

Redefining Youth Justice: A Call to Action

I. Why This Document?

This document is the result of a year-long process in which national youth justice advocacy organizations convened regularly, with the support of the Annie E. Casey Foundation and the Public Welfare Foundation, to discuss how to better coordinate our work and support positive policy change in states. Over the course of these discussions, we began to shape a unified vision for positive youth justice. We recognized collectively that real justice for our children and their families depends on moving beyond efforts to simply reduce recidivism. Instead, our systems should support: 1) child well-being and development, 2) racial and ethnic fairness and equity, and 3) family, youth, and community engagement. These are the three foundational pillars of our vision for youth justice. By pursuing change that builds on these pillars, we will achieve better results for our children and public safety.

The urgency for reframing national debates about juvenile justice is, of course, sharply underscored by recent events, from Ferguson to Baltimore, tragedies that have highlighted both the limitations of our most common and current approaches to public safety, as well as the tensions that persist between the communities most affected by crime and incarceration and those agencies that are supposed to promote public safety. We hope that the hard lessons learned from these events can provide a context in which the ideas presented in this paper will be discussed and implemented.

II. What's Wrong with Our Juvenile Justice Systems?

At its inception in 1899, the juvenile court's mission was designed to support the perspective that a "child's need and not the deed" should govern court decisions. This focus on rehabilitation, to the extent that it was embraced beyond the original visionaries, was a welcome alternative to the punishment young people would face in the adult system. Critics, however, have noted that, from its start, the juvenile court system raised troubling questions about social control, bringing poor youth and immigrant youth under supervision of the state, and under the care of "respectable" adults. Suffice it to say for our immediate purposes, the aspirations of the court's founders were never actually realized and what has evolved over the past century is an arguably less harsh, but nonetheless relatively close replication of its adult counterpart.

At the base of our juvenile justice systems' problems is the disparate treatment of youth of color who, although they have the same rates of delinquent behavior as white youth, are punished more severely than their white counterparts at each step of the way. This unfair

treatment of youth of color is a foundational problem in our juvenile justice system and is a reflection of the endemic structural racism and implicit bias that permeates our society.

While each state's juvenile justice system still retains rehabilitation or competency development as one purpose, all too often across the country, states use incarceration, custody, control and suppression as default responses to youthful misbehavior. On any given day, thousands of children languish in locked facilities (or are monitored by probation) for often normative adolescent behaviors that violate the law. This focus on the "deed", rather than the "need", harms young people, families and communities. Furthermore, the system's persistent view of families and communities as problems, rather than problem-solvers, further undermines what remains of the well-intentioned original goals of the system.

A growing body of knowledge makes the case that these harsh punitive policies don't work, either for the kids or public safety. If anything, youth placed in secure custody are more, not less, likely to reoffend upon release than their peers who experience no system involvement at all. Moreover, our continued reliance on confinement and probation services that largely stress isolation from the community or compliance with arbitrary conditions, rather than actual behavioral change and human growth, squanders resources that could, if wisely reinvested, actually help kids gain the capacities necessary to be productive adults. Put another way, the system's potential to help our youth is severely restricted by our continued reliance on approaches that provide little if any return on investment.

After years of ignoring the shockingly high failure rates of secure confinement policies, and dismissing other proposed youth justice reforms as "soft on crime," advocates, policy-makers, and communities are beginning to demand a new approach that supports youth within the context of their families, schools, and communities. This approach offers the best to all youth, regardless of race, ethnicity or family resources and that prepares youth to thrive rather than merely get by.

III. A POSITIVE VISION

Pillar 1: Support Child Well-Being through Family and Community Connections

If youth are to realize their full potential, society must invest in supports to families and communities that promote child and family wellness, such as quality education, healthcare, recreation, employment, spiritual life, and access to basic infrastructure (transportation, emergency services, etc). Services developed for youth should be asset- and developmentally-based, focused on opportunities, resources, coaching and supports so that youth can develop the competencies they need to mature and become well-adjusted adults.

This approach is particularly important for youth who come in contact with the law. Rather than respond to wrongdoing with approaches that focus on compliance, monitoring, and punishment, youth who have broken the law should be held accountable in ways that intentionally capitalize on their developmental stage and capacity for change. Given that the adolescent brain, body, and emotions are not fixed, but rather highly dynamic and responsive to their environment until a young person reaches his/her mid 20's, youth who misbehave should be provided every opportunity to make amends and to restore any harm done through their actions. Services and supports provided to youth should primarily occur through non-mandatory, community-based programs. Family members and caregivers must be full partners in any effort to support a young person's successful transition from adolescence into adulthood. For the relatively small portion of youth where confinement or probation supervision are deemed necessary, these interventions should emphasize genuine behavioral change rather than mere compliance with rules and orders.

A. Divert more youth away from juvenile court to drastically reduce the number of youth who touch the justice system at all.

Research shows that most youth will engage in delinquent behavior during their teenage years and that the vast majority of youth will simply "age out" of any delinquent behavior. In fact, limiting involvement of any kind with the juvenile justice system has been shown to lead to better outcomes for youth, their families and their communities. Too often, youth are brought under juvenile justice supervision because of a lack of resources in the community; the juvenile justice system should never be a substitute for voluntary, high quality services in the community that meet the needs of youth. Similarly, juvenile justice should not be a "dumping ground" for other public systems (like education, child welfare or mental health) that, while admittedly facing challenging dilemmas, are far too quick to abandon their responsibilities and to rely on juvenile courts for intervention. This is particularly troubling given the racial disparities in the system, as discussed further below.

B. Invest in a continuum of culturally relevant, gender-responsive, developmentally appropriate, strength-based services, supports, and opportunities for youth and families in the communities most impacted by youth incarceration as alternatives to out-of-home placements and youth prisons.

For those youth not diverted from the court system, it is crucial to create a robust continuum of community-based, non-residential services, supports and opportunities that can safely support youth and families in their homes and neighborhoods. This continuum must include services that provide the comprehensive supports sufficient for youth with complex needs who often

fail out of traditional programs or whose needs can't currently be met in the community. Rather than resorting to incarceration for these youth, communities should have services that maintain inclusive intake policies and a philosophy of unconditional caring. In addition, services should be tailored to the unique needs and assets of each individual youth; engage youth to have voice and choice in what happens to them; be strength-based and incorporate principles of positive youth development; be family-focused and work in partnership with families; be culturally competent, and be available and accessible at times when families most need them.

Pillar 2: Promote Racial Equity and Fair Treatment for All

It is well documented that the juvenile justice system disproportionately harms communities of color. This holds true despite the fact that youth of color and white youth engage in the same levels of delinquent behavior, despite historic declines in the youth justice population over the past two decades, and despite substantial system-level reforms that have benefited juvenile justice-involved youth.

Much of the work in the last 20 years to address racial and ethnic disparities has been focused either on diagnosing the problem or developing programs for youth of color at risk of delinquency. Far too little attention has been paid to the contribution that routine juvenile justice system policies and practices have made to these persistent racial and ethnic disparities. The evidence on the presence and scope of racial disparities is unequivocal: results from hundreds of studies submitted to the U.S. Department of Justice over the last two decades make clear that overrepresentation of youth of color is present at nearly all contact points on the juvenile justice continuum. However, those studies have not led to system changes that measurably improve outcomes for youth of color.

Looking forward, our youth justice systems must make an explicit and committed decision to acknowledge and end the over-representation and disparate treatment of youth of color coming in contact with the juvenile justice system. This is no small task. Research has repeatedly shown that both structural racism and implicit racial bias are deeply embedded in our country's policies, practices, values and beliefs. The considerable discretion characteristic of most juvenile justice systems typically means that youth who come from privileged circumstances are afforded greater leniency, including less formal court intervention, while those with the most disadvantages become the fodder for the courts. The hyper-policing and over-incarceration of people of color, resulting in large part from the "war on drugs" has led to deep-seated mistrust between communities of color and the justice system. At the individual level, implicit biases frequently distort decisions. For example, African American children are presumed to be several years older than their actual age, while Caucasian children are

presumed to be several years younger, which contributes to the harsher treatment faced by African American youth by the juvenile justice system.

The juvenile justice system has become the dumping ground for “other people’s children” who have been failed by under-resourced communities and public child-serving systems (i.e., child welfare, education, health care) and by a limited view that blames youth of color for their over-involvement in the juvenile justice system. A new framework for addressing racial and ethnic disparity would prioritize the elimination of race-based assumptions about youth and root out implicit bias among decision-makers. Reform efforts that fail to articulate an explicit goal around ending racial and ethnic disparities are insufficient.

A. An honest accounting of the disadvantages faced by youth of color is a critical starting point for policy and practice changes that can reduce racial and ethnic disparities in the juvenile justice system.

Despite almost thirty years of funding and efforts to reduce disproportionate minority contact within juvenile justice, few if any jurisdictions have made substantive changes to policy or practice that have reduced the disparate treatment that youth of color face, much less changed aggregate results within these systems. Indeed, simply starting discussions about race and justice has proven difficult and shallow. Real commitment to a more equitable system must begin with an honest acknowledgement of the history and current circumstances that result in youth of color being treated more harshly than more privileged peers. America is not the only nation to have such a troubled history in this area. Policymakers and practitioners can learn from successes elsewhere by adopting reparative and reconciliation-based approaches pioneered in Australia, New Zealand, and South Africa to acknowledge and address the systemic racism in our justice systems.

B. A level playing field must be established so that all justice-involved youth are treated similarly.

While it is true that many factors beyond the control of system officials contribute to differential rates of involvement in juvenile justice, it is equally true that justice system personnel have an obligation to ensure that once youth are known to be in conflict with the law, their treatment should never be influenced by their race, ethnicity, gender or sexual orientation. Many policies implemented over the past few decades—notably laws that transfer juveniles to adult court jurisdiction and “zero tolerance” policies in schools—have had well-known differential impacts on youth of color. Language access issues often disadvantage non-English proficient families when navigating the justice system. The disproportionate power of prosecutors compared to indigent defenders leave kids unable to defend themselves against

the power of the state. And, the biases of individual practitioners, whether acknowledged or not, distort the considerable discretion exercised at virtually all key decision points in the juvenile justice continuum to the disadvantage of youth of color.

Pillar 3: Rely on Families, Involved Youth and Community Engagement

Youth deserve and need to grow up in families, not in systems. Indeed, research covering virtually all areas of social policy confirms that strong families and strong family connections are critical to positive youth development. Unfortunately, one of the common historical narratives driving juvenile justice policy and practice is that the families of system-involved youth *are* the problem and that they are not interested in their children's well-being. This is a damning myth, based largely on class and race biases, and a misinterpretation of the reality that many youth who appear before juvenile courts come from families in crisis. But if family troubles and crises are correlates of juvenile delinquency, we need to question why juvenile justice practice focuses almost exclusively on "correcting" the kids and does little to help strengthen families so they can fulfill their roles as the primary socializing forces in children's lives. This question will not be answered without engaging and supporting families, without developing more "family-friendly" juvenile justice practices, or without seeking the input and opinions of affected youth, their families or their communities.

To achieve this, juvenile justice systems must invest time, personnel and financial resources in youth, families and communities as part of the solution to getting youth back on the right track. Juvenile justice systems should aspire to be involved as minimally as necessary to redirect youth on a supportive path to healthy development and in keeping communities safe and families intact. Families should be invited to participate fully as partners in both designing and sustaining responses to a young person's misbehavior, as well as informing system policy, practice and resource choices. Communities should expect to hold youth accountable in developmentally appropriate ways that allow them to make amends and then resume full participation in the community.

The juvenile justice system's shortcomings regarding youth, family and community engagement are too numerous to recite in this paper. These systems rarely seek feedback from those sources. They typically fail to engage these parties in case planning, court decisions or overall policy. In far too many aspects of daily practice, the system is alienating, frustrating, even incomprehensible to those who most want to end system involvement. Youth in confinement are typically located miles from their homes, a practice that frays family connections. These examples need not be the case. Using youth and family-friendly language and practices should not be a challenge; it should be expected. Consulting with parents regarding a youth's circumstances and what would work best to redirect a misbehaving child should be routine

practice. Investing system resources to strengthen the families of court-involved youth should be a priority, not a wish. Developing approaches that are more community-based (e.g., neighborhood accountability boards or neighborhood probation offices) or that rely more on the input of neighborhood residents can be readily accomplished.

IV. **REDUCING HARM**

Our vision, set forth above, centers around keeping youth in their homes, communities, and families, and building on their strengths. This vision will not be attained overnight, however. In the interim, and for those rare youth who are better served by some form of confinement, there are many improvements needed. The most recent data tell us that on any given day, 54,148 young people are confined in juvenile facilities, and 5,235 youth were in adult prisons and jails at year end 2014. While there have been unprecedented declines in youth commitment, the thousands of youth who are still incarcerated are not adequately served. For these youth, we must work to reduce harm and increase opportunities for positive interventions even as we move forward with our broader vision of de-incarceration and community supports. To this end, we offer four concrete reforms that will vastly improve the system.

A. At every stage of the justice system, youth should receive treatment that recognizes that children are not simply little adults, regardless of the seriousness of their offense. Using the adult criminal justice system for youth is harmful to both youth and public safety.

The promise of a system that helps youth who have erred to get back on track is at direct odds with the practice of placing youth in the adult criminal justice system where they are exposed to harsh sentencing and conditions of confinement. The adult criminal justice system cannot meet the developmental needs of youth, exposes youth to a wide array of physical and psychological harms, and contributes to increased recidivism. Youth must be removed from the adult criminal justice system.

B. Prohibit harmful practices

There is an urgent need in the United States to abandon the ineffective, harmful, and costly practices within the juvenile justice system that have been demonstrated to harm youth. When youth are incarcerated, the goal of all treatment during a child's confinement should be rehabilitation, not punishment. This is the hallmark of the juvenile justice system and the philosophical basis on which it was founded. Justification for the use of punitive behavior modification approaches within juvenile facilities such as isolation, chemical and physical

restraints, and random strip searches are profoundly misguided and harm youth. There is no benefit whatsoever to these practices; they should be eliminated immediately.

C. For the small percentage of youth who are placed out-of-home, ensure that the placements build on the strengths and developmental needs of each child.

In the rare instances when youth must be in out-of-home placement, they should be placed in short-term therapeutic environments that will be of maximum service to youth. There is a broad base of knowledge on the types of institutional designs that are most beneficial to youth. Rather than the congregate care institutions designed for adults, youth should be confined in small, home-like settings where their normal development, education, family connections, and peer supports are disrupted as little as possible. Every effort should be made to eliminate the potential for trauma caused by institutionalization.

D. Ensure Due Process Protections for Youth

While due process protections for youth can support positive interventions, they are also vital as protection against system harm. Attorneys for youth can work to combat racial discrimination, to keep young people out of confinement, and to address harmful conditions that occur for youth who are confined. Appropriate hearings can protect youth from being transferred to more problematic placements (e.g. juvenile corrections, adult jail, adult prison, or disciplinary placements within a detention or correctional facility). At the same time, well-trained juvenile court judges who understand adolescent development can better connect youth with needed services and steer them away from harmful interventions.