

# NATIONAL JUVENILE JUSTICE NETWORK

## Policy Platform

### REDUCING YOUTH CONFINEMENT

AUGUST 2014

Over the past decade, many states across the country have dramatically reduced the number of youth incarcerated in youth and adult facilities. The rate of youth in confinement dropped 41 percent between 2001 and 2011.<sup>1</sup> Over 50 youth facilities have been closed in the past five years alone.<sup>2</sup> However, tens of thousands of youth are still locked up each year, many in facilities with dangerous conditions, sparse educational programming, and few rehabilitative resources.<sup>3</sup>

Recognizing that incarcerating youth is costly, ineffective, harmful, and counterproductive,<sup>4</sup> many states are shifting away from the traditional model of large, prison-like youth facilities to local, non-residential programs that serve youth and their families in their own communities. This shift is saving states money and providing many youth with effective services and programming more tailored to their needs and the needs of their families. And, communities are safer when fewer youth are incarcerated; research shows that incarcerating youth can actually raise their level of offending.<sup>5</sup>

#### *What We Mean by “Confinement”*

We use the term “confinement” to refer to any out-of-home placement of youth stemming from a delinquency or criminal charge, or an order of a delinquency or criminal court judge. Youth can be confined either in detention and jail facilities or in prison and incarceration facilities. For clarification, we use the terms “detention” or “jail” to refer to secure confinement prior to trial, adjudication, or placement in a long-term facility, or confinement used as short-term punishment for youth who commit status offenses, violate a valid court order, or violate probation. We use the terms “incarceration” and “prison” to refer to staff- and hardware-secure facilities used for youth who have been adjudicated delinquent or convicted in adult criminal court.

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\* National Juvenile Justice Network (NJJN) policy platforms are developed by a committee of NJJN members and approved by the full NJJN membership body by a majority vote. Policy platforms do not necessarily represent the recommendations of each individual NJJN member organization. To view additional NJJN policy platforms, visit [www.njjn.org/our-work/our-positions](http://www.njjn.org/our-work/our-positions). NJJN thanks the following national experts for their insightful feedback and guidance throughout the development of this platform: Mishi Faruqee, ACLU; Shaena Fazal, Youth Advocate Programs, Inc.; Angela Irvine, National Council on Crime and Delinquency; Danielle Lipow, Annie E. Casey Foundation; Laura John Ridolfi, W. Haywood Burns Institute; Vincent Schiraldi, New York City Mayor’s Office of Criminal Justice; and Jason Ziedenberg, Justice Policy Institute.

While limiting the number of youth who are placed outside the home is sound policy, it must be done right. While the U.S. has seen significant reductions in the total number of incarcerated youth, profound and troubling disparities remain in the population of youth who are locked up. The disparity between the rates of incarceration for black youth and for white youth was virtually unchanged between 1997 and 2010; more than a decade's worth of juvenile justice reforms dramatically drove down the overall number of youth locked up, and yet in 2010, black youth were still incarcerated at nearly five times the rate of white youth.<sup>6</sup> Likewise, the rates of incarceration for Native American and Hispanic youth in 2011 were 3.2 times and 1.8 times that of white youth, respectively.<sup>7</sup>

It is also crucial to focus on what happens to youth when they are diverted or removed from a facility. Some states have decreased their use of larger government-run facilities, but have just shifted youth to privately-run residential facilities scattered throughout the state, rather than keeping youth out of facilities altogether. Additionally, youth are set up for failure if they are diverted or released from facilities without adequate supports for them and their families within their communities, and without adequate funding for the programs and opportunities all young people need.

It is clear that simply reducing confinement levels is not the entire answer; states must consciously and carefully reform their juvenile justice systems in order to ensure success for youth, reduce justice system costs while increasing community investments, treat youth equitably, hold systems accountable, and increase community safety.

## **The National Juvenile Justice Network Recommends:**

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### ***Create a Presumption of Keeping Youth at Home***

- Establish policies and processes to prevent youth from entering the justice system and divert youth from the system entirely.
- Reduce court supervision for youth who do not need it and build stronger supervision partnerships with families and community-based service providers.
- Review initial decisions to place youth out of the home and reassess the need for out-of-home placement at multiple points.
- Ensure confinement is a last resort and for the shortest time possible—craft legislation that demands youth be supervised in the least restrictive appropriate setting.<sup>8</sup>
- Minimize the use of confinement as a response to probation or parole non-compliance. Develop graduated response practices that positively reinforce youth accomplishments and pro-social adolescent development.
- Ensure adequate funding and support for engaging youth, families, and communities in identifying areas of need and developing viable local alternatives to confinement, and for families to be able to play an active and meaningful role in promoting the success of their children.

### *Eliminate Pathways to Confinement*

- Work with other youth-serving systems to hold them accountable for feeding youth into the justice system—ensure policies from schools, mental health systems, substance abuse systems, or child welfare systems do not facilitate youth entering the justice system.
- Ensure youth involved in the juvenile justice system are represented by well-trained counsel, appointed as early in the process as possible, who provide “competent, diligent, and zealous advocacy” and have specific knowledge of juvenile justice systems, juvenile law, and adolescent development. Youth should have counsel at all stages of the proceedings, including post-disposition and whenever youth face confinement.<sup>9</sup>
- Train and educate judges, prosecutors, defense attorneys, law enforcement, parole and probation officers, educators, service providers, lawmakers, the public, and other stakeholders on the proper purpose and many harms of confinement, as well as adolescent development research and practice.

### *Reduce the Use of Confinement*

- Develop cost-effective local community-based supervision options as alternatives to confinement, using them only for youth who would otherwise be confined. (See “Invest in Local, Non-Residential Community-Based Services,” below.) In all other circumstances, release youth into the custody and care of their parent(s) or guardian(s). Ensure alternatives follow best practices for the specific youth populations they serve.
- Prohibit detention of youth who are charged with or who have committed status offenses, such as truancy or running away from home, with no exception for violation of a valid court order.<sup>10</sup>
- Require the use of a risk assessment instrument that is validated for the population being served to provide a consistent and reliable basis for detention decisions and monitor their ongoing implementation to prevent misuse and inappropriate overrides.
- Allow youth to be detained only if risk assessment screening indicates a youth is at risk of harming others.<sup>11</sup> Do not use detention as short-term punishment for youth or as a means of protecting youth from harming themselves.
- Minimize the length of time youth are detained—after arrest and initial hearings, prior to trial, and pending long-term placement -- by ensuring all aspects of the court process operate expeditiously.
- Investigate using a structured decision-making instrument to guide incarceration decisions.<sup>12</sup>
- Reduce revocations of probation or parole for technical violations and minor offenses that can lead to confinement. Train probation staff in adolescent development and ensure they have a range of responses available when a youth violates probation or parole.
- Limit offenses that are eligible for incarceration, e.g., prohibit secure confinement for youth who commit misdemeanors or non-violent offenses.<sup>13</sup>

- Use sentencing guidelines to reduce eligibility for secure confinement and reduce lengths of stay. Eliminate mandatory minimums and other statutory barriers to reducing a youth's time in confinement.
- Reduce length of stay in confinement through post-dispositional reviews.

### **Limit Confinement Options**

- Limit options for secure confinement.
  - Work to shut down confinement facilities, particularly partially-used facilities.
  - Investigate whether all possible means of decreasing the number of youth in confinement have been exhausted, when new construction has been proposed.
  - Set a limit on the number of youth who can be confined at any given time in a facility.<sup>14</sup>
- Do not “squeeze the balloon”—ensure that facility closures and reduced incarceration do not simply lead to youth being shuffled from large, government-run youth facilities to local or private facilities for youth, or to other secure facilities in the adult, mental health, substance abuse, or immigration systems.
- Do not place youth under age 18 in adult prisons or jails.<sup>15</sup>

### **Invest in Local, Non-Residential Community-Based Services**

- Use fiscal incentives or disincentives to encourage non-residential community-based programming or discourage the use of out-of-home placement.<sup>16</sup>
- Reinvest funds reaped from facility closures or unused facility beds in community-based programming. Consider retraining qualified facility staff as community providers.
- Use concrete legislative mechanisms to ensure relevant public agencies, community-based organizations and youth-serving systems have adequate, sustainable funding to serve youth in their home communities.<sup>17</sup>
- In addition to reallocating current spending from facilities to communities, invest additional dollars in non-residential community-based services and supports for youth and families in high-need communities.
- Locate community-based services in the neighborhoods where they are most needed and are most easily accessed by families and youth in need. Ensure that programs are staffed by advocates from the community being served, and have demonstrated successful results.
- Ensure that programs in the community are culturally affirming and responsive, and follow best practice models for the specific youth populations they serve. Practices that have been shown to be ineffective or harmful—such as using high-intensity interventions for low-risk youth, taking a zero tolerance approach to compliance issues, or failing to engage families in a meaningful way—should be avoided.<sup>18</sup>

### *Deincarcerate Equitably*

- Understand the problem and ground reform efforts in data—gather and analyze non-identifying, statistical data at the state, county, and local levels on disparities in race, ethnicity, gender, and sexuality and use data to identify initial benchmarks and longer-term goals.
- Identify decision points that drive youth of color and/or LGBTQ youth into facilities and target reforms at those points.
- Identify decision points that divert youth from the system or otherwise keep youth at home and monitor them to ensure equity across race and ethnicity.
- Ensure proper training and funding of all system stakeholders and youth-serving employees to address disparities; training should increase participants’ understanding of disparities in the system, increase their capacity to change system behavior, and offer tools for staff at all levels to reduce disparities.<sup>19</sup>
- Invest in non-residential community-based programs that are culturally affirming and responsive, and have proven success with the specific population being served.

### *Track Outcomes and Hold Systems Accountable*

- In partnership with system stakeholders, youth, families, and community providers, develop recommendations for detailed, meaningful outcomes, including recidivism, educational engagement and success, employment, housing, health, and other measures of positive youth development.
- Gather and analyze on a regular basis non-identifying statistical data on youth being served in the community and youth who are incarcerated, including offense, security level of facility/type of program, services provided, length of stay/duration of program or services, age, race, ethnicity, gender, LGBTQ status, and outcomes after release or program completion.
- Make aggregate, non-identifying data publicly available to allow civic involvement in policy change. Systems must be accountable for gathering accurate data, disseminating it, and analyzing its implications.
- Develop mechanisms for holding system stakeholders accountable to data-driven policies, e.g., by tying funding to system outcomes.
- Develop an independent oversight mechanism with the ability to review the data on system outcomes, engage community members, and have real power to alter policy based on the ability of systems to meet outcomes.

## For More Information:

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- Campaign for Youth Justice – [www.campaignforyouthjustice.org](http://www.campaignforyouthjustice.org)
- Center for Children’s Law and Policy – [www.cclp.org](http://www.cclp.org)
- The Equity Project – [www.equityproject.org](http://www.equityproject.org)
- JDAI Helpdesk – [www.jdaihelpdesk.org](http://www.jdaihelpdesk.org)
- Justice Policy Institute – [www.justicepolicy.org](http://www.justicepolicy.org)
- Models for Change — [www.modelsforchange.net](http://www.modelsforchange.net)
- NCCD Center for Girls and Young Women – [www.nccdglobal.org/what-we-do/center-for-girls-young-women](http://www.nccdglobal.org/what-we-do/center-for-girls-young-women)
- National Council on Crime and Delinquency - <http://www.nccdglobal.org/what-we-do/our-focus-areas/juvenile-justice/youth-deincarceration>
- National Juvenile Defender Center – <http://www.njdc.info>
- National Juvenile Justice Network – [www.njjn.org](http://www.njjn.org)
- Safely Home Campaign – [www.safelyhomecampaign.org](http://www.safelyhomecampaign.org)
- W. Haywood Burns Institute – [www.burnsinstitute.org](http://www.burnsinstitute.org)

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<sup>1</sup> Antoinette Davis, Angela Irvine, and Jason Ziedenberg, “Stakeholders’ Views on the Movement to Reduce Youth Incarceration” (Oakland, CA: National Council on Crime and Delinquency, March 2014): 1, accessed April 3, 2014 at <http://bit.ly/Po3Py6>.

<sup>2</sup> Ibid, 1.

<sup>3</sup> Melissa Sickmund, et al., “Easy Access to the Census of Juveniles in Residential Placement: 1997-2011” (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 2013), accessed June 3, 2014 at <http://1.usa.gov/PSaW23>.

<sup>4</sup> See, e.g. “The Real Costs and Benefits of Change: Finding Opportunities for Reform During Difficult Fiscal Times” (Washington, D.C.: National Juvenile Justice Network, June 2010), accessed April 23, 2014 at <http://bit.ly/1mAt5fX>; “The Truth About Consequences: Studies Point toward Sparing Use of Formal Juvenile Justice System Processing and Incarceration” (Washington, D.C.: National Juvenile Justice Network, January 2012), accessed April 23, 2014 at <http://bit.ly/1bIsYwr>; and “No Place for Kids: The Case for Reducing Juvenile Incarceration” (Baltimore, MD: Annie E. Casey Foundation, 2011), accessed June 4, 2014 at <http://bit.ly/1ovFGkE>.

<sup>5</sup> National Juvenile Justice Network, “The Truth about Consequences,” 2.

<sup>6</sup> “Youth Incarceration in the United States” (Baltimore, MD: Annie E. Casey Foundation, 2013) accessed July 11, 2014 at <http://bit.ly/TYgnOe>. For detailed state-by-state information on racial and ethnic disparities in incarceration rates, visit the W. Haywood Burns Institute’s data map at <http://bit.ly/1o9EbMn>.

<sup>7</sup> “Unbalanced Juvenile Justice,” W. Haywood Burns Institute, accessed June 4, 2014 at <http://bit.ly/1o9EbMn>.

<sup>8</sup> Illinois requires consideration of community alternatives to incarceration in all juvenile cases; the court may commit a youth to the Department of Juvenile Justice only if such commitment is the least restrictive alternative appropriate for the youth. Public Act 97-362 (2011).

<sup>9</sup> National Juvenile Defender Center, “National Juvenile Defense Standards” (Washington, D.C.: National Juvenile Defender Center, 2012): 18, 23, accessed April 3, 2014 at <http://bit.ly/1dQKYa2>.

<sup>10</sup> The deinstitutionalization of status offenders core requirement of the federal Juvenile Justice and Delinquency Prevention Act prohibits the incarceration of youth for status offenses, with a notable exception for youth who violate a valid court order related to the status offense. Pub. L. No. 93-415, 42 U.S.C. § 5601 *et seq* (1974); *last reauthorized in 2002* (21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758).

<sup>11</sup> For more information on risk assessment instruments, see Gina M. Vincent, Ph.D., Laura S. Guy, Ph.D., Thomas Grisso, Ph.D., “Risk Assessment in Juvenile Justice: A Guidebook for Implementation” (Models for Change initiative: National Youth Screening & Assessment Project, November 2012), <http://bit.ly/1q4Bpdk>.

<sup>12</sup> A [Structured Decision-Making Instrument](#) was used by the New York City Department of Probation to reduce the number of youth being recommended for commitment.

<sup>13</sup> In 2010, Mississippi legislatively limited offenses eligible for incarceration: no child who has been adjudicated delinquent for a non-violent felony or fewer than three misdemeanors may be committed to the state training school. S.B. 2984/Ch. 371 (2010).

<sup>14</sup> Rhode Island set a limit on the number of youth who may be housed at the Rhode Island Training School. Whenever the population reaches 95% of capacity, or 141 males and 11 females, youth who do not pose a risk of harm to themselves or the community will be referred to the court for release. H.7204A/Chapter 9 (2008).

<sup>15</sup> The Juvenile Justice Delinquency and Prevention Act prohibits placing youth in the juvenile justice system with adults; the Prison Rape Elimination Act prohibits placing youth with adults in any circumstance.

<sup>16</sup> Examples of such incentives include Redeploy Illinois and RECLAIM Ohio. Counties participating in Redeploy Illinois agree to cut the number of youth they send to state juvenile prisons by at least 25 percent below the average of the previous three years. In return, the state reimburses the counties for funds they spend managing the adjudicated youth locally. See <http://bit.ly/1jwOC85>. RECLAIM Ohio gives counties a fixed allocation from the state, based upon a four-year average of felony adjudications. Counties with higher crime rates receive more funds, but the dollars are tied to a reduction in proportion to the amount of Department of Youth Services (DYS) bed space that each county used in the previous year. “Targeted RECLAIM” gives an additional subsidy to the six counties that commit the highest number of youth to DYS, with the provision that they use the money for programs identified as “best practice” and reduce commitments significantly. See <http://1.usa.gov/1hEeqem>. For additional examples of fiscal incentive and disincentive programs, see “The Real Costs and Benefits of Change: Finding Opportunities for Reform During Difficult Fiscal Times” (Washington, D.C.: National Juvenile Justice Network, June 2010): 2-3, accessed June 4, 2014 at <http://bit.ly/1mAt5fX>.

<sup>17</sup> For a list of specific legislative mechanisms, see National Juvenile Justice Network, “Funding Community-Based Supervision: Legislative Levers to Lock in Local Funding” (2013), accessed April 3, 2014 at <http://bit.ly/1hkNose>.

<sup>18</sup> See [www.JJIE.org/hub/evidence-based-practices](http://www.JJIE.org/hub/evidence-based-practices) for more information on best practices with youth.

<sup>19</sup> For more information on trainings and other strategies to eliminate racial and ethnic disparities, visit the W. Haywood Burns Institute ([www.burnsinstitute.org](http://www.burnsinstitute.org)), the Center for Children’s Law and Policy ([www.cclp.org/our\\_work.php#RacialJustice](http://www.cclp.org/our_work.php#RacialJustice)), or the federal Office of Juvenile Justice and Delinquency Prevention, ([www.ojjdp.gov](http://www.ojjdp.gov)).