

# Juvenile InJustice:

Charging Youth as Adults is  
Ineffective, Biased, and Harmful



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# Executive Summary

*“As a society ... do we want young people to be left to a specific, certain fate in prison ... or do we want a process of education, a process of healing, a process of insight to support them to understand how they got there, a process of growth? What do we want?”*

– Malachi, charged as an adult at age 15

In all 50 states, youth under age 18 can be tried in adult criminal court through various types of *juvenile transfer laws*. In California, youth as young as 14 can be tried as adults at the discretion of a juvenile court judge. When young people are transferred out of the juvenile system, they are more likely to be convicted and typically receive harsher sentences than youth who remain in juvenile court charged with similar crimes.<sup>1,2</sup>

This practice undermines the purpose of the juvenile court system, pursues punishment rather than rehabilitation, and conflicts with what we know from developmental science. Furthermore, laws that allow youth to be tried as adults reflect and reinforce the racial inequities that characterize the justice system in United States.

In this report, we review the process that unfolds when a young person is tried as an adult in California and evaluate the health and equity impacts of charging youth as adults. Our findings indicate that:

## The Justice System is Biased Against Youth of Color

Youth of color are overrepresented at every stage of the juvenile court system.<sup>3</sup> Rampant racial inequities are evident in the way youth of color are disciplined in school,<sup>4</sup> policed

## TYPES OF JUVENILE TRANSFER

### Judicial waiver:

When a juvenile court judge transfers a juvenile defendant to adult court after a waiver or fitness hearing. California and 44 other states have statutes allowing for judicial waiver.



### Mandatory direct file:

When a youth is automatically disqualified from being tried in juvenile court due to the type of crime they are accused of committing. This is no longer possible in California since the passage of Proposition 57 in November 2016, yet 39 other states have statutes allowing for mandatory direct file.



### Prosecutorial direct file:

When a prosecuting attorney files the case in adult court directly. This is no longer possible in California since the passage of Proposition 57 in November 2016, yet 13 other states and the District of Columbia have statutes allowing for prosecutorial direct file.



and arrested, detained, sentenced, and incarcerated.<sup>5</sup> These inequities persist even after controlling for variables like offense severity and prior criminal record.<sup>6</sup> Research shows that youth of color receive harsher sentences than White youth charged with similar offenses.<sup>7</sup>

Youth of color are more likely to be tried as adults than White youth, even when being charged with similar crimes. In California in 2015, 88% of juveniles tried as adults were youth of color.<sup>8</sup>

## “Tough on Crime” Laws Criminalize Youth and are Ineffective

Research shows that “tough on crime” policy shifts during the 1980s and 1990s have negatively impacted youth, families, and communities of color. These laws were fueled by high-profile criminal cases involving youth, sensationalized coverage of system-involved youth by the media, and crusading politicians who warned that juvenile “super-predators” posed a significant threat to public safety. The general sentiment — not based on research or data — across the political spectrum was that treatment approaches and rehabilitation attempts did not work.

However, time has shown that harshly punishing youth by trying them in the adult system has failed as an effective deterrent. Several large-scale studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.<sup>2,9</sup>

## The Adult Court System Ignores the Environmental Factors that Affect Adolescent Behavior

When someone is charged in adult court, they are either found guilty or innocent — and they receive a punishment if they are found guilty. By contrast, the juvenile court system (at least in theory) is meant to focus on reasons for the youth’s behavior rather than just their guilt or innocence. A juvenile court judge is responsible for reviewing that youth’s case with their family, community, and future development in mind.

The following environmental factors affect youth behavior and are more likely to be ignored in the adult court system:

- ▶ **Community disinvestment affects youth development and behavior.** In low-income communities and communities of color, there are clear indicators of disinvestment rooted in historical trends and contemporary policies — including poor quality housing, under-resourced schools, scarce and low-paying jobs, and omnipresent police. These policies and their consequences marginalize communities, and the lack of opportunity influences young peoples’ physical health and outlook on life. Growing up in these neighborhoods puts children at risk for behavior considered “deviant” and antisocial.
- ▶ **Poverty creates stress.** Poverty prevents families from providing material needs and often reduces parents’ presence in their children’s lives. This can lead youth to take on a parental role in the family. This role switching, known as parentification, can impact a young person’s life outlook and sense of self. It can force them to make hard choices and even engage in compromising behaviors. Youth that grow up in affluent households are protected from having to make these hard choices — and from being criminalized for their behavior when they act out.

- ▶ **Childhood traumas can have long-term effects.** Research shows that there is a strong link between childhood trauma (for example physical or emotional abuse or witnessing violence in the community) and a variety of physical and mental health outcomes, including disruptive behavior, antisocial behavior, psychosis, and mood disorders. System-involved youth are likely to have lived through Adverse Childhood Experiences (ACEs).
- ▶ **Youth do not make decisions like adults.** It is common and normal for youth to engage in risky behaviors that may negatively impact their health. In fact, our brains reward us for these risky behaviors when we are adolescents. Research shows that this phenomenon has an important developmental function: these early risk-taking experiences prepare us for adulthood, leading us to be more willing to take on important new challenges later in life, such as starting a job or leaving home. Charging youth as adults directly ignores this science of adolescent development.

### **Incarceration Undermines Youth Health and Well-Being**

When we lock up young people, they are more likely to be exposed to extreme violence, fall prey to abuse, and suffer from illness. High rates of violence, unchecked gang activity, and overcrowding persist in Division of Juvenile Justice facilities where many youth sentenced as adults start their incarceration. Fights frequently erupt in facility dayrooms and school areas.

Even if young people manage to escape direct physical abuse in juvenile or adult facilities, exposure and proximity to violence can be harmful in and of itself. Research suggests that exposure to violence can lead to issues with development in youth.

### **Families of Incarcerated Youth Experience Negative Impacts**

Parents and family members of system-involved youth are systematically excluded from the adult court process — they are not given meaningful opportunities to help determine what happens to their children. The inability to participate fully while their loved one is going through the system can be mentally and emotionally harmful to families.

In addition, contact with the justice system often entails exorbitant expenses that can worsen family poverty. The economic burden of legal fees, court costs, restitution payments, and visitation expenses can have disastrous and long-lasting financial consequences for families.



*Homies 4 Justice interns rally with the Justice Reinvestment Coalition for the creation of 1,400 county jobs for individuals involved in the criminal justice system. The Alameda County Board of Supervisors successfully passed a resolution in June 2016 to create the Alameda County Re-Entry Hiring Program. Homies 4 Justice is a 9-week summer internship program run by Communities United for Restorative Youth Justice, to train young adults (ages 14 to 20) to become community leaders and agents of change.*

## Solutions Exist

1. Eliminate the practice of charging youth as adults under any circumstance.
2. Require that system professionals undergo additional hands-on training and coaching by formerly incarcerated people and local community organizations on topics such as youth development, community history, trauma, implicit bias, institutional and structural racism, and the structural causes of crime.
3. Implement community-oriented and problem-oriented policing according to promising practices, with primary aims of improving community safety and reducing contact between youth and law enforcement.
4. Implement school and community-based restorative and transformative justice approaches focused on healing as an alternative to the court system for most youth.
5. Research and pilot viable alternatives to sentencing for youth who commit serious crimes.
6. Ensure support for families as they navigate the justice system — especially investing in peer mentoring strategies that link families and formerly incarcerated people.
7. Increase inter-agency collaboration.
8. Increase funding for quality and culturally appropriate wrap-around services for youth and their families, including programs that connect youth to traditional practices of community building and healing.
9. Change school funding and education policy to provide quality and culturally appropriate education in all communities and ensure equitable distribution of educational resources and opportunities.
10. Implement justice reinvestment strategies and other forms of investment in low-income communities of color to expand opportunity for youth of color and their families.

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# Introduction

This report evaluates the health and equity impacts of charging youth as adults in criminal court. Our goal is to elevate the lived experiences of young people who have been tried as adults and to understand those experiences in the context of policy and public health research. In doing this, we can establish a more detailed picture of the negative health impacts of incarceration in the current criminal justice system — and move towards alternatives that do more to protect youth and their health.

## Incarceration is a Social Determinant of Health

Although health behaviors and health care undoubtedly influence our well-being, more than 50% of our health is actually determined by social and environmental conditions — *social determinants of health*.<sup>10</sup> These are shaped by environmental, economic and social policies, which can either help build healthier communities or harm them.<sup>11</sup>

Being incarcerated can impact an individual's health in profound ways, and social policies that lead to mass incarceration can impact the health of entire groups — particularly young men of color who are disproportionately imprisoned.<sup>12,13</sup>

Within this social determinants of health framework, this report uses a health and equity lens to uncover the factors that lead youth of color to become involved in the criminal justice system as well as the health impacts of adult sentencing on youth, their families, and their communities.

## About This Report

This report aims to centralize the experiences of incarcerated youth of color, formerly incarcerated individuals, and their family members. Much has been written about juvenile system reform in general and juvenile transfer laws in particular. All too often, the voices of system-involved youth and their families — the people most impacted by these policies — are absent from these accounts and analyses. By contrast, the content of this report is grounded in the personal narratives of focus group participants, the expertise of community organizations that work with system-involved families on a daily basis, and public health research.

Methodologically, this report follows a Health Impact Assessment (HIA) approach. An HIA is a public engagement and decision-support tool that can be used to assess policy and planning proposals and make recommendations to improve health outcomes associated with those proposals. The fundamental goal of an HIA is to ensure that health and health equity are considered in decision-making processes using a comprehensive and scientific approach that engages stakeholders in the process.

### What are the social determinants of health?

Where people live, work, play, grow, and age as well as the social and political conditions like racism, sexism, and other forms of discrimination are known in the public health community as the social determinants of health.

### What is health equity?

Health equity means that everyone has a fair opportunity to live a long, healthy life — and that health should not be disadvantaged because of a person's race, income, neighborhood, gender, or other social or policy factor.



We employed the following methods:

- Eight focus groups held in three California cities (Oakland, Stockton, and Los Angeles) with 43 individuals directly affected by the juvenile court system and/or direct file. Focus group participants ranged from 14 to 66 years old. See Appendix A for a more detailed summary of demographic data.
  - 11 individuals who were tried in adult court when they were juveniles
  - 21 family members of youth tried as adults
  - 4 individuals who were tried in both juvenile and adult courts
  - 5 youth currently on probation
  - 2 community organizers who work closely with direct filed youth and families
- Interviews (6) with professionals who have detailed knowledge of California’s juvenile court system, including: two public defenders, a former probation officer, a former chief probation officer, an adolescent mental health specialist, and a probation camp literacy educator.
- An extensive review of peer reviewed and non-peer reviewed literature. For a review of research concerning juvenile transfer laws, see UCLA School of Law (2010).<sup>14</sup>

### Key Research Topics Identified in Focus Groups

Participant responses are quoted throughout this report, and the report is structured according to research topics that emerged across all focus groups. These topics include:

- a. Community and neighborhood conditions: Neighborhood descriptions, school and education, community resources and services
- b. Family and impacts on family: Socioeconomic status and employment, housing, physical and mental health, system involvement of other family members, family relationships
- c. Adverse Childhood Experiences and trauma: Physical, emotional, sexual abuse, neglect, household problems such as domestic violence, parental separation, and community violence
- d. Adolescent development and identity formation: Sense of purpose and belonging, masculinity, parentification
- e. Incident and arrest: Treatment of youth and family by police, prosecutors, public defenders, racist and discriminatory encounters
- f. Court process/direct file: Navigating the process as a minor, family engagement in the process, experiences with legal representatives, district attorneys, etc.
- g. Residential placement/incarceration: Facility descriptions, resources available in each facility, traumas experienced in facilities, impacts on physical and mental health
- h. Transition and re-entry: Experiences with probation or parole officers, reentry challenges, and outcomes on recidivism, rehabilitation, and activism
- i. Solutions and visions for a better world: Supporting families and communities, systems changes, alternatives to incarceration

- Data analysis from sources such as The United States Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, the California Department of Corrections and Rehabilitation, and the California Office of the Attorney General

An Advisory Committee contributed to the project scope, advised on data and research sources, connected the authors to focus group participants and interviewees, reviewed the draft findings and report, prioritized recommendations, and advised on communications activities. See Appendix B for a detailed description of the HIA process and methods. Advisory Committee members are listed above in the Acknowledgements section.



Youth Justice Coalition members rally outside Barry J. Nidorf Juvenile Hall in Los Angeles County — the largest juvenile hall in the world that includes a 250 cell “compound” for the detention of youth who have been transferred into adult court. The compound looks and operates like a baby supermax prison with single-person locked cells, high security fencing with razor wire, and probation officers in military-style uniforms.

## Notes about Language

The premise of mass incarceration — of youth and adults, alike — is fundamentally dehumanizing. As Kim McGill of the Youth Justice Coalition writes, “Criminalization requires naming and seeing people not as humans, youth, and family members — but as *delinquents, offenders, inmates, convicts, illegal aliens, gang members, or felons*. These terms are codified in state law and replicated in our courts, police stations, local legislatures, research institutions, community-based organizations, and media. Even formerly incarcerated people have internalized these damaging terms for ourselves. This is significant because our language can either reflect the world we seek to create, or reinforce the world we seek to dismantle. Dehumanizing and pathologizing labeling impedes our ability to critique and shape the world around us — including participating in our own defense, reintegration, and collective liberation.”

In this report, we adopted the Youth Justice Coalition’s recommended terms: *system-involved individuals/people, incarcerated individuals/people, and formerly incarcerated individuals/people*.

We also embrace the practice of the Youth Justice Coalition to remove “justice” from the term *juvenile justice system* and replace it with the terms *juvenile system* and *juvenile courts*.

# The Juvenile “Justice” System Has Lost Its Way

It is important to understand the origins of the policies that allow youth to be tried as adults and to see that they are mostly funneling youth of color into the adult court system. These policies are part of a legal legacy that punishes youth of color more harshly than White youth.

## Juvenile Courts: Lofty Aims and Racist Realities

The first juvenile court in the United States was established in 1899 as an alternative legal venue for dealing with young people who are accused of breaking the law. Throughout the twentieth century, states implemented their own policies defining and governing the boundaries between juvenile and adult court. National juvenile court trends emerged as modern notions of childhood and adolescence evolved.<sup>15</sup>

Unlike adult criminal courts, juvenile courts were created to focus on the reform and rehabilitation of “delinquent children” and aimed to treat “the child’s need and not the deed.”<sup>16</sup> The Progressive Era reformers who founded the first juvenile courts expressed commitment to several key principles:

- Youth are developmentally different than adults and have distinct needs and capacities.
- The attitudes and behaviors of youth are malleable and thus amenable to change.
- Responses to youth mistakes should be tailored to the individual rather than the offense of which they are accused.
- State intervention is sometimes needed to parent and protect youth who make mistakes.<sup>17</sup>

Despite these founding principles, the juvenile system has always reflected and reproduced the racial inequities of larger society.<sup>a</sup> There is ample evidence that White youth benefited from the protections of juvenile courts even as youth of color continued to be punished as adults.<sup>16</sup> When not being singled out for punishment, youth of color were often singled out for “saving” — as if they needed to be rescued from their families and communities. Families and communities of color were blamed and demonized.<sup>18,19</sup> In reality, prior incarceration is a 26 times greater predictor of future system-involvement than “poor parental relationship.”<sup>20</sup>

## “Tough on Crime” laws shifted the approach to addressing juvenile offenses

Beginning in the 1970s and gaining major momentum in the 1980s and 1990s, the juvenile system shifted focus from rehabilitation to deterrence and punishment. During this period, legislatures in all fifty states modified juvenile court codes and shifted the system’s underlying mission in an increasingly punitive direction.<sup>15,17,21</sup>

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a For a succinct overview of the historical roots of racism in the justice system, see James Bell’s essay “Repairing the Breach: A Brief History of Youth of Color in the Justice System” published by the W. Haywood Burns Institute for Youth Justice Fairness & Equity.<sup>16</sup>



In its first year in 2003, the Youth Justice Coalition marched 50 miles across LA County stopping at each of the county's juvenile halls, ending at the California Youth Authority youth prison in Norwalk. The "March for Respect" called for a repeal of Proposition 21 and an end to the transfer of youth into adult court.

These “tough on crime” laws were fueled by high-profile criminal cases involving youth, sensationalized coverage of juvenile delinquency by the media, and crusading politicians who warned that juvenile “super-predators” posed a significant threat to public safety.<sup>21-23</sup> The general sentiment across the political spectrum was that treatment approaches and rehabilitation attempts did not work.

A nationwide expansion of *juvenile transfer laws* — ways to allow certain system-involved youth to be tried as adults — came to embody this “get tough” policy shift. These legal reforms made it easier to try youth in adult criminal court and expanded the number of youth who are tried in adult criminal court automatically or at the discretion of a prosecutor.<sup>2</sup>

This policy shift came to California when voters passed Proposition 21 in 2000.<sup>b</sup> This new law gave prosecutors the power to directly file juvenile cases in the adult criminal court without judicial review – a type of juvenile transfer known as *prosecutorial direct file*. **After Proposition 21 passed, the number of youth tried as adults in California soared. The rate of prosecutorial direct file approximately doubled from 2003 to 2010.**<sup>24</sup>

By the time Proposition 21 passed, crime rates that had increased in the 1980s and 1990s were declining, and the prediction of a “super-predator” generation had been disproven. Nevertheless, supporters of the law spread misinformation about youth crime and manipulated voters’ fear of youth of color. In this way, the increased reliance on juvenile transfer was not in response to the increased crime rates — but was a tool in a larger effort to use suppression and incarceration in order to contain, control, and disempower people of color as they approached greater demographic, economic, and political power.

*“Without rooting our analysis of youth transfers in to adult court within California history, we will continue to pathologize youth and their families rather than turning our attention to exposing and eliminating racist policies and practices.”*

*– Kim McGill, Organizer, Youth Justice Coalition*

<sup>b</sup> Proposition 21 is also known as the Gang Violence and Juvenile Crime Prevention Initiative.

## Key Mechanisms For Charging Youth as Adults

*Judicial waiver* — occurs when a juvenile court judge transfers a juvenile defendant to adult court. The juvenile court judge reviews the case in a hearing (called a waiver or fitness hearing) before coming to this conclusion.<sup>25</sup> As of 2014, 45 states have statutes allowing for this type of transfer (including California).<sup>26</sup>

*Mandatory direct file* — occurs when a youth is automatically disqualified from being tried in a juvenile court due to the type of crime they are accused of committing, therefore guaranteeing that they will be tried in adult court. This is also called statutory exclusion.<sup>25</sup> As of 2014, 39 states have statutes allowing for this type of transfer.<sup>26</sup> Mandatory direct file was permitted in California until November 2016, with qualifying offenses outlined in Welfare and Institutions Code section 602b. These include murder and certain forms of rape.<sup>8</sup>

*Prosecutorial direct file* — occurs when a prosecuting attorney files the case in adult court directly, without needing approval from a judge. This is also called discretionary direct file or prosecutorial transfer.<sup>17</sup> As of 2014, 13 states and the District of Columbia have statutes allowing for this type transfer.<sup>26</sup> Prosecutorial direct file was permitted in California until November 2016, with qualifying offenses outlined in Welfare and Institutions Code section 707d. These include 30 different types of offense including murder and attempted murder, and certain forms of robbery and assault.<sup>8</sup>

In California, youth as young as 14 can be tried as adults for certain felonies. These are typically “violent and serious offenses including murder and attempted murder, arson of an inhabited building, robbery with a dangerous or deadly weapon, some forms of rape, some forms of kidnapping and carjacking, some felonies involving firearms, certain controlled substance offenses, and certain violent escapes from a juvenile detention facility.”<sup>27</sup>

## Juvenile Transfer Is Ineffective and Biased

Charging youth as adults is a remnant of the outdated “tough on crime” policy approach that has harmed youth, families, and communities — particularly communities of color. It is a deeply flawed practice that reflects a demonstrably failed approach to juvenile justice policy.

In November 2016, California voters passed Proposition 57 — a ballot initiative that rolled back key components of Proposition 21 and ended the practice of direct file. Now, the only way for a young person to be tried as an adult in California is through judicial waiver.<sup>28</sup> As proponents of system reform celebrate this victory, they remind us that the legacy of direct file continues to impact system-involved families across California, and similar policies still stand in other states across the country.

## Direct File in California, 2001 to 2016

After the passage of Proposition 21, direct file became the main mechanism driving youth into adult court in California, yet research shows that district attorneys' reliance on direct file had little connection to actual crime rates and trends. Between 2003 and 2014, there was a 55% drop in the rate of serious juvenile felony arrests, yet there was a 23% increase in the rate of direct file.<sup>29</sup> In other words, prosecutors used direct file with increased frequency even as the rate of serious juvenile crime declined.

As practiced, direct file disproportionately funneled youth of color into adult court. For example, Black and Latinx<sup>c</sup> youth constitute just 57% of California's youth population ages 14 to 17 – yet they comprised 86% of direct files in 2015.<sup>8,30</sup>

Furthermore, direct file was applied unevenly throughout California, and its usage varied greatly county by county. In 2014 the statewide average was approximately 23 direct files for every 100,000 youth ages 14 to 17, but some counties had up to 310 direct files per 100,000 youth.<sup>29</sup> This suggests that system-involved youth were being subjected to very different legal outcomes depending on where they lived in California.

### Laws that allow youth to be tried as adults don't deter crime

Harshly punishing youth by trying them in the adult system has failed as an effective deterrent.<sup>2,25,31</sup> Several large-scale studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.<sup>2,9</sup> For example, a matched case-control study comparing Florida youth tried as adults with youth tried as juveniles found that youth tried as adults were more likely to recidivate. This held true across seven different degrees of offense severity. The study found that 30% of youth tried as adults were rearrested during the research period, versus 19% of matched youth who were not tried as adults.<sup>32</sup>

### Racial bias and structural racism criminalize youth of color

Racial inequities for youth in the system are propelled by conscious and unconscious racial bias, along with structural racism and inequity in society at large.<sup>19,33</sup> Social psychologists and other researchers have found evidence of unconscious racial bias among teachers and school administrators,<sup>4</sup> police and juvenile probation officers,<sup>6</sup> and juvenile court officials.<sup>34</sup>

In addition, the wide gap in access to resources between White families and many families of color — for things like legal representation and mental health services — affects racial inequities in sentencing.<sup>19</sup> **In 2015 in California, 11% of White youth retained private counsel in juvenile court, compared to just 3% of Black youth.**<sup>8</sup>

In 2015, 416 youth were sentenced in adult court in California. **Nearly 90% of these juveniles were youth of color — a disproportionate number given that they constitute just 70% of California's youth population ages 14 to 17** (see Table 1 for a detailed break down). Notably, Black youth make up just 6.6% of the California population of 14 to 17 year olds, but in 2015 they comprised 25.5% of youth sentenced as adults.<sup>8,30</sup>

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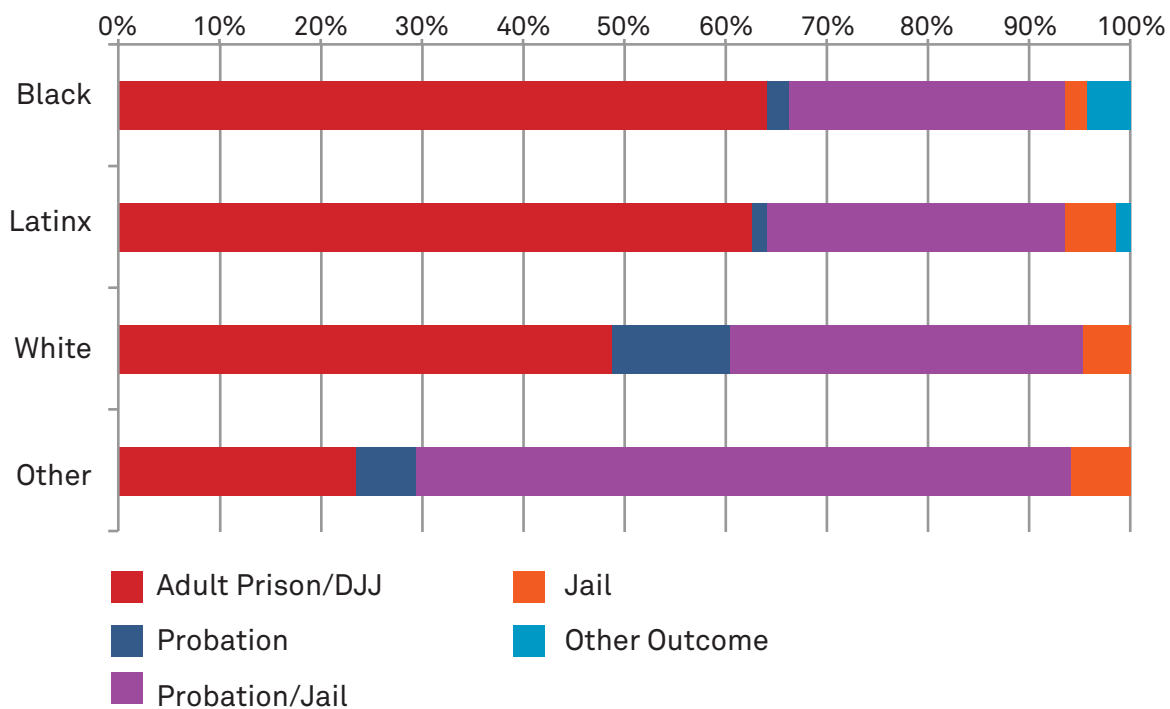
c Latinx is a gender-neutral alternative to Latino/a. The original source used the term "Hispanic."

**Table 1. Adult Court Dispositions in 2015 by Race/Ethnicity<sup>8,30</sup>**

| Race/Ethnicity | Percent of adult court dispositions (n=416) <sup>d</sup> | Percent of state population age 14 to 17 |
|----------------|--|--|
| Latinx         | 57.9% (241)  | 49.9%                                    |
| Black          | 25.5% (106)  | 6.6%                                     |
| White          | 12.0% (50)   | 28.8%                                    |
| Other          | 4.6% (19)  | 15.6%                                    |

Of the youth who were tried in adult court in 2015, 88% were convicted, and approximately 60% of convictions resulted in the youth being sentenced to Division of Juvenile Justice (DJJ) facilities<sup>e</sup> or adult prison. Black and Latinx youth were more likely to be sentenced to DJJ or adult prison, while White youth were more likely to be sentenced to probation or jail (see Table 2).<sup>8</sup>

**Chart 1. Adult Court Convictions in 2015 by Race/Ethnicity<sup>8</sup>**



With this context in mind, we turn to the factors that put youth of color at such high risk for ending up in the juvenile and adult court systems — also known as “system involvement.”

<sup>d</sup> 22 (5.3%) of these 416 adult court cases involved female defendants. Limits in California reporting of juvenile transfer data prevent us from disaggregating each racial category by gender.

<sup>e</sup> Formerly known as California Youth Authority (CYA), this is the division of the California Department of Corrections and Rehabilitation that houses California’s system-involved youth up to the age of 25 who have been convicted of the most serious offenses.<sup>35</sup>



# The Role of Environment in Adolescent Development and Behavior

The changes that we all go through during adolescence shape our identity and influence our interactions with our environment — including family, community, and broader institutions. At the same time, our environment greatly affects our development, our behavior, and the way our actions are interpreted.<sup>36</sup>

We all undergo the same developmental processes regardless of race or ethnicity. However, youth of color have historically been treated as adults prematurely in a variety of social and legal settings. In this way, youth of color have been denied their adolescence and the right to express “age-appropriate” behavior and conduct.<sup>16</sup> This puts them at high risk for being disciplined in school, criminalized in the streets, and harshly sentenced in the courtroom.

Adolescence on its own is a delicate and significant time in our development as adults — and it occurs in the context of the community we live in, the family and friends that surround us, and the resources available to help us succeed. If this context is troubled with economic, social, and environmental difficulties, it can have serious consequences on health and well-being of youth.

*“District Attorneys who handle direct file cases treat those juvenile clients as if they were just little adults. They don’t understand or accept brain science information because they don’t need to. They haven’t been educated about it in terms of the brain not being fully developed, the prefrontal cortex not being fully developed ... They don’t see the remarkable rehabilitation rates that we have.”*

– Melissa Wardlaw, Public Defender

## Youth Do Not Make Decisions Like Adults



As adolescents, we undergo both brain and body development.<sup>37</sup> The *prefrontal cortex* is the part of the brain that is responsible for advanced reasoning and managing impulses — this part of the brain does not fully develop until age 21. Therefore, adolescents have difficulty considering the consequences of their actions, making logical plans, or filtering thoughts before speaking.<sup>38</sup>

Moreover, it is common and normal for youth to engage in risky behaviors that may negatively impact their health, such as drinking alcohol, driving under the influence, carrying weapons, and having unsafe sex.<sup>37</sup> In fact, our brains reward us for these risky behaviors when we are adolescents. Brain imaging studies show that youth experience more emotional satisfaction when engaging in risky behaviors. Researchers suggest that this phenomenon has an important developmental function: these early risk-taking experiences prepare us for adulthood, leading us to be more willing to take on important new challenges later in life, such as starting a job or leaving home.<sup>37</sup>

The court system too-often ignores these developmental factors, particularly when evaluating a young person’s ability to rehabilitate and change. Brain development research finds that young people “age out” of delinquent behaviors as they get older.<sup>39</sup> This is typically true of gang-related activity as well.

*“By the time I became a teenager there were no men in the house and my mom was working. She wasn’t checking up on me or my older brother. I was just left to raise myself pretty much. So when the happiness at home wasn’t there, I found some sort of support in the streets.”*

*– Malachi, charged as an adult at age 15*

*“As I started maturing I started noticing the gang that was around my neighborhood, and I started relating to them. Some of the stuff they were going through I was going through. And I was really able to fit in with these guys, so at the age of 14 I joined my gang.”*

*– Cesar, charged as an adult for a juvenile offense*

*“When asked what kind of support they need, my students frequently express, both in writing and in conversation, how hard it is to come from a single-parent household. And when it comes to their conception of the role poverty plays in their lives, they understand poverty has something to do with why they are incarcerated. At the same time, they emphasize the need for personal responsibility to both combat their own family’s economic situation and to avoid future incarceration.”*

*– Cyrus Armajani, Probation Camp Literacy Educator*

## Youth Robbed of Parents and Role Models

As adolescents we seek and need positive role models within our families and communities to provide a sense of belonging, care, protection, support, and love. The presence of adults in the family and high-quality relationships among family members improve opportunities for youth.<sup>40</sup>

When there is less parental presence and less supervision of youth — for example, when a parent is working multiple jobs or incarcerated — there is a higher likelihood for youth to engage in problem behaviors or experiment with activity that can get them in trouble with the law.<sup>40</sup> In this context, local gang members can seem like important mentors, and youth may turn to gangs as a source of protection and camaraderie.

## Poverty creates stress for families and youth

Poverty prevents families from providing material needs and often reduces parents’ presence in their children’s lives. Low family incomes are associated with higher rates of behavioral problems among youth, including criminal behavior.<sup>41</sup> Many focus group members spoke about the difficulties they faced growing up with one incarcerated parent and one parent struggling to compensate for the loss of income. As Christian, who was charged as an adult at age 14, explained, “I was trying to be positive and wanted to help my mom out by stealing, robbing, and selling drugs. It’s not that simple when you’re poor.” In other words, sometimes experimenting with illegal activity is rooted in a desire to contribute to household finances – or at least to achieve some economic self-sufficiency in the face of scarce family resources. LaToya, whose cousin was charged as an adult, made a similar observation: “They don’t even have a chance at life because they’re trying to help their mother with the struggles. She is trying to make a living so [they think] let me take the burden off of her.”

These experiences illustrate how poverty and low-paying jobs affect families. This often leads youth to take on a parental role in the family. This role switching, sometimes called parentification, can impact a young person’s life outlook and sense of self. It can force them to make hard choices and even engage in compromising behaviors.<sup>41</sup>

Many focus group participants enumerated the many responsibilities they learned to shoulder at a young age – family duties that more affluent youth never have to face. One

participant who was charged as an adult at age 17 remembers lacking the time to do the “normal things kids do” because he was “taking care of younger siblings or having to go to the streets to provide for your parents.” Other focus group members echoed this sentiment: the experience of poverty involves stressors, obligations, and time-scarcity for parents *and* their children.

## Childhood Traumas Are Common Among Youth Involved in the Justice System

Adverse Childhood Experiences (ACEs) as traumas experienced during childhood, including:

- Emotional, physical, or sexual abuse
- Emotional or physical neglect
- Family issues such as domestic violence, household substance abuse, mental illness, parental separation or divorce, or the incarceration of a household member<sup>42</sup>
- Peer, community, and collective violence<sup>43</sup>

When affluent families grapple with ACEs and experience things like addiction or abuse, they are often able to access supportive services and interventions – things like counseling, medication, and legal services. By contrast, low-income families often lack adequate access to logistical and therapeutic supports when facing trauma at home or in their neighborhoods. In addition, for low-income families of color, racial bias in society creates and supports stereotypes about their experiences of trauma. Affluent White families who experience trauma are not burdened by this type of racialized stigma.

Focus group participants’ experiences reflect this reality, and many participants shared stories about difficult family dynamics and community violence. The pain of separation from parents – either through divorce or incarceration – was a common theme. Some reported that their parents or guardians struggled with untreated addiction and mental illness. Participants also shared testimonials about physical or sexual abuse they experienced or witnessed.

System-involved youth are likely to have lived through ACEs.<sup>44</sup> For example, an epidemiologic study of 898 randomly selected juveniles in a Cook County, Illinois detention center found that an overwhelming majority (92.5%) had experienced at least one traumatic event, and the mean number of traumatic events was 14.6. The most common traumatic events experienced were:

1. Seeing or hearing someone badly hurt or killed
2. Being threatened with a weapon
3. Being in a situation “where you thought you or someone close to you was going to be hurt very badly or die”<sup>45</sup>

*“I raised my little brother, so I didn’t have time to go to school. I was always taking care of my little brother ... I was the protector of my family, but who was there to protect me? You know, that was my struggle.”*

*– Raymond, charged as an adult at age 16*

*“My parents were incarcerated since the day I was born. I lived in foster homes, but eventually even the shelters got tired of me running away so they stuck me with my grandma who was an alcoholic. I was only 5 years old. She would just beat me. She’d let me sleep outside naked.”*

*– Anonymous, charged as an adult at age 17*

*“[My children] had to see so much violence growing up. They’ve been beat up, they’ve been traumatized, and they don’t trust the adults in their lives.”*

*– Veronica, Mother of youth charged as an adult at age 14*

Similarly, a study in Florida found that 97% of system-involved youth reported having one or more ACEs, 52% reported having four ACEs, and 32% reported having five or more.<sup>44</sup> These are much higher rates than are found in other populations. The system-involved youth were 13 times more likely to report a trauma or ACE and four times more likely to report four or more ACEs than a previous study's cohort of mostly college-educated adults.<sup>44,46</sup>

### Adverse Childhood Experiences (ACES) have long-term effects

Research shows that there is a strong link between childhood trauma and a variety of physical and mental health outcomes.<sup>42,47,48</sup> These include:

- Exposure to traumas increases risk of anxiety disorders, disruptive behavior, antisocial behavior, psychosis, and mood disorders.<sup>49–51</sup>
- Mental health outcomes stemming from trauma can have different behavioral effects for boys and girls. Boys may display more aggression, inattention, and impulsivity, while girls may display more anxiety, depression, withdrawal, and physical symptoms.<sup>52</sup>

Childhood trauma can also increase likelihood of behavioral problems such as smoking, high-risk sexual behaviors, alcohol and drug use, and perpetrating violence.<sup>47,49,53–56</sup> Childhood traumas have been specifically associated with juvenile arrest and system involvement. **The National Institute of Justice found that abuse or neglect in childhood raised the chances of juvenile arrest by 59%.**<sup>57</sup>

### Inequities in Schools and After School Programs Affect Youth Development

The institutions with which adolescents interact — especially schools — greatly influence development. In school, adolescents form relationships with teachers and peers that guide this development.<sup>58,59</sup>

#### Youth of color are disproportionately punished in school

A racial “discipline gap” in schools, propelled by the conscious and unconscious racial biases of teachers and administrators, means that Black and Latinx youth are disproportionately punished for common adolescent mistakes and behaviors — mistakes that are often part of the normal developmental process.

Research shows that young Black males are disciplined more often and more seriously in school settings than other youth.<sup>4</sup> Zero tolerance discipline policies, which automatically trigger a student’s suspension, expulsion, or arrest for a variety of minor and major offenses, are common throughout the US — yet, they have been shown to be ineffective.

We know that zero tolerance discipline policies:

- Cause harm to students by not making schools safer
- Negatively impact students’ physical and mental health, well-being, and achievement
- Disproportionately target students of color<sup>60</sup>

It is common for youth involved in the juvenile court system to have had school troubles prior to their legal troubles.<sup>61</sup> Many focus group participants recalled struggling to attend class — much less keep up their grades — in school environments that felt unsupportive and inflexible. As Malachi, who was charged as an adult at age 15, explained, his repeated absences and

classroom disengagement eventually led to suspension and expulsion – along with more time to hang out in the streets unsupervised.

Whereas more affluent students in better-resourced school districts can access robust support services to help them cope with tough times at home, many of the focus group participants we spoke with came from schools that used precious funding to maintain discipline. “I came up in the time of metal detectors and the big fences around the schools,” Felix, who was charged as an adult at age 16, recalled. “It wasn’t that different when I went to juvenile hall ... it was like I was prepared.”

### Lack of appropriate programming limits opportunities for low-income youth

Developmental researchers and policy advocates agree that high-quality after school and community programs promote positive development, prevent developmental problems, ease the transition into adulthood, and give youth a sense of belonging, value, and social recognition.<sup>62</sup>

Participation in after school and other community programs has also been positively linked to interpersonal competence, self-concept, high grade point average, school engagement, and educational aspirations.<sup>62</sup> These programs often either are not available for everyone or are of poor quality in low-income communities and communities of color. As Sarait, a community organizer who works with system-involved youth explained, “Even when there are after school programs, they ask for too many requirements,” such as GPAs above a certain threshold. “This is another way of denying them and rejecting their access to these resources.”

### Social Conditions Influence Youth Behavior

In low-income communities and communities of color, there are clear indicators of disinvestment that are rooted in historical policies that disenfranchise these communities.<sup>63</sup> Examples of disinvestment include:

- Poor quality housing
- Under-resourced schools
- Scarce and low-paying jobs
- Omnipresent police<sup>64</sup>

Adolescents are influenced by these conditions. The lack of opportunity youth can face influences both their physical health and their outlook on life. Andrew, whose brother was charged as an adult

*“The schools often [expel] them for minor incidences. When that happens, youth don’t have anywhere to go and end up spending more time in the streets. This can lead to more conflict in the home, too.”*

*– Cecilia, Community organizer*

*“I was never able to concentrate on my work. I was took out of a regular class and put into special education ... Nobody ever addressed what was really going on mentally, the trauma at home. Nobody was there.”*

*– Nate, charged as an adult at age 17*

*“My children were in community centers a lot, but then Santa Clara County cut many of the programs. I’m a single mother, and when they stopped attending these programs, that’s when they were exposed to all the challenges happening in the community. They affiliated themselves with more gangs.”*

*– Veronica, Parent of youth charged as an adult at age 14*

*“[The city’s] approach to crime prevention is increasing a police presence in these communities. Instead of giving us other resources like more parks [and] more crime-free zones, they just invest in policing our communities.”*

– Cecilia, Community organizer

*“Violence is the number one issue [my students] would like to see change in their neighborhood. Their role in the violence in their neighborhoods is complex and has far-reaching effects in their lives. It’s a mental health issue, it’s a physical health issue, it’s an academic issue and fundamentally it’s a social justice issue. Furthermore, as both victims and perpetrators, many live under police surveillance from a very young age and that has a profound negative effect on them.”*

– Cyrus Armajani, Probation Camp Literacy Educator

*“When I committed my crime, they said, ‘Well was there anyone you could turn to? Was there a priest, a cop?’ We looked at the cop as the enemy. When the cops came around they took my parents. And the only time they came was to raid the house and lock up my father and mother ... We didn’t look at the cops as helping anyone.”*

– Raymond, charged as an adult at age 16

as juvenile, had this to say: “There is nothing really around here for kids. The life expectancy is five years different living out here versus living up north.”

### **Many youth of color experience police violence and ongoing surveillance**

Police violence is one of the most prominent issues in low-income communities and communities of color. The omnipresence of police creates animosity between community members and police, and fuels the fear that communities are feeling.

Focus group participants shared numerous negative experiences with law enforcement, including being racially profiled. Tea, whose brother was charged as an adult at age 17, recalled feeling stereotyped by police as a teenager. “I remember when I was 15 one of our friends got killed,” she said. “We went to a little viewing ... the police showed up and searched all of us, just because we were there. No cause, we were just there getting together.” In this context, police feel like more of a threat than any kind of protection.

### **Lack of resources impact overall community well-being**

Residents of under-resourced communities struggle to maintain health, happiness, and hope — a pressure that can impact overall community well-being. One common impact of neighborhood disinvestment is increased criminal behavior.<sup>3,40</sup> Growing up in disadvantaged neighborhoods puts children at risk for behavior considered to be “deviant” and antisocial.<sup>65</sup>

Conversely, other neighborhoods offer ample opportunities and financial resources. Historically, while families of color have been disenfranchised by housing and other policies, White families have benefited from favorable laws that helped them build wealth and equity through home ownership.<sup>63</sup>

Numerous focus group participants discussed growing up in disadvantaged neighborhoods where violence is relatively commonplace. “You hear a lot of gunshots, that’s pretty normal, that’s nothing new,” said 17-year old Aliya. Some participants even suggested that being arrested and incarcerated felt almost inevitable: “There was a lot of violence in our community, you know, it was normal, even when I got convicted of this crime,” said Felix, who was charged as an adult at age 16. “It wasn’t anything that was abnormal to me, which is abnormal, right?”

*“Our young people are growing up in a culture and an environment with systemic oppression ... and they’re expected to make every right decision. When they decide to make a wrong decision they get life sentences or certain terms that impact the rest of their lives.”*

*– Malachi, charged as an adult at age 15*

When a child enters adolescence in an under-resourced and over-policed community, it sets the stage for behavior that can lead to grave mistakes. It is within this context that many youth of color enter the juvenile court system. All too often, instead of repairing harm and addressing root causes of behavior, they are shuffled to adult court for punishment.

## Youth Organizing: Resistance and Resilience



Across the country, young people of color participate in — and often lead — community groups and grassroots movements working to advance social justice. Youth organizers are at the forefront of efforts to reform the juvenile system — as well as intersecting movements combating injustice in education, policing, housing, and other realms.

Youth organizing is a key component of a comprehensive youth development and social justice strategy. It is built on recognition and development of youth, family, and community strengths — capitalizing on the wealth of skills, talents, survival tactics, and healing arts that oppressed and marginalized people have developed over generations. Organizing recognizes that the people most impacted by an issue or injustice are in the best position to imagine solutions and should be at the forefront of defining problems, fighting for change, and monitoring implementation.

Accordingly, youth organizers and their adult allies employ a diversity of tactics — including media-making, participatory research, political campaigning, and direct action — to identify, articulate, and address the issues facing their families and communities.<sup>66</sup> This type of organizing advances social justice movements and builds the collective power of communities — it can also have a profound impact on young people as individuals. Youth organizers acquire leadership and communication skills, learn to engage in civic and political action, grow in their capacity as learners and teachers, and develop critical social consciousness.<sup>67</sup>

From a developmental perspective, these experiences have transformative potential: participating in organizing has been shown to boost self-efficacy and self-esteem among youth. These skills are important elements of adolescent development that youth draw upon while pursuing higher education, employment, and community leadership.<sup>67</sup> For generations, organizing has been an effective youth development strategy to build on these skills, while also positively channeling the anger and frustration of system-involved youth and providing convicted and formerly incarcerated young people a way to be honored and welcomed by their families and communities.

# Charging Youth as Adults Is Harmful

**R**esearch shows that “tough on crime” policy shifts have negatively impacted youth, families, and communities of color.<sup>15</sup> Specifically, juvenile transfer pushes youth of color down a path of progressively deeper system involvement — and exposes them to the many health risks that characterize systems of incarceration.

*“The juvenile court is much more broad in its lens of the offender and the crime. Adult court is much more about the crime that you’re accused of, whether you did it or not, and what your punishment should be rather than looking at a more holistic view of the offender and their family.”*

– Sajid Khan, Santa Clara County  
Public Defender

*“There’s more to a case than what’s on paper. Once you start talking to the family and advocating for that person, you learn more. As a society we are quick to judge, and just because someone is accused of an alleged crime, we automatically assume that they’re the worst of the worst and don’t deserve any kind of compassion.”*

– Cecilia, Community organizer

## The Adult Court Process and Sentencing Do Not Work for Youth

Starting with the court process, youth and their families are thrust into a confusing and adversarial legal system, often with inadequate support. The juvenile court — in theory designed to accommodate young people’s unique needs — is difficult to navigate in its own right. So when youth are tried in adult criminal court, they experience additional immediate and profound disadvantages.

### Adult court does not allow for the consideration of a youth’s context

Ideally, juvenile court provides space for individualized assessment and tailored outcomes. By contrast, the impetus of adult court is to determine guilt or innocence based on available evidence. One focus group member recalled standing in adult court at age 17: “It sinks in that [the judge] believes everything that’s on paper. They have no idea what’s inside of you, and they think you don’t have the ability to rehabilitate.”

When youth are tried in adult criminal court, they typically face a longer court process than those who remain in juvenile court, and they are often detained during this lengthy period. **Longer stays in detention prior to their trial, coupled with the stress of navigating the adult criminal court system, put transferred youth at risk for psychiatric disorders and other developmental and functional problems.**<sup>1</sup>

### Youth don’t understand their legal rights and court procedures

Youth tried as adults are at a disadvantage when it comes to understanding their rights and legal procedures. Being unable to understand the legal process and the impersonal nature of the adult court can leave youth tried as adults feeling confused and resentful. It also makes them vulnerable to self-incrimination as they engage with police officers, lawyers, and judges — sometimes without adult guidance or supervision.



Behavioral scientists suggest that a robust sense of self-efficacy — that is, the sense of being able to effectively manage what life throws at you — is a cornerstone of positive and lasting behavior change.<sup>68</sup> Being mired in a baffling legal environment beyond one’s comprehension threatens the development of this important behavioral health trait. “You’re not even able to understand any of it,” explained Felix, who was charged as an adult at age 16, in one focus group. “There’s no way for you to represent yourself in any way or protect yourself. You don’t even really know your rights.”

Ideally, trustworthy adult figures would be available to guide youth tried as adults through the court process, but this is not always the case. Parents and guardians are typically shut out of the adult court process. As Public Defender Sajid Khan describes it, “If a juvenile is charged in adult court on direct file, the parent is not a party to the action like they are in juvenile court. They don’t have a seat at the table both figuratively and literally.” Because of this, juveniles charged as adults often lack adequate support as they navigate adult court — while court officials expect them to operate at a level of maturity they have not yet attained.

The effect of all of this has been documented in research about the psychiatric impact of being charged as an adult during adolescence. Instead of being supported in a rehabilitative process, youth tried as adults are likely to feel unjustly embattled. Understandably, these youth continue to harbor this sense of injustice while serving their sentences, and this can thwart efforts to meaningfully reflect on their behavior or deter them from future offending.<sup>2,69</sup>

### Youth experience barriers to fair trial in adult court

Unlike juvenile court, adult court involves trial by jury. An experimental study found that jurors may be biased against young people who are tried in adult court. The authors of the study believe that **the mere fact that a young person is transferred to adult court carries negative connotations that may prompt jurors to be more likely to deliver guilty verdicts.**<sup>70</sup>

On top of that, public defender’s offices in California — especially in less affluent counties — are burdened by tight budgets and heavy caseloads.<sup>71</sup> While many public defenders work tirelessly to defend their young clients, others may be unable to provide the time and individualized attention that youth and their families deserve. This reality came

*“I didn’t really understand what was really going on, from my rights to the choices that I had. I felt like when I was in the courtroom they were speaking a different language.”*

*– Malachi, charged as an adult at age 15*

*“We were downtown at 3 a.m. being questioned. I can’t even read and write and you’re gonna ask me if I understand my rights? Miranda Rights? Who is Miranda?”*

*– Raymond, charged as an adult at age 16*

*“They’re at the mercy of the system. A lot of these kids show up to court alone ... the families are working, they can’t take off work. The courthouse is so far away, they don’t have a car, they don’t have gas money. Just because you’re poor doesn’t mean that you can be anywhere at any time. There’s no sensitivity to people, to the struggle. There’s such a disconnection.”*

*– Debra Mendoza, Former Probation Officer*

*“I got a public defender, I’m facing a life sentence, and they’re there to do what they gotta do and get onto the next case.”*

*– Raymond, charged as an adult at age 16*

*“[Our hired attorney] thought my nephew was guilty. He told us his only job was to keep life off the table. He didn’t even look at his paperwork.”*

*– Anonymous, Aunt of youth charged as an adult at age 17*

*“I was numb, I was like, I’m going to adult prison, even though I’m a kid. I’m going to adult prison. I’m only 17 years old. I haven’t even lived 25 years and they sentenced me 25 years to life. I was numb for a long time.”*

*– Nate, charged as an adult at age 17*

*“I didn’t even really understand any of it. I couldn’t wrap my mind around 25 years. That could have been 1000 years or it could have been 10 years, it wouldn’t really have made a difference. I couldn’t wrap my mind around any of that.”*

*– Felix, charged as an adult at age 16*

up frequently in focus group discussions, and participants reported mixed experiences related to legal representation. Although some individuals were generally satisfied with the performance of their attorneys, others expressed skepticism about the adequacy of their representation.

### Youth are sentenced harshly in adult court

When youth are tried in adult court, they are more likely to be convicted and receive a harsh sentence than youth who remain in juvenile court. They are also punished more severely than young adults (age 18 to 24) who are charged in adult criminal court for similar crimes. **When charged with violent offenses, for example, approximately 60% of transferred youth are sentenced to prison compared with 26% of young adults over age 18.**<sup>1</sup>

### Threat of Direct File Can Force Youth to Take Unfavorable Plea Deals

Prosecutorial direct file was permitted in California from 2001 to 2016 and continues today in many states across the country. Giving prosecutors the power of direct file impacts many system-involved youth, not just those who are actually tried in adult court. According to Human Rights Watch, the mere threat of prosecutorial direct file can put enormous pressure on a young person to accept plea agreements in order to avoid being tried in the adult court system.<sup>72</sup> A public defender with experience in both courts put it this way:

*“We have to be cognizant that the DA does have this authority to direct file on a particular client ... it definitely was a looming factor that we had to consider with our client when they made a decision to fight the case or take a plea bargain”*

*– Sajid Khan, Santa Clara County Public Defender*

## Incarceration Exposes Youth to Disease, Violence, and Abuse

*“The reason they’re treating our kids as gang members and violent people while they’re on trial is so that the people won’t care what happens to them when they’re incarcerated. If the world thinks that these kids are the scum of the earth they’re not going to care that they’re being mistreated while they’re incarcerated.”*

– Wanda, Aunt of youth charged as an adult

Incarceration interferes with normal developmental trajectories. Once youth end up in the juvenile or adult system, many forces converge to keep them there. The experience of incarceration can cause and aggravate poor emotional, psychological, and physical health.<sup>12</sup> **When we lock up young people, they are more likely to be exposed to extreme violence, fall prey to abuse, and suffer from disease.**

### Incarcerated people have higher rates of chronic and infectious disease<sup>f</sup>

Incarcerated people experience disproportionate rates of communicable disease, chronic health conditions, and mortality when compared to the general US population.<sup>73</sup> Some of these health problems are generated by prison conditions such as:

- Overcrowding
- Loss of privacy and autonomy
- Violence
- Isolation
- Imposed rigid routines
- Stress of navigating social hierarchies
- Lack of social support
- Barriers to accessing healthcare
- Deprivation<sup>12,74</sup>

Other health problems are the result of prior life experiences that are overrepresented among this population and exacerbated by the experience of incarceration. **Each additional year in prison results in a two-year reduction in life expectancy.**<sup>75</sup>

Some of the primary physical health care needs among incarcerated youth include:

- Oral health
- Trauma-related injury
- Infectious illnesses
- Reproductive health<sup>13</sup>

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<sup>f</sup> Reportedly, no one under 18 is currently incarcerated in California’s adult prisons, but youth may be transferred from a juvenile facility to an adult prison at midnight on their 18th birthday. According to adolescent development science, 18-year-olds are still developing physically, mentally, and emotionally. This makes them vulnerable to abuse and intimidation. The research presented in this section describes how young people are impacted by the experience of adult prison, even when the specific ages of the youth in referenced studies are unknown or may be over 18.

*“My mom went to go visit [my brother] and his hands were really cold. She was like, ‘You’re cold huh?’ And he was like, ‘Yeah it’s really cold in here.’ And she was like ‘Oh, I’m going to tell them and maybe they can give you a sweater.’ And he was like, ‘No mom, just don’t say anything because then they’re going to take it out on me.’”*

*– Maricela, Sister of youth charged as an adult at age 16*

*“I have nightmares every night. They try to give me medication so that I don’t have dreams. But I don’t like that because I wake up and feel like I didn’t sleep, it feels like I just blinked. When I came here I couldn’t sleep at all.”*

*– Anonymous, charged as an adult at age 17*

*“I remember going on long lockdowns, those were the times when it was like, okay, now I can breathe.”*

*– Malachi, charged as an adult at age 15*

*“[I’ve seen] kids in custody for one to two years who didn’t get to touch their family. That’s like torture. I don’t think people understand developmentally that kids need to be loved, they need to be touched, they need to be nurtured. What are we fostering inside these institutions?”*

*– Debra Mendoza, Former Probation Officer*

In addition, detained youth are more likely than non-detained youth to have general health complaints including headache, abdominal pain, back or joint pain, upper respiratory symptoms, and sleep problems.<sup>13</sup> **In a nationally representative survey by the US Department of Justice’s Office of Juvenile Justice and Delinquency Prevention, over two thirds of incarcerated youth (69%) reported having some type of health care need, and more than one out of every four respondents reported having an acute illness.**<sup>76</sup>

Juvenile incarceration is associated with negative health outcomes as an adult including early death.<sup>13</sup> For example, in a study that tracked nearly 50,000 system-involved youth in Marion County, Indiana over the course of a decade, mortality rates were nearly six times higher for youth that had been transferred to the adult system than for the county population.<sup>77</sup> Across race and gender, youth at each higher level of involvement in the system were found to have a greater mortality rate during the study period, with rates associated with transfer to the adult system being the highest.

A national study examined the prevalence of chronic disease among incarcerated and non-incarcerated 18- to 65-year-olds and found that incarcerated populations are more likely to have hypertension, asthma, arthritis, and cervical cancer.<sup>78</sup>

Research has also shown a strong association between incarceration and stress-related health conditions. Correctional facilities tend to be exceptionally stressful environments and health experts have uncovered strong connections between stress and poor health outcomes.<sup>79</sup> Persistent exposure to stress creates a state of being that can permanently weaken the immune system and lead to disease — known as a heightened allostatic load.<sup>80</sup>

A study found that incarcerated individuals were more likely to report both major and minor stress-related conditions compared to a matched sample of non-incarcerated individuals.<sup>79</sup> These conditions include heart problems, sleep disorders, and chronic headaches.

In addition to these chronic conditions, research shows that conditions of confinement can worsen the spread of infectious disease. Infectious illnesses are a main physical health care need among incarcerated youth.<sup>13</sup> While rates of infection and prevalence rates are not readily available for the juvenile population nationally or statewide, communicable disease rates for the incarcerated adult population are telling.

A two-year study of adult prisons and jails by the National Commission on Correctional Health found that prevalence rates of several communicable diseases such as HIV, Hepatitis C, and Tuberculosis are significantly higher among incarcerated and recently released persons than in the general population.<sup>81</sup>

### **Incarcerated youth are exposed to physical abuse and violence**

It has been more than a decade since formerly incarcerated youth and their allies successfully exposed the dangerous conditions of California Youth Authority facilities. In response to the resulting lawsuit, this institution (now called the California Division of Juvenile Justice) was forced to pursue extensive reforms to put an end to the abuses. However, a recent report by the Center on Juvenile and Criminal Justice reveals that, “the institution remains a traumatizing, criminogenic, and dangerous place to send California’s system-involved youth.”<sup>82</sup>

Violence and abuse remain all too common within the state’s juvenile system. Unacceptably high rates of violence, unchecked gang activity, and living unit overcrowding persist in DJJ facilities where many transferred youth start their period of incarceration.<sup>82</sup>

Fights most frequently erupt in facility dayrooms and school areas, suggesting a lack of safety precautions in those settings.<sup>83</sup> **According to a 2012 report by UC Irvine, 85% of male youth in DJJ facilities are involved in violent assaults, and surveyed youth report an average of 38 violent incidents per year of incarceration.**<sup>84</sup>

Violence in the adult prison system is widespread. While youth in juvenile facilities are at a risk of physical harm, being sent to an adult institution puts them at an even greater risk of abuse and physical assault.<sup>29,82</sup> Young people housed in adult correctional facilities are twice as likely to be beaten by staff and 50% more likely to be attacked with a weapon than youth in juvenile facilities.<sup>5</sup>

Even if young people manage to escape direct physical abuse in these settings, exposure and proximity to violence can be harmful in and of itself. Research suggests that youth who are exposed to violence may acquire issues with physical and sexual development. When the nervous system is in a constant state of high alert, it can trigger physiological changes that can suppress the immune system and even damage brain cells that are important in memory functioning.<sup>85</sup>

*“When I turned 18, I went from the juvenile part of the county jail to the adult part. There was a lot of rival gang members in there, so there was a lot of fighting. When I went to prison it was more serious fighting. They weren’t just fighting, they were stabbing, and police were shooting to stop them from killing you.”*

*– Nate, charged as an adult at age 17*

*“You see certain acts of violence from the prison guards, to riots, to stabbings, to stickings, to even sexual assaults ... Seeing the things that we have seen in there, I wouldn’t wish that for no young person.”*

*– Malachi, charged as an adult at age 15*

*“They’re experiencing more trauma in an adult facility than in a juvenile facility. There’s risk in juvenile, but it’s worse in adult because then kids are at risk for being sexually assaulted, for getting raped, for getting beat up ... the younger you are, the more vulnerable you are.”*

*– Debra Mendoza, Former Probation Officer*

*“When I got to prison ... it was like I put on a mask and the only time I felt really safe to take that off is when I was on my pillow going to sleep. Nobody ever knew the whole time.”*

*– Nate, charged as an adult at age 17*

*“You’re being taught in prison to be a criminal, just more skillful. You’re being taught in prison to be antisocial and to be a better criminal.”*

*– Anonymous, charged as an adult at age 17*

*“The taxpayers need to know that giving these kids these long periods of time is not really helping them. Like my son says, jail makes you worse. He tells me that all the time ... it makes them hardened criminals because of the amount of things that they learn in there.”*

*– Barbara, Mother of youth charged as an adult*

### **Incarcerated youth are exposed to sexual abuse**

Youth who become involved in the juvenile system are at a greater risk of sexual abuse. A 2012 Bureau of Justice Statistics (BJS) report explored the prevalence of sexual abuse among youth in 326 juvenile facilities nationwide. Nearly 10% of the 8,707 survey respondents reported experiencing at least one incident of sexual victimization in the past year (or since admission if less a year), 7.7% reported sexual victimization from a staff member, and 2.5% reported sexual victimization from another young person.<sup>g,86</sup>

These risks are particularly high for Black and lesbian, gay, bisexual, or transgender (LGBT) youth. Of the respondents in the 2012 BJS report who experienced sexual victimization, Black youth were more 1.5 times more likely to be victimized by facility staff than White or Latinx youth. In addition, LGBT youth reported a much higher rate of youth-on-youth victimization than heterosexual youth.<sup>86</sup>

A 2010 survey of detained juveniles found 11% of boys and 27% of girls identified as LGBTQ, and four out of five (80%) suppressed gender nonconforming behaviors while detained due to fears of sexual harassment and assault.<sup>13</sup>

Sexual abuse is an even bigger risk for young people who serve time in adult facilities. A 1989 study found that young people housed in adult correctional facilities are five times more likely to be sexually assaulted than those in juvenile facilities.<sup>87</sup> According to the National Prison Rape Elimination Commission, which was created to investigate sexual abuse in correctional institutions nationwide, “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.”<sup>88</sup>

### **Incarcerated youth face psychological abuse, mental health issues, and identity impacts**

Juvenile and adult inmate populations suffer from higher rates of mental health issues than the rest of the US population.<sup>45,81</sup> Common unmet mental health needs among incarcerated juveniles include:

- Attention deficit/hyperactivity disorder (ADHD)
- Learning disorders
- Depression

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<sup>g</sup> Detail does not sum to total because some youth reported multiple incidents.

- Anxiety
- Post-Traumatic Stress Disorder (PTSD)
- Substance abuse

When untreated, these conditions may make incarceration more likely and be made worse during incarceration.<sup>13</sup>

A longitudinal study of more than 1,800 system-involved youth found that youth tried as adults who receive prison sentences are significantly more likely to have one or more psychiatric disorder than youth tried as adults who remain in juvenile facilities.<sup>1</sup>

For incarcerated youth in particular, confinement can be retraumatizing, therefore exacerbating mental health conditions, including PTSD.<sup>45,89</sup> But previous experiences with PTSD and trauma are common for this population even before entering the juvenile system. Authors of one study interviewed 85 incarcerated boys (mean age 16.6) representative of the California Youth Authority population and found that one in three met the criteria for PTSD diagnosis. This group “showed elevated distress, anxiety, depression, and lowered restraint, impulse control, and suppression of aggression.”<sup>90</sup>

Youth involved with the juvenile system have an increased risk of suicide compared with youth in the general population.<sup>91</sup> Studies with large sample sizes indicate that between 11% and 15.5% of system-involved youth attempt suicide in their lifetime, whereas this figure for youth in the general population is between 3% and 8.8%.<sup>92</sup> **Suicide was the leading cause of death for youth in state juvenile correctional facilities from 2002 to 2005 (the most recent data collection period).**<sup>93</sup>

Another study found that youth are 36 times more likely to commit suicide in an adult jail than in a juvenile facility.<sup>94</sup> Suicidal thoughts and behavior are more prevalent among youth who are “more deeply involved in the juvenile system” and are the highest among youth in post-sentencing secure facilities.<sup>95</sup>



**Youth are 36 times more likely to commit suicide in an adult jail than in a juvenile facility**

There are identity impacts as well. Negative impacts on development, identity formation, and life outlook may derive from incarcerated young people identifying themselves as deviant, being socialized via exposure to other incarcerated people into values considered deviant by society, and having normal elements of development such as work and family relationships disrupted.<sup>96</sup>

Negative impacts on identity formation and development may be particularly strong for youth transferred to the adult system, because youth may internalize the notion that they are

*“We’re set up for failure in here. They give us all these programs, they try to throw us a book or something, but the reality is that we’re going to prison one day. We are going to prison sooner or later ... We spend our time in our room and don’t really go out, so we’re here to be set up to fail.”*

*– Christian, charged as an adult at age 14*

*“There’s much more programs [at juvenile facilities] and they’re at your disposal, provided that you’re in an institution where you’re not constantly locked down. That’s another thing that can alter you taking advantage of some of the programs.”*

*– Phillip, charged as an adult at age 16*

labeled as an “unsalvageable adult,” and seek companionship of others who tolerate or support deviant behavior.<sup>32</sup>

Gender identity formation may be affected for young males in both juvenile and adult correctional facilities. One study found that a rigid mandate of masculinity was reinforced by institutional and interpersonal mechanisms in juvenile residential settings. This type of masculine expression centers on expressions of competition, hierarchy, bravado, stoicism, the importance of physical strength, sexism, and homophobia. Alternative gender identities were suppressed, ridiculed, and scapegoated.<sup>97</sup>

When transferred to adult facilities, in particular, these identity issues may be further compounded by the mental strain of trying to avoid victimization. Qualitative research in a 2000 study shows that young people in adult facilities have high rates of anxiety and depression due in part to fear of being victimized by older, more experienced incarcerated persons. For this reason, they are more likely to be placed in protective custody or specialized psychiatric units. While the intent of this strategy is to protect them from harm, it often means that they are held in isolation, unable to participate in recreational or educational activities.<sup>69</sup>

## Youth Are Not Provided with Adequate Services

*“You gotta have smarts and a support team because you can’t do anything on your own. You can try, but you’re always going to need people to help you.”*

*– Anonymous, charged as an adult at age 17*

Incarcerated youth are often deprived of adequate resources to support their education, mental health, and rehabilitation. This is problematic because as many as 67% to 75% of youth involved in the juvenile system need of services for emotional, developmental, academic, and behavioral issues.<sup>5,98</sup>

Although conditions vary from place to place, juvenile institutions tend to have more programming geared toward treatment, rehabilitation, and personal development than adult facilities. It is more common for staff to have therapeutic relationships with youth in their custody in juvenile facilities. In adult institutions, on the other hand, security is the overriding priority and the staff’s primary function is surveillance and control.<sup>69</sup> In either setting,



the conditions of incarceration can interfere with a youth's ability to engage in programs and services even when they do exist. **Staff at adult facilities do not typically receive specialized training to guide their interactions with younger residents.**<sup>91</sup>

### Educational programs for youth are inadequate

Educational attainment is associated with:

- A longer life<sup>99</sup>
- Higher income<sup>100-102</sup>
- Better social networks of support<sup>101</sup>
- Other health promoting factors including a healthy weight, not smoking, and having healthier babies and children<sup>99,103</sup>

In California, county boards of education must operate juvenile court schools for young people who are incarcerated in county juvenile detention facilities. Young people confined to state-run juvenile facilities must attend one of the three high schools operated by DJJ.<sup>104</sup> These schools must follow a California standards-based curriculum, administer the state's required achievement tests, and offer pathways to getting a high school diploma or GED. The California Education code mandates 240 minutes of classroom instruction per day. System-involved youth are required to attend these schools during their incarceration.<sup>105</sup>

Unfortunately, many of these schools are characterized by:

- **High rates of suspension:** The average suspension rate in juvenile court schools is 10% — more than double California's overall suspension rate. Some schools report rates as high as 74%.<sup>106</sup>
- **Low academic achievement:** Among long-term students (i.e., those in a juvenile court school for at least 90 consecutive days) an alarming percentage of students actually become less proficient in reading (29%) and math (28%) while enrolled in these schools.<sup>106</sup>
- **High rates of truancy:** Even in secure facilities, chronic absenteeism is a major problem. In the 2013-2014 school year, six court schools reported truancy rates between 29% and 69%. Institutions lack effective ways to address this, with solitary confinement sometimes used as a punishment.<sup>106</sup>

Youth of color comprise 85% of juvenile court school enrollees. As many as half of them are special education eligible and more than one-quarter are English Learners.<sup>106</sup>

Young people in adult facilities face barriers to continuing their education. Although program availability varies between institutions, adult correctional facilities typically have fewer educational and professional development resources and opportunities than juvenile facilities.<sup>24,91</sup> In California, state prisons tend to focus their limited educational resources on adult basic education, high school equivalency, and career technical education courses. College-level educational opportunities are even more limited. Most prisons offer outdated forms of distance education with no in-person instruction or academic counseling services. **In 2013, only 4.4% of the California state prison population was enrolled in some type of college coursework.**<sup>107</sup>

*“[Services] are more readily available in the juvenile system than they are in the adult system. There are more funding streams in the juvenile system, there are processes in place to monitor this, and they are still entitled to some services. In the adult system, they may have funding for treatments, but they’re not age appropriate ... Treatment is not readily available when charged as an adult compared to when charged as a juvenile.”*

*– Former Chief Probation Officer*

*“The hardest thing for me so far has been trying to get my social security and ID and all that ... Does the system even know we’re getting out? Why don’t they help us and provide us with these things months before we leave at the gate? Immediately when we get out we are met with a hurdle.”*

*– Phillip, charged as an adult at age 16*

*“It was hard for me to get a job out here ... I was working two minimum wage jobs when I first came home. I was always tired and I was going to San Francisco State trying to get my bachelors degree.”*

*– Nate, charged as an adult at age 17*

*“Rehabilitation and education is the main key. Rehabilitation and education over mass incarceration. The opportunities for education and rehabilitation have to be open. You have to invest more in that as opposed to investing more into more prison cells or more bunks and trying to expand that. Expand the education and then enhance it. Update, upgrade.”*

*– Phillip, charged as an adult at age 16*

### **Mental health and substance abuse resources for youth are inadequate**

Mental health resources such as psychotherapy, group therapy, and medication can help people with depression, who have attempted suicide, or who have experienced trauma.<sup>108–111</sup>

Mental health services in juvenile and adult institutions are often inadequate<sup>5,29</sup> with adult facilities offering fewer services than juvenile facilities.<sup>24</sup> Having sufficient and developmentally appropriate mental health programming for incarcerated youth has been described as the “forgotten mandate.”<sup>5</sup>

The situation may be worse for transferred youth in part because they usually face longer periods in detention while they are awaiting trial in adult court: “Studies have found that even within the juvenile court system, few youth receive the psychiatric services they need before they are adjudicated.”<sup>1</sup>

Substance abuse treatment such as behavioral therapy (including individual and group therapies), medications, or a combination of the two, can help people stop compulsively using drugs as well as help improve other life skills such as communication, relationship, and parenting skills.<sup>112</sup> Between half and three quarters of the juvenile system population with mental health issues also has problems with substance abuse.<sup>5</sup>

### **Reentry Presents Many Obstacles For Youth**

Trying youth as adults pushes youth on a trajectory of deeper system involvement and compounding disadvantage. Those who leave the system often have experienced more trauma

and have more needs than when they went in. When tried as adults, they also leave with a felony record that becomes a trap of disadvantage that will continue to follow youth throughout the life-course.

Formerly incarcerated youth and adults are especially vulnerable in the period following release. A study of more than 30,000 formerly incarcerated people in Washington State showed that their mortality risk was 12.7 times higher than other state residents in the first two weeks following release.<sup>73</sup>

### Youth face collateral consequences when they leave prison

When youth are sentenced as adults they receive a felony on their record, which comes with a lifetime of social and civil rights consequences. Unlike youth charged in the juvenile court system, youth sentenced as adults are not able to get their record sealed.

There are significant consequences associated with having a felony record, including numerous barriers to community reintegration and civic engagement, and impacts on employment, lifetime earning potential, and health.<sup>2,113</sup>

A history of incarceration reduces upward mobility; formerly incarcerated individuals can expect to earn 11% less per hour and 40% less per year.<sup>113</sup> The Higher Education Act of 1998 prohibits youth who are convicted of drug-related offenses from receiving any grants, loans, or work assistance programs.<sup>22</sup> In total, there are 3,000 laws that create more than 4,800 additional punishments for those with a criminal record in California.<sup>114</sup>

### Lack of rehabilitation and healing lead to high recidivism

Given these accumulated challenges, the high recidivism rate is hardly surprising. Recidivism — or getting caught up in the system again after being released — is a common occurrence for formerly incarcerated youth and adults. A large body of research has shown that harsher and more punitive sentences are associated with higher recidivism rates.

There is little information about the recidivism rates for youth who have been charged and incarcerated as adults. The statistics from the Division of Juvenile Justice provide some guidance, as these are youth who were incarcerated for crimes that are most similar to those committed by youth currently held in the adult system.

The recidivism statistics from DJJ are bleak. According to the

*“You need to take baby steps because there are going to be times when it is hard and you don’t know where to turn. What I knew best was to turn back to my old ways.”*

*– Cesar, charged as an adult for an incident that occurred at age 17*

*“[I experienced] a lot of anxiety, a lot of depression [and] I have seen some guys break under the pressure ... Their solutions can lead to them getting them back inside the system.”*

*– Phillip, charged as an adult at age 16*

*“The police department doesn’t even give them a chance to try their best. I’ve heard youth say that they don’t want to be in the cycle anymore, but if a police officer is spotted, they run away because they’re scared.”*

*– Veronica, Mother of youth charged as an adult at age 14*

most recent data available,<sup>h</sup> nearly 60% of youth who come out of DJJ are rearrested within one year and 84% are rearrested within three years (See Table 2 below for a breakdown of recidivism data.). Almost 55% return to DJJ or adult prison within three years. Youth who enter DJJ at younger ages recidivate at higher rates than those who are committed at older ages.<sup>115</sup> In addition, involvement in the juvenile system increases the chance of future involvement in the adult system.<sup>116</sup>

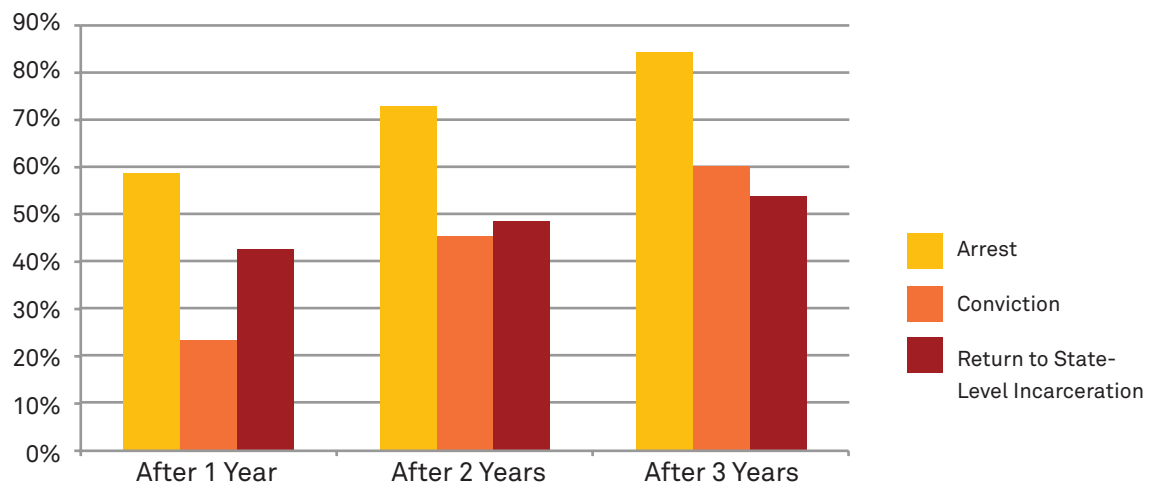
Recidivism rates for adults in the California Department of Corrections and Rehabilitation facilities offer another comparison point, since these are the same facilities holding youth in the adult system. The recidivism rate for system-involved adults is also high. When it comes to adult who have committed felonies and been released from the California prison system, 57% are rearrested within one year, 76% are rearrested within three years, and 64% return to prison within three years.<sup>115</sup>

Harshly punishing youth by trying them in the adult system has failed as an effective deterrent.<sup>25,31</sup> Several large-scale studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.<sup>2,9</sup>

For example, a matched case-control study comparing Florida youth tried as adults with youth tried as juveniles found that youth tried as adults were more likely to recidivate. This pattern held true across seven different degrees of offense severity. Overall, this study found that 30% of youth tried as adults were rearrested during the research period, versus 19% of matched youth who were not tried as adults.<sup>32</sup>

Based on a systematic review of existing evidence, the Department of Health and Human Services' Community Preventive Services Task Force found that the policies allowing youth to be tried as adults typically result in greater subsequent crime, including violent crime. In other words, after carefully reviewing the evidence, this important public health task force recommended against trying youth as adults for the purpose of reducing violent crime.<sup>117</sup>

**Chart 2. Recidivism Rates for Youth Released from DJJ 2007-2010<sup>115</sup>**



<sup>h</sup> The California Division of Juvenile Justice has not published recidivism rates since 2012. These statistics reflect data collected from the 2007-2008 release cohort up until 2010.

# Charging Youth as Adults Harms Families Too

**T**he juvenile and adult justice systems not only impact youth — but also their families, communities, and the general public.

## The financial cost of having a child in the system can be devastating

Contact with the court system often entails exorbitant expenses that can worsen family poverty.<sup>118</sup> The economic burden of legal fees, court costs, restitution payments, and visitation expenses can have disastrous and long-lasting financial consequences for families.<sup>19</sup> In addition to the direct financial costs, families also struggle to secure other living needs, such as housing and employment.

## Having a Youth in the System Harms the Health of Family Members

Research shows the interrelation between stress and physical health outcomes. Chronic stress such as feelings of hopelessness, ongoing poverty and financial strain, and early traumatic experiences wear the body down.<sup>119</sup> Having an incarcerated family member is associated with cardiovascular risk factors and disease.<sup>120</sup> a 2001–2003 nationally representative cross-sectional survey of Blacks and Whites living in the United States, to examine 5 self-reported health conditions (diabetes, hypertension, heart attack or stroke, obesity, and fair or poor health

Family members who participated in focus groups discussed how their loved one's arrest, trial, and incarceration has negatively impacted their health and wellbeing. When Luisa's 14 year old son was charged as an adult, the stress and grief were overwhelming: "At the beginning I couldn't function," she shared. "I lost my job. I lost 33 pounds in a month." Other family members described similar difficulties including sleeplessness, difficulty eating, trouble getting out of bed, and problems managing chronic conditions such as high blood pressure.

*"Many of the families that I have worked with don't speak English, they don't drive, they don't have a valid California ID to go see their son when they get transferred to the prison system...It's a lot for a family with one income, because some of them are single moms."*

*– Luisa, Parent of youth tried as an adult at age 14*

*"[My sister] is always trying to make money, even still now. Trying to get money to get him out, to get a better lawyer, to get someone that can help."*

*– Wanda, Aunt of youth charged as an adult*

*"[During the trial] I couldn't sleep at night. And I know that [my sister] couldn't sleep. I saw her lose weight and not be able to eat hardly anything at all, sometimes nothing."*

*– Wanda, Aunt of youth charged as an adult*

*“My mom goes through depression everyday, she has to take pills every night to go to sleep. There’s times when she wants to take her life away.”*

*– Maricela, Sister of youth charged as an adult at age 16*

## **Having a youth in the system harms the mental and emotional health of family members**

Parents and family members are systematically unable to participate in the juvenile court process — they are not given opportunities to provide input in what happens to their children. In a national survey of family members of system-involved youth, 91% of respondents said that courts should involve families more in decisions about what happens to a child found delinquent/guilty. More than 80% said that a judge never asked them what should happen to their child.<sup>19</sup> The inability to participate fully while their loved one is going through the system was shown to be mentally and emotionally harmful to families.

*“I don’t think stress is the right word. I wish there was something stronger than the word stress in my vocabulary because that word don’t describe the pain. I’ll take stress all day, but pain is when you see your mom breakdown and fall apart ... the best way to explain it is heartbreak.”*

*– Andrew, Brother of youth charged as an adult*

*“You want to have all your family getting together [but] we don’t even get together the way we used to. And that’s hard. That’s hard... You don’t want to do anything. Don’t want to get together. You avoid. Isolate.”*

*– Vanessa, Aunt of youth charged as an adult*

*“I avoid family gatherings and birthday parties because I see my nephews and nieces celebrating and I know my son is missing, he’s not in the pictures, and that’s hard.”*

*– Luisa, Parent of youth tried as an adult at age 14*

Family members shared painful examples of this mental and emotional harm in focus group discussions. Depression symptoms — often characterized as heartbreak — came up frequently, as did anxiety. And the mental and emotional anguish often has ripple effects in the entire family. When Barbara’s adolescent son was charged as an adult, the situation took an enormous toll on her entire family: “You can’t function as a family,” she shared. “You go on everyday with a smile on your face like all is well, when it’s not, and it’s eating you up inside.”

## **Families of System-Involved Struggle with Isolation**

Research shows that social isolation is a predictor for poor health and can lead to poor health behaviors, increase morbidity and mortality, and negatively affect physical and mental health.<sup>121</sup> including living alone, having a small social network, infrequent participation in social activities, and feelings of loneliness. However, multiple forms of isolation are rarely studied together, making it difficult to determine which aspects of isolation are most deleterious for health. Using

population-based data from the National Social Life, Health, and Aging Project, we combine multiple indicators of social isolation into scales assessing social disconnectedness (e.g., small social network, infrequent participation in social activities). There is a strong link between the quality of an individual's social relationships and mental health, morbidity, and mortality. A meta-analysis of 148 studies found that there was a 50% greater likelihood of survival for participants with stronger social relations compared to those with poor social relationships."<sup>122</sup>

Engaging with the criminal justice system can lead to isolation, which can have serious repercussions for family bonds and can lead to more isolation as a result of the break up of families and the withdrawal of family members. Family members may feel powerless from having to navigate a confusing process and isolate themselves as a result. Focus group participants also discussed numerous occasions where they avoided family gatherings and holiday celebrations so as to not be reminded of their loved one's absence.

**The incarceration of a loved one clearly has collateral damages. Understanding these nuances is important for developing holistic approaches to solutions.**

### Activism, Advocacy, and Family-Sourced Solutions



*"I turned my depression into action. I went to all the meetings that I could, different groups, support groups, spiritual groups. Knowing that I was able to help all the families by guiding them through what I went through."*

*– Luisa, Parent of youth charged as an adult at age 14*

Many of the formerly incarcerated youth and family members who contributed to this report have become fierce activists and advocates. They are working to

end the harmful practice of sentencing youth as adults by sharing their stories and their strategies of resilience.

Focus group participants talked about actively participating in many activities that have helped them achieve personal growth and healing, including:

- Working and volunteering with community-based organizations
- Testifying at the state capital about juvenile justice reform
- Writing op-eds
- Leading workshops in prisons
- Organizing to address abusive conditions in juvenile halls

Family members of incarcerated youth have mobilized in recent years, forming and sustaining numerous organizations and coalitions across the country. These family justice leaders have called for juvenile justice reform including an end to direct file and other forms of juvenile transfer. For more information about these movements please see the following sources:

- *Families Unlocking Futures: Solutions to the Crisis in Juvenile Justice* (2012) by Justice for Families and DataCenter.<sup>19</sup>
- *Mothers at the Gate: How a Powerful Family Movement is Transforming the Juvenile Justice System* (2016) by Bernstein, Dolan, and Slaughter-Johnson.<sup>123</sup>

# Solutions Exist

**O**ur findings show that society, the juvenile court system, and the adult criminal court system are failing many of our youth in California — especially youth of color. This greatly affects the health and well-being of these youth, their families, and their communities. There is no single, simple solution: a variety of complex and systemic issues must be addressed to eliminate these health inequities and better support our youth.

Below we outline a range of solutions, starting with issues most directly related to trying youth as adults and broadening out to much larger needed change. Many of these echo and build on the grassroots advocacy of formerly incarcerated youth, their families, and their communities.

## **1. Eliminate the practice of charging youth as adults under any circumstances and mandate that judges prioritize youth rehabilitation and healing.**

Transferring young people to adult criminal court is a failed and harmful practice. With the passage of Proposition 57 in California in November 2016, prosecutors may no longer directly file juveniles in adult court. This is an important step forward but the remaining mechanisms of juvenile transfer must also be eliminated. Judges must be tasked with making the rehabilitation of youth the focus of the process.

*“There needs to be a lot of education with judges, especially with judges that are working in the juvenile justice courts. Understanding developmental stages, understanding trauma, understanding mental health aspects, family stressors. There needs to be a shift in the type of training that they get — even the attorneys [and] law enforcement.”*

*– Adolescent Mental Health Expert*

## **2. Require that system professionals undergo additional hands-on training and coaching by formerly incarcerated people and local community organizations on topics such as youth development, community history, trauma, implicit bias, institutional and structural racism, and the structural causes of crime.**

Those working in the juvenile system — including judges, prosecutors, and police — must understand, consider, and act on their knowledge of these issues. Local community organizations working with youth on justice issues should be funded to support others in the justice system build their capacity.

## **3. Implement community-oriented and problem-oriented policing according to promising practices, with primary aims of improving community safety and reducing contact between youth and law enforcement.**

Youth of color and their families mistrust the police that dominate their neighborhoods and often see them as a source of conflict and violence. Alternatives to standard forms of policing have been shown to both build trust and improve community safety.<sup>124</sup>



#### 4. Implement school and community-based restorative and transformative justice approaches focused on healing as an alternative to the court system for most youth.

Restorative justice is a principle-driven philosophical framework focused on the beliefs that crime harms people and that justice, in turn, should facilitate healing.<sup>125</sup> The practice requires bringing together the offender and victim in a session facilitated by a restorative justice coordinator.

We need to move towards a justice system focused on rehabilitation, restorative justice, and healing. Restorative justice is an effective, ethical, and culturally affirming alternative that can be implemented to meet the juvenile system's original intent to rehabilitate system-involved youth.

A 2000 study by California's Judicial Council Center for Families, Children, and the Courts evaluated restorative justice approaches implemented in six counties. The strongest measure of success was participant satisfaction, and in all counties 90% of both victims and system-involved individuals were satisfied with the process.<sup>126</sup>

#### 5. Research and pilot viable alternatives to sentencing for youth who commit serious crimes.

Some youth do commit serious, violent crimes. Even in these cases, the adult system significantly harms youth and does little to rehabilitate them. We need more research on alternatives for youth who have committed violent crime and we need to pilot new programs that may be able to achieve both community safety and rehabilitation.

According to a recent poll by Youth First Initiative, a majority of Americans — and more than two-thirds of respondents age 18 to 29 — want to close youth prisons and redirect funds to community-based programs, even for youth who have committed serious crimes.<sup>127</sup>

Restorative justice programs have proven effective in reducing reconvictions among youth who have committed violent crimes. In general, the research that has been done suggests that these alternative approaches appear to be more effective and consistent when used as a response to serious crimes involving victims compared to less serious property crimes.<sup>125,128</sup>

*“If I could I would change the entire police department because in addition to being racist, they approach you in a very aggressive way. They’re supposed to keep us safe and we should trust them, but we can’t because they label us ... I don’t like the way officers talk to my community.”*

*– Veronica, Parent of youth charged as an adult at age 14*

*“Sitting in prison for so long, I didn’t face what I had done. I never really faced the harm that I’d done to the family and to the community. To me [accountability means] I’m able to face that, feel the emotions, understand how I have impacted that person and have a conversation that will lead towards healing for both sides. The system doesn’t provide that. The system actually separates young people from their families but oftentimes the victims are secondary in the process and left hurting and left without answers.”*

*– Malachi, charged as an adult at age 15*

*“The best alternatives to incarceration are community-based solutions. That can look like more diversion programs, restorative justice, deferred entry of judgment, investing in stabilizing home services, strengthening our after care systems, eliminating the gaps in services.”*

*– Debra Mendoza, Former Probation Officer*

*“We should offer treatment or education for the parents or a parent support network. Some support for parents to deal with this in a different way is needed. We need to say, ‘you’re the person to handle this, how can we support you?’ instead of ‘you can’t handle it, we’re going to handle your child for you.’”*

*– Former Chief Probation Officer*

*“One of the pieces missing for families and for incarcerated youth is that providers need to start talking to each other and not work in silos ... We need to find a way to make those dialogues happen more frequently and know that we are all in it for the benefit of the child and the family.”*

*– Adolescent Mental Health Expert*

*“There’s a lack of providers that really understand the situations that these youth find themselves in ... Connect youth to service providers they can identify with culturally, providers who are familiar with the community that they come from and some of the issues that they’re facing.”*

*– Adolescent Mental Health Expert*

## **6. Ensure support for families as they navigate the justice system — especially investing in peer mentoring strategies that link families and formerly incarcerated people.**

Ensuring that families are part of the court process is critical for youth rehabilitation and family healing. Families should be supported to understand and influence the processes their loved ones are going through and to be active participants in those processes. Local community organizations that work with youth in the justice system also support their families and should be further funded to provide this support. Nearly 90% of Americans think youth’s family should be included in the design of rehabilitation services.<sup>127</sup>

Findings from focus group and interviews also show that many families feel confused navigating the criminal justice system and lack awareness and understanding of legal processes. While some focus group participants and public defenders note that many youth come from families that expose them to domestic violence, drug abuse, and other forms of trauma, those circumstances do not take away from the fact that youth still want and need their family’s support. Youth may experience harm and still love their families — these are not mutually exclusive.

## **7. Increase inter-agency collaboration.**

Professionals working with system-involved youth need to find ways to improve their communication with each other and to work together to address the complete set of needs youth and their families have.

## **8. Increase funding for quality and culturally appropriate wrap-around services for youth and their families, including programs that connect youth to traditional practices of community building and healing.**

Culturally responsive treatment and programs can address the specific needs of communities of color and their youth, including for rehabilitation. Community organizations that have bilingual staff and close community ties can provide and facilitate culturally responsive alternatives to detention.

## 9. Change school funding and education policy to provide quality and culturally appropriate education in all communities and ensure equitable distribution of educational resources and opportunities.

Ensuring that youth have supportive and safe environments in school is critical for their education, which is a strong determinant of health as it can grant them opportunities for better income<sup>100-102</sup> and better health outcomes.<sup>99,103</sup>

The majority of focus group participants and interviewees shared that schools do not provide supportive environments or a sense of safety for them. Many also shared the lack of concern teachers and other school personnel had for them.

## 10. Implement justice reinvestment strategies and other forms of investment in low-income communities of color to expand opportunity for youth of color and their families.

Many of the problems youth of color face could be avoided if there were more opportunities in their communities. Youth of color need better schools and educational after school programs, job training and mentoring programs, more jobs that provide a living wage, affordable and quality housing, and more.

Structural and institutional racism and the legacy of interpersonal racism — that led, for example, to housing segregation and White flight — have left many communities of color without resources and, therefore, hope. To really fix the juvenile system and its inequities, we must address as a society the underlying social issues that lead to system involvement. Low-income communities of color must be invested in using a variety of strategies including justice reinvestment, the implementation of changes in the justice system that improve community safety and reduce costs and then reinvest savings in communities to improve conditions that will further improve community safety.

*“I went to over five high schools. I was expelled from one. I wouldn’t bother teachers; teachers wouldn’t bother me. Teachers didn’t even really want to teach me, even on the first day, even before they got to know me. They [just] see a kid with tattoos wearing certain colors.”*

*– Anonymous, charged as an adult at age 17*

*“We need to provide kids with opportunities for economic self-sufficiency, education, and career development. We need to invest in them, spend time with them, and give them someone to coordinate their care.”*

*– Debra Mendoza, Former Probation Officer*



CURYJ Young Men’s Circle awarded recognition for their involvement in “Forgotten Voices,” a participatory action-based research project with CURYJ completed in 2014. The photo-novela used the PhotoVoice method to evaluate assets and challenges the young men experienced in their community. More info at: <http://pacinst.org/publication/foto-novela/>

Some youth make major mistakes that cause significant harm to others. These major mistakes should be taken seriously and met with an intentional process for repairing harm and seeking justice. However, we have the choice as a society about whom we hold accountable and how.

We currently often choose to hold the individual solely accountable and use punishment to “correct” them, especially our youth of color. But since many of these youth bear the brunt of poor community conditions and major societal disinvestments before committing a serious mistake and landing in “corrections,” we could also choose to hold ourselves — society — accountable for their behaviors. Let’s take responsibility for creating the neighborhood conditions that lead to behaviors we deem inappropriate and practice forgiveness, restorative justice, rehabilitation, and healing.

*“If the criminal justice system is not doing what it allegedly is supposed to do which is to rehabilitate and repair a person, then their action of stripping a person of their humanity is criminal in itself.”*

*– Phillip, charged as an adult at age 16*



*Homies 4 Justice interns at the Educate the Block Party to Pass Prop 57. Youth across California organized a series of actions to ensure voters knew how Proposition 57 would help youth: by ending the direct file of youth into the adult system. Homies 4 Justice held a day-long block party in the Fruitvale neighborhood of Oakland to mobilize voters of color, women, and low-income voters who are often marginalized in elections, but are most directly impacted by policies. Proposition 57 passed in November 2016. Photo by Ruben Leal.*

# Appendices

## Appendix A: Participant Demographics

### Respondent Type

|   |        |    |
|---|--------|----|
| Youth or former youth charged as adult            | 23.25% | 10 |
| Family member of youth tried as adult             | 48.84% | 21 |
| Youth currently on probation                      | 11.63% | 5  |
| Not transferred but experienced with both systems | 11.63% | 5  |
| Community organizer                               | 4.65%  | 2  |

### Respondent Age

|         |        |    |
|---------|--------|----|
| 10 – 19 | 31.71% | 13 |
| 20 – 29 | 12.20% | 5  |
| 30 – 39 | 26.83% | 11 |
| 40 – 49 | 19.51% | 8  |
| 50 – 59 | 7.32%  | 3  |
| 60 – 69 | 2.44%  | 1  |

### Respondent Gender Identity

|                |        |    |
|----------------|--------|----|
| Male           | 46.51% | 20 |
| Female         | 51.16% | 22 |
| Other Identity | 2.33%  | 1  |

### Respondent Racial/Ethnic Identity

|                              |        |    |
|------------------------------|--------|----|
| Non-Hispanic White           | 7.32%  | 3  |
| Black/African American       | 31.71% | 13 |
| Native America/Alaska Native | 2.44%  | 1  |
| Latinx/Hispanic/Mexican      | 48.79% | 20 |
| Asian/Pacific Islander       | 0.00%  | 0  |
| Multiracial/Mixed Race       | 9.76%  | 4  |

### Education Level (Highest Completed)

|  |        |    |
|--|--------|----|
| Less than or some High School            | 30.77% | 12 |
| High School graduate or equivalent (CED) | 20.51% | 8  |
| Technical/Vocational Training            | 2.56%  | 1  |
| Some college                             | 20.51% | 8  |
| College graduate or higher               | 25.64% | 10 |

## Appendix B: HIA Process and Research Methodology

Health Impact Assessment (HIA) is a public engagement and decision-support tool that can be used to assess policy and planning proposals and make recommendations to improve health outcomes associated with those proposals. The fundamental goal of HIA is to ensure that health and health inequities are considered in decision-making processes using an objective and scientific approach, and engaging stakeholders in the process.

Health Impact Assessment is a flexible research process that typically involves six steps:

1. **Screening** involves determining whether or not a HIA is warranted and would be useful in the decision-making process.
2. **Scoping** collaboratively determines which health impacts to evaluate, the methods for analysis, and the work plan for completing the assessment.
3. **Assessment** includes gathering existing conditions data and predicting future health impacts using qualitative and quantitative research methods.
4. Developing **recommendations** engages partners by prioritizing evidence-based proposals to mitigate negative and elevate positive health outcomes of the proposal.
5. **Reporting** communicates findings.
6. **Monitoring** evaluates the effects of a HIA on the decision and its implementation as well as on health.

The Advisory Committee met on a monthly basis between May and August, for a total of four meetings. Advisory Committee members contributed to the project scope, advised on data and research sources, connected HIP to focus group participants and interviewees, reviewed the draft report, prioritized recommendations, and advised on communications activities.

A sub-group of the Advisory Committee was identified as Community Engagement Partners. This team identified and recruited participants for focus groups and interviews, and coordinated and co-facilitated HIA focus groups.

## Methods

### Literature Review

This report draws upon a multidisciplinary body of research on a variety of topics including the juvenile system, the adult criminal justice system, the science of adolescent development, and the health impacts of incarceration. Given this broad scope, we sought guidance from the project's Advisory Committee members to narrow our literature search to the most updated and relevant sources. In addition, we turned to the literature to triangulate qualitative research findings.

We gathered this evidence using databases such as JSTOR, PubMed, Google Scholar, general internet searches and other public health and sociological databases. Grey literature reviews were conducted by analyzing reports from reputable organizations such as Human Rights Watch, the Campaign for Youth Justice, and Justice for Families. We invoke national research

to illuminate important trends and context, but we cite California-specific data when available.

Secondary data sources were analyzed to inform baseline conditions and predictions. Sources include The United States Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, the California Department of Corrections and Rehabilitation, and the California Office of the Attorney General.

## **Qualitative Data Collection**

### ***Focus groups***

Our HIA team – in partnership with community-based social justice organizations including Communities United for Restorative Youth Justice, Fathers & Families of San Joaquin, Silicon Valley De-Bug, and Youth Justice Coalition – conducted a total of eight focus groups throughout the state of California with individuals and families impacted by the juvenile system and juvenile transfer laws. Focus group participants were selected with a non-probability purposive sampling methodology and a nomination recruitment strategy wherein Community Engagement Partners identified eligible youth and families. These group discussions were conducted in three California cities: Oakland, Stockton, and Los Angeles. Participants filled out brief demographic questionnaires before each session

First, we conducted three focus groups with individuals who got involved with the juvenile system at a young age, were transferred to adult court, and served sentences at both juvenile and adult facilities. Second, we conducted three focus groups with family members of individuals who were tried as adults. Lastly, we conducted one focus group with youth currently on probation through juvenile court and one focus group with youth who are currently in detention awaiting adjudication in adult court.

Focus groups questions were created with an equity lens and with the understanding that health is informed by social determinants. In addition, we used an inductive reasoning approach and focused on the following main categories of questions: Developmental related questions; experiences in the juvenile system and the adult system; the impacts that being system-involved have on education, employment, family, and identity; and concluding questions on a vision for change.

### ***Interviews***

In addition, we conducted key informant interviews with six professionals who have detailed knowledge of California's juvenile system. We spoke with two public defenders who have represented clients in both juvenile and adult court settings. We spoke with a former probation officer and a former chief probation officer to learn more about outcomes for system-involved juveniles. In addition, we interviewed an adolescent mental health specialist and a probation camp literacy educator to better understand the needs of system-involved youth and the services available to them.

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Top right: Youth Justice Coalition members were co-authors and helped to lead the statewide campaign to pass Proposition 57 in 2016. It was the first ballot initiative created and led largely by formerly incarcerated people and families across California — organizations that make up the California Alliance for Youth and Community Justice (CAYCJ).

Top left: Homies 4 Justice interns hit the transit lines in the Bay Area to campaign for Proposition 57. They talked to commuters across the Bay Area to advocate against youth being charged as adults. As the face and organizers of this campaign, youth had a direct hand in passing Proposition 57 in California. Oakland, CA, November 2016.

Bottom: In 2012, Youth Justice Coalition members surveyed more than 2,000 residents across Los Angeles County on solutions to address violence. People could've chosen more police, more gang injunctions, or more incarceration — but instead they prioritized youth centers, youth jobs, and intervention workers and peace-builders in schools and communities.

