

Legal and Policy Responses to Children in Conflict with the Law in the United States



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In support of the Children in Conflict with the Law Working
Group of Family for Every Child

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Abbreviations

DJJ	Division of Juvenile Justice (California)
DMC	Disproportionate minority contact
FJDA	Federal Juvenile Delinquency Act
JJDPA	Juvenile Justice and Delinquency Prevention Act
OJJDP	Office of Juvenile Justice and Delinquency Prevention
SB	Senate Bill
UN CRC	United Nations Convention on the Rights of the Child
USC	United States Code
WIC	Welfare and Institutions Code
§	Used to refer to a specific section of a document

Summary

Children in conflict with the law in the United States interact with a complex patchwork of federal, state, and local laws and policies concerning juvenile justice. There has been a significant and sustained national drop in juvenile arrest and incarceration rates during the past two decades. This has seeded many changes in juvenile law and policy, particularly in the areas of deinstitutionalization, sentencing, and expansion of due process rights.

These reforms have been driven by both fiscal and best practice considerations and have led to numerous innovative new programs in the areas of pre-charge diversion, family engagement, and reintegration. Availability and implementation of these new approaches has varied dramatically in different states, however. Even in states such as California, where recent legislation has forced the closure of all state-run juvenile prisons and shifted administration of juvenile justice to the county level, there are still stark differences in how local jurisdictions treat children in conflict with the law.

Although the United States signed the United Nations Convention on the Rights of the Child (hereinafter UN CRC) in 1995, it remains the sole member state that has not ratified the convention. The United States is nevertheless in compliance with many of the standards concerning children in conflict with the law outlined in the UN CRC and related frameworks, such as the Beijing Rules and the Riyadh Guidelines. Recent developments at both the state and federal level have brought United States juvenile justice law and policy further into compliance with international standards. However, significant shortcomings remain, particularly in the area of disproportionate involvement of racial and ethnic minorities in the country's juvenile justice system.

Introduction

The Children in Conflict with the Law Working Group of Family for Every Child is composed of member organizations from Brazil, Guyana, India, Paraguay, Philippines, Rwanda, and the United States. Group members have previously collaborated on concept notes addressing several themes, including detention and reintegration, prevention, diversion, and overrepresentation.

Group members from Brazil, Paraguay, and the United States decided to undertake this joint research project to develop a foundational understanding of key legal and policy issues impacting children in conflict with the law in their respective country contexts. The research teams for each country have identified strengths, gaps, and areas for potential collective advocacy. Each team has reviewed key policies, legal frameworks, and legislation, using the United Nations Convention on the Rights of the Child (hereinafter UN CRC) as a framework for analysis. In a second stage the research will integrate the findings from Brazil, Paraguay, and the United States into a comparative analysis.

This report addresses the following research questions which were collaboratively developed with Working Group members:

1. How does each state structure their juvenile justice system?

- How/where is the law codified, and who implements it?
- How are the following classified in each country/state context: does each state classify who is a juvenile, and who is not? (minimum age, competency level, etc.)
- Is there specific legislation for teenagers accused of committing an offense?
- What are the laws around sentencing/penalties?

2. What due process rights (rights of an individual who comes into contact with the law) does the law provide to juveniles?

- How does this differ from the rights provided to adults? (for example in relation to representation, right to a trial, call witnesses, etc.)

3. What is the public policy framework to prevent, support and respond to children in conflict with the law?

- Participation: How does the juvenile justice system ensure the active participation of the youth themselves and their families, throughout the legal process?
- Reintegration: What support exists for youth and families after the legal process is complete?

4. How does the state respond to key considerations in juvenile justice, including on detention, diversion, overrepresentation, restorative justice and reintegration?

- What innovative programs exist in these areas, and what success are they having?

Introduction

As discussed below, there is a complicated mix of federal, state, and county-level juvenile justice laws and policies in the United States. For the purposes of this report, the Working Group and country team decided to focus primarily on law and policy at the federal level as well as in the state of California. We have also included some notable examples from additional jurisdictions in the United States, particularly with respect to research questions 3 and 4.

The research method utilized for this report was desk-based review of existing policies, laws, reports, studies, submissions to and observations of the UN CRC and regional bodies, and other data relevant to children in conflict with the law in the relevant country context. The report includes a list of references as well as recommendations for further analysis and action.

Definitions

The Working Group jointly agreed to the following terms and definitions, which will be used throughout this report. They are informed by the terminology of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, otherwise known as the “Beijing Rules.”

Juvenile justice

The legislation, norms, and standards, procedures, mechanisms, and provision, institutions and bodies specifically applicable to juveniles alleged to have committed an offense.

Juvenile

A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offense in a manner which is different from an adult.

Offense

An offense is any behavior (act or omission) that is punishable by law under the respective legal systems.

Juvenile offender

A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offense.

Country context

The United States is a constitutional federal republic with fifty states and approximately 330 million residents.¹ California is the most populous of those states, with approximately 40 million residents living in fifty-eight counties.² California's population growth has slowed in recent decades, and the state has become more racially and ethnically diverse.³ The state has also been deeply shaped by immigration; as of 2019, 27% of all California residents were born outside of the United States.⁴ This is significantly higher than national statistics, also from 2019, which show that 13.7% of all United States residents immigrated from another country.⁵

Perhaps the most important context to consider with respect to children in conflict with the law in the United States is the overall decline in minors' involvement with law enforcement and the juvenile justice system during the last two decades. Nationally, arrest rates of juveniles declined by 67% between 2006 and 2019.⁶ In California, juvenile arrests declined from 192,000 in 2002 to 43,181 in 2019.⁷ Incarceration rates for minors have also seen a precipitous decline. Across the United States, between the years of 1997 and 2016 there was a 50% drop in the number of minors held in juvenile prisons, and an 82% drop in

¹ United States Census Bureau, "US and World Population Clock." July 2021. Retrieved from: <https://www.census.gov/popclock/>

² Public Policy Institute of California, "California's Population." March 2021. Retrieved from: <https://www.ppic.org/publication/california-population/>

³ Ibid.

⁴ Ibid.

⁵ Migration Policy Institute, "Frequently Requested Statistics on Immigrants and Immigration in the United States." February 11, 2021. Retrieved from: <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2020>

⁶ Office of Juvenile Justice and Delinquency Prevention, "The Decline in Arrests of Juveniles Continued Through 2019." Retrieved from: https://www.ojjdp.gov/ojstatbb/snapshots/DataSnapshot_UCR2019.pdf

⁷ California Department of Justice, Office of the Attorney General, "Juvenile Justice in California." 2019. <https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Juvenile%20Justice%20in%20CA%202019.pdf>

minors incarcerated in adult facilities.⁸

There are numerous overlapping trends that underlie this steep drop in juvenile arrest and incarceration rates in the United States. Possible explanations include a shift towards deinstitutionalization, expansion of due process and other rights via legislation and case law, increased availability and funding for community-based alternatives to confinement, greater utilization of data-driven interventions instead of the "tough on crime" rhetoric which prevailed in 1990s policy discourse, greater incorporation of mental health screenings and trauma-informed practices in the juvenile court process, dramatically lower rates of childhood lead exposure, and decreased emphasis on truancy and other low-level offenses.⁹

Overall, the past two decades have seen the United States and California increasingly align with international standards for children in conflict with the law as expressed in the UN CRC. Federal and state approaches to juvenile offenders increasingly echo the developmental model of the UN CRC as well as its emphasis on rehabilitation instead of institutionalization.¹⁰ However, as discussed below, there are still many areas in which the United States is not in compliance with international standards and best practices, particularly concerning the continuing disproportionate involvement of Black, Latino, and American Indian youth in the federal state juvenile justice systems.¹¹

⁸ Marshall Project, "What We Can Learn from the Amazing Drop in Juvenile Incarceration." January 2017. Retrieved from: <https://www.themarshallproject.org/2017/01/24/what-we-can-learn-from-the-amazing-drop-in-juvenile-incarceration>

⁹ For further discussion of possible explanations, see Tucker, J., "Why the US has seen a sharp drop in violent youth crime." San Francisco Chronicle. March 23, 2019.

¹⁰ Griffin, G. et al., "The Convergence of U.S. Juvenile Justice Policies and the U.N. Convention on the Rights of the Child." Boston University International Law Journal, October 29, 2015.

¹¹ Annie E. Casey Foundation, "Juvenile Arrests for Violent Crimes Reached a Historic Low in 2018." Retrieved from: <https://www.aecf.org/blog/juvenile-arrests-for-violent-crimes-reached-an-historic-low-in-2018>

Findings

Research Question 1: How does each state structure their juvenile justice system?

There is no single or monolithic "juvenile justice system" in the United States. Rather, there is a complex patchwork of laws, policies, agencies, and programs that exist at the federal, state, and county levels. The UN CRC¹² requires juvenile justice matters to be heard by "a competent, independent, and impartial authority or judicial body"¹³ and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (hereinafter "Beijing Rules") call for juvenile justice matters to come before a "competent authority to adjudicate."¹⁴ In this regard, the United States is technically in compliance with the suggested international frameworks, but in practice, there are thousands of different jurisdictions and judicial bodies adjudicating juvenile criminal cases throughout the country, which creates significant inconsistencies in the development and application of the law.

The United Nations Guidelines for the Prevention of Juvenile Delinquency (hereinafter "Riyadh Guidelines") call for greater integration and collaboration between the various actors involved in juvenile justice systems at the international level- but also at the local, state, regional, and federal levels within each country.¹⁵ As discussed below, the vast majority of juvenile justice matters in the

¹² Although the United States signed the UN CRC in 1995, it remains the sole member state that has not ratified the convention. See <https://indicators.ohchr.org/>

¹³ United Nations Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989. Article 40, 2 (b)(iii).

¹⁴ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by General Assembly resolution 40/33 of 29 November 1985. 3.14.

¹⁵ United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines"), adopted by General Assembly resolution 45/112 of 14 December 1990. Parts VI and VII.

United States are adjudicated at the state or county level. However, some level of federal coordination exists in the form of the Juvenile Justice and Delinquency Prevention Act (hereinafter JJDP), first passed in 1974 and most recently reauthorized in 2018.¹⁶ The JJDP established minimum federal standards for care and custody of youth involved in the juvenile justice system, earmarked federal funding for delinquency prevention and system improvements, and created a federal agency (the Office of Juvenile Justice and Delinquency Prevention or OJJDP) to coordinate training, technical assistance, research, and evaluation on juvenile justice at the federal level. As of the 2018 reauthorization, the JJDP has four core requirements:

- Seeking alternatives to institutionalization for juveniles convicted of status offenses (conduct that would not be considered a crime if committed by an adult)
- Removing juveniles from adult jails and detention facilities
- Ensuring "sight and sound separation" between juveniles and adults in the limited circumstances when they must be temporarily detained or confined in the same institution
- Identifying and eliminating racial and ethnic disparities within the juvenile justice systems.¹⁷

¹⁶ 42 USC. § 5601 et seq.

¹⁷ See, for example, Coalition for Juvenile Justice, "History of the JJDP." Retrieved from: <http://www.juvjustice.org/federal-policy/juvenile-justice-and-delinquency-prevention-act/>

Although the 2018 reauthorization took sixteen years to achieve and was hailed as a victory by advocates,¹⁸ a fundamental limitation of the JJDA is that it does not have an enforcement mechanism. Rather, it creates an incentive structure, requiring states to submit plans and documentation of their compliance in order to receive federal grant funding. Although a majority of states have historically participated in JJDA compliance reporting, in recent years participation appears to have waned somewhat, due to increased standards for compliance monitoring and weakened grant incentives due to budget cuts.¹⁹ For those states that do participate, many advocates argue that an overemphasis on simply monitoring versus providing demonstration of progress has obscured the lack of significant improvement on issues such as disproportionate minority confinement.²⁰

Oversight of California's juvenile justice jurisdictions has been in considerable flux in recent years. The state's Division of Juvenile Justice (DJJ), previously known as the California Youth Authority (CYA), was effectively eliminated in 2020 with the passage of Senate Bill 823/Assembly Bill 1868. This legislation phases in the closure of all state-run juvenile prisons and shifts resources to the county level for supervision and service delivery to youth in conflict with the law. Although some details on this realignment and shift towards local oversight of juvenile justice are still emerging, per the legislation, all intake into DJJ facilities was halted on July 1, 2020 and the facilities will be permanently

¹⁸ See, for example, Juvenile Justice Exchange, "JJDA Reauthorization Passes Congress After 16 Years." Retrieved from: <https://jje.org/2018/12/13/jjda-reauthorization-passes-congress-after-16-years/>

¹⁹ Kelly, J., "The Curious Case of the Nonparticipating States." Imprint, November 19, 2019. Retrieved from: <https://imprintnews.org/youth-services-insider/the-curious-case-of-the-nonparticipating-states/39197>

²⁰ See, for example, Haywood Burns Institute, <http://data.burnsinstitute.org/>

closed by 2023.²¹ This follows a similar move at the county level in San Francisco, where in 2019 the city's Board of Supervisors voted to close the local juvenile jail and transfer all incarcerated youth out of the facility and into community-based alternatives by the end of 2021.²²

As of July 2021, California established the Office of Youth and Community Restoration to reduce the transfer of youth into the adult criminal justice system, reduce racial and ethnic disparities, and increase community-based responses and interventions.²³ Although it is too early to determine the legacy of this overhauled approach, the new focus on local oversight of juvenile delinquency matters and greater emphasis on community-based prevention and service provision has the potential to significantly advance compliance with several components of the international frameworks. These include the Beijing Rules' focus on "conditions that will ensure for the juvenile a meaningful life in the community,"²⁴ the fundamental principle of "community-based services and programmes" in the Riyadh Guidelines,²⁵ and the overall emphasis on deinstitutionalization in the UN CRC.

1a. How/where is the law codified, and who carries it out?

At the federal level, the primary statute impacting children in conflict with the law is the Federal Juvenile Delinquency Act (hereinafter FJDA), which is codified at 18 United States Code (hereinafter USC), Sections 5031-5042. Federal prosecution of

²¹ Rainey, J., "California plans to close troubled youth prisons after 80 years. But what comes next?" Los Angeles Times, February 15, 2021. Retrieved from: <https://www.latimes.com/california/story/2021-02-15/california-youth-prisons-closing-criminal-justice-reform>

²² Macallair, D. et al., "Closing San Francisco's Juvenile Hall: An Analysis of the Youth Population." Center on Juvenile and Criminal Justice, December 2019. Retrieved from: <https://files.eric.ed.gov/fulltext/ED602935.pdf>

²³ California Department of Health and Human Services, Office of Youth and Community Restoration (OYCR). Retrieved from: <https://www.chhs.ca.gov/oycr/>

²⁴ Beijing Rules, supra, 1.2.

²⁵ Riyadh Guidelines, supra, Parts I.6 and IV.C.32-39.

juveniles is rare, however, as the FJDA urges states to take jurisdiction whenever possible, including prosecution of juvenile matters arising from alleged violations of federal law.²⁶ For this reason, a majority of federal juvenile delinquency matters have historically arisen from conduct on tribal lands and involving American Indian youth. As noted in the 2007 Ninth Circuit case *United States v. Juvenile Male*, "[b]ecause of the structure of the FJDA, Native American youth are disproportionately subject to federal court jurisdiction for their delinquency offenses."²⁷ Although it is rarely invoked, 18 USC § 5032 also allows for juveniles accused of drug trafficking and other serious federal crimes to be tried as an adult in federal court.

California juvenile justice law is primarily codified at Welfare and Institutions Code (hereinafter WIC) Sections 601-608. WIC § 202 also establishes that the primary goal of the juvenile court is rehabilitation, and that "[m]inors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances."²⁸

In California, children can be declared a "ward of the court" if they are the subject of either a juvenile dependency matter (concerning abuse or neglect of that child) or a juvenile delinquency matter (concerning that child's own conflict with the law).²⁹ In general, youth cannot be wards of both the delinquency and dependency courts at the same time. In cases of "dual status" or "crossover" youth who are involved with both systems, a hearing is held to determine under WIC § 241.1 which

²⁶ 18 USC §5032.

²⁷ *United States v. Juvenile Male*, 492 F.3d 1046, 1049 n.3 (9th Cir. 2007).

²⁸ CA WIC § 202(b).

²⁹ CA WIC § 300

of the two juvenile court systems is most appropriate for the matter. However, Assembly Bill 129 was enacted in 2005 and amended by § 241.1 to allow some youth to remain simultaneously involved with both the juvenile dependency and delinquency courts when they are deemed to have a need for services and/or supervision from both systems.³⁰

There are a number of actors involved in the county, state, and federal juvenile justice systems. The first point of contact for youth in conflict with the law is often a police officer or school administrator. As youth move through the legal process, they will interact with attorneys (including public defenders and prosecutors such as district attorneys), judges, and probation officers. The Beijing Rules call for specialized training for all professionals who work on juvenile justice cases, and for those working within the system to "reflect the diversity of juveniles who come into contact with the juvenile justice system."³¹

Although there are general education and licensing requirements at both the state and federal level for police officers, attorneys, and other vocations involved in the juvenile court system, these requirements vary between jurisdictions and generally do not require specialized training in working with youth.³² Some advocates have noted, however, that the juvenile justice courts are often considered a "training ground" for early career professionals who do not have significant experience or training, and have thus called for specialization, increased hiring standards, and mandated ongoing training for juvenile court

³⁰ See Piazza, D. A., *Dual-Status Children: Protocols for Implementing Assembly Bill 129*. Administrative Office of the Courts, Center for Families, Children & the Courts. October 2008. Retrieved from: <https://www.courts.ca.gov/documents/AB129ResearchUpdate-Protocols.pdf>

³¹ Beijing Rules, 22.1 and 22.2.

³² One rare exception is California's AB703 (2015), which created minimum training and specialization standards for juvenile defense attorneys.

professionals.³³ There is a lack of accurate and recent national and state data available on diversity in the juvenile court professions in the United States. However, commentators have noted that in most jurisdictions racial and ethnic minorities are overrepresented in the juvenile offender population and underrepresented in the juvenile court professions, which may lead to explicit or implicit bias affecting the outcome of the juvenile matter.³⁴

1b. How are the following classified in each country/state context: does each state classify who is a juvenile, and who is not? (minimum age, competency level, etc.)

The UN CRC defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”³⁵ It also requires States Parties to establish “a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.”³⁶ The Beijing Rules further recommend that “[i]n those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental, and intellectual maturity.”³⁷

Under United States federal law, a juvenile is considered an individual under 21 years of age at the time a matter is filed, who is alleged to have violated a federal criminal law before

³³ Krinsky, M. A. et al., “Youth Justice Needs Specialized Training of Judges, Lawyers, Court Employees, and Courtroom Language that Doesn’t Demean.” Youth Today. June 7, 2021. Retrieved from: <https://youthtoday.org/2021/06/youth-justice-needs-specialized-training-of-judges-lawyers-court-employees-and-courtroom-language-that-doesnt-demean/>

³⁴ See, for example, Ketchum, P. R., “When a Lack of Diversity Matters: How Juvenile Justice Professionals See Non-White Juveniles.” In Embrick, D. G. et al., *Challenging the Status Quo: Diversity, Democracy, and Equality in the 21st Century*. Brill, 2018, at 261-286.

³⁵ UN CRC, Part 1, Article 1.

³⁶ UN CRC, Part 1, Article 40, 3(a).

³⁷ Beijing Rules, 4.1.

reaching the age of 18.³⁸ Of note, there is no minimum age for federal jurisdiction over children in conflict with the law.³⁹ Individuals who have already reached the age of 21, and conduct taking place after the individual turned 18, are explicitly excluded.⁴⁰ Federal prosecution regarding ongoing conduct—such as criminal conspiracy or racketeering—that bridged an individual’s 18th birthday is allowed, however.⁴¹ Individuals who are adjudicated to have committed a crime under federal juvenile law and have their supervised release revoked may be ordered held in confinement until the age of 26.⁴²

In California, the juvenile courts have jurisdiction over offenses alleged to have been committed after a child’s 12th birthday and prior to a child’s 18th birthday.⁴³ Additionally, minors under the age of twelve are also under jurisdiction when alleged to have committed specific serious crimes such as murder and rape.⁴⁴ Juvenile courts may retain jurisdiction until the individual turns 21 years old, and in some cases, up until age 25.⁴⁵

1c. Is there specific legislation for teenagers accused of committing an offense?

The UN CRC, Beijing Rules, and Riyadh Guidelines envision separation of the juvenile and adult justice systems at all phases of criminal proceedings and detention. This is echoed in the creation of separate adult and juvenile criminal courts adjudicating cases under both United States federal and California state law. However, under federal law and in all fifty states, youth under the

³⁸ 18 USC § 5031.

³⁹ For further context on advocacy efforts to establish a minimum jurisdictional age, see Youth Leaders for Correctional Justice, “Statement on Raising the Minimum Age of Juvenile Jurisdiction.” Retrieved from: <https://yclj.org/minimum-age>

⁴⁰ *Ibid*; see also *United States v. Lopez*, 860 F.3d 201, 209 (9th Cir. 2017).

⁴¹ See *United States v. Camez*, 839 F.3d 871 (9th Cir. 2016).

⁴² 18 USC § 5037(d)(6).

⁴³ CA WIC § 602.

⁴⁴ CA WIC § 602(b).

⁴⁵ CA WIC § 607(a-g).

age of eighteen can be tried in adult criminal court through various types of juvenile transfer laws.⁴⁶ United States federal law actually mandates transfer to the adult criminal court system for juveniles alleged to have committed certain serious or violent crimes after their sixteenth birthday.⁴⁷

In California, if a youth charged with an offense is sixteen years or older, prosecutors have discretion to file a motion requesting the transfer of the case to an adult court.⁴⁸ Juvenile transfers to adult criminal courts have been the subject of much legislation and litigation in the state in recent years. In 2016, voters passed Proposition 57, which vested the authority to decide whether minors will be tried in the juvenile or adult systems with juvenile court judges, rather than prosecutors. In 2019, the California Legislature took further steps to reform the juvenile transfer process, amending Proposition 57 with Senate Bill (SB) 1391, which prohibits the transfer of fourteen and fifteen-year-olds with certain limited exceptions.⁴⁹ A series of challenges were subsequently filed by district attorneys’ offices across the state challenging the constitutionality of SB 1391. The California Supreme Court upheld SB 1391 in February 2021, however, reaffirming that minors under the age of sixteen cannot be transferred to the adult criminal court system.⁵⁰

1d. What are the laws around sentencing/penalties?

Per the Beijing Rules, “[a] large variety of disposition measures shall be made available... allowing for flexibility so as to avoid institutionalization to the greatest extent

⁴⁶ Human Impact Partners, “Juvenile Injustice: Charging Youth as Adults is Ineffective, Biased, and Harmful.” February 2017, at page ii.

⁴⁷ 18 USC § 5032.

⁴⁸ CA WIC § 707(a).

⁴⁹ Senate Bill No. 1391. Stats. 2018, ch. 1012, § 1. Effective January 1, 2019.

⁵⁰ *OG vs. Superior Court of Ventura County*. California Supreme Court decision, February 25, 2021 (awaiting publication).

possible.”⁵¹ The UN CRC similarly calls for “a variety of dispositions... to ensure that children are dealt with in a manner appropriate to their wellbeing and proportionate to both their circumstances and the offense.”⁵²

At the sentencing phase, federal juvenile courts may choose to suspend the sentence, order restitution or probation, or commit the juvenile to detention.⁵³ USC Section 5037 establishes a series of time limits and other limitations on juvenile court sentencing, including differential treatment for defendants whose dispositional hearing takes place when they are under or over the age of 18.⁵⁴ For those juveniles whose cases have been transferred to the adult criminal court system, the United States Sentencing Commission has nevertheless suggested that courts consider the defendant’s age when deciding upon a sentence.⁵⁵

The United States Supreme Court has clearly established that juveniles must be treated differently in the context of sentencing, even when their cases have been transferred to an adult criminal court. The 2005 decision *Roper v. Simmons* held that it is unconstitutional to impose the death penalty for a crime committed by a child under the age of 18.⁵⁶ *Graham v. Florida* (2010) held that it is unconstitutional to impose a sentence of life in prison without the possibility of parole for a non-homicide offense committed under the age of 18.⁵⁷ The 2012 decision *Miller v. Alabama* further elaborated that it is unconstitutional to impose a mandatory sentence of life without parole on any individual who was under 18 at the time of the offense.⁵⁸ As recently as the 2021 case *Jones v. Mississippi*, the U.S. Supreme Court

⁵¹ Beijing Rules, 18.1.

⁵² UN CRC, Part 1, Article 40, 4.

⁵³ 18 USC § 5037.

⁵⁴ 18 USC § 5037(c).

⁵⁵ U.S.S.G. § 5H1.1

⁵⁶ 543 U.S. 551, 578 (2005)

⁵⁷ 560 U.S. 48, 82.

⁵⁸ 567 U.S. 460.

has continued to hold that “youth matters in sentencing.”⁵⁹ With this line of cases, federal jurisprudence has brought the United States into greater compliance with the UN CRC over the last two decades, assuring that “[n] either capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”⁶⁰

For California juvenile matters, there are a variety of sentencing options available to the court short of detention, including dismissal under WIC § 782, deferred entry of judgment under WIC § 790, informal probation under WIC § 725, or formal probation while residing at home, in a relative’s home, in a group home, or in a county probation camp. Following the state’s overall trend towards deinstitutionalization and juvenile justice reform, in 2017 the California Legislature passed SB 394, retroactively eliminating life without parole sentences for offenses committed as a minor.⁶¹

Research Question 2: What due process rights (rights of an individual who comes into contact with the law) does the law provide to juveniles?

2a. How does this differ from the rights provided to adults? (for example in relation to representation, right to a trial, to call witnesses, etc.)

The UN Convention on the Rights of the Child articulates several due process rights of children in conflict with the law, including the right to be presumed innocent until proven guilty, the right to be informed of charges, the right to legal assistance, the right to have a matter determined without delay in a fair hearing before an impartial decider, the right to confront witnesses, the right to appeal,

⁵⁹ 593 U.S. ____ (2021) (awaiting publication).

⁶⁰ UN CRC, Part I, Article 37 (a).

⁶¹ SB 394 (2017), amending Cal. Penal Code § 3051.

the right to an interpreter, and the protection against self-incrimination.⁶²

The landmark case enshrining due process rights for juvenile offenders in the United States was the 1967 decision *In re Gault*.⁶³ In *Gault*, the United States Supreme Court held that juvenile offenders have many of the same due process rights constitutionally guaranteed for adults accused of crimes, including the right to an attorney, the right to receive notice of charges, and the right to confront witnesses. In the years following the *Gault* decision, the Supreme Court recognized other due process rights of juvenile offenders, including the right to have charges proven beyond a reasonable doubt and the right to not face double jeopardy.⁶⁴ Other constitutionally-protected rights of juvenile offenders include the requirement of probable cause for search, the right to make a phone call while in custody, and the right to silence in lieu of self-incrimination.⁶⁵

One crucial distinction between the due process rights of minors and adults in the United States is that, unlike in adult cases, juvenile defendants are not entitled to trial by a jury of their peers.⁶⁶ Although the U.S. Supreme Court has refused to recognize a federal constitutional right to a jury trial in juvenile cases, some states have nevertheless extended this right to minors via legislation or case law.⁶⁷ Additionally, unlike adults, juveniles do not have a constitutional right to seek bail.⁶⁸ However, many juveniles are released to their parents or guardians prior to arraignment in juvenile court.

⁶² UN CRC, Part 1, Article 40, 2 (b)(i)-(vii).

⁶³ 387 U.S. 1 (1967).

⁶⁴ Juvenile Law Center, “Youth in the Justice System: An Overview.” Retrieved from: <https://jlc.org/youth-justice-system-overview>

⁶⁵ Michon, K., “Constitutional Rights in Juvenile Cases.” Retrieved from: <https://www.nolo.com/legal-encyclopedia/constitutional-rights-juvenile-proceedings-32224.html>

⁶⁶ Juvenile Law Center, *supra*.

⁶⁷ *Ibid*.

⁶⁸ Michon, *supra*.

focus on prevention and support, however, relying instead on detention as the primary intervention for youth in conflict with the law.⁷³

With the drop in juvenile arrest and incarceration rates and the shift towards developmental policy and deinstitutionalization in the last few decades, as described *infra*, the integration and funding of juvenile crime prevention and support programs has increased somewhat. The federal OJJDP made 369 million USD in grants during 2020 to state, local, and tribal jurisdictions to support juvenile justice programming, with a stated focus on system improvements and prevention of juvenile crime.⁷⁴ California spends approximately 100 million USD annually on juvenile crime prevention programs in communities, families, and schools.⁷⁵ However, a majority of juvenile justice funding at both the state and federal level still is earmarked for correctional confinement or probation, which in most jurisdictions is geared towards risk management and surveillance.⁷⁶ To be clear, some of the recent juvenile justice reforms discussed *supra* are fiscally-motivated.

California juvenile offenders have a broader right to counsel than recognized under federal law in *Gault*. Youth have the right to court-appointed counsel at every stage of the proceedings, including post-dispositional hearings, and are represented by the same attorney unless removed by the court for substitution of other counsel or for cause.⁶⁹ Beginning in 2018, California police officers were required by statute to provide an opportunity for all youth under sixteen years of age to consult with counsel prior to waiving their right to remain silent. Youth ages sixteen and seventeen were treated differently, however, and required to affirmatively request a consultation with an attorney prior to waiving their right to silence. However, in 2020 the California Legislature went further, and expanded this due process right to all juveniles via Senate Bill 203, which now mandates a no-cost consultation with a public defender or criminal defense attorney for all individuals under the age of eighteen before any interrogation by law enforcement.⁷⁰

Research Question 3: What is the public policy framework to prevent, support and respond to children in conflict with the law?

As stated in the Riyadh Guidelines, “[t]he prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.”⁷¹ The UN CRC likewise urges States Parties to recognize the rights of juvenile offenders “to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth.”⁷² The United States juvenile justice system has historically not had a strong

⁶⁹ CA WIC § 634.6.

⁷⁰ SB 203, Chapter 335, amending CA WIC § 625.6. Sep. 30, 2020.

⁷¹ Riyadh Guidelines, Part I.1.

⁷² UN CRC Part I, Article 40, 1.

⁷³ Gainborough, J. and Lean, E. “Convention on the Rights of the Child and Juvenile Justice.” 2008. Child Welfare League of America: The Link. Summer 2008, Vol. 7, No. 1. Retrieved from: <https://files.eric.ed.gov/fulltext/ED504480.pdf>

⁷⁴ See OJJDP funding dashboard, July 2021. Retrieved from: <https://ojjdp.ojp.gov/funding>

⁷⁵ State of California Board of State and Community Corrections. Juvenile Justice Crime Prevention Act Annual Report. 2017. Retrieved from: <https://www.bscc.ca.gov/wp-content/uploads/BSCC-2017-JJCPA-Leg-Report.pdf>

⁷⁶ Justice for Families. Families unlocking futures: Solutions to the crisis in juvenile justice. 2012. Retrieved from http://www.njin.org/uploads/digital-library/Fam_Unlock_Future_EXEC_SUMNOEMBAR-GO.pdf.

In California the average annual cost for a child detained in a state-run facility was estimated at 268,000 USD per year (vs. 102,736 USD in adult facilities).⁷⁷ With so many juvenile jail beds sitting empty due to the dramatic declines in arrest and incarceration rates, it is not surprising that momentum built to close these facilities for both financial and best practice reasons.⁷⁸

California's recent policy evolutions, including the closure of state-run juvenile prisons and the shifting of incarceration-related funding to community-based and trauma-informed services for children in conflict with the law, represent the vanguard of United States juvenile justice policy innovation. Significant restructuring and reform are taking place at both the state and county levels. For example, Los Angeles County has renamed its juvenile probation department the Department of Youth Development and beginning in 2021 youth sentenced to confinement will no longer be housed in juvenile jails but instead be placed in small local "Healing Centers" staffed with social workers.⁷⁹

Across the state, the realignment of California's juvenile justice system is still a work in progress in 2022 Public officials in some jurisdictions have complained that the shift to local control has been too dramatic and too rapid.⁸⁰ Advocates who successfully lobbied for large-scale change are nevertheless concerned that the challenges of the former DJJ may merely replicate at the local level, or that judges may be more inclined to approve motions to try minors as adults if the youth system is now seen as too

⁷⁷ Rainey, J., "California plans to close troubled youth prisons after 80 years. But what comes next?" Los Angeles Times. February 15, 2021. Retrieved from: <https://www.latimes.com/california/story/2021-02-15/california-youth-prisons-closing-criminal-justice-reform>

⁷⁸ For further discussion, see Justice Policy Institute. "Sticker Shock: The Cost of Youth Incarceration." 2020. Retrieved from: <https://justicepolicy.org/research/policy-brief-2020-sticker-shock-the-cost-of-youth-incarceration/>

⁷⁹ Ibid.

⁸⁰ Ibid.

lenient for certain offenses.⁸¹ It remains to be seen whether these massive reforms will represent a pendulum shift for juvenile justice policy- much like the dramatic shift towards harsher penalties and policies of the 1990s- or a permanent change in course. For now, a majority of states are not following California's lead on closing juvenile prisons or overhauling services for children in conflict with the law.

3a. Participation: How does the juvenile justice system ensure the active participation of the youth themselves and their families, throughout the legal process?

The Riyadh Guidelines call for "youth participation in delinquency prevention policies and processes."⁸² The Beijing Rules emphasize the need for youth participation in all phases of juvenile justice matters, and for parents and guardians to be entitled to participate in juvenile court proceedings- or even required to participate when the court deems appropriate.⁸³ However, the juvenile justice system in the United States was not designed to encourage participation of families, and instead sees families of children in conflict with the law, as well as the youth themselves, as outsiders.⁸⁴

Historically, the juvenile justice system in the United States has placed the state in the role of 'parent' with respect to children in conflict with the law.⁸⁵ Contemporary research in the public health, social welfare and mental health fields has identified family engagement as one of the most important indicators for positive youth outcomes with the juvenile

⁸¹ Ibid.

⁸² Riyadh Guidelines, Part III.9(h).

⁸³ Beijing Rules, 15.2.

⁸⁴ Pennell, J., Shapiro, C., & Spigner, C., Safety, fairness, stability: Repositioning juvenile justice and child welfare to engage families and communities. Georgetown University: Center for Juvenile Justice Reform. 2011.

⁸⁵ Ibid.

justice system.^{86 87} Both families and providers are working to increase family engagement in juvenile justice in many jurisdictions, but the OJJDP cites family engagement as one of the biggest operational challenges in the administration of juvenile justice systems.⁸⁸ Obstacles include a lack of agreement on what constitutes "family engagement" in the juvenile justice system, lack of clarity on when and how family engagement can be incorporated in juvenile proceedings, and a lack of validated and agreed-upon measures to address this deficiency.⁸⁹

Qualitative research with families of children in conflict with the law across the United States reveals that they feel this outsider status acutely, and that they continue to feel the historical legacy of being blamed for their children's problems, rather than being viewed as potential assets in the encouragement of rehabilitation.^{90 91} It has been documented that caregiver involvement in the juvenile justice system is often connected to feelings of guilt, shame and isolation, which likely lead to worse outcomes for youth, families and communities.⁹²

⁸⁶ Arya, N., Family comes first: A workbook to transform the justice system by partnering with families. Washington, DC: Campaign for Youth Justice. 2013.

⁸⁷ Vera Institute of Justice, Identifying, Engaging and Empowering Families: A Charge for Juvenile Justice Agencies. February 2016. Retrieved from: <https://www.vera.org/downloads/publications/family-engagement-for-juvenile-justice-agencies.pdf>

⁸⁸ Office of Juvenile Justice & Delinquency Prevention, OJJDP Family Listening Sessions: Executive Summary. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice; 2013. Retrieved from: <http://www.ojjdp.gov/pubs/241379.pdf>.

⁸⁹ Burke, J. D., et al., "The Challenge and Opportunity of Parental Involvement in Juvenile Justice Services." Children and Youth Services Review 39, at 39-47. Retrieved from: <https://doi.org/10.1016/j.childyouth.2014.01.007>

⁹⁰ Office of Juvenile Justice & Delinquency Prevention, OJJDP Family Listening Sessions: Executive Summary. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Retrieved from: <http://www.ojjdp.gov/pubs/241379.pdf>.

⁹¹ Justice for Families, supra.

⁹² Walker, S. C., et al., "A Research Framework for Understanding the Practical Impact of Family Involvement in the Juvenile Justice System: The Juvenile Justice Family Involvement Model." Am J Community Psychol 56, 408-421. 2015. Retrieved from: <https://doi.org/10.1007/s10464-015-9755-6>

Other major barriers that block families from meaningfully engaging with the juvenile justice system include:

- A lack of basic information about the court system, the legal rights of youth and families, and the roles of various players in the system⁹³
- Power imbalances between families and those employed in the juvenile justice system⁹⁴
- Structural barriers such as racial, ethnic, language, and economic disparities.^{95 96}

Some outstanding and innovative local and state programs, especially involving restorative justice and community conferencing, have successfully increased participation of both juvenile offenders and their families in the juvenile justice process.^{97 98 99} However, despite wide recognition of the benefits of greater participation of children, families, and communities in the juvenile justice system, such participation remains both challenging and sporadic in most jurisdictions in the United States.¹⁰⁰

⁹³ Arya, N., Family comes first: A workbook to transform the justice system by partnering with families. Washington, DC: Campaign for Youth Justice. 2013.

⁹⁴ Rozzell, L., The Role of Family Engagement in Creating Trauma-Informed Juvenile Justice Systems. Los Angeles, CA & Durham, NC: National Center for Child Traumatic Stress. 2013.

⁹⁵ Rovner, L., "Racial Disparities in Youth Commitments and Arrests." The Sentencing Project. 2016. Retrieved from: <https://doi.org/10.1007/s10464-015-9755-6>

⁹⁶ Weber, J. et al., Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes. Washington, DC: Georgetown University Center for Juvenile Justice Reform. 2018.

⁹⁷ Bazemore, E. and Umbreit, M., "A Comparison of Four Restorative Conferencing Models". Office of Juvenile Justice and Delinquency Prevention Bulletin. 2016.

⁹⁸ Rozzell, supra.

⁹⁹ Walker, supra.

¹⁰⁰ See Pennell et al., supra, and Arya, supra.

3b. Reintegration: What support exists for youth and families after the legal process is complete?

The totality of the Riyadh Guidelines—particularly the recommendations for enhancing socialization, family support, education, and community—are relevant not just to the prevention of first-time juvenile offenses but also to the reintegration of youth and the prevention of further involvement with the justice system.

Reintegration of juvenile offenders and prevention of recidivism is one area where the justice systems of both the United States and California continue to struggle. The United States has some of the highest recidivism rates in the world.¹⁰¹ Recidivism rates vary by state, but California is among the highest in the nation.¹⁰² In its most recent report, California reported juvenile recidivism rates within three years as 74.2% for re-arrest, 53.8% for reconviction, and 37.3% for return to DJJ or state custody.¹⁰³

Research with youth and families indicates that juvenile offenders are typically released without adequate notice to their families and are often not provided with necessary documentation or assistance to re-enroll in school.¹⁰⁴ Youth face significant barriers to resuming educational progress and securing housing and employment. Even when youth are subject to ongoing parole supervision, there is a lack of planning and support to ensure successful reintegration. In one survey, “only 32 percent of parents and families reported discussing release plans with juvenile

¹⁰¹ World Population Review, “Recidivism Rates by State, 2021.” Retrieved from: <https://worldpopulationreview.com/state-rankings/recidivism-rates-by-state>

¹⁰² California Innocence Project, “Recidivism Rates.” 2021, Retrieved from: <https://californiainnocenceproject.org/issues-we-face/recidivism-rates/>

¹⁰³ Center on Juvenile and Criminal Justice, “California’s Division of Juvenile Justice Reports High Recidivism Despite Surging Costs.” 2017. Retrieved from: http://www.cjcj.org/uploads/cjcj/documents/californias_division_of_juvenile_justice_reports_high_recidivism_despite_surging_costs.pdf

¹⁰⁴ Justice for Families, supra.

justice system personnel prior to their child’s release.”¹⁰⁵

Recognizing that better support for reintegration is necessary to reduce recidivism and increase public safety, OJJDP has earmarked funding to support “reentry programs [to] help ensure that youth have the tools to become productive, law-abiding members of society upon returning to their communities.”¹⁰⁶ The federal Second Chance Act provides approximately 11 million USD in grants to states and counties for provision of reentry services, including employment and housing assistance, education, substance abuse treatment, family therapy, record sealing and expungement, and mentoring.¹⁰⁷

For example, the state of Virginia’s Department of Juvenile Justice has transformed its reentry programming with help from an OJJDP grant. The department partners with community colleges to assist youth in pursuing higher education and provides assistance accessing transitional housing for youth upon release. Staff also coordinate family engagement activities and provide free transportation for families to visit youth as a way to increase family involvement in the reentry process.¹⁰⁸

Another innovative program is the Mental Health Juvenile Justice Program in Illinois, which brings mental health clinicians into juvenile detention centers to assess youth and provide individual therapy and support groups. When youth are released, the program creates a community reentry plan to maintain continuity of mental health services once detention is over.

¹⁰⁵ Ibid., at 9.

¹⁰⁶ OJJDP, “Juvenile Reentry and Community Supervision.” 2020. Retrieved from: <https://ojjdp.ojp.gov/programs/juvenile-reentry>

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

The program was evaluated and determined to improve mental health indicators and school attendance for participating youth, while lowering their rate of recidivism.¹⁰⁹

Despite evidence of success in several innovative reentry programs, OJJDP has also acknowledged the need for further research and evaluation on the most effective reentry interventions and how to successfully scale and replicate these efforts. Recent evaluations of two major reentry initiatives demonstrate that providing aftercare services to youth returning from institutional placement is a complex process that must be carefully planned, managed, scaled, replicated, and sustained in order to have a lasting impact on recidivism rates and juvenile wellbeing.¹¹⁰

Research Question 4: How does the state respond to key considerations in juvenile justice including on detention, diversion, overrepresentation, restorative justice and reintegration?

The UN CRC clearly states that detention of a child “shall be used only as a measure of last resort and for the shortest appropriate period of time.”¹¹¹ There has been a dramatic overall decline in youth detention in both the United States and California during the past two decades, as discussed supra. Yet as of 2019, nearly 50,000 youth are still held in custody in a variety of facilities across the country on an average day, including:

- Detention centers: 16,858 youth
- Long-term secure facilities: 10,777 youth
- Residential treatment programs: 10,256 youth

¹⁰⁹ Lyons, J. S. et al., “Clinical and Forensic Outcomes from the Illinois Mental Health Juvenile Justice Initiative.” 54 *Psychiatric Servs.*, 1629, 1632, 1634. 2003.

¹¹⁰ OJJDP, Model Programs Guide Literature Review: Juvenile Reentry. 2017. Retrieved from: <https://ojjdp.ojp.gov/library/publications/model-programs-guide-literature-review-juvenile-reentry>

¹¹¹ UN CRC, Part 1, Article 37 (b).

- Adult prisons and jails: 4,535 youth
- Group homes: 3,375 youth
- Miscellaneous locked facilities including diagnostic centers, shelters, and juvenile camps: 2,450 youth.¹¹²

Of note, these figures do not include youth held in immigration detention. The number of youth held on both short-term and long-term basis by immigration authorities fluctuates constantly, especially during so-called immigration “surges.” For example, during fiscal year 2021, United States immigration authorities encountered nearly 150,000 unaccompanied minors at or near the U.S.-Mexico border.¹¹³

With respect to diversion, the Beijing Rules suggest that police, prosecutors, and other juvenile justice professionals should be “empowered to dispose of [juvenile] cases, at their discretion, without recourse to formal hearings.”¹¹⁴ It is also noted that “any diversion involving referral to appropriate community or other services shall require consent of the juvenile, or her or his parents or guardian.”¹¹⁵

Peer-reviewed research has established that diversion is more effective in reducing recidivism than conventional judicial interventions.¹¹⁶ As of 2018, approximately 41% of juvenile criminal referrals in the United States were successfully diverted.¹¹⁷

¹¹² Prison Policy Initiative, “Youth Confinement, The Whole Pie.” 2019. Retrieved from: <https://www.prisonpolicy.org/reports/youth2019.html>

¹¹³ Cheatham, A., “U.S. Detention of Child Migrants.” Council on Foreign Relations, May 4, 2021. Retrieved from: <https://www.cfr.org/backgrounder/us-detention-child-migrants>

¹¹⁴ Beijing Rules, 11.2.

¹¹⁵ Beijing Rules, 11.3.

¹¹⁶ Wilson, H. A. et al., “The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review.” *Criminal Justice and Behavior*. Vol. 40 Issue 5. May 2013.

¹¹⁷ Annie E. Casey Foundation, “What is Diversion in Juvenile Justice?” October 22, 2020. Retrieved from: <https://www.aecf.org/blog/what-is-juvenile-diversion/>

However, of the remaining 59% of juvenile referrals that were formally processed, only 6% were for violent offenses.¹¹⁸ This indicates that a much larger share of juvenile offenders could potentially be diverted, particularly in cases involving non-violent offenses, cases where there is no record of prior offenses, and cases where juveniles are assessed as posing a low risk to public safety.

One United States jurisdiction that has modeled best practices on diversion is Multnomah County, Oregon, where a push for greater utilization of diversion resulted in 60% of juvenile offenders being referred out of formal proceedings during 2016.¹¹⁹ Over 32% of those cases were dismissed outright by prosecutors, and the rest were handled by community-based or probation-administered juvenile diversion programs.¹²⁰ A similar effort in Pierce County, Washington, resulted in diversion of over 82% of youth referred to court on delinquency charges between the years of 2017 and 2019.¹²¹

The UN CRC urges States Parties to “take all appropriate measures to ensure that the child is protected against all forms of discrimination.”¹²² In a 2007 General Comment, the Committee on the Rights of the Child provided additional information on this requirement, urging the adoption of “all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of consistent policy and involve vulnerable groups of children, such as... children belonging to racial, ethnic, religious or linguistic minorities.”¹²³

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² UN CRC, Part 1, Article 2 (2).

¹²³ Committee on the Rights of the Child, General Comment 10 (2007), Children’s Rights in Juvenile Justice, at III.6.

Without question, overrepresentation of minority youth is the area in which the United States juvenile justice system is most profoundly misaligned with the UN CRC standards. As the Prison Policy Initiative noted in 2019, Black and American Indian youth are overrepresented in juvenile facilities, while white youth are underrepresented. These racial disparities are particularly pronounced among both Black boys and Black girls, and while American Indian girls make up a small part of the confined population, they are extremely overrepresented relative to their share of the total youth population. While 14% of all youth under 18 in the U.S. are Black, 42% of boys and 35% of girls in juvenile facilities are Black. And even excluding youth held in Indian country facilities, American Indians make up 3% of girls and 1.5% of boys in juvenile facilities, despite comprising less than 1% of all youth nationally.¹²⁴

Racial disparities are also evident when reviewing which youth are transferred from juvenile court to the adult system. In 2017, Black youth made up 35% of delinquency cases, but comprised over half (54%) the youth judicially transferred from juvenile court to adult court.¹²⁵ Meanwhile, white youth accounted for 44% of all delinquency cases, but made up only 31% of judicial transfers to adult court.¹²⁶ Although the total number of youth judicially transferred in 2017 was less than half what it was in 2005, the racial disproportionality among these transfers actually increased over time.¹²⁷ In California, prosecutors send Latino youth to adult court via “direct file” at 3.4 times the rate of white youth, and American Indian youth are 1.8 times more likely than white youth to receive an adult prison sentence.¹²⁸

¹²⁴ Prison Policy Initiative, *supra*.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

Researchers have documented that Black, Latino, and American Indian youth face disproportionate treatment in all phases of the U.S. juvenile justice system: they are more likely than their white peers to be arrested, to be detained at arrest, to have their case referred for prosecution, to be sentenced to ongoing detention, to be transferred to adult court, and to be incarcerated for longer periods of time.¹²⁹

Many commentators have offered hypotheses on why the United States and California have such profound overrepresentation of minority youth in their juvenile justice systems. The problem is multifactorial, and likely results from a combination of explicit bias and discrimination, implicit bias and stereotyping, differential selection, interstate and intrastate geographical differences, and reduced access to treatment and services due to the overlap of race and poverty.¹³⁰

Although these complex and inter-related causes are difficult to address, OJJDP has made overrepresentation of minorities in the United States juvenile justice system a core issue that all states must address in order to remain in compliance with the JJDP and receive federal funding. In addition to reporting requirements, OJJDP provides extensive training, technical assistance, documentation of model programs and best practices, and discretionary funding for scaling and replication of effective interventions to address disparities. It also funds quantitative and qualitative research into disproportionate minority contact (hereinafter DMC). For example, OJJDP funded a case study of nine jurisdictions that succeeded in documenting a sustained reduction in minority involvement in their juvenile justice systems.

¹²⁹ Haywood Burns Institute, “United States of Disparities.”

Retrieved from: <https://usdata.burnsinstitute.org/#comparison=3&placement=3&aces=1,2,3,4,5,6&offenses=5,2,8,1,9,11,10&year=2017&view=map>

¹³⁰ Fix, R., “Why Disproportionate Minority Contact Exists, What to Do.” Juvenile Justice Information Exchange, April 16, 2018. Retrieved from: <https://jjiie.org/2018/04/16/why-disproportionate-minority-contact-exists-what-to-do/>

The researchers noted eight key strategies that these jurisdictions utilized:

- Focusing on data collection and utilization
- Increasing collaboration with other state and local agencies, police, judges, and the community
- Changing the institutional culture away from a punitive or procedural focus toward a focus on what was best for the youth and the community
- Affiliating with national juvenile justice reform initiatives
- Creating alternatives to secure detention, secure confinement, and formal system involvement
- Focusing intentionally on DMC reduction (and not just on general system improvement while using a nonaccusatory tone)
- Leadership at the local level, the state level, or both
- Making DMC reduction a long-term priority.¹³¹

Additionally, there are large gender disparities for youth in the juvenile justice system, with the OJJDP reporting in 2019 that 85% of the population of youth in detention in the United States are male-identified.¹³² However, female-identified youth are much more likely than male-identified youth to be detained for status offenses and technical violations such as running away or truancy.¹³³

¹³¹ Spinney, E. et al., “Case Studies of Nine Jurisdictions that Reduced Disproportionate Minority Contact in their Juvenile Justice Systems.” March 2014. Retrieved from: <https://www.ojp.gov/pdffiles1/ojjdp/grants/250301.pdf>

¹³² Office of Juvenile Justice and Delinquency Prevention. Statistical Briefing Book. 2019. Retrieved from: <https://www.ojp.gov/pdffiles1/ojjdp/grants/250301.pdf>

¹³³ Sherman, F. et al. Gender Injustice: System-level Juvenile Justice Reforms for Girls. The National Crittendon Foundation, 2015. Retrieved from: <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1987&context=lsfp>

Despite reductions in the overall number of minors' involvement with law enforcement and the juvenile justice system during the last two decades, the percentage of female-identified youth has been increasing at every point in the system, from arrest to detention to probation.¹³⁴

LGBTQ youth also experience overrepresentation in the juvenile justice system, with the Movement Advancement Project and Center for American Progress reporting in 2016 that LGBTQ youth are twice as likely to end up in juvenile detention as non-LGBTQ identified youth, and 20% of youth in juvenile justice facilities identify as LGBTQ as compared to 7-9% of youth in the United States in general.¹³⁵

What innovative programs exist in these areas, and what success are they having?

In addition to the innovative programs highlighted supra, many jurisdictions in the United States and California are developing and expanding innovative programs for children in conflict with the law. Some notable examples include:

- Restorative Community Conferencing

In Alameda County, California and other sites across the country, pre-charge restorative justice diversion programs have reduced youth criminalization while simultaneously meeting the needs of people harmed.¹³⁶ The Restorative Justice Project works to “shift the paradigm from seeing crime as a violation of the law to understanding crime as harm that requires individual, interpersonal, community, and system-wide accountability

¹³⁴ Ibid

¹³⁵ Movement Advancement Project and Center for American Progress. How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth. 2016. Retrieved from: <https://www.lgbtmap.org/policy-and-issue-analysis/criminal-justice-youth>

¹³⁶ Impact Justice, “Partnering with Communities to Address Harm Through Dialogue.” Retrieved from: <https://impactjustice.org/impact/restorative-justice-diversion/>

and healing.”¹³⁷ After integrating pre-charge restorative justice conferencing with juvenile offenders, victims, families and caregivers, community representatives, service providers, and mentors, Alameda County saw a 44% reduction in youth recidivism, 91% satisfaction rates for participating victims, and significant cost savings.¹³⁸

A similar initiative, “Make It Right,” is run by the San Francisco District Attorney. It offers youth between the ages of 13 and 17 who are accused of certain felony offenses the opportunity to participate in restorative community conferencing in lieu of prosecution. Following extensive preparation, juvenile offenders meet with the person they harmed or a surrogate in facilitated dialogues, and collectively develop an agreement for the young person to repair harm, address root causes, and make amends. The agreement identifies concrete steps the youth must take, with supervision from a community-based case manager, over a six-month period. If successful, the case will not be prosecuted in court. A randomized controlled trial showed that youth given the opportunity to participate in the Make it Right program had a “substantially lower likelihood of being rearrested than similarly situated youth who were prosecuted in the traditional juvenile justice system”.¹³⁹

¹³⁷ Impact Justice, Restorative Justice. Retrieved from: <https://impactjustice.org/impact/restorative-justice/>

¹³⁸ Impact Justice, “Restorative Community Conferencing: A Study of Community Works West’s Restorative Justice Youth Diversion Program in Alameda County.” Retrieved from: <https://impactjustice.org/resources/restorative-community-conferencing-a-study-of-community-works-wests-restorative-justice-youth-diversion-program-in-alameda-county/>

¹³⁹ Shem-Tov, Y., et al. “The Impacts of the Make-it-Right Program on Recidivism – California Policy Lab”. January 2022. Retrieved from: <https://www.capolicylab.org/impacts-of-make-it-right-program-on-recidivism/>

- Youth Courts

Youth courts are diversion programs for first-time, non-violent offenders who have been charged with minor violations such as shoplifting, vandalism, truancy, or disorderly conduct. Eligible youth respondents are given the choice to voluntarily participate in a youth court program in place of traditional prosecution. Youth courts differ from the traditional court system in that it is typically a group of peers who make decisions about the outcome of a case, rather than adults. Beginning in the 1980s, youth courts have been piloted and utilized in jurisdictions across the United States. In California alone, there are over eighty youth courts in existence today.¹⁴⁰ Systemic evaluations indicate that California youth courts successfully divert an estimated 9% of cases that would otherwise be handled by the state’s juvenile justice system.¹⁴¹

- Mental Health Integration

In addition to the Mental Health Juvenile Justice Program in Illinois, discussed supra, Seattle’s King County Mental Health Plan funds two full-time liaison positions to assess and treat the mental health needs of youth involved in the local juvenile justice system. Individual and family therapy are provided to youth and their families after sentencing. Youth learn how to increase social skills and manage anger, while families learn communication and coping skills that can be utilized during and after the child’s involvement in the juvenile justice system. The program also assists youth in accessing mental health services during reentry.¹⁴²

¹⁴⁰ Judicial Council of California, “California Youth Courts: A Toolkit and Planning Guide.” 2020. Retrieved from: https://www.courts.ca.gov/documents/youth_court_toolkit.pdf

¹⁴¹ Pearson, S. S. et al. “Youth Court: A Community Solution for Embracing At-Risk Youth.” American Youth Policy Forum, 2015, at 16-17.

¹⁴² King County, “Evidence-based programs.” Retrieved from: <https://kingcounty.gov/depts/community-human-services/mental-health-substance-abuse/services/Youth/ebp.aspx>

- Family Engagement Building

Numerous efforts to increase family engagement in the juvenile justice process have been piloted across the United States. In New York, the Center for Court Innovations’ Family Voices Project provides education to families and caregivers of youth in conflict with the law. The curriculum provides critical information on navigating juvenile justice proceedings and includes firsthand advice from other families and caregivers whose children have been involved in the juvenile justice system.¹⁴³ Another model program is the Vera Institute’s Juvenile Relational Inquiry Tool, which developed national standards for family engagement in juvenile facilities. The tool has been successfully piloted in the states of Ohio and Indiana and has resulted in increased visitation between youth and families, as well as the integration of better social supports for families involved in the juvenile court process.¹⁴⁴

¹⁴³ Center for Court Innovation, “Family Voices in Juvenile Justice.” Retrieved from: <https://www.courtinnovation.org/publications/family-voices-juvenile-justice>

¹⁴⁴ Vera Institute of Justice, “Families as Partners.” Retrieved from: <https://www.vera.org/projects/families-as-partners-support-for-youth-reentry-in-ohio/learn-more>

Recommendations for further analysis and action

State level policy analysis and advocacy:¹⁴⁵

- Further research on implementation of juvenile justice overhaul currently underway in California, including key informant interviews with youth, families, and juvenile justice professionals interacting with the new policies and systems at the county level
- Monitoring and documenting policy implementation inconsistencies as juvenile justice oversight is transferred from the state level to the county level
- Development of best practice guides or minimum standards to address any documented inconsistencies in policy implementation across California's fifty-eight counties
- Further research and documentation of cost savings under new statewide juvenile justice policy in California for use as an advocacy tool in reaffirming new approach and incentivizing other jurisdictions to follow suit.

Federal level policy analysis and advocacy:

- Advocate for greater federal funding of juvenile justice programs, which has declined since 2010
- Secure full implementation of the 2018 reauthorized JJDP and lobby for stronger OJJDP enforcement mechanisms

¹⁴⁵ We believe these tasks are especially high priority, as there remains a high level of uncertainty on how California's juvenile justice overhaul will function in practice. In order to build on this momentum to inform reform efforts underway in other jurisdictions, greater attention to consistent and careful implementation and more detailed documentation are needed.

- Encourage greater focus on outcomes-based instead of output-based reporting for OJJDP grant funding
- Expand OJJDP grant incentives to support training and technical assistance to public middle and high schools integrating restorative justice practices in school discipline proceedings, as suspensions/expulsions from school are strongly correlated with juvenile justice system involvement.

Federal + state + local level policy advocacy:

- Lobby for legislation at the local, state, and federal level to specifically address disproportionate minority contact (DMC) in the juvenile justice system; require all jurisdictions to develop comprehensive strategies to reduce DMC, and design/implement data collection systems to more accurately track progress on DMC
- Develop stronger partnerships between county-level mental health systems and juvenile justice professionals, including training and collaboration (both forensic and non-forensic)
- Identification and replication of model family engagement programs, including toolkits adaptable to local context and resources
- More specialized and standardized training for all juvenile justice system professionals (Per Riyadh Guidelines VI.58, Beijing Rules 12), including routinized and in-depth implicit bias training

- Targeted efforts to recruit and retain Black, Latino, and American Indian juvenile justice professionals in order to better reflect youth populations overrepresented in the juvenile justice system.

Monitoring, evaluation, and research:

- More robust and systematic evaluation of juvenile crime prevention, support, and intervention programs (as called for in Riyadh Guidelines V.48)
- Further qualitative and quantitative research on early intervention programs for youth at risk of juvenile justice system involvement (per Riyadh Guidelines I.4)
- Additional research on best practices in reintegration, including updated comparison of recidivism rates in jurisdictions utilizing innovative approaches to reentry planning/support
- Partnering with journalists, advocates, and policymakers to access additional information and statistics on youth in immigration detention, to better understand their rights and needs and press for additional transparency and protections
- Conduct longer-term outcomes research on youth participating in Restorative Community Conferencing and other pre-charge diversion programs, to support greater integration of best practices in all jurisdictions.

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