

Bring Our Children Home: Ain't I A Child?

A REPORT ON JUVENILE JUSTICE IN NEW JERSEY BY THE INSTITUTE



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Bring Our Children Home: AIN'T I A CHILD?

“You may choose to look the other way but you can never again say that you did not know.”

William Wilberforce

“Kids will be kids.” For many, this age-old adage reminds us of the follies of youth and the inevitable mishaps that accompany the journey into adulthood as we discover who we are and our place in the world. This saying also reminds us that children are not adults. As such, children should be treated differently, with room to grow and learn from their mistakes. But, for far too many children here in New Jersey and across the country, this axiom comes with a caveat: kids will be kids . . . unless they are Black or brown.

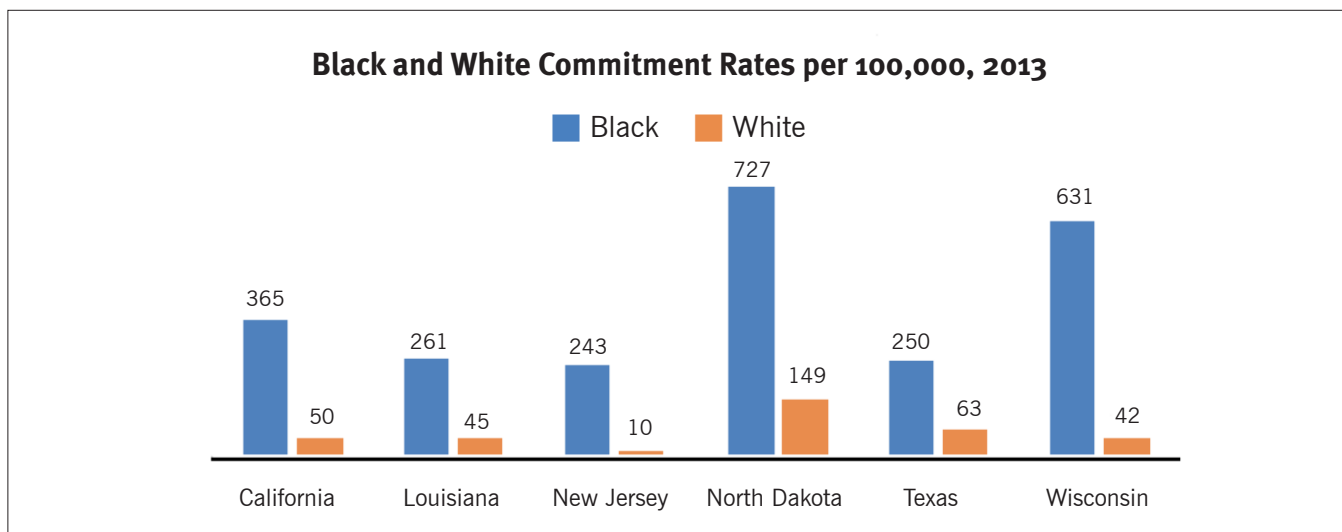


Despite widely-accepted research on the distinct differences between adolescent and adult brain development, which shows that youth lack the maturity to effectively self-regulate and that they eventually age out of antisocial behavior,¹ too many states continue to send children to large, harmful youth prisons.² And this is in spite of a number of evidence-based alternatives to incarceration which have been proven effective in rehabilitating youth and assisting them in a successful transition to adulthood.

Currently, almost one million young people are involved in the American juvenile justice system,³ six times more than the youth incarceration rates of Canada, Germany, Finland, Australia, and England and Wales combined.⁴ Here in New Jersey, 553 young people⁵ are currently ensnared in the “deep end” of the juvenile justice system—either through commitment to a state facility, probation, or aftercare (post-release supervision and services).⁶ Like many states across the nation, New Jersey’s youth incarceration rates have decreased significantly. Between 1997 and 2010, the total population of confined youth in juvenile residential facilities was cut by over half (53%).⁷ This reduction is due in large

part to the commitment of the New Jersey Judiciary and the Juvenile Justice Commission (JJC) to implement the Juvenile Detention Alternatives Initiative (JDAI), a program focused on decreasing the number of youth detained before trial. This trend makes sense, as research shows that decreasing the pre-trial detention population makes it less likely that a child will ultimately be committed to a youth prison.⁸

However, while fewer youth are being incarcerated, striking racial disparities persist: in New Jersey, Black kids are 24.3 times more likely to be committed to a secure juvenile facility than their white counterparts.⁹ New Jersey has the third-highest Black-white commitment disparity rate in the nation.¹⁰ Of the 289 young people currently committed to a state juvenile facility, a staggering three-quarters (73%) of them are Black.¹¹ But this is not because Black youth are more criminally culpable—there is little difference between Black and white youth in terms of delinquent behavior and status offending (conduct that is only criminalized if committed by a minor, such as truancy or underage drinking).¹² Instead, these incredibly, stark racial disparities reflect racially discriminatory policy decisions and practices



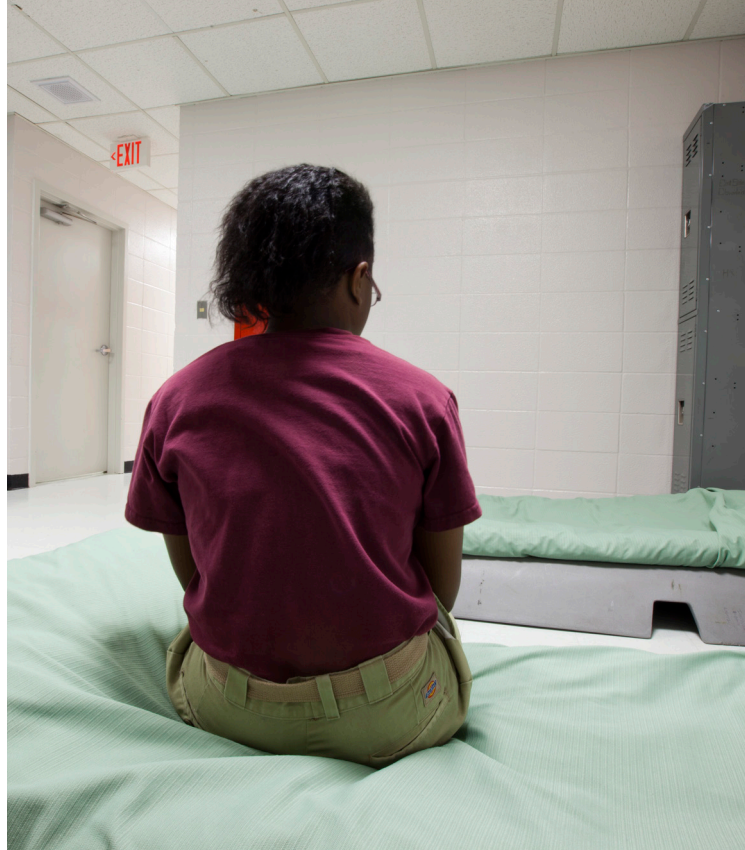
Source: JOSHUA ROVNER, THE SENTENCING PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS 10 (2016), <http://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf>.

that determine which kids get sentenced to youth prisons. We cannot evaluate the racial disparities in our juvenile justice system without looking to the underlying racialized policies and practices, steeped in our nation's history, that funnel Black youth into the system of mass incarceration. And this is a system where they will most likely stay, in a continued cycle of recidivism, for the rest of their lives. Despite the rhetoric of public safety and crime reduction as justifications for youth incarceration, recidivism rates remain high for young people leaving youth prisons.¹³ This racial disparity is not limited to Black youth: Hispanic young people are 5.4 times more likely to be sent to a juvenile facility than their white peers.¹⁴

This disproportionate incarceration of children of color has persisted despite the numerous diversion and incarceration alternatives embedded throughout New Jersey's juvenile justice system. In fact, as a whole, it appears that Black children in particular are not provided the same support, services, and rehabilitation opportunities as their white counterparts in our state. Accordingly, Black youth in New Jersey are less likely to be diverted, and more likely to be incarcerated.¹⁵

From a psychological perspective, it is important to note that this separation of young people from their communities happens during their formative years, breaking the ties between children and their families that are paramount to their maturation into healthy adults. Not only is the juvenile justice system disastrous for these children and their families, but it also strains the state's coffers: New Jersey spends \$63,554,000 annually to fund its three youth prisons that currently operate well under capacity.¹⁶

In light of the research on the development of the adolescent brain,¹⁷ the extreme racial disparities, and studies on youth incarceration's effect on children's health, safety, and recidivism rates,¹⁸ the overwhelming conclusion is that, put simply, incarceration does not work. As long as youth prisons remain the default for addressing delinquency, Black children and their families, in particular, will continue to bear the brunt of this failed approach.



So what can be done?

Research has shown that, in contrast to the negative consequences of incarcerating children, placing at-risk youth in community-based programs with comprehensive services lowers recidivism rates at a fraction of the cost of operating youth prisons.¹⁹ New Jersey should therefore work to comprehensively transform its current juvenile justice system into a community-based system of care.

To be successful, these wrap-around treatment programs demand that resources, both financial and otherwise, move from youth prisons to community programs, to ensure that treatment is kept local, neighborhood-based, and close to a child's home and family. Most importantly, the default response for every child should be diversion with a special emphasis on ensuring that all children have equal access to diversion programs and other alternatives to incarceration. By fundamentally transforming its juvenile justice system, New Jersey has the opportunity to rise to the forefront of juvenile justice reform in this nation.

This report is divided into five sections. *First*, it provides a brief historical overview of the juvenile justice system and highlights how it has evolved over time. *Second*, it examines the problematic nature of youth incarceration and discusses the myriad reasons why the current system is ineffective and must be reformed. *Third*, the report evaluates existing diversion and alternatives to incarceration options in our current system, noting strengths as well as areas for improvement. *Fourth*, the report offers an effective response to address the failures of the current state juvenile justice system: replace our current juvenile justice regime with a community-based system of care. *Last*, the report offers a number of policy proposals to implement this community-based model of reform while simultaneously reducing the racial disparities inherent within the present model.

HISTORY OF THE JUVENILE JUSTICE SYSTEM

The United States did not always have a separate process for adjudicating youth. In the nascent years of our country, there was little distinction between the penalties for crimes committed by adults and children.²⁰ As a result, children as young as seven years of age were tried and sentenced in criminal courts,²¹ sometimes for capital crimes.²² Youth were also housed in jails and penitentiaries with adults—in many cases, these facilities were filled with youth who had engaged in noncriminal behavior because no alternative options were available.²³

This began to change in the early 1800s, however, with a burgeoning recognition that children were developmentally different from adults and should be housed in separate facilities.²⁴ This realization led to the opening of the first institution solely for juvenile offenders in New York City—the New York House of Refuge.²⁵ In turn, other reform schools began to open around the country, ushering in a new moment in juvenile justice in the mid-1800s called the “child-saving” movement.²⁶ This crusade focused on rehabilitating youth to prevent them from potential future criminal activity.²⁷ Ultimately, this cause spurred the creation of the first juvenile court in the United States in Cook County, Illinois in 1899—over the following twenty-five years, most states set up juvenile justice courts.²⁸ These courts continued the rehabilitation model of the

reform schools, drawing upon the legal doctrine of *parens patriae* (“the State as parent”) to adopt a paternal role toward the child.²⁹ Under this approach, justice involved curing the child of his or her “antisocial ways,”³⁰ and recognizing that children needed guidance and care, not harsh punishment.³¹ Cases in these courts were treated as informal and non-adversarial, and dispositions were indeterminate.³²

The informality of juvenile justice proceedings began to shift, however, in the mid-twentieth century.³³ A push in the 1960s by civil libertarians, frustrated at the perceived mismatch of the progressive rhetoric on rehabilitation and the reality of kids being “warehoused in institutions” similar to adult prisons, resulted in a reassessment of the entire system.³⁴ Upon review, many felt that juvenile hearings, which were intended to remain informal and parental, bore too much similarity to adversarial adult proceedings, but with none of their constitutional protections.³⁵ In response, the Supreme Court decided a series of cases

that brought due process safeguards to bear on juvenile delinquency proceedings. In the seminal case transforming how the criminal justice system treats our youth, *In re Gault*, the Court held that juveniles are entitled to a number of due process protections in juvenile delinquency hearings, including sufficient notice of charges; a right to counsel; a right to cross examination; a right to confrontation; and a privilege against self-incrimination.³⁶

Historical Underpinnings of Current Racial Disparities in the Juvenile Justice System

The disproportionate incarceration of children of color in our nation’s youth prisons traces its historical roots to the early foundation of this country. As explained in the Burns Institute’s powerful report, *Repairing the Breach: A Brief History of Youth of Color in the Justice System*, juvenile justice in America has never been colorblind—historically, children of color were excluded from the view that courts should remediate, not punish, the child.³⁷ As slaves during the Early Settlement Period, Black children were seen as property, rather than children in need of rehabilitation, treatment, and care.³⁸ Even

after the end of slavery, these youth were viewed as less able and not worthy of the benefits of the parental state.³⁹ Black children were often segregated in houses of refuge into special sections characterized by lengthier sentences, cruel treatment, and a high death rate.⁴⁰

Not surprisingly, this perception of vulnerable Black children as unworthy of redemptive care, and in need of harsh punishment, influenced how our juvenile justice system operates in the modern era. Today’s youth of color often receive harsher sanctions than their white peers charged with the same offense,⁴¹ resulting in their overrepresentation in youth prisons.

The rise of Black Codes, which permitted the incarceration of Black citizens for conduct that would not be criminalized if they were white, also allowed for the re-enslavement of Black bodies.⁴² As Michelle Alexander details in her transformative book *The New Jim Crow*, Black Codes arose out of a need for white Southerners to develop “a new racial order” and control Blacks – “[c]learly, the purpose of the black codes in general and the vagrancy laws in particular was to establish another system of forced labor.”⁴³ The subsequent proliferation of black prisoners fueled the convict leasing program, wherein states leased out convicts to local business owners.⁴⁴ Black youth found themselves caught in this brutal labor system—according to an 1890 census analysis, over eighteen percent of all Black prisoners at that time were youth.⁴⁵ With the rise of the juvenile court era, Black children were overrepresented on court dockets while simultaneously being largely ignored by community-based service providers.⁴⁶ This disproportionate minority contact continued into the 1920s-40s; a 1940 report of fifty-three courts nationwide showed that Black boys’ cases were dismissed less than their white peers, and they were more frequently committed to institutions.⁴⁷ These racial disparities continue to this day, where Black kids are less likely to see their cases diverted and more likely to be sent to secure confinement.⁴⁸ The pernicious history of racial subjugation and the dehumanization of people of color as a basis for mass incarceration parallels our current system.



THE COMING OF THE SUPER-PREDATORS

By John J. Dilulio, Jr.



Black Children Labeled as “Super-predators”

In response to a rise in juvenile crime rates,⁴⁹ a racially-discriminatory juvenile justice narrative emerged in the 1980s and 1990s in which the media stoked public panic by creating a menacing narrative of Black children. This fear was buoyed by Princeton professor John Dilulio’s creation of a new phrase to describe this modern, emerging juvenile delinquent: the “super-predator.”⁵⁰ Dilulio described these children as “fatherless, jobless, and Godless”⁵¹ aggressors who “place zero value on the lives of their victims.”⁵² This perceived “super-predator” was racialized—according to Dilulio, “as many as half of these juvenile super-predators could be young black males.”⁵³ By using an animalistic term to describe Black children, Dilulio dehumanized scores of children of color, which helped justify their large-scale incarceration. Indeed, for Dilulio, these children were not children, but something much more carnal:⁵⁴

[t]hey are perfectly capable of committing the most heinous acts of physical violence for the most trivial reasons (for example, a perception of slight disrespect or the accident of being in their path). They fear neither the stigma of arrest nor the pain of imprisonment. They live by the meanest code of the meanest streets, a code that reinforces rather than restrains their violent, hair-trigger mentality. In prison or out, the things that super-predators get by their criminal behavior—sex, drugs, money—are their own immediate rewards. Nothing else matters to them. So for as long as their youthful energies hold out, they will do what comes ‘naturally’: murder, rape, rob, assault, burglarize, deal deadly drugs, and get high.⁵⁵

As part of this deeply racist “super-predator” theory, Dilulio cautioned that the nation would soon be exposed to a wave of juvenile crime.⁵⁶ His apocalyptic warning was proven mythical; it never came to pass. Indeed, shortly after the peak in juvenile crime in the mid-1990s, juvenile crime rates fell for the next ten years, with the short-term rise in crime later attributed to factors such as economic inequality and easy access to guns, not any change in the nature of juvenile offenders.⁵⁷ In fact, realizing the error of his assessment, Dilulio later recanted and apologized for his theory.⁵⁸ But the truth was of little consequence—the immediate response to this pervasive theory was swift.

Not wanting to seem “soft on crime,” state legislatures felt immense pressure to lock up children who committed crimes.⁵⁹ As a result, states across the nation began to impose more restrictive juvenile justice laws, including expanding the list of transferrable offenses, imposing more stringent determinate sentencing laws, and criminalizing low-level conduct.⁶⁰ In New Jersey, for example, the state legislature passed juvenile waiver laws—to allow juveniles to be waived to adult criminal court—in 1982 to provide harsher penalties for juveniles who committed serious acts or were “repeat offenders.”⁶¹ As a result of this new “tough on crime” stance, over 250,000 kids a year were transferred into the adult system nationwide.⁶² Again, which kids are waived to adult court offers yet another example of the racial disparities inherent in the system—as revealed in WNYC’s recent groundbreaking series, “Kids in Prison,” almost 90 percent of youth prosecuted as adults in New Jersey today are Black or Hispanic.⁶³

Children Are Different from Adults

Recent research has reconfirmed one fundamental fact: children are different. In the early 2000s, an onslaught of research on adolescent development provided support for the treatment of children as children, recalling the original purpose of the juvenile justice system.

Studies make clear that involvement in delinquent and criminal behavior peaks around ages sixteen and seventeen, followed by a decline in antisocial behavior as an adolescent matures to adulthood.⁶⁴ Moreover, during adolescence, the brain undergoes a “rewiring” process that is not complete until around twenty-five years of age.⁶⁵ Significant changes occur in brain maturation during this period—such as changes in the limbic system, which may “impact self-control, decision making, emotions, and risk-taking behaviors.”⁶⁶ As a result, adolescents are “more likely to weigh positive experiences more heavily and negative experiences less so than adults,” leading them to be more likely to engage in risky activities.⁶⁷ Relatedly, research has also uncovered that the frontal lobe—which contains the area responsible for judgment of consequences, impulse control, and planning—is the most underdeveloped portion of the juvenile brain.⁶⁸ Notably, these findings indicate that juvenile offending is a reflection of psychological immaturity, rather than an indication of innate criminality, and will often cease as “a natural consequence of growing up.”⁶⁹

Evolving Jurisprudence: Youth Culpability in the Eyes of the Courts

Relying on this new research, the Supreme Court issued a number of rulings shifting the juvenile justice system back toward its initial redemptive goals. In *Roper v. Simmons*,⁷⁰ the Court held that the death penalty as applied to juveniles under 18 was unconstitutional, referencing the “recognition of the comparative immaturity and irresponsibility of juveniles”⁷¹ and noting that “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.”⁷² In *Graham v. Florida*,⁷³ the Court declared that juveniles could not be sentenced to life imprisonment without



the possibility of parole for non-homicide offenses, pronouncing that “[n]o recent data provide reason to reconsider the Court’s observations in *Roper* about the nature of juveniles”⁷⁴ and “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.”⁷⁵

Two years later, the Court expanded upon this ruling in *Miller v. Alabama*.⁷⁶ Relying on the adolescent brain development research it cited in *Roper* and *Graham*, the Court held that mandatory life imprisonment without parole for juveniles was unconstitutional.⁷⁷ Further broadening the law with respect to the treatment of youth in criminal cases, in *J.D.B. v. North Carolina*⁷⁸ the Court held that age is a factor to

be considered in determining whether an individual is in “custody” for Miranda purposes, noting that “[t]he law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.”⁷⁹ These important holdings signify a significant shift in how the courts view youth and show that the time is ripe for transformative juvenile justice reform.



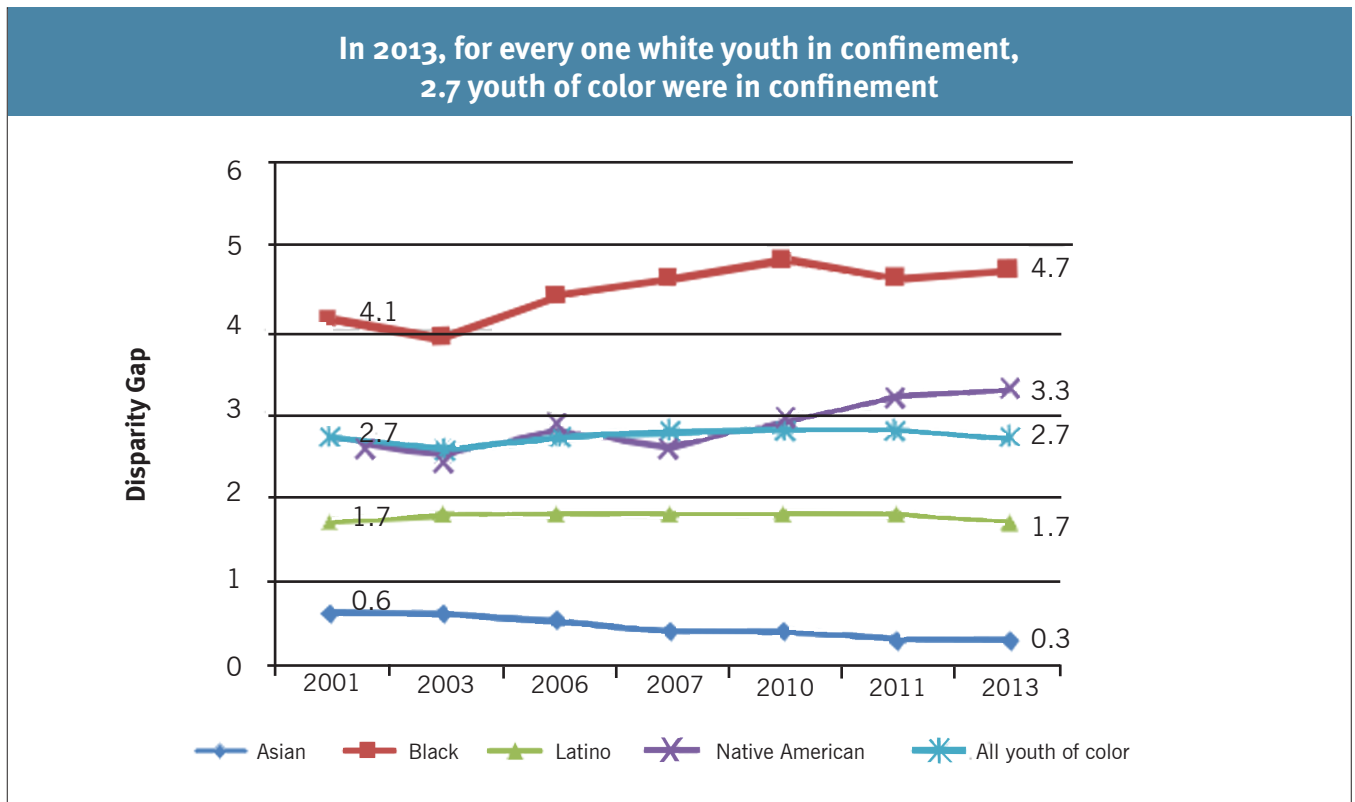
NEW JERSEY SHOULD PRIORITIZE DIVERSION AND ALTERNATIVES TO INCARCERATION

As of October 7, 2016, 289 young people are committed to New Jersey’s juvenile facilities.⁸⁰ Notwithstanding a growing body of research showing that youth incarceration does not work and leads to a range of negative consequences including trauma, recidivism, homelessness, and poverty,⁸¹ the JJC, the agency responsible for the state’s juvenile justice system, spends approximately half of its budget on its three youth prisons—the New Jersey Training School for Boys (NJTS), the Juvenile Medium Security Facility (JMSF), and the Female Secure Care and Intake Facility.⁸² In light of research showing that adolescents should be treated differently and will eventually age out of criminal behavior, juvenile justice advocates across the nation have called for increased spending on rehabilitative community alternatives instead of youth prisons.

There are four key reasons we should reform the juvenile justice system to make therapeutic community-based programs the default instead of incarceration: (1) the system is inherently unfair—young people of color are disproportionately incarcerated; (2) youth incarceration is excessively expensive, particularly when compared to community-based programs that yield far better youth outcomes at a fraction of the cost; (3) youth are being incarcerated for non-violent conduct and no new offenses; and (4) youth incarceration has little effect on decreasing recidivism rates.

Young People of Color Are Disproportionately Incarcerated

Nationally, Black and Hispanic/Latino people make up approximately one-third of the population, but represent two-thirds or more of incarcerated youth.⁸³ Black youth in America are also 4.3 times more likely to be committed to juvenile facilities than white youth.⁸⁴ Analyzing data for a ten-year period from 2003 to 2013, experts found that the ratio of racial disparities for Black children versus white children committed to juvenile facilities grew by 15% across the country.⁸⁵ This heightened racial disparity begins at arrest—as of 2013, Black youth were 129% more likely to be arrested than white youth.⁸⁶ This phenomenon is pervasive—the Office of Juvenile Justice Delinquency Prevention found evidence of racial and ethnic disparities in 31 of 36 states surveyed.⁸⁷ And it is not just happening to young Black men: according to the recent report *Gender Injustice*, Black girls are currently the fastest growing group within the juvenile justice system and, in 2013, were nearly three times as likely as their white counterparts to be referred to court for delinquency.⁸⁸



Source: *Unbalanced Juvenile Justice: Disparity Gap Incarceration Rate, Youth of Color vs. White*, W. HAYWOOD BURNS INST., <http://data.burnsinstitute.org/#comparison=3&placement=3&aces=1,2,3,4,5,6&offenses=5,2,8,1,9,11,10&-year=2013&view=map> (last visited Oct. 31, 2016).

These racial disparities, however, cannot be explained by different delinquent behavior across racial groups. As The Sentencing Project detailed in its recent policy brief, *Racial Disparities in Youth Commitments and Arrests*, Black and white youth are about as likely to engage in a variety of delinquent conduct, including getting into fights, carrying weapons, stealing property, using and selling illicit substances, and committing status offenses.⁸⁹ Despite these similarities, however, Black youth are much more likely to be arrested across a range of offenses than white youth.⁹⁰ Further, even though Black youth are more likely than white youth to commit violent offenses, these offenses comprise less than 5% of all juvenile arrests.⁹¹ Accordingly, the gross racial disparities at arrest, which in turn lead to the overrepresentation of Black youth in youth prisons, cannot be explained by any substantial difference in violent offending.⁹² In other words, white children are being treated as children when they commit wrongful conduct, while Black children are incarcerated for similar behavior.

And in New Jersey this racial inequity is especially stark: the state has one of the highest racial disparities between Black and white youth in juvenile facilities in the nation. In addition, racial disparities can also be seen in which young people are

arrested in the first place. For example, Monmouth County arrested over 10% (11.2%) of its Black youth population, and only 2.3% of its white youth in 2012.⁹³ In Glassboro, a borough of Gloucester County, 70% percent of youth arrested were minority, even though minorities represented only 39% of the town’s population.⁹⁴ This disproportionate arrest rate eventually leads to disproportionate rates of juvenile justice system involvement.

A 2013-2015 report by the New Jersey Supreme Court Committee on Minority Concerns concluded that “Black/African American youth are consistently and disproportionately overrepresented throughout the juvenile justice decision-making continuum” and disproportionately represent the number of youth in secure juvenile detention and juvenile correctional facilities.⁹⁵ At the same time, Black youth in New Jersey have the lowest representation in the population of youth whose cases are diverted.⁹⁶ Put simply, this means that Black kids are disproportionately arrested, are not getting diverted, and, as a result, are being incarcerated in lopsided numbers. A review of where committed youth are coming from in the state furthers this point: currently, almost 40% (39.4%) of all committed youth in New Jersey come from just two counties—Camden and Essex—each of which



contain cities with large minority populations and populations living in extreme poverty.⁹⁷ And, even more troubling, these racial disparities exist in spite of federal law that requires states receiving federal dollars to take steps to address “disproportionate minority contact” to comply with the Juvenile Justice Delinquency Prevention Act (JJDP).⁹⁸

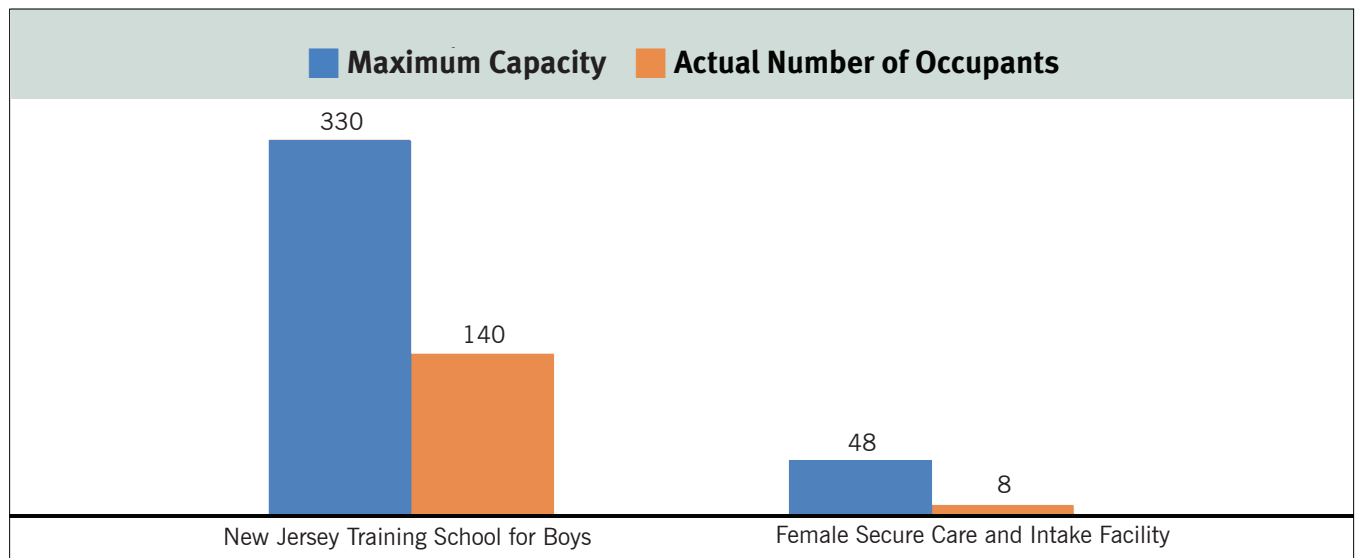
This disparity in youth incarceration is not just limited to children of color—children with disabilities are also being entrapped in the juvenile justice system. At least one out of every three youth arrested in this country has a disability, with some research estimating the number may be as high as 70%.⁹⁹ In New Jersey, almost half (44.3%) of all committed young people require special education services.¹⁰⁰

Youth Incarceration is Excessively Expensive

Youth incarceration is incredibly expensive, particularly when compared to various available community-based alternatives to incarceration. Annually, our nation bears an estimated \$8-\$21 billion in long-term costs—costs such as continuing recidivism and lost educational opportunities—to

incarcerate our youth.¹⁰¹ According to Justice Policy Institute’s 2014 report, *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, the average cost of the most expensive confinement for a young person—based on a survey of state confinement expenditures in 46 states—is \$148,767 a year.¹⁰²

For New Jersey, youth incarceration is more expensive: as of 2014, the state spends up to \$196,133 to incarcerate one young person each year (the twelfth highest expenditure of the forty-six states reporting).¹⁰³ By contrast, in-state tuition, fees, and room and board for the prestigious College of New Jersey is \$28,674 a year.¹⁰⁴ And this exorbitant spending persists even though the state’s youth prisons are largely underutilized. As of March 2016, the New Jersey Training School for Boys (the state’s largest youth prison), which has a maximum capacity of 330 youth, housed only 140 young people.¹⁰⁵ Even more troubling, as of March 2015, the Female Secure Care and Intake Facility, the only youth prison for girls, housed only eight young women, approximately seventeen (16.7%) percent of its maximum capacity of forty-eight.¹⁰⁶



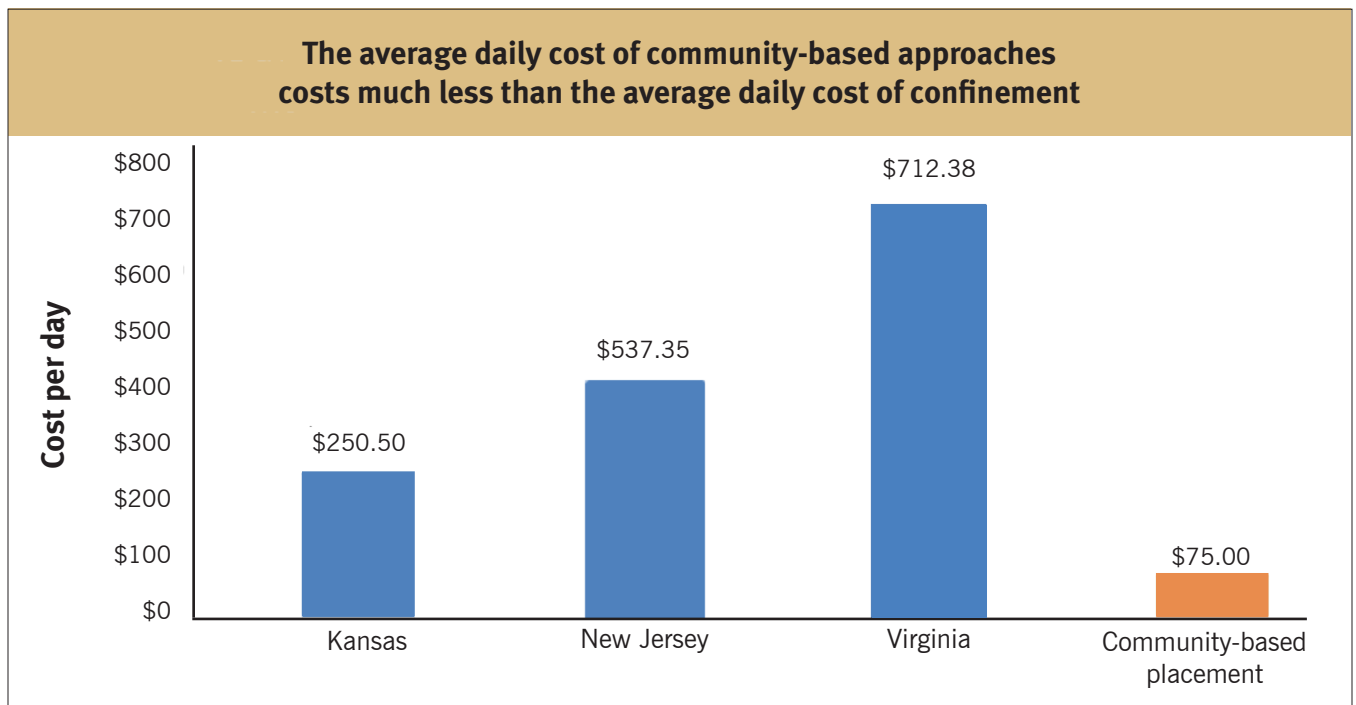
Source: DOROTHY XANOS, PREA AUDIT REPORT: NEW JERSEY TRAINING SCHOOL 1 (2016), http://www.nj.gov/lps/jjc/pdf/2016-PREA-Final-Report_NJ%20Training-School.pdf; BOBBI POHLMAN ROGERS, PREA AUDIT REPORT: JUVENILE FEMALE SECURE CARE AND INTAKE FACILITY 1 (2015), http://www.nj.gov/lps/jjc/pdf/PREA_JSCIF_Hayes_Audit_Report_2015.pdf.

The September 12, 2014 JMSF PREA audit does not provide a current facility population number, but it does state that, as of July 16, 2014, 148 young people had been admitted to the facility in the past year. By contrast, JMSF had a capacity of 271 young people at that time. BOBBI POHLMAN ROGERS, PREA AUDIT REPORT: JUVENILE MEDIUM SECURE FACILITY (JMSF) 2 (2014), http://www.nj.gov/lps/jjc/pdf/PREA_Auditor_Report_Summary_JMSF.pdf.

The expense of youth incarceration is even more pronounced when comparing the funding for youth prisons versus local programming. New Jersey has appropriated \$38,546,000 for NJTS and \$25,008,000 for the Juvenile Medium Security Center (which consists of JMSF and the Female Secure Care and Intake Facility) for the 2016-2017 fiscal year—for a combined total of \$63,554,000.¹⁰⁷ In comparison, the state has appropriated \$26,184,000 for direct state services for juvenile community programs,¹⁰⁸ and only \$16,599,000 in grants-in-aid¹⁰⁹ for juvenile community programs—including \$1,624,000 for alternatives to juvenile incarceration programs and a scant \$313,000 for the purchase of services for juvenile offenders.¹¹⁰ This is all while the state has slashed vital programming, such as prevention initiatives. For example, in his line-item veto of the 2017 state budget, Governor Christie deleted in its entirety the \$1,000,000 allocated for Newark’s Anti-Violence Out-of-School Youth Summer Program.¹¹¹ And as the graph below illustrates, the overspending on youth prisons persists in light of the fact that the state could save almost \$500 a day by investing in community-based programs over confinement.

Youth are Being Incarcerated for Non-Violent Conduct and No New Offenses

Rather than only confining the youth who pose a serious risk to public safety, our youth prisons have many young people who either have committed non-violent offenses or violations of probation, which may, in some cases, mean they committed no new offense



Source: JUSTICE POLICY INSTITUTE, *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* 11 (2014), http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf; SHAENA M. FAZAL, YOUTH ADVOCATE PROGRAMS POLICY & ADVOCACY CENTER, *SAFELY HOME: REDUCING YOUTH INCARCERATION AND ACHIEVING POSITIVE OUTCOMES FOR HIGH AND COMPLEX NEED YOUTH THROUGH EFFECTIVE COMMUNITY-BASED PROGRAMS*, 5 (2014), http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf.



Research makes it clear that incarceration has only a minimal effect on reducing recidivism rates. Indeed, incarceration is ineffective as a crime prevention strategy.

at all. This is so because violations of probation include technical violations, which can range from failure to pay restitution to failure to appear for drug tests or meetings.¹¹² As a result, our young people can be placed back in youth prison due to circumstances often outside of their control—such as transportation issues, changing court dates, and poverty.

For every year in which data is available, the vast majority of incarcerated youth in our country are confined for non-violent offenses¹¹³—in 2013, 74% percent of all committed youth had been adjudicated for a nonviolent offense.¹¹⁴

Of the 507 youth committed in New Jersey at the time of a 2013 one-day count, fifty seven had committed a technical violation as their most serious offense, twenty four had committed a drug offense, and eighty four had committed

a property offense—totaling almost one-third (32.5%) of then-confined youth.¹¹⁵ Looking at the latest statistics on the offense categories for which young people are currently committed to JJC custody in New Jersey, property offenses represent almost one-fifth (18.63%) of the total offenses, and drug offenses over seven percent (7.6%).¹¹⁶ It must be noted, however, that the current weekly statistics provided by the JJC do not further disaggregate the types of property offenses and drug offenses for which these young people are incarcerated, does not provide a number for how many are serving terms of confinement for technical violations, and does not distinguish between violations of parole and probation.

Youth Incarceration Has Little Effect on Reducing Recidivism Rates

Not only is incarceration ineffective as a crime prevention strategy,¹¹⁷ but it is not more effective than probation or alternative sanctions in reducing criminal behavior.¹¹⁸ In fact, studies have shown that long-term juvenile incarceration actually increases recidivism rates.¹¹⁹

Indeed, 70% to 80% of youth released from incarceration are rearrested within two to three years; 38%-58% of youth released are found guilty of new offenses within two years; and, excluding Missouri, 26%-62% of youth released are re-incarcerated on new charges within three years.¹²⁰

In New Jersey, of the approximately 652 juveniles released from juvenile correctional facilities in 2011, 84% had a new court filing/arrest, 71.9% had a new adjudication/conviction, and 32.4% were recommitted within three years of release.¹²¹ Black kids are disproportionately represented at all three of these decision points—86.8% of Black kids had a new court filing/arrest vs. 76.1% of white youth; 74% had a new adjudication vs. 67.2% of white youth, and 33.8% had a new commitment vs. 22.4% of white youth.¹²² Importantly, these high recidivism rates are not a reflection of the criminal culpability of Black kids; but instead, are driven by a racially discriminatory system of juvenile incarceration that disproportionately ensnares Black youth.



A BETTER APPROACH: DIVERSION/ALTERNATIVES TO INCARCERATION IN THE NEW JERSEY JUVENILE JUSTICE SYSTEM

Community-focused diversion and incarceration alternatives offer greater potential to rehabilitate our youth and prevent recidivism. Community-based programs allow young people to live at home while receiving intensive wrap-around services.¹²³ As one form of community-based placement, diversion provides an opportunity for a young person to be completely removed from system involvement. When a young person is diverted, he or she is directed out of the juvenile justice system before initial or continued formal processing.¹²⁴ In many cases, the youth is diverted into programs providing counseling, mental health treatment, and educational services.¹²⁵ Among other benefits, diversion programs have maintained youth integration with family and community, and are generally cheaper than court processing and youth incarceration.¹²⁶

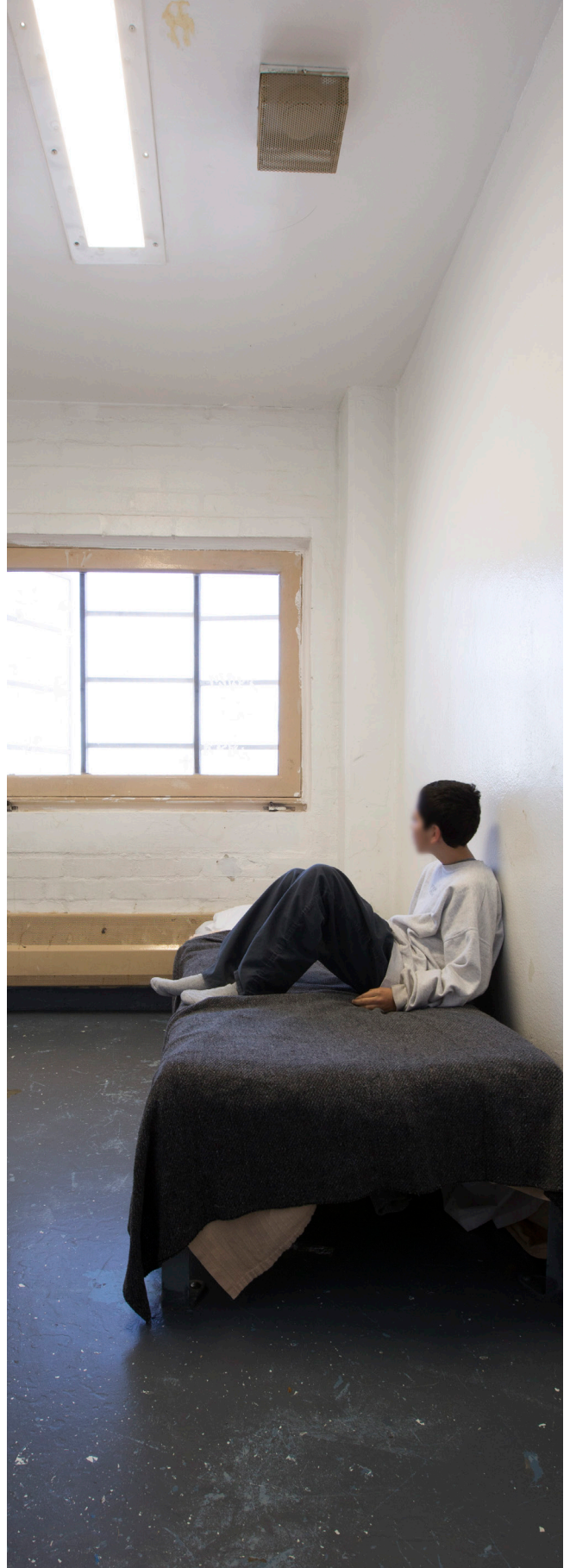
Community-based alternatives to incarceration outside of complete diversion from the system have also been effective. Research has shown that children are better served by treatment-intensive community programs rather than incarceration, and that such programs result in positive outcomes for children, are more cost-effective, and reduce recidivism rates.¹²⁷ These programs can employ approaches such as graduated sanctions, tiered supervision, and restorative justice practices in the community, providing local courts with safe incarceration alternative options.¹²⁸

For example, research by the John Jay College of Criminal Justice Research and Evaluation Center has shown that, of 3,523 high-risk youth participating in an intensive community-based program, 86% remained arrest free during the program and 93% remained at home at the end of services.¹²⁹ To safely keep our children in their communities and out of youth prisons, New Jersey must transform its juvenile justice system to a community-based system of care because it works.



While there are numerous diversion options and alternatives to incarceration available within New Jersey’s juvenile justice system to prevent children from entering youth prisons, children of color, in particular, are not provided equal access to these programs. As a point of reform, by shifting state funding from youth prisons to community-based alternative programs, Black children in our state can fully benefit from the rehabilitative care that the juvenile justice system was originally designed to provide, and that their white peers more often experience. For illustrative purposes, the JJC chart in Appendix A outlines the various departure points available as a child navigates through the juvenile justice system, while simultaneously illustrating the convoluted nature of the system.¹³⁰

Although there are multiple programs and strategies to ensure our children are not being incarcerated, several of these options are limited in application by resource scarcity, racial disparity, and restricted discretion. As a result, hundreds of children—disproportionately Black children—are ending up in youth prisons. This section will highlight four major diversion and incarceration alternative points in the state system which have great potential to address racial disparities in our state: (1) law enforcement diversion; (2) the Juvenile Detention Alternatives Initiative; (3) family court intake diversion; and (4) court disposition.¹³¹



Law Enforcement Diversion

Law enforcement’s successful diversion of children before they get a record is one of the most important first steps in keeping our kids home. In New Jersey, several diversion options are available to officers when they first come into contact with youth, including issuing a warning (known as a curbside warning or the “counseled and released” alternative)¹³² or conducting a stationhouse adjustment.

A stationhouse adjustment occurs when a law enforcement officer diverts a child who has committed a minor juvenile offense by ordering him or her to perform community service, pay restitution, or complete some other condition as an alternative to having a formal complaint filed against him or her.¹³³ The child, his or her alleged victim, and the child’s parent or guardian must be involved in the process, and, if the child completes the mandated conditions, a formal delinquency complaint will not be filed.¹³⁴ Pursuant to the New Jersey Attorney General’s Guidelines for Stationhouse

Adjustments, all law enforcement agencies are required to use stationhouse adjustments.¹³⁵ Each quarter, every law enforcement agency must submit a quarterly report of total stationhouse adjustments to their County Prosecutor’s Office, which then submits it to the Division of Criminal Justice.¹³⁶

There are issues, however, with law enforcement diversion practice. *First*, a review of the latest stationhouse adjustments quarterly reports, provided in response to an NJISJ Open Public Records Act (OPRA) request sent to the Attorney General’s Office, shows that police departments are simply not using this program—eliminating a diversion method that could potentially impact Black and brown kids across the state. In fact, as the chart below illustrates, out of the fourteen counties reporting, over 60% of agencies reported that they had no stationhouse adjustment activity in each of 2015’s four quarters.¹³⁷

2015 Stationhouse Adjustment Data by Quarter for Agencies Reporting

Quarter	Agencies Reporting No Adjustment Activity		Agencies With Adjustment Activity		
	Number	Percent	Number	Percent	Total
1st Quarter	148	67.3	72	32.7	220
2nd Quarter	141	60.5	92	39.5	233
3rd Quarter	119	68.4	55	31.6	174
4th Quarter	107	64.8	58	35.2	165

Second, since informal curbside warnings are, for the most part, not tracked or otherwise recorded, we may not have accurate data on how many youth are actually being diverted. *Third*, stationhouse adjustments can only be used without supervisory approval for certain low-level offenses—other offenses, such as the use or possession of a controlled substance or drug paraphernalia and bias offenses, can only be stationhouse adjusted with the permission of the County Prosecutor’s Office.¹³⁸ This additional preclearance before a child can be diverted not only halts the diversion process, keeping him or her in a police department for a longer period of time, but it also places limits on police officer discretion and adds another layer of law enforcement (the prosecutor’s office) to the procedure.

Finally, there is no stationhouse adjustments uniformity across counties. Although the Attorney General’s Guidelines provide a baseline for the stationhouse adjustments practice, there is currently no comprehensive guide that outlines what stationhouse adjustments programs and strategies have been effective and successful.¹³⁹ This contributes to the wide variations in stationhouse adjustments methodology and implementation across counties. For example, while almost 100% (97.5%) of Hudson County youth participating in stationhouse adjustments successfully completed the program, only 27.6% of youth did so in Mercer County.¹⁴⁰ Further, one-third (33.9%) of the stationhouse adjustments plans started in Atlantic County ended before successful completion because the victim insisted on a formal complaint, but zero stationhouse adjustment plans ended in this way in Cumberland, Gloucester, Hudson, Middlesex, Salem, Somerset, and Sussex Counties.¹⁴¹ The uneven application and lack of accountability were predicted by former Assemblyman William D. Payne during a 2007 Assembly Regulatory Oversight Committee meeting on the progress of the stationhouse adjustments program:



[b]ut who tells the municipalities what to do, when to do it? I mean, who is overseeing them—seeing to it that this is happening? Who is overseeing to make sure that kids in Livingston don’t get a better shot than the kids in Newark? I mean, who is doing it? Nobody.¹⁴²

Aside from the uneven and often infrequent use of stationhouse adjustments, and the limited discretion afforded police officers without prosecutorial consent, police resource deployment also merits some level of scrutiny. Indeed, when certain communities are targeted and operate under constant surveillance by police, it is inevitable that more arrests will occur in those neighborhoods, which undoubtedly contributes to the racial disparities in incarceration rates—particularly among youth of color. Police deployment becomes a major factor in a vicious cycle where young people of color are arrested repeatedly and funneled deeper into the criminal justice system.

Juvenile Detention Alternatives Initiative (JDAI)

If the law enforcement contact does not result in diversion, a delinquency complaint is filed and the child’s case will proceed to the pre-trial phase. An important consideration at this stage is whether a child will be detained while awaiting trial. Under New Jersey law, the default rule is that a child should be released pending the disposition of a case.¹⁴³ The law, however, provides exceptions to this rule where (1) detention is necessary to secure the presence of a young person at the next hearing or (2) the physical safety of people or property in the community would be threatened if the young person were not detained, and he or she has been charged with certain offenses.¹⁴⁴ Yet, despite these narrow circumstances permitting detention, for many years, New Jersey’s detention facilities were dangerously overcrowded. For example, in 1993, New Jersey had an average daily detention population of 676 youth, 67 above the combined maximum capacity of the 17 detention facilities of 609 young people.¹⁴⁵ Given the scope and severity of the problem, the New Jersey Judiciary and Juvenile Justice Commission piloted JDAI in 2004 to begin addressing issues around detention and has had great success with decreasing the population of pre-trial detainees in youth detention facilities.

JDAI was created by the Annie E. Casey Foundation in 1992 to address the troubling issue of the increased use of secure detention in the 1990s and early 2000s at a time when juvenile arrests were on the decline.¹⁴⁶ To tackle this problem,

JDAI helps local jurisdictions safely reduce their pre-trial detention populations.¹⁴⁷

JDAI aims to ensure that secure detention is only used for youth who have committed serious and repeat offenses and that alternatives are available for youth who can be safely supervised in the community pre-trial.¹⁴⁸ Among other things, JDAI employs detention alternative programs including electronic monitoring, home detention, and reporting centers to keep kids awaiting a court hearing or pending placement out of locked detention.¹⁴⁹ As of 2014, over 250 counties in thirty-nine states and the District of Columbia are replicating the JDAI model, and average daily population in detention has fallen 43% in participating JDAI sites.¹⁵⁰

New Jersey initially piloted JDAI in five county sites in 2004; it is now in operation in nineteen counties in the state.¹⁵¹ Courts located in JDAI jurisdictions employ a statewide risk screening tool to classify youth by risk level, in order to ensure that detention is “limited to youth who pose a significant threat to reoffend or abscond as determined through objective screening.”¹⁵² This process has led to a significant decrease in the pre-trial detainee population in New Jersey—between pre-JDAI and 2015, there was an average daily population decrease of 65.1% across eighteen sites.¹⁵³ Significantly, in Camden, Essex, and Passaic, the three counties with the highest number of committed youth, the average daily population in detention from pre-JDAI to 2015 dropped drastically—by 66.4%, 66.5%, and 68.2% respectively.¹⁵⁴ Not only has JDAI reduced the number of young people detained pre-trial, it has also led to significant cost savings.¹⁵⁵ Several counties have been able to close their detention centers—saving millions of dollars—and house their youth in other counties’ facilities.¹⁵⁶ Unfortunately, it is unclear whether the cost savings have been reinvested in community programs to enhance prevention, intervention, and social services for youth programs. Importantly, the decrease in the pre-trial detention population may have had an effect on the number of children being committed to JJC custody—from the beginning of JDAI to 2015, commitments to the JJC were cut by over three-quarters (79.7%) across the active JDAI sites.¹⁵⁷

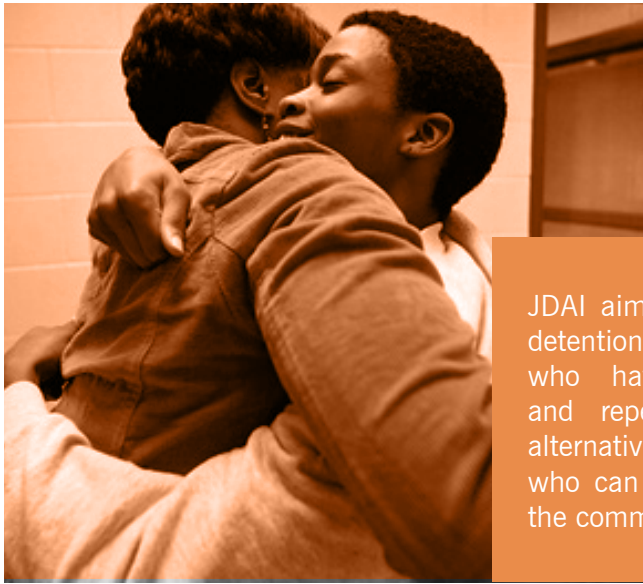
Although the JDAI program has been successful in New Jersey in decreasing the pre-trial detainee population, several issues remain, namely (1) the overrepresentation of children of color in detention and (2) county asymmetry in JDAI implementation.

First, while JDAI has decreased the average daily population of youth of color in pre-trial detention (falling from 740 pre-JDAI to 300 in 2013, a 60 percent reduction),¹⁵⁸ this does not account for the stark racial disparities for the children that are still detained. Every single county but two (Cumberland and Cape May) has seen their percentage of detention admissions comprised of minority youth increase between pre-JDAI to 2015.¹⁵⁹

Despite a four percent decrease in minority overrepresentation—the difference between the percentage of youth of color in the general population vs. detention—between JDAI’s implementation and 2015,¹⁶⁰ there continues to be a gap in length of stay between youth of color and white youth. Indeed, across all JDAI sites in 2015, the mean length of stay in detention for youth of color was, on average, 7.3 days longer than for white youth;¹⁶¹ in addition, the percentage of children of color remaining in detention longer than sixty days is 6.5 % higher than that of white children.¹⁶² While Camden County, which currently sends the second-highest number of children to JJC commitment, had a decrease in admissions of kids to pre-trial detention from pre-JDAI to 2015 (78.8%),¹⁶³ and a decrease in average daily population (66.4%)¹⁶⁴ during this same time, it also had an increase in average length of stay in detention for minority youth of over 50% (53.5%).¹⁶⁵ Even more troubling, Union County, the county currently sending the fourth-highest number of youth to state facilities, experienced a jump of almost 100% in average length of stay for youth of color (97.0%).¹⁶⁶ In addition, even though total juvenile arrests in participating sites have decreased by 58.7% from pre-JDAI to 2014,¹⁶⁷ based on the available data, the minority average daily population and monthly admissions in Essex and Passaic Counties—which currently send the second and third highest number of youth to commitment in New Jersey—have remained above ninety percent every year since JDAI began in the state.¹⁶⁸ Since studies have shown that youth held in secure detention pending adjudication are three-times as likely as youth who remain home to be committed to a youth prison or other residential facility,¹⁶⁹ the pre-trial detention of our children of color has a direct link to their increased representation in the incarcerated population.

Recognizing racial disparities as a significant problem in its youth detention population, in 2009, the JJC contracted with The Burns Institute, a national non-profit organization committed to reducing racial and ethnic disparities in local justice systems,¹⁷⁰ to tackle this very issue. The partnership





JDAI aims to ensure that secure detention is only used for youth who have committed serious and repeat offenses and that alternatives are available for youth who can be safely supervised in the community pre-trial.

(59.5%).¹⁷³ However, there are noticeable differences in these counties' average lengths of stay in detention: Union's average length of stay of 57.4 days is over twice Bergen's 23.9 day average, and three weeks longer than Passaic's average length of stay of 34.8 days.¹⁷⁴ There is also a stark contrast in the average length of stay across counties for youth transferred to jail for any reason, who made bail or were released on their own recognizance after adult charges were filed, or were otherwise released after or upon waiver.¹⁷⁵ While Burlington youth stayed in detention an average of 105.9 days before transfer under one of these circumstances

worked with four New Jersey JDAI-site counties—Atlantic, Camden, Monmouth, and Mercer—to decrease the racial and ethnic disparities in local justice programs.

The partnership employed a three-step approach to combatting the issue: 1) identify racial and ethnic disparities; 2) identify, analyze, and strategize around a target population and implement or pilot policy and practice change to reduce disparities; and 3) monitor reductions and measure progress.¹⁷¹ In the end, this initiative was highly successful. In Atlantic County, for example, between 2008 and 2012, admissions to detention for violations of probation for youth of color were reduced by 72%; in Monmouth County, Latino youth experienced an almost 80% reduction in admissions to detention; and, in Mercer County, Black and Latino youth both experienced a 50% reduction in admissions for failure to appear violations between 2010 and 2012.¹⁷² The Burns Institute initiative, however, has since ended in New Jersey.

Second, while JDAI benchmarks are evenly applied across the state, some counties have achieved more success in meeting those benchmarks than others, leading to a lack of system uniformity and different dispositions for similar conduct. For example, in 2015, three New Jersey counties had similar percentages of youth detained for 1st and 2nd degree offenses—Union (58.2%), Bergen (59%), and Passaic

in 2015, youth in Essex stayed in confinement for over a year and a half (676.7 days), and young people in Mercer in these circumstances were confined for over two years (847 days)—more than doubling Mercer's 2014 average of 461.6 days.¹⁷⁶ Even in cases that are ultimately dismissed, diverted, or reached a similar resolution, youth are subjected to different confinement times across counties—several counties (Cumberland, Warren, Gloucester, Cape May, Atlantic, and Bergen) reported that no children were detained before departure under these circumstances, while youth in Hudson County were detained for almost two months (57.6 days) before departure.¹⁷⁷

Family Court Intake Diversion

There are also opportunities for diversion before a complaint officially comes before the family court—the court tasked with adjudicating juvenile delinquency. After a formal complaint is signed or a juvenile-family crisis matter is referred, the case proceeds to court intake services, the body responsible for screening cases for the court.¹⁷⁸ Upon reviewing a case, intake services either recommends that the case be placed on the formal calendar (before a judge; mandatory counsel), the informal calendar (before a judge or juvenile referee; counsel not mandatory), or diverted (to a Juvenile Conference Committee or Intake Services Conference).¹⁷⁹

Where a child is alleged to have committed a first or second offense of a minor nature, his or her complaint may be diverted to a Juvenile Conference Committee or an Intake Services Conference.¹⁸⁰ While operating in similar capacities, a Juvenile Conference Committee is conducted by community residents appointed by the court to review minor crimes, and Intake Services Conferences are carried out by the Superior Court intake staff for marginally more serious offenses.¹⁸¹ These practices are informal, involve the child, his or her parent, and the alleged victim, and aim to divert the child to incarceration alternatives such as counseling, community service, and restitution.¹⁸² Once all required conditions have been completed, the case can be dismissed.¹⁸³

It is important to note, however, that the law requires that most charges have prosecutorial consent before court intake services can recommend diversion for a child, which severely constrains the discretion of that body.¹⁸⁴ Moreover, a question remains as to how often Juvenile Conference Committees and Intake Services Conferences are actually used. For example, in 2011, only 16.8% of all juvenile delinquency cases in New Jersey were diverted to Juvenile Conference Committees.¹⁸⁵ The infrequent use of this diversion strategy means that less youth—particularly youth of color—are able to benefit from this program.

Court Disposition

At the end of the pre-trial period, a young person’s case proceeds to its final phase: the adjudicatory hearing. In reaching a final disposition, the family court is required to take into account a number of factors, which, again, at least on paper, speak to the rehabilitative purpose of the juvenile justice system. These factors include (1) “[w]hether the disposition supports family strength, responsibility and unity and the well-being and physical safety of the juvenile”; (2) “[w]hether the disposition recognizes and treats the unique physical, psychological, and social characteristics and needs of the child”; and (3) “[w]hether the

disposition contributes to the developmental needs of the child, including the academic and social needs of the child where the child has intellectual disabilities or learning disabilities.”¹⁸⁶

Where the court determines a child is delinquent, the dispositional options available to the judge provide one last opportunity for a child to be kept home and/or in his or her community. While the court may choose to incarcerate a child, it also can impose around twenty other dispositions, including (1) deferred disposition, (2) community service, (3) participation in a work program, (4) counseling, (5) a non-residential program providing intensive services, or (6) probation.¹⁸⁷ Each county’s youth services commission may also provide the court with a range of disposition options.

Delinquency hearing outcomes provide another example of the racial disparities inherent within our juvenile justice system. For example, although 26,809 white youth were arrested in 2009, and in 4,838 of these cases the youth were found delinquent, only seventy-three of these cases resulted in commitment to a youth prison. By contrast, while fewer Black youth were arrested in that same year (21,209), 5,572 were found delinquent, and 406—over five times the amount of white youth—were sent to youth prisons.¹⁸⁸

Another issue arises with the court disposition process—namely, the issue of discretion, or a lack thereof. Mandatory



minimum sentencing requires judges to impose punishments they might otherwise avoid if they were allowed to consider the unique circumstances of each case. Long recognized in the adult criminal justice system as overly punitive, certain juvenile offenses are subject to mandatory terms of incarceration. For example, in addition to any other disposition, there is a mandatory minimum of sixty days incarceration where a child is found guilty of an act, which if committed by an adult, would constitute aggravated assault, second-degree eluding, or a repeated motor vehicle theft offense.¹⁸⁹ A mandatory minimum of thirty days incarceration is also imposed where a young person has been adjudicated for an act which would constitute an unlawful taking of a motor vehicle or third-degree eluding, and he or she was previously adjudicated for motor vehicle theft, unlawful taking of a motor vehicle, or eluding.¹⁹⁰

GOAL: TRANSFORM THE NEW JERSEY JUVENILE JUSTICE SYSTEM INTO A COMMUNITY-BASED SYSTEM OF CARE

In light of the high levels of Black children incarcerated in our state’s youth prisons, the inherent inequities embedded in our current system, and the uneven access to diversionary programs for youth of color, what can be done? In short, New Jersey must fundamentally transform its current juvenile justice system from using incarceration as its default response—especially for Black youth—to one where the ultimate goal is to keep youth in their own communities with intensive treatment and services through community-based programs. New Jersey must therefore transform its juvenile justice system to a community-based system of care at each of the following entry points: (1) law enforcement, (2) courts, and (3) counties and the state.¹⁹¹

Law Enforcement: Increased Use of Diversion Methods

Law enforcement must be transformed to a model where children are seen as meaningful and important members of communities. One of the obvious ways to achieve this goal is through the increased use of stationhouse adjustments by all police departments across the state. Such an increase should be coupled with an expansion of community partners to provide services to youth subject to the stationhouse adjustment process.

In addition to stationhouse adjustments, however, there are more nuanced ways to bring about a community-based policing model. For one, police officers should live in, and represent, the communities they serve. By doing



so, officers will feel ties to the youth they interact with, and may, therefore, feel inclined to work with the parents and community to address the behavior of the child and to divert them more often. Hand in hand with this concept, local police departments should make an effort to interact with the communities they serve in meaningful ways, such as through programs like the Police Athletic League. In addition, police departments should reevaluate how they deploy resources, to ensure that certain neighborhoods are not over-policed in a way that leads to the mass incarceration of Black and brown youth. The default should be to help deter youthful indiscretion through community relationship building, rather than repeated arrests.



Courts: Use All Disposition Options

Under a community-based model of care, courts must recommit themselves to only placing youth in secure placements as a last resort. Treatment and community-based programming must therefore be one of the first options courts turn to when deciding where to place adjudicated youth. In making this determination, judges should meaningfully consider the various factors that may have brought a child before them, including the impact that structural issues—such as poverty, hunger, poor schooling, and others—may have had in his or her life. In addition, courts must wrestle with how current laws may disproportionately impact Black children. As part of this transformation, courts should also consider the possibility of declining to adjudicate youth for low-level conduct. For example, in 2011, Connecticut juvenile courts began rejecting referrals of youth arrested for very minor misbehavior; more than half of the first 221 cases the courts refused to adjudicate involved school arrests.¹⁹²

COUNTIES AND STATE: FINANCIAL REINVESTMENT AND TRANSFORMATION OF YOUTH PRISONS

As mentioned above, a body of research has shown that keeping our children in community-based incarceration alternatives has dramatically positive effects on wellbeing, development, and recidivism rates. In addition to the holistic benefits they provide to our children, community-based programs are also cheaper than incarceration. While the average cost of youth incarceration in New Jersey is approximately \$537.35 per day, the associated cost of keeping a child in a community-based program with wrap-around services has a daily average cost of \$75.¹⁹³ Here in New Jersey, it is evident that moving children (and funding) from under-utilized state facilities to smaller, community-based program placements, will decrease state costs. For example, Youth Advocate Programs, Inc. (YAP), a national non-profit committed to providing community-based alternatives to out-of-home-placement through direct service, advocacy, and policy change, has had a history of successful outcomes for youth at a fraction of the cost of incarceration.¹⁹⁴ Of a sample of 1,851 YAP cases between the ages of 14 and 17, over 87% of the sample was living in the community, and less than 5% was in secure placement, between six and twelve months after being discharged from YAP.¹⁹⁵

In addition, youth with prior out-of-home placements were more likely to stay in their community, and less likely to be in a secure facility, six to twelve months following their discharge from YAP.¹⁹⁶ YAP is just one example of the programming that can be used to keep our young people out of youth prisons and in their communities.

i. Funding Reinvestment

The JJC currently has a budget of approximately \$119,898,000, but only \$8,470,000 of this budget is allotted for counties to develop community programming through the state/community partnership program.¹⁹⁷ To keep children in their own neighborhoods, where their treatment and rehabilitation can be guided by family, friends, and trained professionals, New Jersey must follow the lead of several other states by reconfiguring the way it funds juvenile justice. To do so, the state should redirect funding from youth prisons to community-based facilities, treatment, and programming. This funding should not only increase incarceration alternatives, but also prevention and intervention programming to prevent our children from becoming system-involved in the first place. By using this approach, everyone wins: young people will be kept home, there will be increased funding for the implementation of innovative community-based programs, public safety will be enhanced by lower recidivism rates, and the state can cut its overall juvenile services budget.

ii. Humane, Child-Centered Approach for Those in Need of Secure Placement

While there may be instances where a young person needs to be confined in a secure facility for his or her own safety and/or the safety of the general public, this does not mean that he or she should be incarcerated in a youth prison with limited resources and opportunities, far away from his or her home.

New Jersey should commit itself, in cases where secure confinement has been deemed necessary, to a minimally restrictive environment for a child—i.e., small, more residential, community-based facilities with intensive treatment and services. The Missouri Model, which emphasizes rehabilitation and therapeutic treatment in a home-like setting,¹⁹⁸ is the ideal standard for juvenile confinement.



Conclusion

New Jersey has the opportunity to fundamentally transform its current juvenile justice system by redirecting funding from youth prisons to effective community-based alternatives. Currently, incarceration is the default for too many young people. We should adopt a system in which the ultimate goal is to keep youth in their own neighborhoods with intensive treatment and services. By doing so, New Jersey will ensure that its children receive rehabilitation and treatment close to home, rather than being funneled into youth prisons. The following policy recommendations urge New Jersey to provide all of its justice-involved young people with the treatment that has been shown to work: community-based programming with intensive wrap-around services.

Policy Proposals

POLICY PROPOSAL # 1

The New Jersey Legislature Should Redirect Funds from Youth Prisons to Community-Based Intervention, Prevention, Diversion, and Incarceration Alternatives Programs.

Community-based diversion and incarceration alternatives programs are cost-effective and lead to decreased recidivism rates. In addition, studies have also shown that there is little difference between Black and white youth in delinquent behavior and status offending. In spite of this evidence, however, Black children are less likely to be diverted, and more likely to be sent to costly and ineffective youth prisons, than their white counterparts.

There is a financial incentive to keeping our children in community-based programs with wrap-around services rather than youth prisons. Currently, at least two out of the three youth prisons—the New Jersey Training School and the Female Secure Care and Intake Facility—are significantly underpopulated.¹⁹⁹ It makes little fiscal sense to continue to fund and operate large facilities, far away from children’s communities, for only a handful of youth who could likely be more effectively treated using an alternative model rather than incarceration.

Funding for youth prisons should instead be redirected to community-based programs, focusing on intervention, prevention, diversion, and enhancing incarceration alternatives programs—which are currently sufficiently underfunded by the state. Of note, shifting funds to prevention and intervention programs helps ensure young people do not become system-involved in the first place. Targeting the front-end of the system not only makes economic sense—as Gloucester County noted in its comprehensive



plan of county youth programming, “[p]revention continues to be a much cheaper service than diversion or incarceration and reaches more youth”²⁰⁰ but it is also the first step in keeping children home.

In addition, funds should be reinvested into employment preparation and skills development programs. Providing a child with a job or the opportunity to develop a marketable skill can go far to prevent him or her from entering the juvenile justice system. Indeed, even short term programs, like a summer job initiative, have been shown to have lasting effects on youth behavior.²⁰¹ Counties should include either a jobs initiative or some form of a skills-based program in their youth programming. Programs such as YAP’s MERGE (Males Engaged in Reducing Violence through Gainful Employment)—a three-year program in Atlantic City which helped at-risk young men with, among other things, job training and placement—provide examples of the progress that can be made with such initiatives for both young men and women; over 60% of all participants who had set a goal of continuous employment or half-time self-employment had successfully achieved this goal by the end of the MERGE program.²⁰² But, importantly, these programs must be well-funded to ensure broad success—for example, the MERGE program was only funded for three years.²⁰³ In addition, while Newark has a youth summer program, which aims to train and employ 2,700 of the city’s young people, needs additional funding, a fact evidenced by a number of children who were waitlisted for the program.²⁰⁴ To fully understand the breadth of available programs, a research organization should provide a review of the current jobs-readiness programs available to our state’s youth, and evaluate their effectiveness.

New Jersey should also do an assessment of the funds that it already has available for juvenile justice reform, and evaluate how these funds can be better allocated to support keeping our youth at home with intensive services. For example, federal funds available through the Victims of Crime Act—which provides support for victims of crime, including incarcerated victims—can be used for trauma-based diversion programs, restorative justice programming, and school-based peer support groups.²⁰⁵

POLICY PROPOSAL # 2

The New Jersey Legislature Should Reevaluate Its Sentencing Structure And Cases Requiring Prosecutorial Consent to Ensure Youth Who Do Not Pose A Serious Risk to Public Safety Are Not Incarcerated.

While our ultimate goal should be to move decidedly away from youth prisons, we should reevaluate our sentencing structure to ensure that no youth is incarcerated for a nonviolent offense. Too many young people incarcerated in youth prisons in New Jersey are there for property offenses, drug offenses, and technical violations of probation.²⁰⁶

Legislation should be proposed to prohibit incarcerating youth for non-violent offenses. These offenses provide ideal circumstances for youth to participate in a community-based program to remedy the harm and their behavior. For example, youth adjudicated for a property offense, instead of being incarcerated, could be asked to repair the property damage through community service or some other restorative justice mechanism.

The New Jersey legislature should also prohibit the imposition of mandatory minimums for juvenile delinquency offenses—specifically, it should repeal the provisions of N.J. Stat. Ann. §2A:4A-43 that impose mandatory minimums for certain offenses. Doing so would enable judges to consider the unique circumstances of each child’s situation, and their potential for rehabilitation, rather than having to adhere to overly-punitive laws. In addition, the legislature should consider eliminating non-violent fourth

degree offenses and non-violent disorderly persons offenses from the categories of offenses that require prosecutorial consent before family court intake services can recommend diversion.²⁰⁷ This change would provide this body with greater flexibility to divert these young people to community-based alternatives, rather than pushing them further into system-involvement.

POLICY PROPOSAL # 3

The Attorney General, in conjunction with the JJC, Should Launch a Targeted Initiative to Combat Disproportionate Minority Contact in Detention Centers and Youth Prisons.

Despite the decrease in juvenile incarceration, stark racial disparities continue to characterize our state’s juvenile justice system. As a state receiving Office of Juvenile Justice and Delinquency Prevention funds, New Jersey is required to address disproportionate minority contact in its system, including by developing and implementing intervention strategies to address this issue.²⁰⁸

The JJC should intensify its efforts to build an internal infrastructure to address racial disparities in New Jersey’s youth detention centers and youth prisons. The Burns Institute’s previous project to decrease racial and ethnic disparities in detention populations was highly successful in its four operating counties. Since that time, however, the program is no longer active, even as disproportionate minority contact persists. The JJC should reengage the Burns Institute or some other organizational partner, or launch its own initiative, to satisfy its JJDPA mandate, and to expand the efforts to address disproportionate minority contact statewide.



POLICY PROPOSAL #4

Where Placement in a Secure Facility May be Warranted, Such Facilities Should be Small, Residential, and Located Close to Youths' Families.

In some instances, placing a young person in a secure facility may be necessary for safety reasons. Even in these instances, children should not be sent to large youth prisons that offer little treatment and services, particularly given that other jurisdictions have demonstrated that youth can thrive in smaller, secure placements, close to their communities and families, with intensive services, counseling, and other treatment.²⁰⁹

Where a secure facility is determined to be the most appropriate placement for a young person, he or she should be kept as close to his or her community as feasible, to draw on familial support and extended networks to aid in rehabilitation and development. In addition, these facilities should be treatment-focused, and should allow our young people access to counseling, needed social services, educational support, and mental and emotional health treatment.

POLICY PROPOSAL #5

The Attorney General Should Issue Directives Aimed at Stemming the Flow of Youth Referrals by Law Enforcement to the Juvenile Justice System.

Law enforcement should seek to help keep youth at home in their communities.

Although stationhouse adjustments have been developed as one mechanism to accomplish this goal, this practice has not been equally implemented across New Jersey's twenty-one counties. This is a practice in dire need of reform.

First, law enforcement departments should use stationhouse adjustments more, and those who are not utilizing this system at all should start doing so. *Second*, there should also be a uniform implementation process across counties. The Attorney General's Guidelines only outline the "minimum stationhouse adjustment process,"²¹⁰ and its training guide does not provide specific examples of strategies employed by individual counties, is not uniformly followed given the discrepancies across agencies in the use of stationhouse adjustments, and appears to have been created and used for training purposes over ten years ago.²¹¹ To ensure greater uniformity, the Attorney General should issue a formal directive to provide more comprehensive guidance regarding the use of stationhouse adjustments and to encourage greater use of the program. And this directive should also grant law enforcement officers the flexibility to divert some offenses, such as certain drug and bias offenses, without prosecutorial consent.

To address the underutilization of such an important diversion tool, the Division of Criminal Justice should identify local police departments and counties with successful stationhouse adjustments plans. For example, the Cumberland County Positive Youth Development Coalition—a county-wide juvenile delinquency effort—has engaged in successful stationhouse adjustments practices that led to a 122% increase in stationhouse adjustments between 2013 and 2015.²¹² The Division should then record best practices of these departments and, perhaps working with an external research partner or juvenile justice advocates, develop a best practices guide with real-life examples that can be distributed to police departments statewide. By doing so, not only will the stationhouse adjustments program become more standardized, but each police department will be informed by best practices in diverting cases in its community. Last, a publicly-available data collection and distribution component would also strengthen the stationhouse adjustments program, as further described in policy proposal #6.

POLICY PROPOSAL #6

There Should Be Increased Data Collection and More Accessible Information.

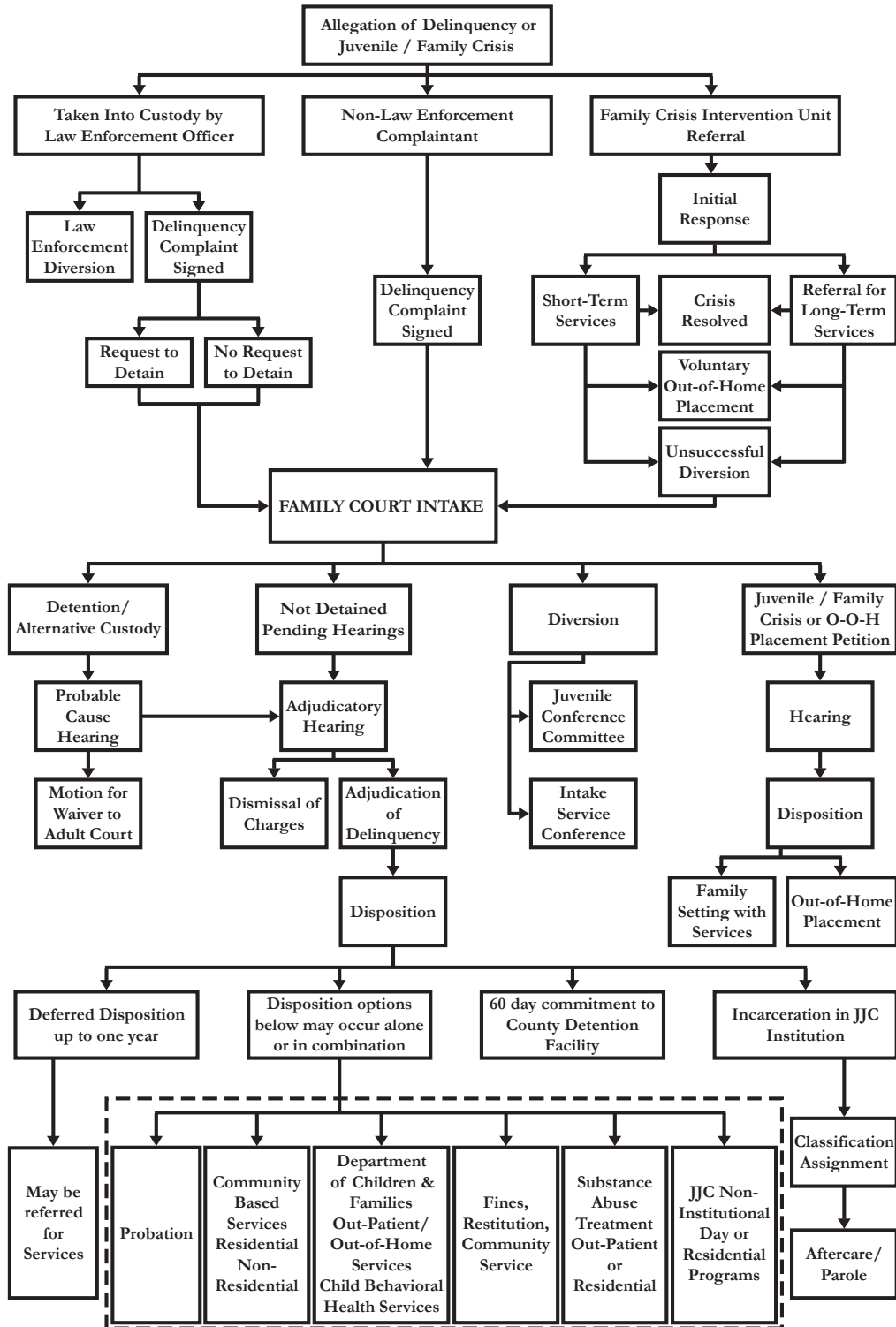
Finally, New Jersey must provide more data on the experience of young people at each pivotal point of the juvenile justice system, and ensure that current data is made publicly available. Data collection and dissemination efforts concerning law enforcement and JJC operations should be expanded.

Law Enforcement: Law enforcement diversion data is not easily accessible. Although law enforcement agencies are required to issue a quarterly stationhouse adjustments report—which includes data by race, sex, prior contact, age, offense, and success rate—they are not required to make this information easily accessible; currently it is only available through an OPRA request. To make it easier for parents and advocates to hold their police departments accountable, each department should post its quarterly stationhouse adjustments data on its website or publish this information through some other publicly-available means.

Police departments should also create accountability measures for their stationhouse adjustment numbers. For example, in Newark, Newark Community Solutions, the Newark Police Department, and the Rutgers School of Criminal Justice, have entered into a partnership to develop a web-based data collection system for juveniles referred to non-profit agencies as part of the City of Newark’s stationhouse adjustments initiative.²¹³ The data generated will track eligible cases in Newark, collecting case characteristics that lead to successful diversion.²¹⁴

JJC: The JJC collects significant data to monitor its progress, which is commendable. There are several ways that the JJC can continue this progress, and achieve greater transparency and accountability. First, the JJC should update its website to include only current information on newly-introduced programming, such as its deep-end JDAI reform efforts in Camden. Second, the weekly juvenile demographics and statistics posted on the website should give a breakdown of how many youth reside in each youth prison, and further disaggregate the types of offenses young people are being incarcerated for, including distinguishing between violations of probation and parole, and reporting how many youth are currently committed for technical violations.

APPENDIX A



Source: NJ JJC Moving through the System, N.J. JUVENILE JUSTICE COMM'N, http://www.nj.gov/oag/jjc/pdf/jjc_print_flowchart_moving.pdf (last visited Nov. 2, 2016).

(Endnotes)

- ¹ Laurence Steinberg, Elizabeth Cauffman & Kathryn C. Monahan, *Psychosocial Maturity and Desistance from Crime in a Sample of Serious Juvenile Offenders*, OFF. JUV. JUST. & DELINQ. PREVENTION JUV. JUST. BULL., Mar. 2015, at 1, <http://www.ojjdp.gov/pubs/248391.pdf>.
- ² This report defines youth prisons as long-term secure facilities.
- ³ JAMES BELL, REPAIRING THE BREACH: A BRIEF HISTORY OF YOUTH OF COLOR IN THE JUSTICE SYSTEM 1 (2015), http://www.burnsinstitute.org/wp-content/uploads/2015/09/Repairing-the-Breach_BI.pdf.
- ⁴ JUSTICE POLICY INST., U.S. YOUTH INCARCERATION IN AN INTERNATIONAL PERSPECTIVE (2014), http://www.justicepolicy.org/uploads/justicepolicy/documents/factsheet_international.pdf.
- ⁵ Statistics as of October 7, 2016.
- ⁶ N.J. JUVENILE JUSTICE COMM'N, JUVENILE DEMOGRAPHICS AND STATISTICS (Oct. 7, 2016), <http://www.nj.gov/lps/jjc/stats/10-07-16-Juvenile-Demographics-and-Stats.pdf>. Unless otherwise indicated, the data included in this report focuses on youth committed to juvenile, rather than adult, facilities.
- ⁷ THE ANNIE E. CASEY FOUNDATION, REDUCING YOUTH INCARCERATION IN THE UNITED STATES 3 (2013), <http://www.aecf.org/m/resourcedoc/AECF-DataSnapshotYouthIncarceration-2013.pdf>.
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- ⁹ JOSHUA ROVNER, THE SENTENCING PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS 10 (2016), <http://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf> [hereinafter ROVNER, SENTENCING PROJECT].
- ¹⁰ *Id.*
- ¹¹ N.J. JUVENILE JUSTICE COMM'N, *supra* note 6. This population count only includes post-disposition committed youth, and does not account for the pre-trial detention population.
- ¹² ROVNER, SENTENCING PROJECT, *supra* note 9, at 6.
- ¹³ NAT'L RESEARCH COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 42 (Committee on Assessing Juvenile Justice Reform et al. eds., 2013), http://www.njcn.org/uploads/digital-library/Reforming_JuvJustice_NationalAcademySciences.pdf.
- ¹⁴ See ROVNER, SENTENCING PROJECT, *supra* note 9, at 11. This disproportionate incarceration of Hispanic children in New Jersey warrants further research. Given the extreme racial disparities between Black and white youth confinement in our state, this report will focus on addressing ways to decrease the racial disparities in the juvenile justice system between Black and white young people in New Jersey.
- ¹⁵ N. J. SUPREME COURT COMM. ON MINORITY CONCERNS, 2013-2015 Report 34-35 (2015), <https://www.judiciary.state.nj.us/reports2015/minority.pdf>.
- ¹⁶ N.J. DEP'T OF THE TREASURY OFFICE OF MGMT. & BUDGET, STATE OF NEW JERSEY APPROPRIATIONS HANDBOOK FISCAL YEAR 2016-2017 B-131-B-132 (2016), <http://www.nj.gov/treasury/omb/publications/17approp/FullAppropAct.pdf> [hereinafter Appropriations Handbook].
- ¹⁷ See, e.g., Steinberg et al., *supra* note 1.
- ¹⁸ See e.g., RICHARD A. MENDEL, THE ANNIE E. CASEY FOUNDATION, NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION (2011), <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>.
- ¹⁹ See, e.g., SHAENA M. FAZAL, YOUTH ADVOCATE PROGRAMS POLICY & ADVOCACY CENTER, SAFELY HOME: REDUCING YOUTH INCARCERATION AND ACHIEVING POSITIVE OUTCOMES FOR HIGH AND COMPLEX NEED YOUTH THROUGH EFFECTIVE COMMUNITY-BASED PROGRAMS (2014), <http://safelyhomecampaign.org/Portals/0/Documents/Safely%20Home%20Preview/safelyhome.pdf?ver=2.0>.
- ²⁰ *Child or Adult? A Century Long View*, PBS: Frontline, <http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/childadult.html>.
- ²¹ *Id.*
- ²² AM. BAR ASSOC., DIALOGUE ON YOUTH AND JUSTICE PART 1: THE HISTORY OF JUVENILE JUSTICE 1 (2007), http://www.americanbar.org/content/dam/aba/administrative/public_education/resources/DYJfull.authcheckdam.pdf.
- ²³ *Juvenile Justice History*, CTR. ON JUV. & CRIM. JUST., <http://www.cjcj.org/education1/juvenile-justice-history.html> (last visited Oct. 31, 2016).
- ²⁴ *Child or Adult? A Century Long View*, *supra* note 20.
- ²⁵ *Id.*
- ²⁶ Anthony Platt, *The Rise of the Child-Saving Movement: A Study in Social Policy and Correctional Reform*, 381 ANNALS AM. ACAD. POL. & SOC. SCI. 21, 26 (1969), <http://www.umass.edu/legal/Benavides/Fall2005/397G/Readings%20Legal%20397%20G/3%20Anthony%20Platt.pdf>.
- ²⁷ AM. BAR ASSOC., *supra* note 22, at 5.
- ²⁸ *Id.*
- ²⁹ *Juvenile Justice History*, *supra* note 23.
- ³⁰ Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 FUTURE CHILD. 15, 16 (2008), <https://ccoso.org/sites/default/files/import/Adol-dev-and-reg-of-crime.pdf>. Although this resource provides a comprehensive history of the juvenile justice system in our nation, this author does not support the report's position that older, violent recidivists should be tried as adults. See *id.* at 28.

- ³¹ *Id.* at 16.
- ³² *Id.* at 17.
- ³³ *Id.* at 17.
- ³⁴ *Child or Adult? A Century Long View*, *supra* note 20.
- ³⁵ *Id.*
- ³⁶ 387 U.S. 1 (1967).
- ³⁷ BELL, *supra* note 3, at 4.
- ³⁸ *Id.*
- ³⁹ *Id.*
- ⁴⁰ *Id.* at 5.
- ⁴¹ NAT'L JUVENILE JUSTICE NETWORK, POLICY PLATFORM: RACIAL AND ETHNIC DISPARITIES IN JUVENILE JUSTICE SYSTEMS 1 (2010), <http://www.njjn.org/uploads/policy-platforms/DMC-Policy-Platform-5.18.12-fin.pdf>
- ⁴² BELL, *supra* note 3, at 6.
- ⁴³ MICHELLE ALEXANDER, *THE NEW JIM CROW* 28 (2012).
- ⁴⁴ *Convict Leasing*, subpage of *Slavery by Another Name*, PBS, <http://www.pbs.org/tpt/slavery-by-another-name/themes/convict-leasing/> (last visited Oct. 31, 2016).
- ⁴⁵ BELL, *supra* note 3, at 7.
- ⁴⁶ *Id.* at 10.
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- ⁴⁸ JOSHUA ROWNER, DISPROPORTIONATE MINORITY CONTACT IN THE JUVENILE JUSTICE SYSTEM 2 (2014), <http://www.sentencingproject.org/wp-content/uploads/2015/11/Disproportionate-Minority-Contact-in-the-Juvenile-Justice-System.pdf>.
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- ⁵⁰ JOHN J. DILULIO, JR., *The Coming of the Super-Predators*, *THE WKLY. STANDARD*, Nov. 27, 1995, <http://www.weeklystandard.com/the-coming-of-the-super-predators/article/8160> [hereinafter Dilulio, Super-Predators]; see also Barry Krisberg, *Reforming Juvenile Justice*, *AM. PROSPECT* (Aug. 14, 2005), <http://prospect.org/article/reforming-juvenile-justice>.
- ⁵¹ BARRY KRISBERG ET AL., NAT'L COUNCIL CRIME & DELINQUENCY, YOUTH VIOLENCE MYTHS AND REALITIES: A TALE OF THREE CITIES i (2009), http://www.aecf.org/m/resourcedoc/AECF-Youth_Violence_Myths-2009.pdf [hereinafter KRISBERG, YOUTH VIOLENCE].
- ⁵² Dilulio, *Super-Predators*, *supra* note 50.
- ⁵³ JOHN J. DILULIO, JR., *My Black Crime Problem, and Ours*, *CITY J.*, Spring 1996, <http://www.city-journal.org/html/my-black-crime-problem-and-ours-11773.html>.
- ⁵⁴ KRISBERG, YOUTH VIOLENCE, *supra* note 51, at i.
- ⁵⁵ Dilulio, *Super-Predators*, *supra* note 50.
- ⁵⁶ *Id.*
- ⁵⁷ KRISBERG, *Youth Violence*, *supra* note 51 at i.
- ⁵⁸ PETER KATEL, *Juvenile Justice*, 18 *CQ RESEARCHER* 913 (2008), <http://library.cqpress.com/cqresearcher/document.php?id=cqresre2008110703>.
- ⁵⁹ Marsha Levick, *The Pendulum Swings: Looking Back at More Than a Century of Juvenile Justice Reform in the United States*, *N.J. LAW.* 11, 14 (2015).
- ⁶⁰ DAVID W. SPRINGER & ALBERT R. ROBERTS, *JUVENILE JUSTICE AND DELINQUENCY* 10 (2011), http://samples.jbpub.com/9780763760564/60564_CH01_Springer.pdf.
- ⁶¹ PUBLIC CATALYST GROUP & YALE ALUMNI ASSOCIATION JUVENILE JUSTICE REFORM TASK FORCE, *RECOMMENDATIONS FOR THE REFORM OF NEW JERSEY'S JUVENILE WAIVER LAWS* 7 (2011), <http://www.njsj.org/assets/documents/RecommendationsfortheReformofNewJerseyJuvenileWaiverLaws.pdf>.
- ⁶² Scott *et al.*, *supra* note 30 at 18.
- ⁶³ Sarah Gonzalez, *Kids in Prison: Getting Tried as An Adult Depends on Skin Color*, *WNYC NEWS*, Oct. 10, 2016, <http://www.wnyc.org/story/black-kids-more-likely-be-tried-adults-cant-be-explained/>.
- ⁶⁴ Steinberg *et al.*, *supra* note 1, at 2.
- ⁶⁵ Mariam Arain *et al.*, *Maturation of the Adolescent Brain*, 9 *NEUROPSYCHIATRIC DISEASE & TREATMENT* 449, 452-53 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/pdf/ndt-9-449.pdf>
- ⁶⁶ *Id.* at 450.
- ⁶⁷ *Id.*
- ⁶⁸ Ellen Torregrossa-O'Connor, *New Jersey's Juvenile Waiver Reform and the Nexus Between Adolescent Development and Criminal Responsibility*, *N.J. LAW.* 16, 18 (2015).
- ⁶⁹ Steinberg *et al.*, *supra* note 1, at 2.
- ⁷⁰ 543 U.S. 551 (2005).
- ⁷¹ *Id.* at 569.
- ⁷² *Id.*
- ⁷³ 560 U.S. 48 (2010).
- ⁷⁴ *Id.* at 68.

- ⁷⁵ *Id.*
- ⁷⁶ 132 S. Ct. 2455 (2012).
- ⁷⁷ *Id.* In *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), the *Miller* holding was made retroactive.
- ⁷⁸ 564 U.S. 261 (2011).
- ⁷⁹ *Id.* at 273.
- ⁸⁰ N.J. JUVENILE JUSTICE COMM'N, *supra* note 6.
- ⁸¹ See Mendel, *supra* note 18.
- ⁸² APPROPRIATIONS HANDBOOK, *supra* note 16, at B-131-B-132.
- ⁸³ JUSTICE POLICY INST., STICKER SHOCK: CALCULATING THE FULL PRICE TAG FOR YOUTH INCARCERATION 4 (2014), http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf.
- ⁸⁴ See ROVNER, SENTENCING PROJECT, *supra* note 9, at 10.
- ⁸⁵ *Id.* at 5.
- ⁸⁶ *Id.* at 8.
- ⁸⁷ *What is R.E.D.?*, W. HAYWOOD BURNS INST. FOR JUVENILE JUSTICE FAIRNESS & EQUITY, <http://www.burnsinstitute.org/what-is-red/> (last visited Oct. 31, 2016).
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- ⁸⁹ ROVNER, SENTENCING PROJECT, *supra* note 9, at 6.
- ⁹⁰ *Id.*
- ⁹¹ *Id.*
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- ⁹³ MONMOUTH CTY. YOUTH SERV. COMM'N, MONMOUTH COUNTY COMPREHENSIVE YOUTH SERVICES PLAN 2015-2017, at Data Worksheets-Delinquency Prevention Table 6, <http://co.monmouth.nj.us/documents/41%5C2015-17MCComprehensive%20Youth%20Services%20Plan.pdf>.
- ⁹⁴ GLOUCESTER CTY. YOUTH SERV. COMMISSION, COMPREHENSIVE GLOUCESTER COUNTY YOUTH SERVICES PLAN JANUARY 2015-DECEMBER 2017, at 21 (2014), <http://www.glooucestercountynj.gov/civica/filebank/blobload.asp?BlobID=7791>.
- ⁹⁵ N. J. SUPREME COURT COMM. ON MINORITY CONCERNS, *supra* note 15, at 34-35.
- ⁹⁶ *Id.*
- ⁹⁷ N.J. JUVENILE JUSTICE COMM'N, *supra* note 6; Alex Napoliello, *Newark Kids Are Healthier but Still Living in Poverty, New Study Finds*, NJ.COM (Aug. 1, 2016, 11:18 AM), http://www.nj.com/essex/index.ssf/2016/08/kids_in_newark_are_healthier_but_still_living_in_p.html; Candace Kelley, *More NJ Children Are Living in Extreme Poverty*, NJTVNEWS (Apr. 28, 2014), <http://www.njtvonline.org/news/video/more-nj-children-are-living-in-extreme-poverty/>.
- ⁹⁸ *About DMC*, OFF. JUV. JUSTICE & DELINQ PREVENTION, <http://www.ojjdp.gov/dmc/about.html> (last visited Oct. 31, 2016).
- ⁹⁹ Jackie Mader & Sarah Butrymowicz, *Pipeline to Prison: Special Education too Often Leads to Jail for Thousands of American Children*, HECHINGER REP., Oct. 26, 2014, <http://hechingerreport.org/pipeline-prison-special-education-often-leads-jail-thousands-american-children/>.
- ¹⁰⁰ N.J. JUVENILE JUSTICE COMM'N, *supra* note 6. The overrepresentation of children with disabilities in the juvenile justice system in New Jersey is an issue that warrants additional research and reporting.
- ¹⁰¹ See JUSTICE POLICY IN., *supra* note 83, at 3.
- ¹⁰² *Id.*
- ¹⁰³ *Id.* at 11. This amount is based on the cost of the state's most expensive confinement option.
- ¹⁰⁴ *Admissions: Costs & Aid*, THE COLL. OF N. J., <https://admissions.tcnj.edu/about-tcnj/costs-financial-aid/> (last visited Oct. 31, 2016).
- ¹⁰⁵ DOROTHY XANOS, PREA AUDIT REPORT: NEW JERSEY TRAINING SCHOOL 1 (2016), http://www.nj.gov/lps/jjc/pdf/2016-PREA-Final-Report_NJ%20Training-School.pdf.
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- ¹⁰⁷ APPROPRIATIONS HANDBOOK, *supra* note 16, at B-131,132.
- ¹⁰⁸ *Id.* at B-130.
- ¹⁰⁹ Grants-in-aid appropriations are defined as appropriations for programs and services provided to the public on behalf of the State by a third party provider, or grants made directly to individuals based on assorted program eligibility criteria. See N.J. DEP'T OF THE TREASURY OFFICE OF MGMT. & BUDGET, CITIZENS' GUIDE TO THE BUDGET: FISCAL YEAR 2016 47 (2015), <http://www.nj.gov/treasury/omb/publications/16citizensguide/citguide.pdf>.
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- ¹¹² Nat'l Ctr. For Juvenile Justice, *Glossary*, EASY ACCESS TO THE CENSUS OF JUVENILES IN RESIDENTIAL PLACEMENT: 1997-2013, <http://www.ojjdp.gov/ojstatbb/ezacjrp/asp/glossary.asp> [hereinafter *Glossary*].

¹¹³ THE ANNIE E. CASEY FOUND., A KIDS COUNT DATA SNAPSHOT: REDUCING YOUTH INCARCERATION IN THE UNITED STATES 2 (2013), <http://www.aecf.org/m/resourcedoc/AECF-DataSnapshotYouthIncarceration-2013.pdf>.

¹¹⁴ ROVNER, SENTENCING PROJECT, *supra* note 9, at 7.

¹¹⁵ Nat'l Ctr. For Juvenile Justice, *Offense Profile by Race/Ethnicity for New Jersey*, 2013, EASY ACCESS TO THE CENSUS OF JUVENILES IN RESIDENTIAL PLACEMENT: 1997-2013, https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/Selection_cjrp.asp?state=0&topic=Offense_Race&year=2013. The National Center for Juvenile Justice (the "Center") defines "committed" youth as those "juveniles in placement in the facility as part of a court-ordered disposition. Committed juveniles may have been adjudicated and disposed in juvenile court or convicted and sentenced in criminal court." *Glossary*, *supra* note 112. The Center defines technical violations as "[v]iolations of probation, parole, or valid court orders; acts that disobey or go against the conditions of probation or parole." *Id.*

¹¹⁶ N.J. JUVENILE JUSTICE COMM'N, *supra* note 6. As noted by this JJC resource, committed juveniles may have engaged in multiple offenses.

¹¹⁷ MENDEL, *supra* note 18, at 9.

¹¹⁸ *Id.* at 11.

¹¹⁹ JUSTICE POLICY INST., *supra* note 83, at 2.

¹²⁰ MENDEL, *supra* note 18, at 10.

¹²¹ N. J. DEP'T OF CORR., RELEASE OUTCOME 2011: A THREE-YEAR FOLLOW-UP 6, 27, http://www.state.nj.us/corrections/pdf/offender_statistics/2016/Release_Outcome_Report_2011.pdf.

¹²² *Id.* at 23.

¹²³ FAZAL, *supra* note 19, at 9.

¹²⁴ *Diversion Programs*, youth.gov, <http://youth.gov/youth-topics/juvenile-justice/diversion-programs> (last visited Oct. 21, 2016).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ JUSTICE POLICY INST., THE COSTS OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES MAKE GOOD FISCAL SENSE 2 (2009), http://www.justicepolicy.org/images/upload/09_05_rep_costsofconfinement_jj_ps.pdf.

¹²⁸ FAZAL, *supra* note 19, at 11.

¹²⁹ FAZAL, *supra* note 19, at v.

¹³⁰ Indeed, the complex intricacies of the system may result in families being unable to effectively advocate for their children due to confusion over the process.

¹³¹ Please refer to N. J. PARENTS CAUCUS, NAVIGATING THE JUVENILE JUSTICE SYSTEM IN NEW JERSEY: A FAMILY GUIDE (2014), http://www.njnj.org/uploads/digital-library/NJ-Parents-Caucus_Navigating-JJ-System-Family-Guide_2014.pdf, for a detailed view of the entire criminal justice process in New Jersey for children and their families.

¹³² *Id.* at 9.

¹³³ N.J. JUVENILE JUSTICE & DELINQUENCY PREVENTION COMM., THE NEW JERSEY 2009-2011 COMPREHENSIVE THREE YEAR PLAN 2, http://www.nj.gov/lps/jjc/pdf/NJ_2009-2011_Three-Year-Plan.pdf [hereinafter Comprehensive Three Year Plan].

¹³⁴ Ronald Smothers, *First Offenses Under Study in New Jersey*, N.Y. TIMES, Dec. 8, 2005, http://www.nytimes.com/2005/12/08/nyregion/first-offenses-under-study-in-new-jersey.html?_r=1

¹³⁵ N.J. OFFICE OF THE ATTORNEY GEN., ATTORNEY GENERAL GUIDELINES FOR STATIONHOUSE ADJUSTMENT OF JUVENILE DELINQUENCY OFFENSES 3 (2005, rev. 2008), <http://www.state.nj.us/lps/dcj/agguide/directives/dir-2008-2.pdf>.

¹³⁶ *Id.* at 7-8.

¹³⁷ N.J. Div. of Criminal Justice, *Table 1. Reporting Information 2015 Stationhouse Adjustment Data by Quarter* (received in response to Aug. 10, 2016 OPRA request).

¹³⁸ N.J. OFFICE OF THE ATTORNEY GEN., *supra* note 135, at 4-5.

¹³⁹ N.J. OFFICE OF THE ATTORNEY GEN., STATIONHOUSE ADJUSTMENTS: HELPFUL HINTS FOR IMPLEMENTATION OF THE GUIDELINES, <http://www.nj.gov/oag/s-a-guide/>; Press Release, N.J. Office of the Attorney General, Attorney General Peter C. Harvey Announces Mandatory Stationhouse Adjustment of Juvenile Delinquency Offenses to New Jersey Law Enforcement Agencies (Dec. 7, 2005), <http://www.nj.gov/oag/newsreleases05/pr20051207a.html>; the initial training guide for agencies appears outdated and does not contain county-specific examples of successful implementation of the program.

¹⁴⁰ N.J. Div. of Criminal Justice, *Table 4. Outcome Information Stationhouse Adjustment Data by County 2015* (received in response to Aug. 10, 2016 OPRA request).

¹⁴¹ *Id.*

¹⁴² *Committee Meeting of Assemb. Regulatory Oversight Comm.*, (2007) (statement of Assemb. William D. Payne) at 33, <http://www.njleg.state.nj.us/legislativepub/pubhear/aro012207.pdf>.

¹⁴³ N.J. STAT. ANN. § 2A:4A-34 (West 2016).

¹⁴⁴ *Id.* The law also provides another exception for temporary placement in shelter or non-secure placement if the juvenile has been charged with certain offenses and a parent cannot be found or will not accept custody. *See id.*

¹⁴⁵ JUVENILE DETENTION ALTERNATIVES INITIATIVE, THE ANNIE E. CASEY FOUND., JDAI IN NEW JERSEY 6 (2014), <http://www.aecf.org/m/resourcedoc/aecf-JDAIinNewJersey-2014.pdf>.

¹⁴⁶ *Id.* at 2,6.

¹⁴⁷ *Id.* at 2.

¹⁴⁸ *Juvenile Detention Alternatives Initiative (JDAI)*, Prevention and Early Intervention, N. J. Juvenile Justice Comm'n, http://www.nj.gov/oag/jjc/localized_programs_jdai.html.

¹⁴⁹ JUVENILE DETENTION ALTERNATIVES INITIATIVE, *supra* note 145, at 2.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 4.

¹⁵² *Id.* at 36.

¹⁵³ N. J. JUVENILE JUSTICE COMM'N, NEW JERSEY JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) 2015 ANNUAL DATA REPORT III (2016), <http://www.nj.gov/oag/jjc/pdf/JDAI-2015-Report-Annual.pdf>.

¹⁵⁴ *Id.* at 1.

¹⁵⁵ JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI), *supra* note 148.

¹⁵⁶ *Id.*

¹⁵⁷ N. J. JUVENILE JUSTICE COMM'N, *supra* note 153, at iv.

¹⁵⁸ JUVENILE DETENTION ALTERNATIVES INITIATIVE, *supra* note 145, at 30.

¹⁵⁹ N. J. JUVENILE JUSTICE COMM'N, *supra* note 153, at 27.

¹⁶⁰ *Id.* at iv, 26.

¹⁶¹ *Id.* at iv.

¹⁶² *Id.*

¹⁶³ *Id.* at 1.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 22.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at iv.

¹⁶⁸ *Id.* at 42,50.

¹⁶⁹ JUVENILE DETENTION ALTERNATIVES INITIATIVE, *supra* note 145, at 31.

¹⁷⁰ MICHAEL FINLEY ET AL., W. HAYWOOD BURNS INST., FINAL SUMMARY BRIEFING: NEW JERSEY 3 (2013), <http://www.jdaihelpdesk.org/jersey/GEN%20New%20Jersey%20-%20Burns%20Institute%20Collaboration%20Report.pdf>.

¹⁷¹ *Id.* at 10.

¹⁷² *Id.* at 4-5.

¹⁷³ N. J. JUVENILE JUSTICE COMM'N, *supra* note 153, at 6.

¹⁷⁴ *Id.* at 11. Table 5 in the JDAI 2015 Annual Report also illustrates that this wide disparity in average lengths of stay between these three counties cannot be readily accounted for by the populations detained for the other offense categories. *See id.* at 6. Both Bergen and Passaic have higher percentages of youth detained for 3rd degree offenses (10.3% and 12%, respectively) than Union (5.5%), the three counties have a relatively comparable number of youth detained for "other" offenses, and there is only a percentage gap in youth detained for 4th degree and disorderly person offenses of 1% (in the case of Union and Bergen) and 1.9% (in the case of Union and Passaic). *Id.*

¹⁷⁵ *Id.* at 54.

¹⁷⁶ *Id.* at 15.

¹⁷⁷ *Id.*

¹⁷⁸ N.J. STAT. ANN. § 2A:4A-70 (West 2016).

¹⁷⁹ COMPREHENSIVE THREE YEAR PLAN, *supra* note 133, at 3-4. Cases are referred to the formal or informal calendar for first time serious offenses, repeat serious offenses, and repeat minor offenses. *Id.*

¹⁸⁰ N.J. PARENTS CAUCUS, *supra* note 131, at 9.

¹⁸¹ *Id.*

¹⁸² *Id.* at 9-10.

¹⁸³ *Id.* at 10.

¹⁸⁴ N.J. STAT. ANN. § 2A:4A-71 (West 2016).

¹⁸⁵ JUVENILE CONFERENCE COMMITTEES, N. J. COURTS, <http://www.judiciary.state.nj.us/family/fam-01.html> (last visited Oct. 21, 2016).

¹⁸⁶ N.J. STAT. ANN. § 2A:4A-43 (West 2016).

¹⁸⁷ *Id.*

¹⁸⁸ N.J. SUPREME COURT COMM. ON MINORITY CONCERNS, *supra* note 15, at 32.

¹⁸⁹ N.J. STAT. ANN. § 2A:4A-43 (West 2016), *supra* note 186.

¹⁹⁰ *Id.*

¹⁹¹ This report recognizes that there are a number of other points of contact that fuel the current youth prison crisis, such as the school-to-prison pipeline, prosecutorial discretion, and parole-related issues.

¹⁹² RICHARD MENDEL, JUSTICE POLICY INSTITUTE, JUVENILE JUSTICE REFORM IN CONNECTICUT 25 (2013), http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_juvenile_justice_reform_in_ct.pdf.

¹⁹³ JUSTICE POLICY INST., *supra* note 83, at 11; Fazal, *supra* note 19, at 45.

¹⁹⁴ WHO WE ARE, YOUTH ADVOCATE PROGRAMS, INC., <http://www.yapinc.org/Who-We-Are> (last visited Dec. 4, 2016).

¹⁹⁵ DOUGLAS EVANS & SHEYLA DELGADO, JOHN JAY COLLEGE OF CRIMINAL JUSTICE, YAP HELPS TO KEEP YOUTH OUT OF SECURE FACILITIES AND LIVING IN THEIR COMMUNITIES 1 (2014), <http://www.yapinc.org/Portals/0/Documents/Fact%20Sheets/JJIB3.pdf>.

¹⁹⁶ *Id.* at 2.

¹⁹⁷ APPROPRIATIONS HANDBOOK, *supra* note 16, at B-130, B-132; Notice of Availability of Funds State/Community Partnership Grant Program and Family Court Services Program, 48 NJR 4(1) (Mar. 8, 2016), http://www.nj.gov/oag/jjc/pdf/funding/CY-2017_Comprehensive-County-Youth-Services-Plan_noaf.pdf.

¹⁹⁸ Solomon Moore, *Missouri System Treats Juvenile Offenders with Lighter Hand*, N.Y. TIMES, Mar. 26, 2009, http://www.nytimes.com/2009/03/27/us/27juvenile.html?_r=0.

¹⁹⁹ As previously noted, the latest JMSF PREA audit did not provide a current population number for that facility.

²⁰⁰ GLOUCESTER CTY., N.J. YOUTH SERVICES COMM'N, COMPREHENSIVE GLOUCESTER COUNTY YOUTH SERVICES PLAN, JANUARY 2015-DECEMBER 2017 18 (2014), <http://www.glooucestercountynj.gov/civica/filebank/blobdload.asp?BlobID=7791>.

²⁰¹ Emily Badger, *Chicago Gave Hundreds of High-Risk Kids a Summer Job. Violent Crime Arrests Plummeted.*, WASH. POST, Dec. 8, 2014, <https://www.washingtonpost.com/news/wonk/wp/2014/12/08/one-cheap-way-to-curb-crime-give-teens-a-summer-job/>.

²⁰² Crum R, *Helping Young Men Build Meaningful Lives in Atlantic City, NJ*, ROBERT WOOD JOHNSON FOUNDATION (July 24, 2014), <http://www.rwjf.org/en/library/research/2014/07/helping-young-men-build-meaningful-lives-in-atlantic-city-n-j-.html>.

²⁰³ *Id.*

²⁰⁴ Kate Mishkin, *Program Puts 2,700 Newark Kids to Work This Summer*, NJ.COM, (Jul. 7, 2016, 8:08 AM), http://www.nj.com/essex/index.ssf/2016/07/newark_program_brings_jobs_training_to_youth.html.

²⁰⁵ NATIONAL JUVENILE JUSTICE NETWORK, THE CRIME VICTIMS FUND: A PRIMER FOR YOUTH JUSTICE ADVOCATES (2016), http://www.njjn.org/uploads/njjn-publications/VOCA_Fact_Sheet_Update_Nov2016.pdf.

²⁰⁶ Nat'l Ctr. For Juvenile Justice, *supra* note 115.

²⁰⁷ See N.J. STAT. ANN. § 2A:4A-71 (West 2016).

²⁰⁸ *About DMC*, *supra* note 78.

²⁰⁹ See, e.g., THE ANNIE E. CASEY FOUNDATION, THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS 14-35 (2010), http://static1.1.sqspcdn.com/static/f/658313/9749173/1291845016987/aecf_mo_fullreport_webfinal.pdf?token=v1tZeRGDxeiiZF4svllteOwCzOA%3D.

²¹⁰ N.J. OFFICE OF THE ATTORNEY GEN., *supra* note 135, at 3.

²¹¹ See N.J. OFFICE OF THE ATTORNEY GEN., *supra* note 139; N.J. OFFICE OF THE ATTORNEY GENERAL, *supra* note 139.

²¹² Cumberland County Positive Youth Development Coalition, http://ccpydc.com/wp-content/uploads/2016/08/ccpydc_brochure.pdf (last visited Nov. 21, 2016).

²¹³ *Projects/Funding*, RUTGERS CTR. ON YOUTH VIOLENCE AND JUVENILE JUSTICE, <http://youthviolence.rutgers.edu/projects/> (last visited Oct. 23, 2016).

²¹⁴ *Id.*



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