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**EXECUTIVE SESSION  
ON THE FUTURE OF  
JUSTICE POLICY**

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**CAN WE  
ELIMINATE THE  
YOUTH PRISON?  
(AND WHAT  
SHOULD WE  
REPLACE IT  
WITH?)**

**The Square One Project aims to incubate new thinking on our response to crime, promote more effective strategies, and contribute to a new narrative of justice in America.**

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MEMBERS OF THE  
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OF JUSTICE POLICY

**The new century has witnessed a remarkable turnabout in youth justice policy in America. After peaking at over 100,000 youth in custody in 2000, youth incarceration has dropped by more than half and there is a growing movement among activists, formerly incarcerated people, youth correctional leaders, and prosecutors to end the use of youth prisons in favor of community programs and supports for young people who have run afoul of the law. For the few who require custody, states throughout the country have been closing large, distant youth prisons and, in some jurisdictions, replacing them with small, homelike facilities close to home.**

In many respects, what has happened and continues to happen with youth justice is what many criminal justice advocates and community organizers have been calling for on behalf of incarcerated adults: the halving of incarceration, realignment of funding to community programs, widespread youth prison closures, and calls for complete deinstitutionalization. This all happened while youth crime has continued to plummet. And, this remarkable decline in youth incarceration started from a moment when there was bi-partisan vilification of young people.

This paper will discuss the remarkable and unexpected decline over the past two decades of youth incarceration. It will summarize research on the negative impact of youth imprisonment, even in its attenuated state, and the implications for the future of the 19th century youth prison model as it faces its possible demise. The paper will also juxtapose youth decarceration with the adult criminal justice system—still squarely mired in mass incarceration—and offer implications for both juvenile and adult justice reform going forward.

# THE END OF THE SUPER-PREDATOR ERA

**On the horizon, therefore, are tens of thousands of severely morally impoverished juvenile super-predators. They are perfectly capable of committing the most heinous acts of physical violence for the most trivial reasons ... 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 far, 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.**

**John Dilulio, 1996**

**They are often the kinds of kids that are called super-predators—no conscience, no empathy. We can talk about why they ended up that way, but first, we have to bring them to heel.**

**Hillary Clinton, 1996**

Following sharp increases in both adult and youth crime, particularly homicides, youth justice practices came under attack during the 1980s and 1990s for being soft on crime. Policymakers from both parties bandied about phrases like “super-predator” to describe America’s youth, claiming that if such remorseless adolescents “do the adult crime, they should do the adult time” (Hudson 2009).<sup>1</sup>

Researchers like Northeastern University’s James Allen Fox and Princeton’s John J. Dilulio issued wild—and, as it turned out, wildly inaccurate—forecasts of a “rising tide” of hundreds of thousands of such juvenile super-predators poised to unleash a “blood bath of teen violence” on hapless citizens (Bennett, Dilulio, and Walters 1996:26; Butterfield 1995).

Public sentiment erupted in fear. In 1998, despite youth violent crime rates being at their lowest point in the history of the

National Crime Victimization Survey (up to that point in time), 62 percent of poll respondents felt that youth crime was on the rise. In 1996, the pervasive depiction of youth as offenders in newspapers and other media contributed to 60 percent of California survey respondents believing that “most crime nowadays is committed by young people” (Dorfman and Schiraldi 2001:40). In reality, young people were responsible for only about 13 percent of violent crime that year (Dorfman and Schiraldi 2001:40).

Policy and youth incarceration responded in kind. During the 1990s, every state in the U.S. made it easier to prosecute or jail young people with adults or rolled back confidentiality protections, eroding these core elements of the youth justice system (Sickmund and Puzanchera 2014:86). Advocates and pundits ruminated about the end of the juvenile court. University of Minnesota Professor Barry Feld openly



advocated the court's demise in favor of "youth discounts" for youth in adult courts and the Coalition for Juvenile Justice's annual report to Congress was somberly entitled "Celebration or Wake: The Juvenile Court after 100 Years" (Feld 1993:264; Coalition for Juvenile Justice 1998).

Youth incarceration in juvenile facilities exploded, reaching 108,882 by 2000 (Sawyer 2019). During the early 2000s, another 250,000 young people were being tried as adults each year, with approximately 12,000 of them sleeping in adult prisons or jails every night, numbers unheard of internationally (Ziedenberg 2011:2; Beck and Karberg 2001:5-6).

The racial animus behind this assault on the more benign youth justice system was thinly-veiled, or sometimes not veiled at all. Dilulio, once again at the forefront of this attack, wrote, "all that's left of the black community in some pockets of urban America is deviant, delinquent and criminal adults surrounded by severely abused and neglected children, virtually all of whom were born out of wedlock" (Schiraldi 2001). Rather than being castigated for such pronouncements, Dilulio was rewarded with an appointment by President George H.W. Bush to run the newly-established Office of Faith Based

Initiatives (Schiraldi 2001). Rhetoric such as Dilulio's was remarkably effective at criminalizing communities of color. From 1983 to 1997, 80 percent of the increase in detained youth were youth of color (Hinton Hoytt, Schiraldi, Smith, and Ziedenberg 2002:10).

And then it stopped.

Well, it hasn't stopped completely, but punitive policies aimed at juveniles have plummeted over the past two decades. From 1999 to 2017, there has been a 60 percent decline in the number of youths in juvenile custody, dropping from 108,802 to 43,580 (Office of Juvenile Justice and Delinquency Prevention 2019). Every state besides West Virginia experienced double-digit percentage declines in youth incarceration during this time (Sickmund, Sladky, Kang, and Puzanchera 2019).

As an example, California had over 10,000 youth in state youth prisons in the mid-1990s. Now, it has fewer than 800 (Schiraldi, Schindler, and Goliday 2011). By 2018, 39 of 43 California counties had youth facilities that were less than half full, with 7 counties at a quarter capacity or less, exponentially increasing the cost per incarcerated youth for taxpayers. Since 2011, the average annual cost of detaining a youth in 14 diverse California

counties increased between 29 to 214 percent. For example, the annual cost of detention per child in Santa Clara County increased from \$187,000 in 2011 to \$514,000 in 2018 (Tucker and Palomino 2019).

As the cost per youth in confinement has increased, the already limited utility of all of these facilities at the state and local level declines, making it harder to argue to keep them open. In May 2020, California Governor Gavin Newsom proposed eliminating the state's Division of Juvenile Justice (DJJ), once the nation's largest youth corrections systems, and realigning youth incarceration to California counties. In doing so, he noted that there were fewer than 800 youth confined in DJJ and that county facilities were housing 3,600 youth in facilities with a capacity of 11,200 (Office of California Governor Gavin Newsom 2020).

From 2000 to 2017, the number of kids locked up in adult jails and prisons also dropped precipitously from 17,633 to 4,135—a 70 percent decline from the turn of the century (Bureau of Justice Statistics N.d). Eleven states raised the age at which they include youth in their juvenile systems to 18 (and one—Vermont—to 20), leaving only three states—Georgia, Texas and Wisconsin—still trying all 17-year-olds as adults. Since 2007, 40 states and Washington, DC, have enacted approximately 100 pieces of legislation to remove youth from adult jails and prisons,

limit the prosecution of youth in adult court, or revise sentencing laws (Mistrett 2020).

Far from engendering the predicted bloodbath, the opposite trend accompanied this less punitive approach—youth crime plummeted alongside the decline in youth punishment, giving the lie to cherished beliefs that youth imprisonment was necessary to ensure safety. The juvenile arrest rate declined 60 percent from 2000 to 2017 while large drops in youth incarceration were occurring (Federal Bureau of Investigation 2000:226; Federal Bureau of Investigation 2017b; United States Census Bureau 2002; United States Census Bureau 2020).

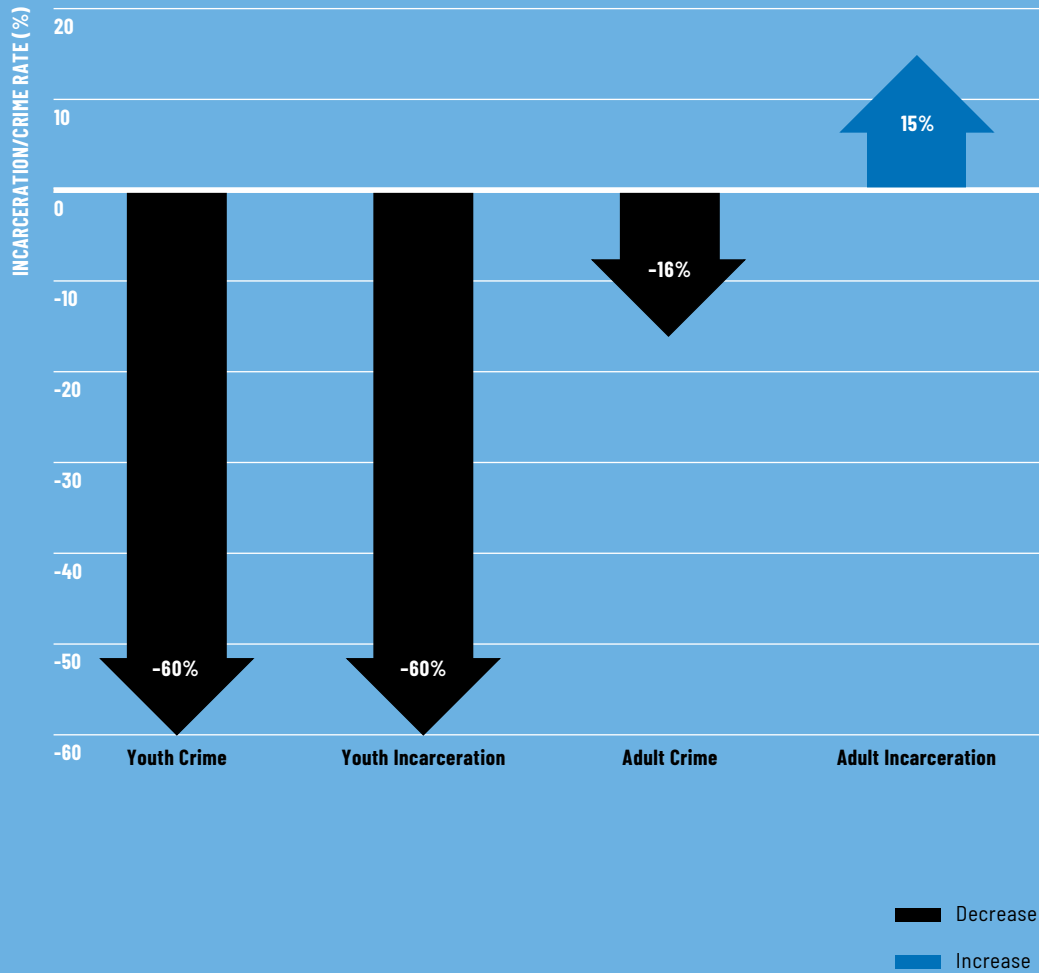
No one could have predicted this reversal of fortune for the youth imprisonment zealots during their mid-1990s' heyday.

The decline in youth crime and incarceration has been so sharp that both the number of total facilities in operation and the percent capacity at which remaining facilities are currently operating have decreased dramatically. From 2002 to 2012, 970—one in three—youth facilities closed up shop. Moreover, the overwhelming majority of large youth correctional facilities (66 percent of facilities with a capacity of more than 200) have shuttered since their peak in 1999. From 1997 to 2017, there has been an 87 percent decline in the number of youths held in facilities

of more than 200 people (Sickmund et al. 2019). In some cases, money saved from these closures and decreases in operating costs has followed the kids from their prisons into their home neighborhoods to provide services meant to help get them back on the straight and narrow (Schiraldi et al. 2011).

As Figure 1 illustrates, adult and youth crime and incarceration rates have taken dramatically different paths since 2000, the year when youth incarceration peaked. As noted above, from then until 2017, the youth crime rate declined by 60 percent while the youth incarceration rate also dropped by 60 percent.<sup>2</sup> Meanwhile, from 2000 to 2017, adult crime rates declined by 16 percent, but adult incarceration rates actually increased by 15 percent.

Criminal justice reform organizations such as JustLeadershipUSA, the American Civil Liberties Union, and #CUT50 have called for a 50 percent reduction in imprisonment. But adult incarceration has declined at a tepid pace, not even keeping up with the decline in crime (Gramlich 2019; Kaeble and Cowhig 2018:1).<sup>3</sup> Research in 2018 by the Sentencing Project estimated that, at the current rate at which incarceration is declining, it would take 75 years to cut America's adult prison population in half (Mauer 2018). In many respects, these youth decarceration outcomes are the precise goals of adult decarceration advocates and should be examined to glean lessons for their potential to contribute to the end of mass incarceration.



**FIGURE 1**

**Percent change in youth and adult crime and incarceration rates, 2000 to 2017**

Sources: Bronson and Carson 2019; Federal Bureau of Investigation 2000; Federal Bureau of Investigation 2017b; Kaebler and Cowhig 2018; Office of Juvenile Justice and Delinquency Prevention 2019; United States Census Bureau 2002; United States Census Bureau 2020; Zeng 2019:17

**Note: Number of arrests of persons under 18 was divided by total population count of persons ages 5–17 (with the same process repeated for persons 18 and over) to create a proxy for crime rates. Adult correctional populations were obtained through the summation of state and federal prison populations and local jail populations (excluding juvenile prison and jail populations) from BJS Correctional Reports.<sup>4</sup>**

## CLOSING YOUTH PRISONS IN A POST-COVID-19 WORLD

Having the world's highest youth incarceration rate was not particularly good public policy, even before the COVID-19 pandemic swept across the globe (McCarthy, Schiraldi, and Shark, 2015). As this paper will demonstrate, youth prisons are brutal, costly, ineffective, and meted out in a racially inequitable manner.

But since the advent of the coronavirus crisis, imprisoning youth is even more indefensible. Incarcerated young people are at heightened risk for the virus compared to their peers (Aalsma, Anderson, Schwartz, Ouyang, Tu, Rosenman, and Wiehe 2017). System-involved youth generally have poorer health than their agemates, including higher rates of asthma, which increases the severity of COVID-19 (Sawyer 2019; Winkelman, Frank, Binswanger and Pinals 2017; Wetsman 2018). Furthermore, although young people typically suffer from less severe symptoms than their elders, it is wrong to presume that being young makes one invulnerable. Recently, 17-year-old boys who had tested positive for COVID-19 have died in both Los Angeles and New Orleans (Froelich 2020; O'Connell 2020). Nationally, as of May 8, 2020, 421 staff and 251 youth have tested positive for COVID-19 in youth correctional facilities. On April 1, a staff member who once worked for me in DC's Department of Youth Rehabilitation Services—Kenneth J. Moore—died from a COVID-19 infection.

Youth prisons are ripe for the spread of infection, with limited access to hand washing and poor ventilation. Youth prisons often promote group activities and are designed around shared bathrooms, eating areas and, often, sleeping areas. Separating youth from one another can sometimes morph into solitary confinement, which is extremely damaging to adolescent mental health. Add the rotation of staff in three shifts a day to

a group of medically vulnerable young people compelled to congregate, and you have a recipe for disaster. In many respects, if one were designing an environment in which to spread the virus—both in and out—one could hardly do better than youth correctional facilities.

As staff or their family members become sick, they will start missing work, thinning already stretched staffing complements. Others will refuse to come to work out of fear of contracting the virus, a concern growing more warranted by the day, as youth correctional staff in New York City and Washington, DC have died of COVID-19 (Grench 2020).

During a time of heightened stress, youth will find themselves incarcerated in facilities improperly staffed to do positive programming like school, group therapy, or recreation. Visits by volunteers—essential to facility activities—and families, are being suspended. The longer this pandemic goes on, the clearer it will become to youth that we have abandoned them.

For all these reasons, 32 current and former youth correctional leaders recommended releasing youth from correctional facilities who can safely be sent home because “locked settings were an unsuccessful model for addressing youth crime even before the pandemic, and are dangerous at this time, with youth facilities placing staff and youth at risk because of these facilities’ size, age, and condition,” (Youth Correctional Leaders for Justice 2020). The very same day—March 19, 2020—advocates and community organizers from 36 states sent letters to their Governors, juvenile justice administrators and other state and local officials demanding a halt to new admissions to youth prisons, release of any medically vulnerable youth from correctional facilities, and an elimination of youth incarceration

unless the youth was determined to be a “substantial safety risk to others” (Youth First Initiative 2020).

As tragic as it is, the pandemic provides us with an opportunity to jump-start some of the reforms we should have been engaged in prior to this crisis. Youth justice systems have begun to step up, perhaps buoyed by the fact that youth correctional populations have been declining without negatively affecting crime for the past two decades. A survey of juvenile justice agencies in 30 states funded by the Annie E. Casey Foundation found that the number of young people in local secure detention centers fell by 32 percent in March and April 2020 (The Annie E. Casey Foundation 2020a).

Milwaukee, Wisconsin provides an informative case study of a jurisdiction that was already reducing its incarcerated youth population and that is now endeavoring to comprehensively do so in the wake of the pandemic. In 2017, when I was the expert witness on the lawsuit against Wisconsin’s two youth prisons—Lincoln Hills and Copper Lake (discussed at length later in this paper)—Milwaukee County incarcerated 64 youth who were not classified as “Serious Juvenile Offenders” (SJO) in Lincoln Hills and Copper Lake. By January 2020, that number had declined to 33 youth. Encouraged by these declines, Milwaukee County youth justice leaders and advocates were discussing ways that Milwaukee could completely stop using Wisconsin’s notorious youth prisons even before the current crisis.

After the pandemic hit, the need to remove young people from youth prisons became even more apparent. The Milwaukee County Division of Youth and Family Services has now proposed the creation of a Zero Youth Corrections Project Manager to cease using Lincoln Hills and Copper Lake for Milwaukee’s youth altogether.<sup>5</sup> Among other things, this position would be responsible for capturing and reallocating funds saved by eliminating the use of state youth prisons. For each youth diverted from state custody, Milwaukee County saves the \$200,750 a year that it would need to pay the state for that

youth’s incarceration. The costs to taxpayers will continue to increase in years to come, as the cost to Wisconsin counties per youth, per year in state custody will rise to \$224,475 on January 1, 2021 (Pechacek 2019).

Further, the Zero Youth Corrections manager would launch a participatory budgeting process with Milwaukee communities to co-design the services, supports, and opportunities that would become available as these funds were reallocated locally, and would oversee recruitment of credible messengers along with efforts to identify “at least one durable, positive, pro-social adult relationship for every youth” in the system.

To reduce the population of youth (and adults) detained and committed and to assure that youth in custody are humanely cared for, Milwaukee’s Chief Judge Mary Triggiano is meeting with Milwaukee stakeholders and public health officials twice weekly. Youth with misdemeanor *capiases* (warrants) who come into contact with law enforcement are not being detained during this pandemic. A policy has been put into place to clear the *capias* and provide a new court date without having the youth brought into custody. Other health measures have been undertaken to reduce inadvertent infection and on-line programming and visitation have been initiated.

As Circuit Court Judge Laura A. Crivello, who presides over Milwaukee’s juvenile court, stated: “Potentially, this pandemic may teach us new ways to look at things and how to address matters. It definitely has us thinking outside the box. Time will tell what good arises out of all of this.”<sup>6</sup>

Neither staff nor youth in Milwaukee’s youth justice system have tested positive for COVID-19 as of the writing of this paper. By April 2020, there were only 29 non-SJO youth from Milwaukee County in state custody. The County’s detention population has also declined by 14 percent versus its pre-COVID-19 average daily population.<sup>7</sup>

# OUTCOMES FOR JUSTICE-INVOLVED YOUTH

## The failure of youth incarceration to advance public safety should not come as a surprise.

In 2013, summarizing the research on youth prisons, the National Research Council recommended against institutionalization and offered suggestions of what court-involved youth need to thrive (National Research Council 2013). These suggestions included:

- 1 Limiting and structuring contact with antisocial peers and encouraging contact with prosocial peers.
- 2 Keeping youth proximate to their communities, which is less disruptive of their developmental progress.
- 3 Involving parents and ensuring family engagement.
- 4 Providing a social context that has ample opportunity and structures for healthy development and that provides youth with the tools to deal with negative influences that might be present in the settings they will encounter in the future.
- 5 Offering opportunities for academic success and activities that contribute to developing decision-making and critical thinking skills.

This is neither currently nor historically what kids get when they are incarcerated in the U.S.

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals concluded that the nation's youth institutions "have a dismal record of failure... and should be closed" (National Advisory Commission on Criminal Justice Standards and Goals 1973). In 1994, the federal Office of Juvenile Justice and Delinquency Prevention conducted a study of 995 youth prisons, concluding that there were "substantial and widespread" problems with living space, health care, security, and suicide prevention with deficiencies in all but a few of the facilities it examined (Parent, Leiter, Kennedy, Livens, Wentworth, and Wilcox 1994:1).

Too often, such facilities are located hours from youths' home communities and devoid of structured programming. They are frequently brutal congregate care environments in which youth are huddled in idleness with many others who have broken the law in a stressful and sometimes violent tug of war with the only adults with whom they come into contact—correctional officers.



Not surprisingly, the outcomes from these youth prisons are dismal. While there is no agreed-upon measure of recidivism across jurisdictions, state data reveal that 70 to 80 percent of youth returning to the community from incarceration are re-arrested within two to three years (Mendel 2011:10).

Researchers Aizer and Doyle analyzed the outcomes of 35,000 court-involved youth over 10 years. Using the “natural experiment” of the random assignment of judges allowed the researchers to examine youth who were similar in terms of prior record, current offense, family background, etc. They found that rather than accruing human and social capital like their non-incarcerated peers, incarcerated youth were accruing “criminal capital.” This significantly worsened their rates of adult

offending and diminished their academic achievement, including the likelihood that they would ever return to school post-release (Aizer and Doyle 2015).

In other words, they found that the youth justice system failed at its two basic goals of reducing the odds of youth reoffending and setting them on a path to successful adulthood.



**YOUTH PRISONS ARE BRUTAL, COSTLY, INEFFECTIVE, AND METED OUT IN A RACIALLY INEQUITABLE MANNER.**

# STARK AND RISING RACIAL DISPARITIES

**As with the adult criminal justice system, racial disparities in youth incarceration are dramatic. But unlike disparities in adult imprisonment, which have declined slightly of late, disparities in youth imprisonment are on the rise even as youth incarceration rates decline (Sickmund et al. 2019).**

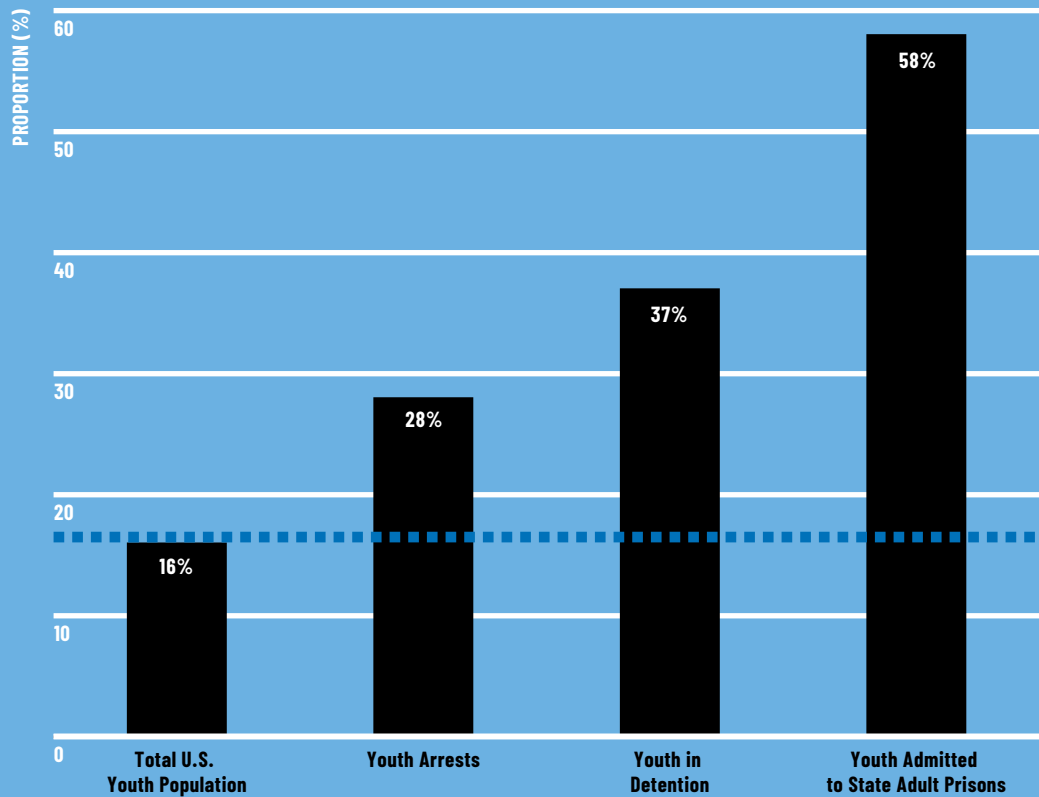
In 2017, Black and Native youth were incarcerated at 5.8 and 2.5 times the rate of white youth (Sickmund et al. 2019; Puzzanchera, Sladky, and Wang 2019). In 2015, Latino youth were 1.7 times more likely to be incarcerated than white youth (The Sentencing Project 2017).<sup>8</sup>

In 2002, researchers conducted a meta-analysis of the studies on disproportionate minority confinement of youth. Twenty-five of the 34 studies (73 percent) they reviewed showed “race effects”—disparities not explainable by current offense or prior record—in the handling of youth at one or more stages of legal processing (Pope, Lovell, and Hsia 2002:5).

Furthermore, a report issued by the National Council on Crime and Delinquency (NCCD)

showed how these disparities compounded, resulting in a “cumulative disadvantage” for youth of color as they moved through the system (Hartney and Silva 2007:1). NCCD found that, from 2002 to 2004, although Black Americans made up just 16 percent of American youth under 18, they constituted 28 percent of juvenile arrests, 37 percent of youth in detention, and 58 percent of youth admitted to adult prisons (See Figure 2) (Hartney and Silva 2007:1–3).

Researchers Bridges and Steen (1998) offered a rare glimpse into how bias can affect youth before the law. They analyzed presentence reports of youth being assessed by probation officers in a large northwestern county. They found that the probation officers there were more likely to see the crimes of youth of color as caused by internal



## FIGURE 2

**Cumulative disadvantage: proportion of Black youth along the justice system trajectory, 2002 to 2004**

Sources: Hartney and Silva 2007:1

forces (e.g., personal failure, inadequate moral character, personality) while crimes by white youth were seen as caused by external forces (e.g., poor home life, lack of appropriate role models, environment). Controlling for current offense and relevant background information, youth of color were described as higher risk and were more likely to be recommended for incarceration than white youth.

For example, comparing two boys of different races accused of separate first-offense robberies, probation officers wrote:

*This robbery was very dangerous as Ed confronted the victim with a loaded shotgun. He pointed it at the victim and demanded money be placed in a paper bag... There is an adult quality to this referral. In talking with Ed, what was evident was the relaxed and open way he discussed his lifestyle. There didn't seem to be any desire to change. There was no expression of remorse from the young man. There was no moral content to his comment.*  
**About Ed, a Black youth, who robbed a gas station with two friends.**

*Lou is the victim of a broken home. He is trying to be his own man, but... is seemingly easily misled and follows other delinquents against his better judgment. Lou is a tall emaciated little boy who is terrified by his present predicament. It appears that he is in need of drug/ alcohol evaluation and treatment.*  
**About Lou, a white youth, who robbed two motels at gunpoint (Bridges and Steen 1998:564).**

These disparities can accumulate to completely eliminate incarceration for white youth as incarcerated populations decline. In fiscal year 2017, only Black and Latino youth were committed to Limited Secure (locked) facilities in New York City (Weissman, Ananthakrishnan, and Schiraldi 2019:38). During the five years I ran Washington, DC's DYRS, I did not have a single white kid committed.

# THE YOUTH SYSTEM AND ENDEMIC ABUSE

**Throughout my four decades in this field, I have worked within and outside the youth justice system and have seen firsthand how systems intended to protect and support youth have instead engaged in widespread abuse and inhumane treatment of the young people in their care.**

When I became director of DYRS in 2005, the conditions under which the kids were incarcerated in our nation's capital were shocking. Staff routinely beat the youth, occasionally stripping them naked and tossing them into their cells for lengthy periods. Sometimes youth were locked down for so long without release that they urinated or defecated in their cells. The young people reported taking their shirts off at night to stuff them into cracks in the walls to prevent rats and cockroaches from crawling on them while they slept. Drugs were so pervasive in the facility (being sold, we learned, by a corrections officer) that youth who came into custody testing drug-free had marijuana in their systems when they were retested a month later.

Sexual abuse was rampant. I met a new educational aide who was incarcerated at our youth prison—the Oak Hill Youth Detention Center—when she was a teenager. She told me that one of the staff still in our employ raped her during her confinement. Our internal investigators and lawyers uncovered widespread sexual assault of female staff who often either quit or acceded to their supervisors' pressure lest they find themselves alone and unaided in dangerous situations (Schiraldi 2015).

In 2010, by which time my colleagues and I had replaced Oak Hill with the smaller (although still too large and distant) New Beginnings Facility, I became Commissioner of New York City's Probation Department, supervising around 2,500 youths and 25,000 adults. Shortly before my arrival

Images (right): Fencing at Oak Hill Youth Detention Facility and Oak Hill Cell. Photos by David Yee and funded by the Public Welfare Foundation.



in New York, a teenage boy died in a state youth prison after being slammed to the ground and pounced on by facility staff in a harsh “takedown” (See Box 2: The New York Story). The Justice Department investigated and sued, reporting:

*Staff...consistently used a high degree of force to gain control in nearly every type of situation... Anything from sneaking an extra cookie to initiating a fistfight may result in a full prone restraint with handcuffs. This one-size-fits-all control approach has not*

*surprisingly led to an alarming number of serious injuries to youth, including concussions, broken or knocked-out teeth, and spiral fractures (King 2009:5).*

Within a few years of that report, New York City would remove all of its young people from youth prisons run by the State of New York.

After my time in government, in 2017, I was plaintiff’s expert in a lawsuit against the Wisconsin Department of Corrections’ youth prisons—Lincoln Hills and Copper Lake.



## THE NEW YORK STORY

In 2010, youth corrections in New York State was at a crisis point. The ACLU and Human Rights Watch had published a damning report about conditions for girls in state youth prisons run by the Office for Children and Family Services (OCFS) (Lewis 2006). That same year Darryl Thompson, a 15-year-old black boy from the Bronx, was killed during a lethal “takedown” by staff at the Tryon Residential Center, an OCFS youth prison in upstate New York. His death, which resulted in heightened scrutiny of OCFS youth prisons, was initially ruled a homicide by the county coroner but never prosecuted (Feldman 2007). The United States Justice Department investigated conditions at four OCFS facilities, filing and settling litigation with the state in December 2009. OCFS Commissioner Gladys Carrión described conditions in her facilities as “toxic” (Dwoskin 2010) and a state commission investigating conditions in the state’s youth prisons wrote:

*New York’s juvenile justice system is failing in its mission to nurture and care for young people in state custody. The state’s punitive, correctional approach has damaged the future prospects of these young people, wasted millions of taxpayer dollars, and violated the fundamental principles of positive youth development (Task Force on Transforming Juvenile Justice 2009:8).*

To be sure, the number of youths from New York City imprisoned in OCFS facilities had already dropped dramatically before then, falling from 1,896 in 1995 to 642 by 2010 (New York State Office of Children and Family Services 2010:9; New York State Division for Youth 1996:6). But as the number of youths sent to OCFS facilities by judges throughout the state declined, the cost per youth mushroomed as state policymakers had been loath to close facilities that were shoring up rural economies (Bernstein 2014:481).

Shortly after his election in November 2010, Governor Andrew Cuomo toured Tryon, which was fully staffed yet completely devoid of young people. In his first State-of-the-State Address in January 2011, Governor Cuomo angrily summarized the case against the state’s youth prisons:

*You have juvenile justice facilities today where we have young people who are incarcerated in these state programs who are receiving... treatment that has already been proven to be ineffective; recidivism rates in the 90 percentile. The cost to the taxpayer is exorbitant. For one child, over \$200,000 per year. The reason we continue to keep these children in these programs that aren’t serving them but are bilking the taxpayers is that we don’t want to lose the state jobs that we would lose if we closed the facilities. I understand, I understand, the importance of keeping jobs... I also understand that that does not justify the burden on the taxpayer and the violation of civil rights of the young person who is in a program that they don’t need where they’re not being treated, hundreds of miles from their home just to save state jobs. An incarceration program is not an employment program (New York State Office of Governor Andrew Cuomo 2011b).*

Likewise, Mayor Michael Bloomberg called the state’s youth prisons “relics of a bygone era, when troubled city kids were stripped from their families and shipped to detention centers in remote rural areas” (New York City Office of the Mayor Michael Bloomberg 2010). Bloomberg proposed the “Close to Home” initiative through which all New York City youth would be returned to the city (or never sent away from home in the first place) and most of the money the state once spent to incarcerate them—up to \$41.4 million—would follow the youth back home. The funds would be used to purchase an array of



in-home and community programs for the youth. The few youths placed out of home would be in small, homelike facilities near their home communities.

Sixteen months later, in April 2012, Close to Home (C2H) was enacted into law with support from Governor Cuomo, Mayor Bloomberg, and the state's politically divided legislature. Youth began to be placed in facilities run by non-profit organizations in or near the city only five months after the bill's passage.

Four years after C2H was enacted, outcomes were strongly favorable. The nation's largest city had removed all of its youth sentenced through its family courts from deplorable state youth prisons. By February 2019, the number of youths in custody declined to 107 youth, now housed in local placements ranging in size from six to 20 beds. Only 12 of those youth were held in locked facilities.<sup>9</sup>

Overall, there was a 68 percent decline in youth in placement in New York City from 2012 to 2016, compared to a 20 percent decline in the rest of

the state (which was not affected by C2H during that time). Further, youth arrests in New York City dropped by 53 percent from 2012 to 2016, dwarfing the previous four years (-24 percent) and the 41 percent decline in the rest of the state during that period. Ninety-one percent of C2H youth passed their academic classes while in custody in the 2016-17 academic year. Eighty-two percent of youth released from C2H facilities transitioned to a parent or guardian and 91 percent of youth exiting C2H facilities were enrolled in post-release community programming (Weissman et al. 2019).

The nation's largest city—larger than most states—showed it could simultaneously remove all of the youth prosecuted in its family courts from youth prisons, reinvest most of the savings into community programs, and enjoy record-breaking declines in youth arrests.

Image (above): Brooklyn, New York limited secure Close to Home facility. Courtesy of Allison Dikanovic and Milwaukee Neighborhood News Service.

One out of five youth incarcerated there were held in inhumane solitary confinement conditions, generally spending 23 hours a day in their cells. When outside their cell, they were cuffed hand and foot and often chained to fixed objects like tables in the day room where they sat in forced silence. They showered in a phone-booth sized cage and recreation was in an empty cell, alone, with a yoga ball. In granting a restraining order against the department's practices, United States District Court Judge James Peterson, who had visited the federal "supermax" prison in Colorado, found that "(Unabomber) Ted Kaczynski has less restrictive confinement than the youth at Lincoln Hills" (J.J. v. Litscher 2017; Hovorka 2017).

In my 40 years as a juvenile facility staff member, foster parent, researcher,

advocate, and department-head, it has always struck me that the general public experiences such atrocities as episodic, rather than endemic. This leads to investigations and critiques of this or that staff member, superintendent, administrator, Mayor, or Governor. But, until recently, there have not been widespread calls for a system-wide, critical examination and elimination of the youth prison model.

This, despite the fact that shortly after youth prisons sprang up in the U.S. in the 1800s, they were riddled with the same deplorable conditions that plague them to this day. Historian David Rothman chronicles the record of youth "reformatories" and "training schools" from their birth in the U.S. context during the 1800s. Rothman describes

Images of Living Conditions for youth in solitary confinement at Lincoln Hills and Copper Lake. Photos taken by Vincent Schiraldi.



the newly-minted 19th century youth prisons as riddled from the onset with atrocities like leasing youth out under harsh labor conditions and physical abuse and neglect (2002). Summarizing this legacy, Rothman concludes, “when custody meets care, custody always wins” (Newsweek Staff 1994).

When he was head of youth corrections in Massachusetts in the early 1970s, Jerome Miller famously closed all of the Commonwealth’s youth prisons over a two-year period. As he placed youth into ultimately more successful community programs, he was met with fierce resistance from staff and elected officials defending a brutal status quo (Coates, Miller, and Ohlin 1979; Krisberg and Austin 1998). Miller wrote the following of his view on the potential for youth prisons to improve:

*Reformers come and reformers go. State institutions carry on. Nothing in their history suggests they can sustain reform, no matter what money, what staff, and programs are pumped into them. The same crises that have plagued them for 150 years intrude today. Though the cast may change, the players go on producing failure (Miller 1991:18).*

The data bear out Miller and Rothman’s dismal conclusions. The Associated Press surveyed every juvenile justice agency

incarcerating youth in the country from 2004 to 2007, uncovering 13,000 allegations of abuse in facilities housing 46,000 youth (Mohr 2008). A 2018 survey by the Bureau of Justice Statistics found that 1 out of 14 incarcerated youth reported being sexually assaulted while in custody in the 12 months prior to the survey (Smith and Stroop 2019:1).

The Annie E. Casey Foundation issued a pair of reports analyzing litigation and media exposés on conditions in youth facilities from 1970 to 2015. Their 2011 report uncovered evidence of systemic maltreatment in facilities in almost all states, half of which had occurred since 2000 (Mendel 2011:5). This included high rates of violence, sexual abuse, overreliance on physical restraints, and excessive use of isolation and solitary confinement. Casey’s 2015 update found systemic maltreatment in an additional seven states, with seven states from the original cohort exhibiting ongoing evidence of constitutional violations (Mendel 2015:2–3). Often these violations occurred despite the fact that many of those states were under court oversight, like the one I inherited in Washington, DC. The data are overwhelming: these negative conditions are not facility-specific but characteristic of the youth prison model itself.

# WHY THE TURNABOUT IN YOUTH INCARCERATION?

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## **High costs. Disappointing outcomes. Stark racial disparities. Abusive conditions. Successful programmatic and systemic examples of decarceration.**

Above are a few of the reasons why youth prisons have increasingly fallen out of public favor and into disuse. These, and a blend of other factors that I will discuss more below, have contributed to a broad and steep decline in youth incarceration in the United States over the past two decades.

First, the substantial drop in youth arrests over the past several decades has significantly contributed to the decline in youth incarceration in at least two ways. Most obviously, the crime drop has reduced the number of young people available for the system to incarcerate. Moreover, the reversal of the spike in crime in the early 90s to a two-decade decline has provided judges and elected officials with political breathing room to experiment with fewer youth prisons.

Some argue that the decline in youth arrests may, in and of itself, be sufficient to explain the drop in youth incarceration (Butts 2013). But that conclusion fails to answer the question of why some jurisdictions have experienced youth incarceration declines

that far outstrip their youth crime declines. Or why adult incarceration has risen since 2000 even while adult crime has declined.

Crime rates are hardly a reliable predictor of incarceration rates, and vice versa. Indeed, over the past four decades during which the United States has experimented with mass incarceration, there has been only a weak connection between crime and incarceration, suggesting that there is more to the youth incarceration drop than simply a youth crime drop. (National Research Council 2014).

There are several other factors that have also likely contributed to the decline in youth incarceration since 2000. Increasingly sophisticated and well-funded advocates and community organizers have launched local and national efforts to close youth prisons and stop incarcerating youth in adult prisons or trying them as adults (Ryan and Schindler 2011).<sup>10</sup> For example, the Youth First Initiative, which describes itself as a “national campaign to end youth incarceration and invest in

community-based supports, services and opportunities for youth,” now has campaigns to eliminate youth prisons with local youth, families and grass roots organizers in nine states (Youth First Initiative 2019b). Their goal is to amass enough deinstitutionalized states to get the nation’s system over a “tipping point” to total elimination of the youth prison model. Importantly, their efforts to craft justice solutions that eschew reliance on youth prisons involve not only community members and families, but also the voices of youth in the system (Youth First Initiative 2019c).

Even before Youth First, some early youth justice activists, philanthropists and youth correctional administrators recognized the importance of including youth and family voices in order to achieve meaningful youth justice policy forums. For example, for decades, youth in Missouri routinely testified at annual Division of Youth Services hearings (Mendel 2010). In 2003, Friends and Families of Louisiana’s Incarcerated Children (FFLIC) helped successfully lead the charge to close the state’s notorious Tallulah Correctional Center for Youth (Marguerite Casey Foundation 2015). In 2015, the Annie E. Casey Foundation created a youth advisory council to inform their juvenile justice work (The Annie E. Casey Foundation 2015). Furthermore, these examples all include positive youth development

efforts; by participating in advocacy, system-impacted youth are able to use their own knowledge and strengths to develop individual agency (Butts, Bazemore, and Saa Meroe 2010).

In addition to helping young people develop, these partnerships humanized youth in ways that, in my view, came to prominence later for criminal justice reformers.<sup>11</sup> Now, as criminal justice reform efforts are increasingly spearheaded by formerly incarcerated people— from closing Rikers Island in New York City, to reinstating the vote for people with felony records in Florida, to ending non-unanimous jury verdicts in Louisiana—they are carried out with a greater sense of urgency and are notching significant wins (JustLeadership USA 2020; Katal Center for Health, Equity and Justice 2018; Norwood 2020; O’Donoghue 2018).

Efforts to replace youth prisons are sometimes successfully joined by litigators from organizations like the Juvenile Law Center, the National Center for Youth Law, the Youth Law Center, the Southern Poverty Law Center and the ACLU, among others. While the specific legal emphasis of litigation is on improving conditions, such litigation often highlights institutional atrocities, increases the costs of running minimally constitutional facilities, and creates flashpoints for reform.



**DURING THE FIVE YEARS I RAN WASHINGTON, DC'S DYRS, I DID NOT HAVE A SINGLE WHITE KID COMMITTED TO MY DEPARTMENT'S CUSTODY.**

Philanthropic support has also helped focus specifically and over a long-term on reducing youth incarceration and creating a developmentally appropriate response to youth crime that eschews youth prisons. The Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) provides a prime example of how philanthropic commitments to youth justice reform have affected the field. JDAI was founded in 1994, at the height of the super-predator era, to help jurisdictions safely and effectively reduce pre-adjudication youth detention populations and racial disparities in detention. Launching in five demonstration sites, JDAI is now in 40 states, three tribes, and over 300 counties. The Casey Foundation has also expanded to reduce post-adjudication placements in 12 jurisdictions across seven states and reform youth probation in 14 sites across eight states.<sup>12</sup> Research by the Earl Warren at the Institute on Law and Policy at the University of California at Berkeley found that within 23 states where JDAI was operating prior to 2010, detention populations had fallen 2.5 times more in participating counties (down 42 percent) than in the states as

a whole (down 17 percent) (Chief Justice Earl Warren 2012:5). Through this long-term and growing commitment, the Casey Foundation has helped states and counties accrue experience with, and evidence about, safely reducing youth detention for decades and throughout the country (The Annie E. Casey Foundation 2020b).

The MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice highlighted the need for developmentally appropriate approaches to youth justice. This research has had a profound impact on several United States Supreme Court decisions about the juvenile death penalty and juvenile life without parole, and has influenced the discussion of broader youth justice reforms system-wide. (McCarthy et al. 2015; The MacArthur Foundation 2020). More recently, the Youth First State Advocacy Fund was established as a funding collaborative aiming to close youth prisons and secure investment in communities most impacted by incarceration, working in partnership with the Youth First Initiative and grass roots groups throughout the country (Art for Justice Fund 2018).



These initiatives often partnered with, influenced, and were influenced by a burgeoning assemblage of reform-minded youth correctional leaders. For example, in 2019 a group of 57 youth correctional administrators joined calls by advocates, youth, and families to end the youth prison model and replace it with a youth justice system favoring community programs and small, local facilities for the incarcerated few (Gressier 2019).<sup>13</sup> The newly-formed Youth Correctional Leaders for Justice states that:

*As current and former leaders of youth justice agencies around the country, we believe that the time has come to close down youth prisons, once and for all. Our collective experience “on the inside” has shown us that separating youth from their families and communities and emphasizing punishment and retribution harms young people and their communities (Youth Correctional Leaders for Justice 2019).*

Finally, a growing cadre of “evidence-based practices” (EBPs) that were subject to randomized clinical trials, like Multi-systemic Therapy, Functional Family Therapy, and Multi-Dimensional Treatment Foster Care, were shown to reduce recidivism when applied to populations of young people similar in risk and offending to those who were being incarcerated. This offered cost-conscious policymakers concerned with public safety research-backed alternatives to youth imprisonment at lower costs (Washington State Institute for Public Policy 2019).

This stew of reform elements has worked not only to push down incarceration, but to shift public opinion in the direction of a less punitive and more supportive youth justice system. A recent survey of 1,000 respondents conducted by GBAO Strategies found that 80 percent supported providing financial incentives to reduce youth incarceration in favor of community rehabilitative programs; 70 percent supported reducing racial and ethnic disparities in the youth justice system; and 57 percent supported closing youth prisons (GBAO Strategies 2019:1-2). Poll findings of this sort were unheard of in the heyday of the super-predator era.

# IMPLICATIONS AND RECOMMENDATIONS

**The youth justice system has already travelled to a place where many leading criminal justice advocates hope to be soon: half as much incarceration; a major shift away from the use of larger youth prisons; far fewer collateral consequences; some funding of community programs and rehabilitation; field leaders openly calling for the demise of the youth prison; growing public support for closing youth prisons; and several states and large jurisdictions safely eschewing high-capacity, locked facilities, or vowing to do so.**

While advocates and community organizers rightly argue that much more needs to be done, with campaigns to close youth prisons growing more common and 20 years of plunging youth incarceration

under our belts, now seems like a good time to take stock of where we are with youth confinement, where we should be headed, and what lessons there are for adult decarceration.

## IMPLICATION #1—WE SHOULD FINISH THE JOB

The first and most obvious implication of these data is that we should finish the job of ending America's 180-year experiment with youth imprisonment. Consistently brutal conditions, stark racial disparities, dismal outcomes, and high costs have characterized youth prisons since their birth. Jurisdictions reducing or eliminating youth prisons have already done so without jeopardizing public safety, funneling some of the savings from deinstitutionalization into programs to support youth who would otherwise have been incarcerated. And there is public support for doing so.

Often, youth prisons provide jobs in the rural communities in which they are generally located, rendering them difficult to close due to entrenched interests among staff or local elected officials or business leaders. As such, public officials in charge of closures can come under harsh public scrutiny (Bernstein 2014; Miller 1991). Gladys Carrión, who closed two dozen youth prisons when she headed youth corrections in New York, was vilified by her staff and elected leaders in the upstate communities where those facilities were located, in spite of the facilities' deplorable conditions, stark racial disparities, and underutilization (Bernstein 2014). Similarly, Jerome Miller's memoir

*Last One Over the Wall* describes the fierce resistance and sabotage he endured closing Massachusetts' training schools (1991). When I closed the Oak Hill Youth Center, I was the subject of numerous votes of no confidence by the Fraternal Order of the Police, the union representing my staff—some of whose members were actively involved in sabotaging our efforts (Schiraldi 2010).

This resistance renders youth facilities difficult to close, not because they are achieving the rehabilitative or public safety goals for which they were established, but because they feather a variety of well-connected nests. In New York, for example, state officials were required to announce any correctional facility's closure a year prior to actually closing it, due to legislation passed during the administration of Governor George Pataki at the urging of the correctional officers' unions and elected officials from rural "prison towns" (New York Public Law 2011). Once a prison closure is announced, this provision allows local business, political leaders, and correctional officers to organize in protest against shuttering local youth prisons.

As a result, facility costs per incarcerated youth often mushroom as such facilities

outlive their utility but cling to their existence (Tucker and Palomino 2019). In both California and New York, as incarcerated youth populations plummeted, cost per confined youth reached a quarter million dollars a year (Schiraldi et al. 2011:426; Weissman, et al. 2019:10–11). In the year prior to the closure of the Connecticut Juvenile Training School, 43 youth were incarcerated in it, at a total cost of \$53 million (Kovner 2016). In 2014, the Justice Policy Institute found that deep-end institutional confinement of youth costs an average of over \$150,000 annually and 33 states had average confinement costs of over \$100,000 per youth per year in confinement (Petteruti, Schindler, and Ziedenberg 2014:12).

There are lessons here for both youth and adult justice. In youth justice, policymakers, advocates and community organizers in states with waning incarcerated youth populations should look to complete facility closures, rather than partially downsize. Shrunken prisons consume almost as many resources as full ones do, given the many fixed costs required to operate them and the reluctance of elected officials to lay off workers who are often their constituents. For those looking to decrease mass incarceration for adults, wresting the resources away from the facilities will be a considerable challenge that needs to be taken head on.

Techniques to repurpose facilities that include affected communities in the design process will be vital to shore up local economies and may help quell objections to facility closures. Early in his administration, New York Governor Andrew Cuomo allocated \$50 million and additional tax credits to spur economic development in communities where youth or adult prisons have closed (New York State Office of Governor Andrew Cuomo 2011a). When I closed DC's Oak Hill Youth Correctional Center, the District was reluctant to allocate funds to raze it, so we did the next best thing. Working with City Administrator Dan Tangherlini, the District leased the facility to the National Guard, which has rehabbed it, removed much of the correctional apparatus and feel, and turned it into the DC Youth Challenge residential program for at risk youth (District of Columbia National Guard N.d.)

Because so many youth prisons have closed, researchers and advocates have begun to document examples that could point the way for organizers, advocates and public officials as they look to close adult correctional facilities (Harvell, Warnberg, Sakala, and Hull 2019; Youth First Initiative 2019a). It bears remembering that, as prisons begin to close, it will take more effort to finish the job than just turning off the lights as the last person leaves.

## IMPLICATION #2—CAPTURE AND REDEPLOY RESOURCES

A key reason to focus on closing youth prisons is to redeploy the exorbitant resources poured into them to bolster community cohesion and supports for those coming home. This investment can help build a more durable, “thicker” brand of community safety to replace the “thin” kind that reliance on imprisonment provides (Western 2018).

In the last two decades, youth justice systems nationwide have begun to move in this direction, as a growing number of places are shifting resources out of incarceration and into communities. For example, efforts like New York City’s Close to Home initiative, RECLAIM Ohio, Redeploy Illinois, and fiscal realignment in California, Connecticut, Kansas, Texas, and Virginia, to name a few, have reallocated hundreds of millions of dollars from youth prisons to counties and communities while reducing incarcerated populations and closing youth prisons (Schiraldi et al. 2011; Schoenberg, Pheiffer, and Rosenthal 2019; Virginia Association of Counties 2018; Kovner 2018). While such approaches are rarely subject to sophisticated evaluations (like youth imprisonment itself), they have coincided with sustained reductions in youth crime and incarceration (McCarthy et al. 2015:19).

These approaches have been more successful than similar efforts to reallocate funds from adult prisons to community programs. Perhaps this is because youth justice systems were more used to contracting with non-profit organizations to provide at least some modicum of rehabilitative programming while adult prison systems largely abandoned rehabilitation starting in the 1970s (National Research Council 2014; McCarthy et al. 2016; Austin, Clear, Duster, Greenberg, Irwin, McCoy, Mobley, Owen, and Page 2007). Put another way, realigning resources from youth prisons may be easier than from adult prisons because adult prisons have a longer way to go.

While cause and effect are difficult to establish (Butts 2013; Balis and Woods 2013), it is undeniable that, in many states—those mentioned above and others—as youth incarceration has declined, funds have sometimes been funneled into community programs and/or probation services and youth crime has dropped considerably. It is also clear that the declines in youth incarceration have been more in-line with youth crime drops than the separate paths adult crime and incarceration have taken (See Figure 1).

This suggests that policy changes, including reinvestment of savings into supports for youth in lieu of confinement, are an important factor in the dramatic reductions in youth imprisonment.

By contrast, the leading approach to reinvesting dollars from prisons to communities—the federal Justice Reinvestment Initiative—has been criticized for overstating its prison reduction outcomes and failing to

reinvest substantially in communities (Austin, Cadora, Clear, Dansky, Greene, Gupta, Mauer, Porter, Tucker, and Young 2013). If a substantial portion of the 2.2 million people in America’s prisons and jails are to be returned successfully to their home neighborhoods, advocates, organizers and policymakers will need to craft policy that does better than pay lip service to reinvestment in the communities most impacted by imprisonment.

## IMPLICATION #3—REALLY INVEST IN COMMUNITIES

A lament heard often among youth corrections workers (sometimes with a tinge of resentment projected onto youths’ families and communities) is that some youth do well when they are in custody, but then reoffend when they return home, even if they are referred to aftercare services. Still, little is done in either the criminal or youth justice system to work directly with highly impacted communities to improve the environment to which youth and adults will return upon release from incarceration (or stay in instead of being locked up). Even with youth justice’s better reinvestment record in funding community programs, much more needs to be done to move beyond group homes and even individually-focused evidence based

practices to build legitimacy in our justice systems and support community cohesion—both of which have been shown to reduce crime rates (National Research Council 2013; Sharkey 2018).

As evident in the collective action literature, communities are much more likely to advance their own safety and well-being when they have neighborhood-based and resident-led institutions that support basic needs and exert informal social control (Gamson 1991; Sampson, McAdam, MacIndoe, and Weffer-Elizondo 2005; Sampson, Raudenbush, and Earls 1997). For example, every 10 additional non-profit organizations devoted to community

development or violence prevention in a city with 100,000 residents led to a 9 percent drop in the murder rate and a 6 percent drop in violent crime (Sharkey, Torratts-Espinosa, and Takyar 2017).

Here and abroad, worthwhile experiments have been launched in *both adult and youth justice* that tap into the expertise of formerly incarcerated people, family members, and communities—often led by people of color who are overrepresented in incarceration—to co-design services and supports that help minimize the need to incarcerate while improving safety. The Public Welfare Foundation (PWF) has launched a video series on programs and supports that have “bubbled up” from communities that they anticipate can help end youth incarceration (Public Welfare Foundation 2019).<sup>14</sup> Candice Jones, PWF President and former Commissioner of the Illinois Department of Juvenile Justice, has stated:

*When reinvestment is at its best, it’s about reinvesting out of systems and into communities and the places that are being the most harmed. It is our hope at the Public Welfare Foundation that, by sharing these stories, it inspires other jurisdictions to see that transformative, community-based approaches to justice are not only possible, but are working.<sup>15</sup>*

The Urban Institute has launched a project to investigate which approaches jurisdictions are, or should be, using to invest in communities and divest in youth prisons, aimed at answering the question “How can we support better outcomes for youth and families by investing more resources in programming and community development strategies in neighborhoods disproportionately impacted by incarceration?” (Harvell et al. 2019).

In order to move beyond mass incarceration, both adult and youth justice organizers and policymakers will need to find a way to transfer power and resources to the communities most affected by crime and incarceration in order to replace mass incarceration with community cohesion.

This will include tapping into the power of formerly incarcerated “credible messengers” like those in New York City, Oakland, California, and Washington, D.C. (Credible Messenger Justice Center 2020; Department of Youth Rehabilitation Services N.d.). For example, the Arches Mentoring program, adapted from Oakland’s Mentoring Center, pairs credible messengers with high risk young adults (ages 18–24) on New York City probation. Arches participants work with credible messengers, most of whom have been formerly incarcerated, in a transformative mentoring model that pairs elements of group mentorship,



cognitive behavioral therapy, and journaling. Research by the Urban Institute has found that Arches participants had 57 percent lower felony reconviction rates within their first two years of probation than other, similar probation youth who were in neighborhoods where Arches was not offered (Lynch, Esthappan, Astone, Collazos, and Lipman 2018:42; Alcorn 2019).

Communities can also be enlisted to directly help with housing their families and neighbors reentering from prison. Returning people often have a difficult time finding decent housing options upon release, sometimes delaying their parole or forcing them into substandard options. Family members are often willing to assist but unable to do so (Western 2018). The Osborne Association's *Kinship Reentry Program* and Impact Justice's *Homecoming Project* offer two examples of more personal, individualized, and community-centered housing options than oft-criticized halfway houses (Gilna 2015). Like Kinship Care in the child welfare context, Kinship Reentry is designed to financially support family members to successfully receive their loved ones coming home from prison instead of having them placed into halfway houses or homeless shelters (New York Office of the District Attorney Cyrus R. Vance 2018). The *Homecoming Project* taps into the resource that many "empty-nester" families in neighborhoods heavily impacted by

imprisonment present. The project provides subsidies to homeowners to house returning citizens in spare bedrooms in an "AirBNB-style" arrangement, coupled with additional social services and supports (Impact Justice 2020).

Communities can also undertake some justice system functions that are normally performed by government. In Baltimore, when the W. Haywood Burns Institute launched a call-notification project—originally staffed by a mother whose child had been in detention—to remind families of court appearances, detention for failures to appear in court dropped by 75 percent (W. Haywood Burns Institute 2006).

Similarly, members of the Nga Puhi Iwi ("tribe") in Northern New Zealand were troubled because, when their children were arrested, they would be detained three to seven hours from home, depending on available detention space. The tribe took action, creating an "invisible remand" program. Tribal families agreed to hold youth in their homes in lieu of shipping them off to detention. Members of the tribe were also hired to supervise and engage the youth in cultural activities during the day (Schiraldi 2019).

Several pilots have been launched or are launching for community members and government to co-design community

reinvestment approaches. In 2014, after a spike in shootings in New York City's Public Housing developments, the Mayor's Office of Criminal Justice organized twelve city agencies—including police, housing, mental health, education, probation, and community development—to work with community residents to co-design neighborhood-based efforts to increase public safety, dubbed the Mayor's Action Plan (MAP). These included hiring formerly incarcerated people to mentor neighborhood kids, expanding the summer youth employment program, and extending community centers' hours until midnight. Violent crime declined by 8.9 percent in the 15 MAP housing developments in the effort's first four years, compared to a 5.1 percent decline in crime in New York City's housing developments that are not part of MAP (Trone 2019:5).

In 2017, the Colorado Criminal Justice Reform Coalition partnered with legislators from both parties to craft a new approach to justice reinvestment. The resultant Justice Reinvestment Crime Prevention Bill reinvested \$4 million annually in two communities—North Aurora and Southeast Colorado Springs, Colorado—for an initial three-year pilot period.<sup>16</sup> The bill funds a micro-loan program to spur small business development in the two pilot neighborhoods. Additionally, it funds a community grants program co-designed by Local Planning Teams in each

neighborhood to set crime prevention funding priorities (Colorado Criminal Justice Reform Coalition 2020).

In 2019, the Brooklyn District Attorney and Center for Nu Leadership—a Brooklyn non-profit founded by formerly incarcerated people to organize youth and community to achieve Human Justice—joined forces with the Columbia Justice Lab to initiate planning of the Imagining Project. This summer the initiative will begin working closely with Brooklyn neighborhoods most impacted by the criminal justice system to co-design safety and justice projects. These projects will help zero out incarceration (or nearly do so) for youth ages 25 and under in Brooklyn, a borough (county) of 2.6 million people—approximately the size of Chicago.

This roster of innovations is not meant to be a comprehensive list of evidence-based options for policymakers and activists to airlift onto their jurisdictions. On the contrary, part of the strength of realigning resources and power to communities is the collaborative design process that involves communities in their own innovations. Instead of a cook book, these should be viewed as a "flavor bible"—or a set of ingredients that mesh well with one another but are deliberately not prescriptive. These ingredients include services, supports and opportunities that have bubbled up from communities, have involved residents

in their development and implementation, and are funded by monies that are shifted from corrections to communities. If youth and adult justice systems gravitate in this direction, they should carefully research and evaluate their innovative approaches, together with impacted communities, to learn and share lessons from their experiences.



**IT BEARS REMEMBERING THAT, AS PRISONS BEGIN TO CLOSE, IT WILL TAKE MORE EFFORT TO FINISH THE JOB THAN JUST TURNING OFF THE LIGHTS AS THE LAST PERSON LEAVES.**

# CONCLUSION

During the 1990s, young people enmeshed in the juvenile justice system were vilified as public enemy number one. Vitriolic epithets stereotyped a generation as miscreants ready to engulf an unsuspecting public. This occurred even as youth crime had already begun what would become a several decade decline.

But that incarceration tide has turned, with youth incarceration dropping by more than half since its peak in 2000 alongside a 60 percent decline in youth crime. In some places, like New York City and Washington, DC, youth incarceration for white youth has disappeared entirely and incarceration for youth of color has nearly done so, all without increasing youth crime, offering widespread hope for the elimination of the youth prison.

This evidence roundly refutes the very foundation of the waning super-predator era, under which mass incarceration purported to be a salve for crime. It also offers some hopeful, potential lessons for those eager to see the end of mass incarceration not just for young people, but for all people.



**PART OF THE STRENGTH OF REALIGNING RESOURCES AND POWER TO COMMUNITIES IS THE COLLABORATIVE DESIGN PROCESS THAT INVOLVES COMMUNITIES IN THEIR OWN INNOVATIONS.**

## ENDNOTES

**1** This phrase was so unexceptional that laws making it easier to try kids as adults were commonly called “adult crime, adult time” statutes [[www.abajournal.com/magazine/article/adult\\_time\\_for\\_adult\\_crimes](http://www.abajournal.com/magazine/article/adult_time_for_adult_crimes)].

**2** NB: 2017 is the last year for which the federal government has published youth incarceration data.

**3** Full source citations can be found in References.

**4** From 2009 to 2017, U.S. incarceration totals have declined by 7.8%, while arrest rates (as a proxy for crime) have declined by 27%. See Editorial Board 2019; Federal Bureau of Investigation 2009; Federal Bureau of Investigation 2017a.

**5** Information obtained from personal correspondence between the author and Mark Mertens, Milwaukee County Department of Youth and Family Services Administrator.

**6** Information obtained from personal correspondence between the author and Circuit Court Judge Laura A. Crivello.

**7** Information obtained from personal correspondence between the author and Mark Mertens, Milwaukee County Department of Youth and Family Services Administrator.

**8** Starting in 2017, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) stopped including the race “Latino” as sampling criteria. Instead, survey data included the ethnicity “Hispanic” or “Non-Hispanic;” thus, after 2015 Latino-white racial disparities cannot be determined.

**9** Data obtained from personal correspondence between the author and Felipe Franco, Deputy Commissioner, Division of Youth and Family Justice, New York City Administration for Children’s Services.

**10** See, for example, the Campaign for Youth Justice, Youth First and the National Juvenile Justice Network.

**11** This, despite the best efforts of pioneers in fighting to get the voice of formerly incarcerated people into the public dialogue around prisons, including the Center for Nu Leadership’s Eddie Ellis and Legal Services for Prisoners with Children’s Dorsey Nunn, who helped pave the way for organizations like the Formerly Incarcerated, Convicted People and Families Movement.

**12** Information obtained from personal correspondence between the author and Nathaniel Balis, Director of the Juvenile Justice Strategy Group, The Annie E. Casey Foundation.

**13** Other efforts to elevate the voices of youth justice administrators in policy matters include the Council of Juvenile Justice Administrators and Georgetown University’s Center for Juvenile Justice Reform.

**14** View videos at [www.youtube.com/channel/UCdbziFG\\_AhTEdAOBaCa-\\_sg](http://www.youtube.com/channel/UCdbziFG_AhTEdAOBaCa-_sg).

**15** Quote obtained through correspondence with Candice Jones’ administrative office at the Public Welfare Foundation.

**16** In 2019, the Colorado Legislature extended the pilot for an additional three years until 2023.

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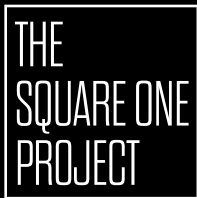
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