and sexual violence and the deterioration of their mental health.

While the focus of this paper is on research and policy interventions for emerging adults age 18 to 25, there are still issues facing younger system-involved children in New York that must be addressed. With Raise the Age fully in effect as of October 2019, 16- and 17-year-olds are no longer automatically charged as adults and no longer detained in adult jails and prisons. However, some 16- and 17-year-olds will continue to have their cases heard in adult criminal court Youth Parts, as mandated by Raise the Age legislation, where adult sentencing applies. Meanwhile, children as young as 13 are prosecuted in the adult court system for certain offenses under our Juvenile Offender law, and children as young as 7 can be prosecuted as juvenile delinquents. Our youth justice system on one end prosecutes second-graders who should not be in any courtroom, and on the other, denies any age-based protections to young people after their nineteenth birthday.

**Recent Raise the Age reforms were an essential step toward making young people and communities safer, but there is much more work to do.** Our youth justice system fails to address the needs of the tens of thousands of emerging adults age 18 to 25 who are arrested and charged each year. These young people make up only 10% of the state's population but represent a quarter of arrests statewide.<sup>1</sup> About one third of these arrests are for felonies, where young people face the risk of long sentences in adult prisons and permanent criminal records.<sup>2</sup> And there is stark racial disparity among the emerging adults who enter the system and the outcomes they face. In 2018, only 16% of youth 15 to 24 in New York were Black,<sup>3</sup> but Black youth accounted for 42% of those arrested and 55% of those sentenced to prison in New York State.<sup>4</sup>

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**1** Division of Criminal Justice Services (DCJS) data, on file with authors; *Estimated Population by Age, Sex, and Region*, NYS-2010, New York State Department of Health, Table 1 (Nov. 2011): [https://www.health.ny.gov/statistics/vital\\_statistics/2010/table01.htm](https://www.health.ny.gov/statistics/vital_statistics/2010/table01.htm)

**2** Division of Criminal Justice Services (DCJS), Arrest data for 2018, 18-20 and 21-24 age groups: <https://www.criminaljustice.ny.gov/crimnet/ojsa/adult-arrest-demographics/2018/NYS.pdf>

**3** Citizens' Committee for Children of New York's analysis of American Community Survey, Public Use Microdata Sample file (2018 1-year estimate).

**4** DCJS data on file with authors.

In middle class and wealthy communities, especially when they are also white, emerging adulthood is a time when experimentation is encouraged and growing independence is combined with continued support, as young people pursue higher education and explore career options. Large scale surveys have found that compared to previous generations, young people today stay in school longer, rely more on their parents for financial support, and wait longer to marry and have children.<sup>5</sup>

Across disciplines, public policy has shifted to respond to research and changing norms on emerging adulthood and lengthening adolescence. Nationally, alcohol and marijuana consumption (in the states where marijuana is legal) is prohibited prior to age 21. One of the most popular provisions of the Affordable Care Act, allowing youth to stay on their parents' health insurance plans up to age 26 (and in New York, in some cases, up to age 29),<sup>6</sup> has been utilized by millions of families since 2010.<sup>7</sup>

In New York State, child welfare policies have expanded protections for youth older than 18, permitting adolescents to remain in foster care up to age 21, and to obtain support for education up to 23.<sup>8</sup> New York has also raised the age to legally purchase cigarettes from 18 to 21, recognizing the unique developmental needs of emerging adults.<sup>9</sup> Young people now have the opportunity to earn a high school diploma up to age 21.<sup>10</sup> And in 2017, New York enacted legislation expanding service options for runaway and homeless youth by raising the maximum permissible age to 24.<sup>11</sup>

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<sup>5</sup> Laurence Steinberg, *Age of Opportunity*, p. 59 (1st ed. 2015).

<sup>6</sup> *Coverage Expansion Through Age 29*, New York State Department of Health: [https://www.dfs.ny.gov/consumers/health\\_insurance/faqs\\_age29\\_young\\_adult\\_option](https://www.dfs.ny.gov/consumers/health_insurance/faqs_age29_young_adult_option)

<sup>7</sup> Namrata Uberoi et al., *Health Insurance Coverage and the Affordable Care Act, 2010-2016*, Office of the Assistant Secretary for Planning & Evaluation, p. 5 (March 3, 2016): <https://aspe.hhs.gov/system/files/pdf/187551/ACA2010-2016.pdf>

<sup>8</sup> *Education and Training Voucher Application and Eligibility Requirements*, Informational Letter, Transmittal 19-OCFS-INF-05, New York State Office of Children & Family Services, p. 3 (July 1, 2019): [https://ocfs.ny.gov/main/policies/external/ocfs\\_2019/INF/19-OCFS-INF-05.pdf](https://ocfs.ny.gov/main/policies/external/ocfs_2019/INF/19-OCFS-INF-05.pdf)

<sup>9</sup> N.Y. Senate Bill S2833 (2019): <https://www.nysenate.gov/legislation/bills/2019/s2833>

<sup>10</sup> *Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, By State*, National Center for Education Statistics, Table 5.1 (2017): [https://nces.ed.gov/programs/statereform/tab5\\_1.asp](https://nces.ed.gov/programs/statereform/tab5_1.asp)

<sup>11</sup> Nina Aledort, Ph.D. et al., *Enacted 2017 Runaway and Homeless Youth Legislation*, Office of Children & Family Services, Slide 5 (June 14, 2017): <https://ocfs.ny.gov/main/youth/assets/2017-Enacted-RHY-Legislation-Slides.pdf>



**These changes in policy and practice are consistent with the growing consensus in neurobiology, developmental psychology and sociology that age 18 is not the end of youth development, but rather a transitional point where young people continue to learn and grow into their mid-twenties.**<sup>12</sup> Consistent with this consensus is substantial evidence that most youth mature and age out of crime if given the opportunity to do so. But in New York, a 19-year-old who is arrested is not only automatically tried as an adult, but also faces the full force of the criminal justice system, including adult sentencing, potential incarceration, and a lifelong permanent record.

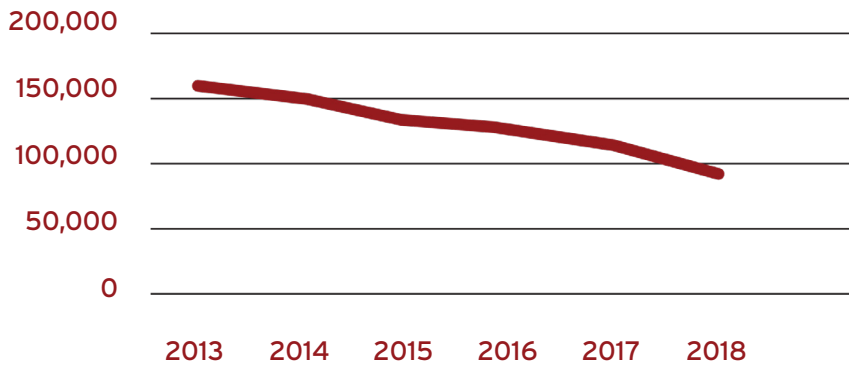
New York has the opportunity to reject this inconsistent and counter-productive approach, and to lead the way by embracing a comprehensive, cutting-edge agenda for youth justice grounded in principles of adolescent development and guided by lessons and best practices from around the country. Importantly, these models have the potential to reduce the legal system's impact on Black and Latinx youth, who are over-policed and disproportionately represented in our courts, jails, detention centers and prisons.

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<sup>12</sup> BJ Casey et al. , *How Should Justice Policy Treat Young Offenders?: A Knowledge Brief of the MacArthur Foundation Research Network on Law and Neuroscience*, p. 3 (Feb. 1, 2017): [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2746&context=faculty\\_scholarship](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2746&context=faculty_scholarship)  
*The Promise of Adolescence: Realizing Opportunity for All Youth*, National Academies of Sciences, Engineering, and Medicine (2019): <https://www.nap.edu/resource/25388/Adolescent%20Development.pdf>

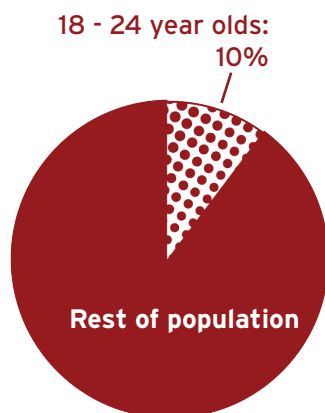
# A Snapshot of New York's Youth Justice System

Arrests of 18 - 24 Year Olds in NY

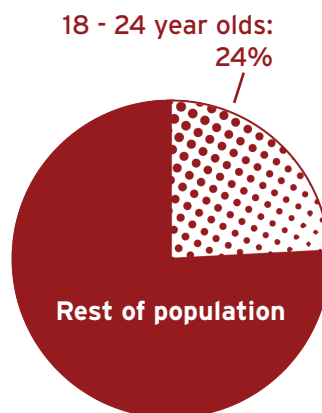


**Arrests of emerging adults are declining, but at a slower rate than arrests of younger adolescents.**

Arrests of youth 18 to 24 declined by 41% between 2013 and 2018, but still represented over 94,000 arrests in 2018, the year that Raise the Age went into effect.<sup>13</sup> By contrast, arrests of 16- and 17-year-olds declined by 53% during the same period, from 33,000 arrests in 2013 to 15,422 arrests in 2018.<sup>14</sup>



18 - 24 Year Olds  
As Share of NY State Population



18 - 24 Year Old Arrests  
As Share of All Adult Arrests

**Young adults are over-represented in New York's criminal justice system.**

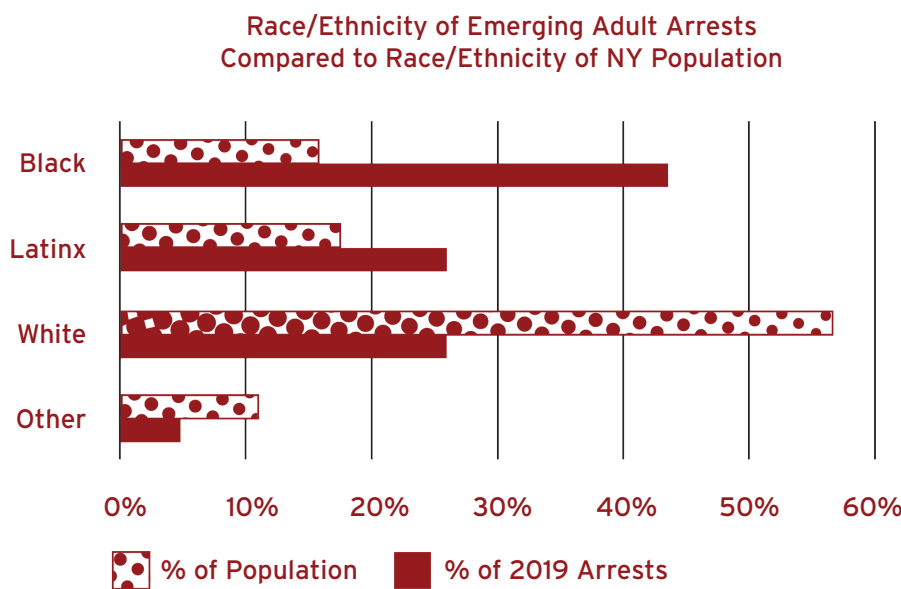
<sup>13</sup> DCJS data on file with authors.

<sup>14</sup> Division of Criminal Justice Services (DCJS), Youth arrest data (under 18): <https://www.criminaljustice.ny.gov/crimnet/ojsa/youtharrests.pdf>



Youth ages 18 to 24 comprised only 10% of New York’s population in the last census but represented 24% of arrests statewide in 2018.<sup>15</sup> **Fewer than half of those arrests led to a criminal conviction.**<sup>16</sup> This over-representation is driven by policing. In New York City during 2019, 27% of recorded police stops were of youth age 18 to 24.<sup>17</sup>

Only 16% of New Yorkers age 15 to 24 are Black, but 43% of young adults arrested in New York in 2019 were Black. Latinx youth represented 26% of those arrested but only 22% of the youth population in New York.<sup>18</sup> Again, these numbers are driven by policing: of stops recorded by the NYPD in 2019, 59% were of Black New Yorkers and 29% were of Latinx New Yorkers.<sup>19</sup>



**Alarming racial disparity continues to permeate every aspect of the youth justice system.**

The disparity is even more striking in sentencing. Over half of emerging adults 18 to 24 who were sentenced to prison in 2018 were Black. Although 51% of teenagers and

<sup>15</sup> *Estimated Population by Age, Sex, and Region, NYS-2010*, New York State Department of Health, Table 1 (Nov. 2011): [https://www.health.ny.gov/statistics/vital\\_statistics/2010/table01.htm](https://www.health.ny.gov/statistics/vital_statistics/2010/table01.htm); DCJS data on file with authors.

<sup>16</sup> *Id.*

<sup>17</sup> New York City Police Department, Stop, Question, Frisk Data (2019): <https://www1.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page>

<sup>18</sup> Citizens’ Committee for Children of New York’s analysis of American Community Survey, Public Use Microdata Sample file (2018 1-year estimate); DCJS data on file with authors.

<sup>19</sup> New York City Police Department, Stop, Question, Frisk Data (2019): <https://www1.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page>

young adults in New York are white/non-Latinx, they represented less than 20% of those sentenced to prison in 2018.<sup>20</sup>



Arrests of Emerging Adults  
New York City vs. Rest of State

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**Emerging adult  
justice is not  
an upstate or  
downstate issue.**

New York City accounts for slightly less than half of New York State's population (44%) and slightly less than half of emerging adult arrests (48%); more than half of arrests of emerging adults were outside New York City in 2019.<sup>21</sup>

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<sup>20</sup> Citizens' Committee for Children of New York's analysis of American Community Survey, Public Use Microdata Sample file (2018 1-year estimate); DCJS data on file with authors.

<sup>21</sup> DCJS data on file with authors.

**Youth justice in New York requires a new framework—one that recognizes that emerging adults are a distinct population with unique needs and opportunities.** New York must better appreciate and respond to this critical developmental period between the ages of 18 and 25. And, in light of the growing consensus on youth development, we must also re-examine our current approach to charging youth younger than 18 as adults and prosecuting young children under the age of 12 in family court. The solution is to work at both ends of the youth justice system by raising the minimum age of delinquency prosecution while also expanding protections for older youth to promote reentry and opportunity for adolescents and young adults.

The goals for any youth justice system should be to keep young people and communities safe by reducing recidivism, avoiding reliance on incarceration and denial of liberty, increasing pathways to diversion and high quality community-based services, addressing racial disparities, employing approaches that are responsive to gender identity, and meeting the needs of justice-involved youth, many of whom live with histories of trauma, mental illness, and poverty. This paper sets forth the basis for a new approach to youth justice in New York that targets these goals and examines recent reforms in other states. No one state has adopted all of these reforms. By embracing the recommendations set forth here, New York has the opportunity to become a true national leader in youth justice.

## Emerging Adulthood and Youth Justice

Almost 20 years ago, psychologist Jeffrey Arnett first used the term “emerging adulthood” to describe the period from age 18 to 25. During this time young people explore adult roles, including those related to work, education, and relationships, as part of their transition to independence.<sup>22</sup> Emerging adulthood stems from social and cultural changes, including the delay of marriage and parenthood until the late twenties and beyond.

More recent neuroscience research shows that the period of age 18 to 25 is distinct not only due to social conditions, but biologically. During emerging adulthood, the prefrontal cortex of the brain, which regulates emotions, critical thinking, planning, and impulse control, is still developing. Emerging adults, like younger adolescents, are impulsive and often do not foresee the consequences of their choices.<sup>23</sup> Brain development during this period means that individuals at this stage of life have significant capacity to make positive changes, but are also especially vulnerable to trauma.<sup>24</sup> The recent scientific findings about emerging adulthood conform with well-known empirical information about youth, crime, and other reckless behavior that has been consistent for decades. Criminal justice experts have adopted the term “age crime curve,” which illustrates that unlawful behavior peaks in the late teens and early twenties, dropping significantly by the mid-twenties. <sup>25, 26, 27</sup>

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<sup>22</sup> Jeffrey Jensen Arnett, *Emerging Adulthood: A Theory of Development From the Late Teens Through the Twenties*, 55 *American Psychologist* 469, p. 473-474 (May 2000):

[http://www.jeffreyarnett.com/articles/ARNETT\\_Emerging\\_Adulthood\\_theory.pdf](http://www.jeffreyarnett.com/articles/ARNETT_Emerging_Adulthood_theory.pdf)

<sup>23</sup> *The Road to Adulthood: Aligning Child Welfare Practice With Adolescent Brain Development*, The Annie E. Casey Foundation, p. 10-11 (2017): <https://www.aecf.org/m/resourcedoc/aecf-theroadtoadulthood-2017.pdf>

<sup>24</sup> *Id.* at 8.

<sup>25</sup> The age-crime curve is one of the most accepted concepts in the study of criminal behavior; See Darrell J. Steffensmeier et al., *Age and the Distribution of Crime*, 94 *The American Journal of Sociology* 803 (Jan. 1989): [https://www.researchgate.net/profile/Darrell\\_Steffensmeier/publication/245232855\\_Age\\_and\\_the\\_Distribution\\_of\\_Crime/links/5cdd68eb92851c4eaba4e311/Age-and-the-Distribution-of-Crime.pdf?origin=publication\\_detail](https://www.researchgate.net/profile/Darrell_Steffensmeier/publication/245232855_Age_and_the_Distribution_of_Crime/links/5cdd68eb92851c4eaba4e311/Age-and-the-Distribution-of-Crime.pdf?origin=publication_detail)

<sup>26</sup> See Howard N. Snyder, Ph.D., *Arrest in the United States, 1990-2010*, US Department of Justice (Oct. 2012): <https://www.bjs.gov/content/pub/pdf/aus9010.pdf>

<sup>27</sup> Terrie E. Moffitt, *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 *Psychological Review* 674, p. 675 (1993): [http://users.soc.umn.edu/~uggen/Moffitt\\_PR\\_93.pdf](http://users.soc.umn.edu/~uggen/Moffitt_PR_93.pdf)

A focus on emerging adulthood is especially necessary when considering a meaningful approach to public safety and justice.<sup>28</sup> Looking nationally, while young people age 18 to 25 make up only 10% of the U.S. population, they comprise 23% of all arrests.<sup>29</sup> A study of recidivism rates in 30 states, including New York, showed that 76% of those under age 24 released in 2005 were rearrested within 3 years, a number significantly higher than rates of those released at older ages.<sup>30</sup> Emerging adults in the criminal justice system are also disproportionately Black and Latinx. Research shows that emerging adults experience the largest racial disparity of any incarcerated age group in the U.S. For example, incarceration rates in 2013 among young Black men aged 18 and 19 were 7 times higher than they were for young white men in the same age group.<sup>31</sup> In addition, in 2012, Black male youth aged 20 to 24 were 6.5 times more likely than white male youth to be incarcerated.<sup>32</sup> Because this disproportionality is so stark among emerging adults, reforms targeting this population are especially urgent.<sup>33</sup>

Moreover, reducing the overall involvement of adolescents and young adults in the criminal justice system—from arrest to incarceration—and reinvesting in communities would bolster the health of young people and families by providing educational, vocational, counseling, healthcare, and other supports. **The safest communities are those with the most resources, not the most police and incarceration.** Avoiding the stigma of lifelong criminal records and the associated barriers to employment, education, and housing would also expand opportunities and improve community reentry when a young person is arrested. Spending less on arresting and incarcerating youth would free up millions of dollars that could be reinvested in communities to fund programs that support young people and prevent justice involvement.

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<sup>28</sup> *Improving Approaches to Serving Young Adults in the Justice System*, Justice Policy Institute, p. 4-5 (Dec. 2016): [http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi\\_young\\_adults\\_final.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_young_adults_final.pdf)

<sup>29</sup> *2017 Crime in the United States, Table 38: Arrests*, FBI Uniform Crime Report (2017): <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-38>

<sup>30</sup> Matthew R. Durose et al., *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005-2010*, U.S. Department of Justice, p. 12 (April 2014): <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>

<sup>31</sup> Jon C. Rogowski Cathy J. Cohen, *Black Millennials in America*, Black Youth Project, Center for the Study of Race, Politics, and Culture at the University of Chicago, p. 5 (2015): <http://blackyouthproject.com/wp-content/uploads/2015/11/BYP-millennials-report-10-27-15-FINAL.pdf>

<sup>32</sup> E. Ann Carson & Daniela Golinelli, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012*, U.S. Department of Justice, p. 25 (Sep. 2, 2014): <https://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>

<sup>33</sup> See, e.g., Selen Siringil Perker & Lael Chester, *Emerging Adults: A Distinct Population That Calls For an Age-Appropriate Approach By the Justice System*, Malcolm Wiener Center for Social Policy, p. 3-4 (June 2017): [https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/MA\\_Emerging\\_Adult\\_Justice\\_Issue\\_Brief\\_0.pdf](https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/MA_Emerging_Adult_Justice_Issue_Brief_0.pdf)

## Reforms From Around the Country: Examples of Expanding Youth Justice

States and local jurisdictions across the U.S. have begun to explore reforms that embrace more age-appropriate responses to justice-involved youth, based on the principles of youth development and the growing consensus about the unique period of emerging adulthood.

### Ending the Arrest and Prosecution of Elementary School Age Children as Delinquents

Research shows that contact with the juvenile justice system can have lasting negative impacts on young children, and does not reduce future crime or promote public safety.<sup>34</sup> Children's contact with the juvenile justice system increases the chances that they will someday return to the system by more than 50%.<sup>35</sup> Coupled with concerns over their ability to meaningfully participate in the judicial process,<sup>36</sup> and the risks associated with detention and institutionalization, states have begun raising the lower age of delinquency jurisdiction to exclude young children under 12. Recently, California, Massachusetts and Utah passed laws requiring alternative, community-based responses for youth accused of committing offenses before they turn 12 and prohibiting their detention and prosecution

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**34** *Futures Denied: Why California Should Not Prosecute 14- and 15-year-olds as Adults*, Human Rights Watch and the W. Haywood Burns Institute, p.1 (2018):  
<https://www.burnsinstitute.org/wp-content/uploads/2018/08/Futures-Denied.pdf>

**35** *The Juvenile Justice And Delinquency Prevention Act: Preserving Potential, Protecting Communities*, Statement Of Robert L. Listenbee, Administrator of the Office of Juvenile Justice & Delinquency Prevention Office of Justice Programs, p. 4 (June 9, 2014):  
[https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/2016/02/22/06-09-14\\_ojp\\_ojdp\\_listenbee\\_testimony\\_re\\_the\\_juvenile\\_justice\\_and\\_delinquency\\_prevention\\_act\\_web\\_ready.pdf](https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/2016/02/22/06-09-14_ojp_ojdp_listenbee_testimony_re_the_juvenile_justice_and_delinquency_prevention_act_web_ready.pdf)  
(citing Howard N. Snyder & Melissa Sickmund, *Juvenile Offenders and Victims: 2006 National Report*, National Center for Juvenile Justice, p. 234 (March 2006): <http://www.ojjdp.gov/ojstatbb/nr2006/downloads/NR2006.pdf>).

**36** Thomas Grisso, *Juveniles' Consent in Delinquency Proceedings*. In: Melton G.B., Koocher G.P., Saks M.J. (eds) *Children's Competence to Consent*. Critical Issues in Social Justice (1983).



as delinquents.<sup>37</sup> Similar bills are being pushed by advocates in Connecticut and Kentucky. These reforms recognize that young children who come to the attention of law enforcement should be provided services within the context of their family and community without juvenile justice system involvement.

## Providing Pre-Arrest Community-Based Diversion for Youth

Several jurisdictions have created programs that divert people, including youth under 18 and emerging adults, from court involvement before arrest, allowing access to services—if needed—completely outside of the court and criminal justice context. A growing body of evidence shows that these kinds of programs can improve community safety while relieving the resource strain on justice system stakeholders, including police and the courts.<sup>38</sup>

In Washington, D.C., youth up through age 17 can avoid arrest for status offenses (primarily truancy) and low-level delinquency offenses through the Alternatives to the Court Experience or “ACE” program. With ACE, adolescents and their families work together to develop a 6-month diversion plan with a case manager, who makes referrals to local service providers.<sup>39</sup> Diversion through ACE can also occur post-arrest and pre-petition filing in court. In those cases, all charges are dropped after the young person completes the program. Based on recent data, 88% of diverted youth completed the program, 51% saw improved school attendance, and 81% had no further legal involvement.<sup>40</sup>

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<sup>37</sup> Mass. Acts Ch. 69, §§ 72-74, 77-79 (2018) (Increases the minimum age for a child to be found delinquent from 7 to 12): <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter69>;

Cal. SB 439 (amending Cal. WIC Ch. 2 §§ 601-602) (prevents California’s juvenile court system from assuming jurisdiction over minor children under the age of 12):

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB439](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB439)

<sup>38</sup> See, *Promising Practices in Prosecutor-Led Diversion, Fair & Just Prosecution* (2017):

<https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.Diversion.9.26.pdf>

<sup>39</sup> *Id.* at 11.

<sup>40</sup> *Id.* at 12.

In King County, Washington, the Law Enforcement Assisted Diversion (LEAD) program diverts individuals stopped for low-level drug offenses, prostitution, and crimes of poverty away from the criminal legal system and connects them directly with intensive case managers who provide crisis response and long-term services.<sup>41</sup> While the LEAD program is focused on adults with behavioral health issues, the harm reduction model of offering wrap-around services is well-suited to adolescents and emerging adults.

The Atlanta/Fulton County Pre-Arrest Diversion Initiative provides case management, linkages to services and participant advocacy to serve people who may be subject to arrest for offenses like shoplifting, trespass and panhandling.<sup>42</sup> Services and supports are intended to address the underlying needs of people coming into contact with police, including homelessness, substance use, and unmet mental health concerns.<sup>43</sup>

The Connecticut Youth Services Association operates a community-based diversion process for youth called the Juvenile Review Board (JRB) which can be used by police and schools in lieu of referral to Juvenile Court. The model, which has been used for decades in Connecticut, allows local communities to establish their own JRB processes, tailoring programs and services to meet community needs.<sup>44</sup> Services are coordinated through Youth Service Boards and include individual and group counseling, alternative and special education opportunities, and employment counseling and placement services.<sup>45</sup>

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<sup>41</sup> King County Department of Community and Human Services, *Law Enforcement Assisted Diversion (LEAD) Diversion and Reentry Services* (2020): <https://www.kingcounty.gov/depts/community-human-services/mental-health-substance-abuse/diversion-reentry-services/lead.aspx>

<sup>42</sup> *What We Do*, Atlanta/Fulton County Pre-Arrest Diversion Initiative (2020): <https://www.atlantapad.org/strategies>

<sup>43</sup> *Id.*

<sup>44</sup> *Diversion*, Connecticut Youth Services Association: <https://www.ctyouthservices.org/Diversion/>

<sup>45</sup> *Establishing a Juvenile Review Board*, Connecticut Youth Services Association: [https://www.ctyouthservices.org/Customer-Content/WWW/CMS/files/Establishing\\_a\\_JRB.pdf](https://www.ctyouthservices.org/Customer-Content/WWW/CMS/files/Establishing_a_JRB.pdf)

## Ending the Prosecution of Juveniles in Adult Criminal Court

States and policy experts are reconsidering laws that permit the prosecution of children under age 16 in adult criminal court.<sup>46</sup> So-called “transfer laws” and “statutory exclusions” (known in New York as the “Juvenile Offender” law) can mandate that children under the age of 18 (in New York, age 13) charged with certain offenses must have their cases tried in adult courts, or can permit Family Court judges or prosecutors to decide to prosecute children as adults.<sup>47</sup> These kinds of laws “have been shown to increase recidivism, particularly violent recidivism, among those convicted in adult courts.”<sup>48</sup> Children prosecuted as adults under these laws are disproportionately youth of color.<sup>49</sup> In light of this evidence, California recently ended the prosecution of all 14- and 15-year-olds in criminal court.<sup>50</sup> Children under the age of 16, regardless of offense, can now only be prosecuted in the juvenile system.

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<sup>46</sup> See generally, Jeree Thomas et al., *Raising the Floor: Increasing the Minimum Age of Prosecution of Youth as Adults*, Campaign For Youth Justice (2019):

[http://www.campaignforyouthjustice.org/images/Raising\\_the\\_Floor\\_Final.pdf](http://www.campaignforyouthjustice.org/images/Raising_the_Floor_Final.pdf)

Josh Rovner, *How Tough on Crime Became Tough on Kids: Prosecuting Teenage Drug Charges in Adult Courts*, The Sentencing Project (Dec. 7, 2016):

<http://www.sentencingproject.org/publications/tough-crime-became-tough-kids-prosecuting-teenage-drug-charges-adult-courts/>

<sup>47</sup> Rovner, *supra* at note 46.

<sup>48</sup> *Id.* at 3.

<sup>49</sup> *Id.* See also, Human Rights Watch, *supra* at note 33, p. 15-16.

<sup>50</sup> Cal. SB 1391 (2018): [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB1391](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1391); Bob Egelko, *Court upholds Calif. Law barring 14-15-year-olds from being tried as adults*, San Francisco Chronicle (June 26, 2019):

<https://www.sfchronicle.com/news/article/Court-upholds-Calif-law-barring-14-14053434.php>

## Expanding Family Court Jurisdiction to Keep Emerging Adults in the Juvenile System

Some states are exploring raising the upper age of juvenile court jurisdiction to include emerging adults, keeping them out of the adult criminal justice system.<sup>51</sup> By including youth up to age 21 in the juvenile system, young people benefit from these courts' ability to provide services and focus on problem-solving, while capitalizing on the developmental opportunity that this age group possesses to change behavior and learn from mistakes. Keeping adolescents and emerging adults out of the adult court system also avoids the significant civil consequences of permanent criminal convictions and records, and ensures they will not be incarcerated with adults or in adult facilities.

Vermont is implementing reforms that move most youth (except those charged with the most serious offenses, known as the "Big 12 offenses") accused of lawbreaking at age 18 and 19 into their Family Division.<sup>52</sup> Emerging adults in Vermont's delinquency system will receive all of the services and protections that have long been in place for younger adolescents.

In other states, expanding family court jurisdiction is gaining momentum. The Colorado legislature established a taskforce to explore expanding family court jurisdiction and juvenile justice services for youth ages 18 through 24.<sup>53</sup> Recent legislative proposals in California would add 18- and 19-year-olds; Connecticut has proposed expanding family

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**51** See, e.g. MA: Bill S.825: <https://malegislature.gov/Bills/191/S825>;  
CO: HB19-1149: <https://leg.colorado.gov/bills/hb19-1149>;  
CT: SB57: [https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=SB00057&which\\_year=2019](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB00057&which_year=2019); IL: HB1465, available at: <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1465&GAID=15&DocTypeID=HB&LegId=115872&SessionID=108&GA=101>;  
IL: HB1465: <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=1465&GAID=15&DocTypeID=HB&LegId=115872&SessionID=108&GA=101>

**52** See 33 V.S.A §§ 5280–5288: <https://legislature.vermont.gov/statutes/fullchapter/33/052A>;  
*Working with Adolescents and Justice-Involved Youth, Youthful Offender Status*, Vermont Department for Children & Families, Family Services Policy Manual, Policy # 164, p. 6-7 (Jan. 10, 2019) [hereinafter Vermont Policy Manual]; <https://dcf.vermont.gov/sites/dcf/files/FSD/Policies/164.pdf>

**53** CO HB19-1149, *supra* at note 51; *Age of Delinquency Study*, Colorado Commission on Criminal & Juvenile Justice: <https://leg.colorado.gov/bills/hb19-1149>

court jurisdiction up to age 20, and Massachusetts and Illinois aim to expand up to age 21.<sup>54</sup>

Expanding juvenile court jurisdiction has been accompanied by declines in youth crime. National data shows that as jurisdictional ages have increased over that last decade, arrests among adolescents have decreased.<sup>55</sup> This is also true in New York, where the juvenile justice system has been shrinking for nearly a decade.<sup>56</sup> In New York City, for example, arrests of 16-year-olds declined 41% overall the first year that Raise the Age was in effect. While misdemeanor and non-violent felony arrests declined the most steeply (by 57% and 26% respectively), violent felony arrests also declined by 9%.<sup>57</sup> Experiences from other jurisdictions show that juvenile justice systems have not been overwhelmed by the addition of older youth, and opportunities for cost-savings have been realized.<sup>58</sup>

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**54** CA: California SB 889: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB889](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB889); MA: Mass. S.825, *supra* at note 51; IL: Dana Vollmer, *Should Young Adults Be Sent to Juvenile Courts?*, Illinois Public Media News (March 12, 2019):

<https://will.illinois.edu/news/story/should-young-adults-be-sent-to-juvenile-courts>

See Selen Siringil Perker et al., *Emerging Adult Justice in Illinois: Towards an Age-Appropriate Approach*, Columbia Justice Lab (Jan. 2019):

<https://justicelab.columbia.edu/sites/default/files/content/EAJ%20in%20Illinois%20Report%20Final.pdf>;

CT: *Malloy pushes one more time to expand juvenile court jurisdiction*, Connecticut Mirror (March 20, 2018):

<https://ctmirror.org/2018/03/20/malloy-pushes-one-last-time-expand-juvenile-court-jurisdiction/>

**55** *Raise the Age: Shifting to a safer and more effective juvenile justice system*, Justice Policy Institute, p. 7-10 (2017):

<http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheage.fullreport.pdf>;

*OJJDP Data Supports the "Raise the Age Effect," Campaign for Youth Justice* (March 26, 2019):

<http://cfyj.org/2019/item/ojjdp-data-supports-the-raise-the-age-effect>

**56** *Raise the Age in New York City*, New York City Mayor's Office of Criminal Justice, p. 4 (2019):

[http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/11/Raise-the-Age-in-New-York-City\\_\\_\\_.pdf](http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/11/Raise-the-Age-in-New-York-City___.pdf)

**57** New York City Criminal Justice Agency, *The First Year of Raise the Age*, May 2020, at 2:

<https://www.nycja.org/publications/the-first-year-of-raise-the-age>

**58** Justice Policy Institute, *supra* at note 56.

## Alternative Sentencing and Record Sealing for Emerging Adults in Adult Court

Several jurisdictions, including New York, have “Youthful Offender” laws, which protect young people who are prosecuted in the adult criminal court system by providing alternative sentencing, limits on incarceration, and record sealing. Often described as “second-chance” laws, they are intended to relieve older teenagers and emerging adults of some of the life-long consequences of adult criminal convictions, while recognizing that jail and prison are detrimental to youth, families, and communities.

While New York’s law covers youth charged with committing an offense before their 19th birthday, Vermont recently expanded its Youthful Offender (YO) law to include emerging adults up to the 22nd birthday in order to align their youth justice system with “brain development research and best practices for serving youth.”<sup>59</sup> Under the Vermont Youthful Offender law, cases can be directly filed in the Family Division, or can be transferred (on motion) from the Criminal Division for YO consideration. If the case receives YO treatment, the young person participates in a risks/needs screening and youth determined to have a low or moderate risk level have their cases presumptively diverted. If the youth is adjudicated as a youthful offender, the Department for Children and Families and the Department of Corrections work together to design an appropriate plan of probation and treatment supervision (which could be provided by either or both agencies). A criminal conviction is deferred so if the youth successfully completes the requirements, a conviction is never entered and will never show up on background checks.<sup>60</sup>

In Washington, D.C. and Michigan, youth age 24 or younger prosecuted in adult criminal court are eligible for alternative sentencing that reduces the length of incarceration and can replace a prison sentence with community-based probation and supervision.<sup>61, 62</sup>

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<sup>59</sup> Vermont Policy Manual, *supra* at note 52.

<sup>60</sup> *Id.*

<sup>61</sup> See D.C. Code § 24-901(6) (2018): <https://code.dccouncil.us/dc/council/code/sections/24-901.html>  
The YRA applies to all crimes except murder, first degree murder that constitutes an act of terrorism, second degree murder that constitutes an act of terrorism, first degree sexual abuse, second degree sexual abuse, & first degree child sexual abuse.

<sup>62</sup> MI CCP § 762.11: <http://legislature.mi.gov/doc.aspx?mcl-762-11>



The District's Youth Rehabilitation Act (YRA) provides the criminal court flexibility in sentencing young adults and an opportunity for youth to have their sentence "set aside" (similar to expungement) if the young person satisfies the conditions of the sentence (see discussion below).<sup>63</sup> Unlike in New York, there are no statutory limits on the number of times that a youth can receive a "youthful offender" sentence under D.C. law, though the court may consider prior YRA sentencing in its decision.<sup>64</sup> The set-aside conviction is accessible only to law enforcement in limited circumstances outlined by the statute, and the young person does not have to disclose criminal history to potential employers.<sup>65</sup> In Michigan, courts can designate young adults up to age 24 charged with many offenses as "youthful trainees."<sup>66</sup> Imprisonment or probation cannot exceed 3 years, and upon successful completion, the court dismisses all charges and the records are sealed.<sup>67</sup> As in D.C., there is no limit on the number of times a young person can be granted youthful trainee status.<sup>68</sup>

By way of comparison, New York's youthful offender law, which only applies to youth whose alleged offense was committed before their 19th birthday, permits eligible youth to have their convictions set aside and replaced with a confidential "youthful offender" finding that will not show up on background checks. New York's YO law carries a maximum sentence of four years in adult prison and allows for non-incarceratory sentences. However, New York's law is limited both by its cutoff age of 19 and by its eligibility restrictions; a young person who has been granted YO status for a felony conviction can never access YO again, even for a misdemeanor.

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<sup>63</sup> D.C. Code § 24-906: <https://code.dccouncil.us/dc/council/code/sections/24-906.html>

<sup>64</sup> D.C. Code § 24-903(c)(2)(C): <https://code.dccouncil.us/dc/council/code/sections/24-903.html>

<sup>65</sup> DC Code § 24-906(f): <https://code.dccouncil.us/dc/council/code/sections/24-906.html>

<sup>66</sup> MI CCP § 762.11, *supra* at note 63.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

## Age-Appropriate Probation and Community-Based Programming in Adult Court

Youth justice research has increasingly focused on pathways to divert youth from juvenile and criminal court processes and keep more youth out of detention through court-ordered probation and programming.<sup>69</sup> But, as experts have found, there is a significant tension inherent to these approaches. As noted in a recent report by the Annie E. Casey Foundation, “[a]t its best, probation offers court-involved youth who would otherwise be confined the chance to remain in the community and participate in constructive and therapeutic activities. But probation can also become a gateway to unnecessary confinement for youth who frustrate authorities with noncompliant behavior but pose minimal risk to public safety.”<sup>70</sup>

Some jurisdictions, including New York City, NY; San Francisco, CA; Harris County, Houston, TX; Washington, D.C.; Portland, OR; and Merrimack Valley, MA, have developed specialized probation and case management for emerging adults to provide a more age-appropriate response to the needs of young people, and by incorporating “graduated sanctions” to respond to age-normative behavior and reduce violations that may lead to incarceration or deeper system-involvement.<sup>71, 72, 73</sup> A developmentally-appropriate approach to probation requires shifting the focus from compliance toward life skills and vocational training and helping emerging adults develop maturity while enhancing public safety.<sup>74</sup>

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<sup>69</sup> See generally, *If Not the Adult System, Then Where? Alternatives to Adult Incarceration for Youth Certified as Adults, Campaign for Youth Justice*: [http://cfyj.org/images/ALT\\_INCARCERATION\\_FINAL.pdf](http://cfyj.org/images/ALT_INCARCERATION_FINAL.pdf)

<sup>70</sup> *Transforming Juvenile Probation: A Vision for Getting it Right*, The Annie E. Casey Foundation (May 7, 2018): <https://www.aecf.org/resources/transforming-juvenile-probation/>

<sup>71</sup> D.C. Code § 24-902: <https://code.dccouncil.us/dc/council/code/sections/24-902.html>

<sup>72</sup> Vermont Policy Manual, *supra* at note 52, at p. 2-3 & 14-17.

<sup>73</sup> Yotam Zeira & Molly Baldwin, *Pioneers in Young Adult Justice: 10 Initiatives and Programs Improving Criminal Justice for Young Adults*, Roca Inc., p. 4 (Feb. 2016) [hereinafter *Pioneers in YA Justice*]  
<https://rocainc.org/wp-content/uploads/2017/01/Pioneers-in-Young-Adult-Justice-Roca.pdf>

<sup>74</sup> Joshua Cuddy, et al., *Young Adults and Community Supervision: The Need for a Developmentally Appropriate Approach to Probation*, Texas Criminal Justice Coalition, One Size Fails All Report Series, p. 11 (2018): <https://www.texascjc.org/system/files/publications/Young%20Adults%20and%20Community%20Supervision%20Report.pdf>

## Post-Adjudication Facilities: Keeping Youth Out of Prisons, Creating Age-Appropriate Settings in Adult Facilities

A goal of any youth justice reform must be to reduce the number of young people in the juvenile and adult criminal justice system who are placed or sentenced to terms of incarceration. For those who are institutionalized or incarcerated, facilities must be safe and must provide programming, services, education and training that is developmentally-appropriate. There must also be active planning for young people's return to the community from the moment they enter. Some states have recently reformed their approach to youth incarceration to delay the transfer of youth to adult settings.

Some states permit youth adjudicated in adult criminal court to serve incarceratory sentences in juvenile facilities - instead of adult prisons - up to age 25. California recently passed a law permitting youth convicted at age 19 or younger in adult court to spend their entire term of incarceration in the state's juvenile justice facilities if they can complete their sentences before their 25th birthday.<sup>75</sup> In Oregon, a recent reform permits youth who committed offenses before they turned 18, and were sentenced in adult criminal court before turning 20, to serve their sentence in Oregon Youth Authority facilities if they will complete their sentence before the age of 25.<sup>76</sup> In Washington State, minors convicted in adult court can remain in the state juvenile corrections system until they turn 25, rather than being transferred to a prison when they turn 21.<sup>77</sup> These reforms were recently made retroactive with follow-up legislation requiring the Washington State Department of Corrections (DOC) to review cases for individuals under age 25 who were incarcerated in state prison serving a sentence for an offense committed as a juvenile. Qualifying youth were given the option to transfer from DOC facilities to a residential juvenile facility to serve their sentence until age 25.<sup>78</sup>

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**75** *The 2018-19 Budget: Governor's Criminal Justice Proposals*, Legislative Analyst's Office, at 35:

<https://lao.ca.gov/reports/2018/3762/2018-19-crim-justice-proposals-022818.pdf>;

CA Penal Code § 1731.5(c)(3):

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1731.5.&lawCode=WIC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1731.5.&lawCode=WIC)

**76** ORS 137.124(7)(e): [https://www.oregonlegislature.gov/bills\\_laws/ors/ors137.html](https://www.oregonlegislature.gov/bills_laws/ors/ors137.html)

**77** Washington State Engrossed Second Substitute Senate Bill 6160:

<http://lawfilesexet.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6160-S2.SL.pdf#page=1>

**78** *Washington State's Juvenile Justice System: Evolution of Policies, Populations, and Practice Research*, Washington State Institute for Public Policy, p. 9 (2020):

[https://www.wsipp.wa.gov/ReportFile/1719/Wsipp\\_Washington-State-s-Juvenile-Justice-System-Evolution-of-Policies-Populations-and-Practical-Research\\_Report.pdf](https://www.wsipp.wa.gov/ReportFile/1719/Wsipp_Washington-State-s-Juvenile-Justice-System-Evolution-of-Policies-Populations-and-Practical-Research_Report.pdf)

In Massachusetts, “Youthful Offenders” (youth 14 to 17 accused of serious offenses, who had a previous commitment as a juvenile, or are charged with causing or threatening serious bodily harm, or charged with a weapons offense) whether charged as an adult or a juvenile, can receive a commitment to the Department of Youth Services (DYS) until age 21, a combination DYS commitment and adult sentence, or an adult sentence.<sup>79</sup> If sentenced to a DYS commitment, they are placed in the custody of the juvenile justice system and receive treatment and programming. They are also supervised by a caseworker who monitors their progress and makes recommendations for future programming.<sup>80</sup> Youth may spend a portion of their commitment in a secure facility and then progress through programs that enable them to return to the community.<sup>81</sup>

By avoiding or delaying transfer from juvenile facilities to adult prisons at 18, young people are protected from the risks of physical and sexual violence that they face in adult prisons, and benefit from age-appropriate services, programming and re-entry supports that are typically more robust in juvenile justice systems. For example, starting this year, 16- and 17-year-olds sentenced in the Youth Part of adult criminal court in New York under Raise the Age will serve incarceratory sentences in secure Office of Children and Family Services facilities, rather than adult prisons.

While juvenile facilities are the preferable setting for emerging adults sentenced to incarceration, some jurisdictions have tried to create specialized settings within adult correctional facilities, which are intended to wrap young people with robust programs and services that meet their unique needs. Maine, Connecticut, Texas, Colorado, Mississippi, Massachusetts and Washington, D.C. have created facilities or units dedicated to emerging adults.<sup>82</sup> To be effective, these settings must go beyond staff training to focus on therapeutic approaches to young people’s needs, with a strong focus on education,

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**79** Juvenile Justice Legal Issues, Massachusetts Department of Youth Services:  
<https://www.mass.gov/service-details/juvenile-justice-legal-issues>

**80** Juvenile Crime Victim Services, Massachusetts Department of Youth Services:  
<https://www.mass.gov/service-details/juvenile-crime-victim-services>

**81** *Id.*

**82** See Joel Caston & Michael Woody, *A DC Jail Unit Challenges the ‘Warehouse’ Approach to Corrections* (June 11, 2019):  
<https://thecrimereport.org/2019/06/11/a-dc-jail-unit-challenges-the-warehouse-approach-to-corrections>  
Zeira & Molly Baldwin, *supra* at note 73.

employment and post-release supports.<sup>83</sup> Connecticut, Massachusetts and Washington, D.C. have developed programs for emerging adults within adult facilities, where they live in separate units, and receive targeted programming and mentorship.<sup>84</sup> Staff working in these facilities receive specialized training on youth development and the settings promote family engagement, peer support and individualized youth education and career readiness.

## Sentencing Review and Early Parole for Youthful Offenders

As a result of U.S. Supreme Court decisions over the last 15 years that rely on the science underpinning emerging adulthood and youth development, states are increasingly examining their approaches to juveniles and emerging adults sentenced in adult courts to long periods of incarceration.<sup>85</sup> The Supreme Court's decisions banning the use of capital punishment and mandatory life without parole for juveniles reflects a shift in our collective national perspective about people sentenced to prison in their youth. As one expert wrote, "sentences that close the door on rehabilitation and second chances are cruel and misguided."<sup>86</sup>

Courts and legislatures have recognized the need to permit people convicted as youth to be eligible for early sentencing review or parole. California first created "youth offender parole" through legislation in 2013, allowing people imprisoned for offenses committed before they turned 18 to be considered for release based on demonstrated growth since the time of their conviction. In 2017, California expanded eligibility for youth offender parole to people who were under age 26 at the time of their offense and to people

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<sup>83</sup> *Id.*

<sup>84</sup> *Restoring Promise: An Initiative to Disrupt the American Prison System*, Vera Institute of Justice: <https://www.vera.org/spotlights/restoring-promise>

<sup>85</sup> See, e.g., *Youth Offender Hearings*, California Department of Corrections & Rehabilitation: <https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/>

<sup>86</sup> Josh Rovner, *Policy Brief: Juvenile Life Without Parole*, The Sentencing Project, at p. 4 (July 23, 2019): <https://www.sentencingproject.org/publications/juvenile-life-without-parole/>

sentenced to life without the possibility of parole when they were under 18, as early as the 15th year of their incarceration.<sup>87</sup>

In 2019, Illinois passed legislation that provides early eligibility for parole review for those who were under 21 at the time of the offense and includes guidelines for decision-making that are consistent with emerging adult principles, making them a national leader.<sup>88</sup> Many will be eligible for parole review after serving 10 years of their sentence.<sup>89</sup> Requiring an opportunity for release at 10 years is consistent with the recommendations of the American Law Institute's sentencing guidelines for adolescents and young adults up to age 21.<sup>90</sup> Under Illinois law, the parole inquiry should consider the "diminished culpability of youthful offenders, the hallmark features of youth, and any subsequent growth and maturity of the youthful offender during incarceration."<sup>91</sup>

Other jurisdictions are moving in the same direction. In 2016, Washington, D.C. passed the Incarceration Reduction Amendment Act which, along with subsequent amendments, provides an opportunity for resentencing to people tried as adults when they were under 18 after they have served 15 years in prison. Currently introduced legislation would expand sentencing review eligibility to young people who committed an eligible offense before they turned 25.<sup>92</sup>

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<sup>87</sup> CA Penal Code § 3051:  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=3051](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=3051)

<sup>88</sup> 730 ILCS § 5-4.5-115: <http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=073000050K5-4.5-115>

<sup>89</sup> *Id.* at 730 ILCS § 5-4.5-115(b).

<sup>90</sup> MPC: Sentencing § 6.14, Sentencing of Offenders Under the Age of 18, American Law Institute (2017).

<sup>91</sup> 730 ILCS § 5-4.5-110(j)(3), *supra* note 88.

<sup>92</sup> D.C. B127:  
<https://trackbill.com/bill/district-of-columbia-bill-127-second-look-amendment-act-of-2019/1724667/>



# Opportunities

To Expand Youth Justice  
In New York



Art: Cornelius

Just a few years ago New York lagged behind in critical areas of criminal justice policy, being one of the last two states in the country to automatically prosecute all 16- and 17-year-olds as adults. Now that we have raised the age of presumptive criminal prosecution and continued to see sharp declines in arrests, there is a tremendous opportunity to implement an ambitious youth justice agenda. The current movement to confront racial injustice, which is led by Black youth and other youth of color, only amplifies this opportunity. While some states have taken steps towards age-appropriate treatment of children, adolescents and emerging adults, New York's youth justice community can adopt smart, youth-centered policies across the justice system from the youngest children charged with serious crimes to emerging adults.

### **Expand Protections for Older Youth Charged in Adult Courts**

Build on New York's existing youthful offender law, which protects young people under age 19 from some of the most severe and long-term impacts of criminal justice involvement.

- Expand access to "Youthful Offender" protections by removing unnecessary bars to eligibility and making it mandatory for lower-level offenses.
- Create a new "Young Adult Status" for emerging adults age 19 to 25. Similar to youthful offender status, young adult status would encourage alternatives to incarceration and other programs instead of prison, limit maximum prison sentences, and allow cases to be sealed.
- Allow youth who were denied youthful offender status to apply for reconsideration.

## End the Arrest and Prosecution of Children Under 12 as Delinquents

Raise the minimum age for arrest and prosecution of children as juvenile delinquents, which is currently set at age 7. Recent law raising the jurisdictional age in California includes carve-outs for murder and violent sex offenses, whereas Massachusetts passed reforms that exclude all children under 12 from court prosecution, regardless of crime.

- Ending juvenile delinquency prosecutions for elementary school-aged children under 12 will help close the school to prison pipeline, reduce incarceration, and promote a more age-appropriate response to young children's behavioral needs.

## Expand Family Court Jurisdiction

Move in the same direction as several other states which are exploring raising the upper age of juvenile jurisdiction beyond age 17, as Vermont has done, to keep more youth out of the adult system.

- Raise the age for family court jurisdiction to permit emerging adults arrested at 18 and older to have their cases proceed through the family court process, offering opportunities for adjustment and diversion, and avoiding the risk of criminal records and incarceration in adult facilities.

## Eliminate Fines and Fees For All Emerging Adults

Recognize that mandatory fees place financial stress on New Yorkers, particularly low-income youth and families, who struggle to pay them or face civil judgments and compromised credit. The New York City Bar has urged New York to reexamine mandatory court fees and the New York City Comptroller has called on the state to eliminate mandatory surcharges and forgive outstanding court debt.<sup>93</sup> Recently enacted legislation in New York that eliminates court fees when young people receive “youthful offender” status and gives judges discretion to waive fees for youth under 21 is a step in the right direction.<sup>94</sup> Yet New York continues to impose mandatory court fees on emerging adults involved in the adult criminal justice system, including those age 21 and over and youth under 21 for whom judges decline to waive court fees. For young people, the financial burden of justice involvement can amount to hundreds of dollars, imposed regardless of a youth’s ability to pay. These fees hurt youth, burden their families and impact their communities.<sup>95</sup>

- Eliminate court mandatory fees for young people up to age 25, giving youth a chance to move on from past mistakes and enter adulthood on more solid financial footing.

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<sup>93</sup> *New York Should Re-Examine Mandatory Court Fees Imposed on Individuals Convicted of Criminal Offenses and Violations*, New York City Bar Association (May 2019): <https://s3.amazonaws.com/documents.nycbar.org/files/2018410-MandatorySurchargesCriminalCharges.pdf>  
*Fees, Fines and Fairness: How Monetary Charges Drive Inequity in New York City’s Criminal Justice System*, New York City Comptroller Scott M. Stringer (September 2019): <https://comptroller.nyc.gov/reports/fees-fines-and-fairness/>

<sup>94</sup> S3457 (Montgomery) / A5045 (Davila), signed into law on August 24, 2020: [https://assembly.state.ny.us/leg/?default\\_fld=&leg\\_video=&bn=A05045&term=2019&Summary=Y](https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A05045&term=2019&Summary=Y).

<sup>95</sup> New York City Comptroller, *supra* note 93.



## Create Developmentally Appropriate Settings

Recognize that meaningful accountability, even for serious crime, can and should happen in a safe environment with resources available to address the issues that most often drive young people to problematic behavior.

- Continue to reduce confinement of emerging adults, both pre-trial and post-adjudication. Whenever possible, young people should have the opportunity to remain at home or in settings that are as home-like as possible.
- End the use of even short-term punitive segregation and any other forms of solitary confinement for emerging adults.
- Address the specific needs of emerging adults in the justice system by continuing to expand access to robust, age-appropriate, and trauma-informed programming, services, education, and reentry supports.

## End Adult Prosecution of Youth Under 16

New York's Juvenile Offender Act was passed in 1978 in direct response to two high-profile murders committed by a 15-year-old, and without grounding in evidence, data, or understanding of youth development.<sup>96</sup> It mandates that 14- and 15-year-olds be arrested and processed as adults for certain violent offenses, and extends this mandate to 13-year-olds charged with murder. Our understanding of how children's brains work, how they make decisions, and how to effectively hold youth accountable and change violent behavior has evolved tremendously over the past 40 years, yet our Juvenile Offender law has not. As we aim for a youth justice system that treats emerging adults in an age-appropriate manner, we must ensure the same for youth under 16.

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<sup>96</sup> *Recommendations for Juvenile Justice Reform in New York State*, Governor's Commission on Youth, Public Safety, and Justice (2015): [https://stage.criminaljustice.ny.gov/ofpa/jj/jjreform\\_forum.htm](https://stage.criminaljustice.ny.gov/ofpa/jj/jjreform_forum.htm)

- Repeal New York's Juvenile Offender Law and end the prosecution of 13, 14, and 15-year-olds in the adult system.
- Embrace a developmental orientation instead of a punitive framework for youth.

### Create Pathways for Early Parole for Youthful Convictions

In the past decade, New York has turned away from some of the harsh juvenile justice policies and practices adopted forty years ago. Many policy makers have acknowledged not only the waste and ineffectiveness of those policies, but the harm they did to young people, families, and communities. The result has been declining arrest rates and far less reliance on detention and incarceration of young people, as well as declines in crime. But so far there has been no opportunity for meaningful sentence review for thousands of people already serving decades in prison for crimes committed as youth or emerging adults. To truly achieve youth justice in New York we must correct the overly harsh sentences of the past.

- Establish avenues for resentencing and early parole review for people currently serving a sentence of 10 years or more for a crime committed before their 26th birthday.
- Require parole and resentencing decision-makers to consider emerging adult principles in each case.

