



# TRANSFORMING JUSTICE

Bringing Pennsylvania's Young People Safely Home from  
Juvenile Justice Placements

Authored by Lisa Pilnik, Robert G. Schwartz, Karen Lindell,  
Jessica Feerman and Christina Sorenson

Juvenile Law Center  
Fighting for the rights  
and well-being of youth

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### A Publication of Juvenile Law Center

#### Authored by:

Lisa Pilnik, Robert G. Schwartz, Karen Lindell,  
Jessica Feierman and Christina Sorenson



Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the foster care and justice systems.

Founded in 1975, Juvenile Law Center is the first nonprofit, public interest law firm for children in the country. We fight for youth through litigation, appellate advocacy and submission of *amicus* (friend-of-the-court) briefs, policy reform, public education, training, consulting, and strategic communications. Widely published and internationally recognized as leaders in the field, Juvenile Law Center has substantially shaped the development of law and policy on behalf of youth. We strive to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values. For more information about Juvenile Law Center's work, visit [www.jlc.org](http://www.jlc.org).

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## INTRODUCTION

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There is broad consensus that incarcerating youth in the juvenile justice system is both dangerous and ineffective. Secure facilities and other juvenile justice placements pose a high risk of short- and long-term harm to children. Placing young people outside their homes disrupts family ties, undermines educational continuity and developmental trajectory, and can cause trauma and undermine a child's developmental trajectory. Recent research has shown that placement also leads to long-term mental and physical health consequences. Moreover, far too many youth sent to "treatment" facilities experience abuse or neglect and fail to receive needed behavioral health services.

Pennsylvania stakeholders have taken important steps to decrease placement rates and improve outcomes for youth—and local and state leadership is already engaged in continuing the reform efforts. At the same time, the need to dramatically change our responses to young people in the justice system is obvious. Where Pennsylvania was widely recognized as a leader in the 1990's and early 2000's, we now lag behind other states in the extent to which we use placement and the extent of our racial disparities.

Wordsworth. VisionQuest. Glen Mills. Luzerne. Year after year, facilities in Pennsylvania are sued or shut down after the horrific treatment of youth in their care comes to light. Each time, children are removed from the placement and additional oversight is imposed to try to prevent a recurrence, and then it happens again. Oversight isn't enough.

To meet its obligations to our children, Pennsylvania must re-examine its reliance on juvenile placements. Working in collaboration with youth in the system and their families, we must create a system that stresses high-quality community-based solutions that are safer for children, promote public safety, and more effectively and efficiently use our resources.

## PART I: BACKGROUND AND CONTEXT

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### A. Juvenile Placement in Pennsylvania

Pennsylvania's Juvenile Act, like others around the country, emphasizes the importance of developing youth competency, keeping young people in their homes, limiting reliance on confinement, and relying on evidence based practices.<sup>1</sup> This approach aligns with recent U.S. and Pennsylvania Supreme Court case law affirming that youth in the justice system must be treated differently from adults, consistent with their developmental and neurological differences.<sup>2</sup>

Pennsylvania stakeholders at the state and local levels have taken numerous steps to improve outcomes for youth involved in the juvenile justice system. For example, during the last decade, the Council of Chief Probation Officers, the Juvenile Court Judges Commission, and the Pennsylvania Commission on Crime and Delinquency launched the Juvenile Justice System Enhancement Strategy (JJSES), which has improved the handling of juvenile justice cases and led to modest, but important, decreases in recidivism.<sup>3</sup> The Commonwealth has focused its juvenile justice funding on evidence-based practices and prevention strategies.<sup>4</sup> The state and local jurisdictions that have engaged in the Juvenile Detention Alternatives Initiative (JDAI) process have focused on reducing reliance on detention.<sup>5</sup> Some Pennsylvania jurisdictions have instituted nationally recognized policies or programs (e.g., Philadelphia's school-based diversion<sup>6</sup> and Allegheny County's Balanced and Restorative Justice work).<sup>7</sup> And our Juvenile Court Judges' Commission tracks and shares data about youth disposition, detention, and placement—providing a key start to transparency and accountability in our process.<sup>8</sup>

Yet there is still much room for improvement. Although arrest rates have declined significantly, these decreases in placement are more modest than the national average.<sup>9</sup> Pennsylvania still uses out-of-home placements far too frequently, costing our citizens dearly while not producing good results. Our rates of racial and ethnic disparities, placement for non-violent offenses, and placements in large facilities are all well above the national average.<sup>10</sup> Additionally, the voices of youth, families, and impacted communities are far too often missing in discussions of the problems and solutions.<sup>11</sup>

Pennsylvania's leadership can channel their vision and commitment to youth by seizing this opportunity to partner with youth and families to create transformative policy reforms to fully support our youth in their homes and communities. This report provides background research, information about other models, and recommendations for change to support these goals.

#### 1. Pennsylvania Placement Practices

There were 7,623 secure detention admissions in Pennsylvania in 2018, a 24.7 percent reduction in use since 2014.<sup>12</sup> There were 2,965 delinquency placements in Pennsylvania courts in 2018.<sup>13</sup> These placements represented 6.2% of all dispositions statewide<sup>14</sup> and a 29% reduction since 2014.<sup>15</sup>

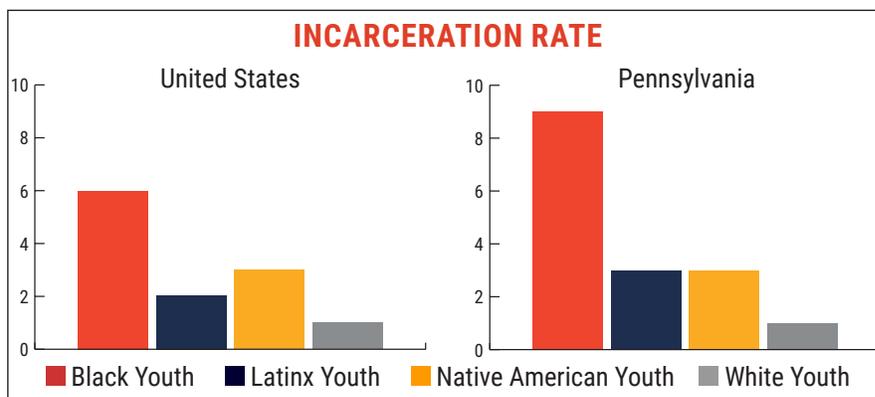
More than half of youth in placements in the Pennsylvania juvenile justice system were in "institutional" placements, per the Pennsylvania Juvenile Case Management System categorization, including General Residential Services (29.6% of youth placements), YDC Secure (9.6%), Secure Residential Services (8.6%), and YDC/YFC Non-Secure (5.5%).<sup>16</sup> Youth were also placed in Residential Treatment Facilities (RTF) (9.6%), Community Residential Service/Group Homes (20.4%), and Drug and Alcohol Programs (14.2%).

Many of these youth were away from home and disconnected from their families and other supports for long periods: 1,870 youth experienced out-of-home placements of more than 28 days in 2018 as a part of a delinquency disposition, and the median length of stay in out-of-home placement was 9.9 months, despite research showing stays that exceed six months do not reduce recidivism.<sup>17</sup> Many youth were also placed far from home, making it difficult to maintain positive supportive relationships, engage in prosocial activities, and benefit from school stability. Geography also plays a significant role in young people's juvenile justice experiences, with placement rates varying widely by county.<sup>18</sup>

## 2. Placement Rates: Areas for Improvement

As discussed above, Pennsylvania has seen improvements in the form of declining arrest and delinquency adjudication rates and reduced recidivism. Yet in the context of the larger justice system reforms happening across the country, Pennsylvania has gone from being a leader in the 1990s to trailing national averages, sometimes significantly, on several important measures.

- Significant racial and ethnic disparities exist in juvenile justice systems across the country, but the situation is even more dire in Pennsylvania. Nationally in 2015, Black youth were incarcerated at a rate 6 times the rate of white youth, and Latinx and Native American youth were incarcerated at rates of 2:1 and 3:1 respectively.<sup>19</sup>



In Pennsylvania in 2015, Black youth were 9 times as likely to be incarcerated, with Latinx and Native American youth experiencing a 3 to 1 disparity.<sup>20</sup> Moreover, the data suggest that disparities increase at each stage of the delinquency system. For example, while Black Non-Hispanic youth constitute 14.1% of the state population, they make up 38.1% of delinquency allegations, 43.1% of placements, and 59.5% of all secure placements.<sup>21</sup>

- Pennsylvania frequently places youth for non-criminal acts and has particularly high rates of placement for technical violations. A state-by-state comparison published by the Pew Charitable Trusts in 2018<sup>22</sup> found that Pennsylvania had the fourth highest rate of juvenile confinement for these acts nationally.<sup>23</sup> Approximately 1 in 11 young people in custody for noncriminal acts in the country were confined in Pennsylvania (999 total in Pennsylvania out of 10,885 nationally).<sup>24</sup> According to the Pew report, twenty-six percent of youth in Pennsylvania placements were committed for technical violations (compared to 15% nationally).<sup>25</sup> And over half of delinquency placements statewide (53.7%) were ordered as a result of a disposition review, not a new delinquency adjudication.
- Pennsylvania was also flagged in a report from The Annie E. Casey Foundation for having “the majority of placements into residential custody stem from technical violations and other rule breaking, not new offenses.”<sup>26</sup> The data also suggest high rates of placement for status offenses in juvenile facilities, pointing to a need for additional research as status offenses should primarily be handled through the dependency system or by district magisterial or municipal court judges.<sup>27</sup>



- In 2015, Pennsylvania had 196 youth in juvenile facilities per 100,000 youth in the population, compared to the national average rate of 152 per 100,000.<sup>28</sup> This means that Pennsylvania youth are 29% more likely to be confined than youth around the country.
- In Pennsylvania in 2016, 51% of youth placed in facilities were in large facilities of 100 or more beds, which was twice the national average of 25% that year.<sup>29</sup> Pennsylvania also relies in part on private, for-profit facilities, which increase the harm to youth because of their conflicting service and financial incentives.<sup>30</sup>



- In a one-day count of youth in juvenile residential placements, 12% of committed youth were in placement for simple assault, compared to 8% of committed youth nationally.<sup>31</sup> 80% of committed youth were in placement for offenses not on the violent crime index, compared to 73% nationally.<sup>32</sup>

While we lack reliable Pennsylvania data on placement rates for LGBTQIA youth\*, dependent youth, and youth with disabilities, national research suggests that these youth are at heightened risk of justice system involvement and placement.<sup>33</sup> Data from the Defender Association of Philadelphia confirms significant disproportionalities in placement for youth with dependency histories and youth with disabilities (See text box). Moreover, while boys make up the vast majority of youth in juvenile justice placements in Pennsylvania, a lack of access to services and alternatives for girls may still be leading to unnecessary, longer stays in detention or more restrictive placements for less serious offenses.<sup>34</sup> For example, in Philadelphia, the city's Post Adjudicatory Evening Reporting Center does not serve girls, completely closing off a potential alternative to out-of-home placement.

## WHO IS IN PLACEMENT? DATA FROM THE DEFENDER ASSOCIATION OF PHILADELPHIA

Data gathered by the Defender Association of Philadelphia provides a snapshot of many of the young people in placement in Pennsylvania. The data below reflect the Defender Association's client in placement on July 12, 2019. Although this data does not capture the experience of all clients in placement across the state, Philadelphia has more young people in placement than any other Pennsylvania county, and the Defender Association's data provides a fuller picture of the young people in placement and their prior experiences than publicly available statewide data provide.

**Demographic information:** Reflecting trends statewide, all but one of the Defender Association's clients were youth of color; 84% were Black and 93% were male. Youth ranged in age from 14 to 20, with most in the 16- to 18-year-old category. No data regarding gender identity or sexual orientation were available.

**Dependency history:** Nearly 42% of the Defender Association's clients in juvenile delinquency placement have had cases in the dependency system.

**Prior placements:** Although many of the youth were in their first delinquency placement, a majority of youth in placement (66%) have previous placement history.

**Reason for current placement:** The vast majority of youth in placement (45 of 73) are in placement for technical probation violations. Only 12 were placed following an adjudication of delinquency. A significant number (16) are in placement because of difficulties in prior placements, either because they failed to adjust to the prior placement or because they ran away.

**Reason for initial adjudication:** A significant number of youth in placement (42%) were initially adjudicated for misdemeanor offense.

**Disability or mental health diagnosis:** A majority of youth in delinquency placement (62%) have a documented disability or mental health diagnosis.

**Special education eligibility:** Over half of youth in delinquency placement (51%) have an Individualized Education Plan for special education needs.

*For full data, please see Appendix A. The above data does not include the Defender Association's direct file juvenile clients.*



\*LGBTQIA is an inclusive term intended to include individuals with non-mainstream sexual orientation or gender identity, including people who identify as gay, lesbian, bisexual, transsexual, queer, questioning, intersex, and asexual.

***“When I was at the facility, I was too scared to open up and talk. I didn’t think anyone would believe me. I didn’t think anything would be done if I ever did speak up. Why should I think anyone would help me if they are sitting there harming me?”***

– Lilly, a Juveniles for Justice Advocate speaking out at City Council Hearing

### 3. Harms in Placement

Out-of-home placements for youth separate youth from their families and communities; imposes trauma; expose youth to abusive practices, including strip searches, physical and chemical restraints, and solitary confinement; put young people at risk of physical and emotional abuse; and are ineffective in reducing recidivism.

In Pennsylvania, these problems are acute, as reflected in recent devastating examples of youth suffering from abuse in facilities. We must listen not only to adult observers of these abuses but to the young people themselves who lived through these experiences.

At Glen Mills Schools, a private facility for youth who have been adjudicated delinquent, staff repeatedly assaulted youth and encouraged youth to fight each other, creating an environment of fear and toxic stress.<sup>35</sup> The “school” also routinely failed to provide appropriate educational services to youth, particularly those with special education needs.<sup>36</sup> In 2019, the Pennsylvania Department of Human Services found “that youth placed at Glen Mills are at imminent risk and their safety is in jeopardy,” and ordered emergency removal of the last young people still confined there.<sup>37</sup>

Youth placed at Wordsworth Academy, a Philadelphia residential treatment facility for youth involved in the juvenile justice or child welfare system, also suffered abuse. Wordsworth was closed in 2016 after David Hess, a 17-year-old boy, died of suffocation after being punched in the ribs by staff; his death was ultimately ruled a homicide.<sup>38</sup> Wordsworth had previously paid to settle lawsuits brought by residents for physical injuries inflicted by staff, including one girl whose jaw was broken and another girl whose arm was fractured.<sup>39</sup> A 2017 investigation by the *Philadelphia Inquirer* and *Daily News* found that over a 10-year span, “49 sex crimes have been reported at Wordsworth, including 12 rapes and 23 accounts of sexual abuse.”<sup>40</sup> The *Inquirer* also reported that the facility itself had “holes in the walls, exposed wiring, broken light fixtures, and faulty heaters.”<sup>41</sup>

VisionQuest, a controversial program that operates in many states, had a Philadelphia “shelter” that provided short-term placements for youth, including those awaiting adjudication and placement by the juvenile court. State inspections of the facility included reports of dangerous treatment and living conditions.<sup>42</sup> In separate incidents, a staff member struck a child in the face, a child’s head went through a wall when a staff member “improperly attempted to restrain the child,” and a child was choked and hit by a staff member.<sup>43</sup> Mouse droppings were found in the cafeteria, and bathrooms and eating areas were “corroded with a dirty brown substance.”<sup>44</sup> Staff members cursed at and verbally attacked children in their care, saying things like “You’re going to be nothing in life.”<sup>45</sup> VisionQuest closed the facility in 2017 after their contract ended but may re-open it as a placement for unaccompanied migrant youth.<sup>46</sup> Glen Mills, Wordsworth, and VisionQuest are among the most recent and documented examples of mistreatment of youth in the system, but these stories of abuse echo elsewhere. In April 2019, Disability Rights Pennsylvania filed a lawsuit alleging abuse by staff at several state-run Youth Development Centers,<sup>47</sup> and Philadelphia stopped sending youth to two other residential facilities run by Mid-Atlantic Youth Services that are currently under investigation.<sup>48</sup> A December 2018 report published by Children’s Rights, Inc. and Education Law Center exposed dangerous conditions at residential facilities for dependent youth, many of which also house youth involved in the juvenile justice system, including sexual assaults, physical and verbal aggression and maltreatment (including punching and choking youth), and inappropriate use of restraints (many instances of which resulted in physical injury).<sup>49</sup> And perhaps most notably, youth held in private correctional placement as a result of the Kids for Cash scandal in Luzerne

County suffered devastating and lasting damage from their time in placement.<sup>50</sup> Many youth also choose not to report abuse or end up withdrawing such reports due to fear of retaliation or the (often correct) assumption that authorities will not believe them or nothing will change. In several facilities, the installation of video cameras finally showed incontrovertible evidence that youth were being abused. And the CEO of VisionQuest recently told the *Inquirer*, “complaints of abuse occur at virtually all juvenile-justice centers.”<sup>51</sup>

Youth in Juvenile Law Center’s Juveniles for Justice Program spoke out about their concerns about safety in their publication, *Broken Bridges: How Juvenile Placement Cut Off Youth from Communities and Successful Futures*: “We and our peers have experienced harsh treatment—like restraints, broken ribs, and being burnt by a hair iron—that has negatively impacted our lives. Instead of being sent to a place that would have to rehabilitate us and provide us support, we endured more damage inside this facility than before we entered.”<sup>52</sup> They also emphasized the harms of being separated from family and friends just when they most need connection, and the devastating impact of harmful practices in placement, including strip searches that were traumatizing and degrading; physical restraints and physical abuse, such as being slammed into the wall or floor or punched; placement in solitary confinement where all they could see was “the walls and the floor;” and educational disruption that made it hard for them to complete high school.<sup>53</sup>

## A NOTE ON PRIVATE PLACEMENTS

A striking feature of Pennsylvania’s juvenile justice system is its heavy reliance on private placements. Pennsylvania has more youth in private juvenile facilities than any other state.\* Three quarters of the Pennsylvania youth in placement are in private facilities, compared with less than a third nationally. Pennsylvania’s private facilities also house many youth from other states. These facilities vary widely in size, type, and approach, ranging from large institutions run by for-profit companies to small, treatment-oriented group homes.

Private providers can play a key role in the transformation of the justice system. Private providers may have more flexibility than state- or county-run facilities to shift their focus from placement to community-based services, and many providers have already begun this work. We therefore recommend that the state provide sufficient funding, training, and supports to providers and provider associations in making this transition effectively for youth, families, and staff.

The Pennsylvania juvenile justice system’s reliance on private providers to provide placement, however, has at times created obstacles to reform. Most notably, private for-profit facilities may increase harm to youth because of their conflicting service and financial incentives.\*\* Moreover, private providers—both for- and non-profit—often have less oversight than state-run facilities, particularly when it comes to education. Finally, youth, families and advocates have noted that the outsized influence of providers at the state and county levels can make it difficult for other voices to be heard. To address these problems, we recommend that the state should ensure that youth, families, and affected communities play a leading role in reform efforts, that the state cease reimbursement for services provided in for-profit facilities, and that all placement providers—public and private—be subjected to tighter regulations, better oversight, and more publicly available information. (For further details on these recommendations, see Part IV)

\*Sarah Hockenberry & Anthony Sladky, *Juvenile Resident Facility Census, 2016: Selected Findings*, JUVENILE JUSTICE STATISTICS (2018), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/251785.pdf>.

\*\*National Juvenile Justice Network, *CONFINING YOUTH FOR PROFIT: POLICY PLATFORM* (2015), <http://www.njjn.org/our-work/confining-youth-for-profit-policy-platform>.

## B. Legal and Policy Framework

State and federal policies frame current practices and suggest directions for reform. Pennsylvania's juvenile justice system is largely county-based: county juvenile courts make orders of disposition pursuant to the Juvenile Act; county juvenile probation officers divert youth from the system and supervise those who remain; and county children and youth agencies enter into contracts with service providers. Under state law, costs for these services—including placements in both private and state-run facilities—are shared by the state and the county agency, with the state reimbursing counties on a sliding scale designed to discourage the most restrictive placements.<sup>54</sup> The state also impacts county-level policy through the needs-based planning and budgeting process which requires that each county develop a plan showing the predicted service needs for court-involved youth and the cost of those services. Through this budgeting process and the sliding reimbursement scale, existing state law offers mechanisms to encourage counties to reduce the use of placement and expand community-based programs.

The impact of these existing state-law mechanisms is limited, however, by the wide latitude juvenile court judges have over dispositions. Notwithstanding a county plan to reduce use of placement, a juvenile court judge can commit any youth adjudicated delinquent to almost any out-of-home placement, regardless of cost. The court also has the authority to order any service the court can order for a dependent child; to place the child on probation under whatever conditions it prescribes; and to impose fines, costs, fees, and restitution.<sup>55</sup> Although courts are instructed to follow the “general principle” to confine a child only when necessary and for the minimum amount of time needed to protect the public interest and meet the child’s rehabilitative needs,<sup>56</sup> there are few specific statutory limits on the judicial authority to commit a youth adjudicated delinquent to placement. Before committing a youth to an out-of-home placement, the court must provide “the reasons why commitment to that facility or type of facility was determined to be the least restrictive placement that is consistent with the protection of the public interest and best suited to the child’s treatment, supervision, rehabilitation and welfare,”<sup>57</sup> but once commitment is ordered it is difficult to challenge on appeal. Juvenile courts review all dispositions at least every six months and may commit a youth to placement during these disposition reviews.<sup>58</sup>

Juvenile probation officers are also afforded wide discretion under the Juvenile Act and the Rules of Juvenile Court Procedure, and juvenile probation has been a key participant in prior reform efforts in the state.<sup>59</sup> But while many county probation departments have been taking note of recent literature on neuroscience and the adolescent brain, the core probation functions in the Juvenile Act still emphasize monitoring over counseling and other supportive interventions.<sup>60</sup>

In addition to the legal parameters imposed by the Juvenile Act and the Rules of Juvenile Court Procedure, other state-level entities wield substantial statewide influence and have shaped prior reform efforts. These entities include, among others, the Juvenile Court Judges Commission (JCJC), the Pennsylvania Council of Chief Juvenile Probation Officers (the Chief’s Council), the Juvenile Justice and Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency (JJDPCC), and the Pennsylvania Council of Children, Youth and Family Services (PCCYFS).<sup>61</sup>

Federal law has also been a driver of prior reforms, and recent federal changes continue to shape the legal landscape in Pennsylvania. The newly reauthorized Juvenile Justice and Delinquency Prevention Act (JJJPA), for example, requires states to identify and establish a plan to address racial and ethnic disparities in their justice system, strictly limits the extent to which youth who commit status offenses can be placed in facilities for violating a valid court order related to an initial status offense, and creates a focus on data-driven, evidence-based prevention programs.<sup>62</sup> Additionally, the Family First Prevention Services Act, set to be fully implemented in Pennsylvania in October 2020, substantially changes Title IV-E funding for child welfare services, opening up federal entitlement funding for prevention services and limiting the funding available for congregate care.<sup>63</sup>

## PART II: NATIONAL RESEARCH ON THE HARMS OF YOUTH JUSTICE PLACEMENTS

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As noted above, juvenile justice placements harm young people, are ineffective, and can entrench racial disparities. In 2011, The Annie E. Casey Foundation published *No Place for Kids*, establishing that youth incarceration was “(1) dangerous, (2) ineffective, (3) unnecessary, (4) obsolete, (5) wasteful, and (6) inadequate.”<sup>64</sup> The report detailed the abuse that adolescents often faced in juvenile correctional facilities,<sup>65</sup> including experiences like those described in Pennsylvania’s facilities. Relying on a wide range of research, the report also demonstrated that incarceration produced poor outcomes and was an ineffective use of public funds, as recidivism rates were generally high, despite the high costs.<sup>66</sup> Incarceration is also overused, frequently for youth who do not pose a risk to public safety and despite numerous alternatives to incarceration have been shown to produce better results.<sup>67</sup> Although there is far less research available on non-secure residential programming for juvenile justice involved youth, programs such as boot camps, wilderness programs, and some residential treatment centers have also have been shown to yield poor outcomes for youth.<sup>68</sup>

### A. Youth Placement is Harmful

In a national survey of over 7,000 youth in juvenile facilities, an unacceptably high rate of youth (29%) reported “being beaten up or threatened with being beaten up since coming to their facility.”<sup>69</sup> Nearly one quarter (24%) of victims said their assailants were facility staff.<sup>70</sup> Federal Bureau of Justice Statistics also report a high rate (9.5%, nationally) of sexual victimization in juvenile facilities, including victimization by both staff and other youth.<sup>71</sup>

Young people involved in the juvenile justice system have higher rates of past exposure to violence than other young people, and justice system placements can make trauma symptoms worse.<sup>72</sup> The hallmarks of correctional approaches to confinement, including belligerent staff, aggression between youth and staff, lack of privacy, and seclusion and restraint, can trigger trauma-related responses or exacerbate already present traumatic stress symptoms.<sup>73</sup> These consequences are amplified for girls and youth who may already be suffering from Post Traumatic Stress Disorder.<sup>74</sup>

Placement also has long-term impacts on physical and mental health which are exacerbated by lengthier periods of incarceration. A 2017 article in the journal *Pediatrics* found that:

- Even short periods of youth incarceration (less than one month) were associated with depressive symptoms as an adult;
- Youth incarceration for periods of 1 to 12 months were associated with worse general health as an adult; and
- Longer periods of youth incarceration (more than one year) were associated with suicidal thoughts, depressive symptoms, and functional limitations as an adult.<sup>75</sup>

Youth who experience placement also have much poorer educational attainment and employment outcomes as adults.<sup>76</sup> This is disturbing but unsurprising given the educational disruptions they experience during incarceration and low rates of re-enrollment in school after returning home.<sup>77</sup>

### B. Youth Placement Interferes with Positive Transitions to Adulthood

Dr. Laurence Steinberg, a world-recognized expert on adolescence, has shown that juvenile justice system involvement and particularly placement in justice facilities disrupts young people’s psychosocial development.<sup>78</sup> Adolescence and young adulthood are a vital time for brain development.<sup>79</sup> Removing youth from their communities, families, and other caring adults and restricting their ability to have age-appropriate experiences and opportunities during this time can delay, limit, or otherwise inhibit their normal development.<sup>80</sup> According to Steinberg, it disrupts the processes that help youth successfully transition to adulthood in multiple ways:

- In the absence of support from parents and other supportive adults, and without opportunities to exert independence and “autonomy, the gradual process of maturation—to learn self-direction, social perspective, and responsibility—may be effectively cut off.”
- The separation from key adults and even friends and romantic partners can hinder normal development and reduce incentives “to follow through on conventional goals.”
- Early labeling of youth as “delinquents” or “criminals” can cause long-term negative consequences, “as youth may respond to society’s recrimination by withdrawing further from conventional activities and seeking support, approval, and esteem” from peers and adults engaging in criminal activity.<sup>81</sup>

Steinberg and colleagues also explain that the typical juvenile justice services a young person receives to develop competency, such as educational and vocational services, are unlikely to give them the skills they need to succeed as adults.<sup>82</sup> For example, a young person “may leave a residential treatment program that offers training in automotive repair with the ability to fix a car but without the psychosocial capacities necessary for being able to report to work on time each day or manage his earnings.”<sup>83</sup>

The quality of education provided in juvenile justice facilities is also typically far below the level in community schools and often fails to meet the special education needs of confined youth, setting them on a harmful trajectory as they transition to adulthood.<sup>84</sup>

### C. Youth Placement is Ineffective

Many years of research show that youth placement generally does not reduce re-offense rates or increase public safety. In 2015, Pew Charitable Trusts reviewed wide-ranging research and concluded that:

- **Placing youth in correctional-style facilities does not lead to lower recidivism rates and may actually increase reoffending.** One of the studies reviewed for this finding included longitudinal research on “serious adolescent offenders” in Pennsylvania and Arizona.
- **Longer lengths of stay have also not been proven to reduce recidivism.** In some cases, longer stays in juvenile facilities were associated with higher recidivism rates.
- **Secure residential placements are typically much more expensive than community-based care.** Data from several states indicate that these facilities are “a poor return on public investments.”<sup>85</sup>

### D. Youth Placement is Inequitable

Placing youth outside the home also creates and entrenches racial disparities. As *No Place for Kids* described, “at virtually every stage of the juvenile justice process, youth of color—Latinx and African-Americans, particularly—receive harsher treatment than their white counterparts, even when they enter the justice system with identical charges and offending histories.” More specifically, “among youth adjudicated delinquent in juvenile court, African-American youth are more likely than white youth to be placed and, if placed, more likely to be sent to a state youth correctional facility, rather than a private group home or residential treatment center.”<sup>86</sup> Youth with disabilities and LGBTQIA youth are also severely overrepresented in the juvenile justice system and in juvenile justice placements.<sup>87</sup> Moreover, once in these placements, these youth are at unique risk of additional harm.<sup>88</sup>

## THE JUVENILE JUSTICE SYSTEM'S LONG HISTORY OF RACISM AND INEQUITY

**“In its early history, the inequitable treatment of youth of color in the juvenile justice system was the result of intentional and blatant race-based policies. Today, our policies are race-neutral, but remain covertly steeped in the same legacy of structural racism.”**

—James Bell and Laura John Ridolfi, “Adoration of the Question.”

Pennsylvania has a unique opportunity to eliminate racial and ethnic disparities and to create an equitable system of justice. Reforms across the country have too often resulted in reductions in population but increases in disparities. Pennsylvania can establish itself as a leader on this issue by examining the historical roots of these disparities and engaging proactively in addressing them.

Today’s inequities in juvenile justice involvement have their roots in cruel and discriminatory practices dating back to the 1800s. The country’s earliest juvenile detention facilities, including the Philadelphia House of Refuge, excluded Black children from rehabilitation services that were offered to white youth, believing that it would be “degrading” to the white children or a “waste of resources.” Black children were also often placed in adult prisons after being excluded from juvenile facilities housing white children. After the Civil War, Black children and adults were frequently arrested for minor offenses and then forced to work through “convict leasing,” often in backbreaking manual labor jobs under terrible conditions.<sup>2</sup> In the early- to mid-1900s, advocates and public officials continued to observe noticeable differences in the services available to and the treatment of children of color, including documenting disproportionality and harsher treatment of Black youth in courts across the county.<sup>4</sup> Compounding the problem was a “child-saving” mentality in which the justice system was purportedly working to help children in need, while simultaneously pulling young people out of their families and communities in ways that were ultimately deeply destructive. This idea still pervades the justice systems.<sup>5</sup>

Although Congress, through the Juvenile Justice and Delinquency Prevention Act, and individual jurisdictions have made numerous attempts to address racial and ethnic disparities, there is still much work to be done. Across the country, the history of racism and mistreatment is still felt in the policies and practices of today. Although youth of color are not explicitly excluded from programming, Black children are significantly less likely to receive diversion and more likely to be incarcerated than white youth.<sup>6</sup> They are also much more likely to be transferred to the adult criminal justice system.<sup>7</sup> Understanding this history is essential in order to “fully understand the entrenchment of racial and ethnic disparities in today’s juvenile justice system”<sup>8</sup> and to develop effective policies to right this historical wrong.

\*\*For more on the history of the juvenile justice system’s treatment of children of color, see W. Hayward Burns Institute’s “Adoration of the Question” (<https://tinyurl.com/yynxv78v>), and Youth First Initiative’s “Jim Crow Juvenile Justice” (<https://tinyurl.com/y45vq2dk>).

1-4 James Bell & Laura John Ridolfi, *Adoration of the Question: Reflections on the Failure to Reduce Racial & Ethnic Disparities in the Juvenile Justice System*, W. HAYWOOD BURNS INST. (Dec. 2008), <https://www.burnsinstitute.org/wp-content/uploads/2013/12/Adoration-of-the-Question.pdf>.

5 Calli M. Cain, *Child Savers*, in *THE ENCYCLOPEDIA OF JUVENILE DELINQUENCY AND JUSTICE* (2017).

6 Joshua Rovner, *Policy Brief: Racial Disparities in Youth Commitments and Arrests*, THE SENTENCING PROJECT (Apr. 1, 2016) <https://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf>.

7 Jeree M. Thomas & Mel Wilson, *The Color of Juvenile Transfer: Policy & Practice Recommendations*, NAT’L ASS’N OF SOC. WORKERS (2017), <https://www.socialworkers.org/LinkClick.aspx?fileticket=30n7g-nwam8%3D&portalid=0>.

8 James Bell & Laura John Ridolfi, *Adoration of the Question: Reflections on the Failure to Reduce Racial & Ethnic Disparities in the Juvenile Justice System*, W. HAYWOOD BURNS INST. (Dec. 2008), <https://www.burnsinstitute.org/wp-content/uploads/2013/12/Adoration-of-the-Question.pdf>.

## Dramatic Reductions in Placement

Lucas County, Ohio transformed their system by making changes in policy and practice, including expanding their continuum of community-based services. Court-led efforts significantly reduced the use of juvenile detention, which led to a significant decrease in commitments to the state juvenile prison system: from 300 in 1988<sup>2</sup> to only 18 in 2018.<sup>3</sup>

In New York City in the mid-1990's, 3,800 youth per year were sent to large facilities either operated by the New York State Office of Children and Family Services (OCFS) or by private providers contracted by OCFS.<sup>4</sup> By 2016, New York no longer sent youth from its family court to state operated prisons. Today, around 100 youth from New York City are placed outside of home, and about a dozen are in a locked facility.<sup>5</sup> In an overview of *Close to Home* developed by the Columbia University Justice Lab, the authors explain that it “was not purely an initiative that transferred custody for youth from one jurisdiction to another, but rather, a complete reimagining of the City’s youth justice system.”<sup>6</sup>

1 Shaena M. Fazal, *Safely Home*, YAP (June 2014), <http://www.yapinc.org/Portals/0/Documents/Safely%20Home%20Preview/safelyhome.pdf>.

2 *Id.*

3 2018 Annual Report, Lucas County Juvenile Court (2018), <https://co.lucas.oh.us/DocumentCenter/View/75032/2018-Annual-Report-LCJC?bidId=>.

4 Marsha Weissman et al., *Moving Beyond Youth Prisons: Lessons from New York City’s Implementation of Close to Home*, Columbia Univ. Justice Lab (Feb. 2019), [https://justicelab.columbia.edu/sites/default/files/content/Moving%20Beyond%20Youth%20Prisons%20-%20C2H\\_0.pdf](https://justicelab.columbia.edu/sites/default/files/content/Moving%20Beyond%20Youth%20Prisons%20-%20C2H_0.pdf).

5 *Id.*

6 *Id.*

## PART III: APPROACHES TO REDUCING YOUTH PLACEMENT

Recognizing the negative consequences of incarceration naturally leads stakeholders to ask how to reduce incarceration and what to do instead. Researchers and advocates have identified key strategies for bringing about needed change, and although no state or local jurisdiction has a “perfect” juvenile justice system, some jurisdictions have reduced their placement rates to **less than 5%** of their original population of youth in placement (see sidebar).

Avoiding the harms of placement starts well before and continues after the disposition decision. Youth need access to prevention services to help them avoid system involvement, as well as “off-ramps” from the juvenile justice system before formal arrest, during court processing and at disposition, and while on probation. Effective strategies tried elsewhere include:

1. advancing equity;
2. limiting entry points to placement;
3. expanding the continuum of services, including diversion programs;
4. ensuring accountability; and
5. relying on youth and family leadership.<sup>89</sup>

The illustrations of how these approaches have shaped reform in other jurisdictions can also help inform and guide reform efforts here in Pennsylvania.

Placement rates, of course, are significantly influenced by all entry points into the justice system; a young person who never enters the system cannot be placed by that system. Because this report focuses primarily on young people who have already entered the court system, we do not address the broad array of reforms to policing that can further assist the state in minimizing justice system placement.

### A. Relying on Youth and Family Leadership

States that have successfully reduced their reliance on placement have recognized the importance of engagement and leadership by youth in the system and their families. According to a report by the Youth First Initiative, “the work was dynamic and successful in large part because young people and their families were not tokenized; instead, their expertise took a central role in shaping the direction and strategy of each campaign.”<sup>90</sup> Lawyers collaborating on these reforms have recognized that while they might have been inclined to engage in “tinkering around the edges of reform,” parents reshaped the conversation and highlighted the importance of closing facilities.<sup>91</sup> Young people, too, recognized that when they shared their experiences and perspectives, other stakeholders began to realize the need for dramatic changes away from youth placement.<sup>92</sup>

In one powerful example, attorneys worked to litigate against devastating abuses at Tallulah Youth Prison in Louisiana, but all stakeholders recognize that the leadership of youth and families was the driver behind the shift in goals from improving to closing the facility.<sup>93</sup> Similarly, youth organizing played a key role in New York City Council's rejection of the Mayor's proposal for 200 detention beds. After youth confronted Mayor Michael Bloomberg about his plans on camera and testified en masse during City Council hearings, the Council pulled the \$65 million from the budget and the detention beds were not added.<sup>94</sup> Organizing by family members and communities was also critical to the passage of legislation requiring the closure of two youth prisons in Wisconsin; their work continues to focus the debate on more comprehensive transformation of the justice system.<sup>95</sup> And young people were also vital to a set of reform bills passed into law in Washington State, including one that limited detention for status offenders.<sup>96</sup>

There is a broader implication here as well—when youth and families play a role, policy reforms themselves are stronger. At the system level, such engagement can facilitate greater policy responsiveness to community needs and improve system effectiveness, accountability, and equity.<sup>97</sup> At the individual level, authentic youth and family engagement promotes positive youth development, engenders a sense of community and purpose, and supports a broad array of positive outcomes.<sup>98</sup>

## **B. Advancing Equity**

Addressing disparities on the basis of race and ethnicity, LGBTQIA identity, and disability is vital to successful reform efforts. Centering equity goals allows systems to strive for fair treatment and supports dramatic reductions in incarceration.

The Haywood Burns Institute works closely with juvenile justice systems around the country to address disparities on the basis of race and ethnicity. This work has led to significant reductions in youth placement, including reducing African-American youth detentions for school fights by 43% in Peoria, Illinois by piloting a restorative justice project and cutting the number of African-American youth placed in secure detention in Baltimore, Maryland by nearly 50% by creating new policies around youth who fail to appear for court.<sup>99</sup>

Centering race in the decarceration efforts in New York City “forced honest public conversations about who we imprison in this country and why,” which ultimately led to success in the reforms. While advocates are still working to address disparities in the city, they have dramatically reduced the number of Black and Brown youth in the justice system.<sup>100</sup>

To further support the goal of reducing racial disparities, all bodies that receive and manage funds should make equity central to the work. To support this goal, jurisdictions can require racial impact analyses prior to any new legislation or policy, as a number of states have now required by state law.<sup>101</sup> This approach can also be undertaken by administrative bodies, task forces, and other key state stakeholders working toward reform. Similarly, all decision-making should appropriately address equity goals. For example, recent work on risk assessment instruments underscores the importance of carefully tracking and reviewing such tools to ensure that they reduce disparities;<sup>102</sup> decisions by individuals should be similarly subject to review for bias and interventions when needed.

Eliminating fines and fees in the justice system may also enhance both racial and economic equity in the system. Research has shown that fines and fees disparately impact Black and Brown youth and, simultaneously, push these young people deeper into the system and their families deeper into poverty.<sup>103</sup> While it is too early to measure the impact on disparities, recent reforms in California and Nevada to eliminate all administrative fees from juvenile court are likely to reduce both economic and racial disparities in those states.<sup>104</sup>

Explicit attention to disparities and bias on the basis of race and ethnicity, class, LGBTQIA identity, and disability will also ensure that all other reforms—including limiting entry points, expanding the continuum of services, and ensuring accountability—lead to more equitable reforms, as discussed below.

## C. Limiting Entry Points

Limiting entry points to the justice system is a key reform in the effort to reduce placement rates. The Juvenile Detention Alternative Initiative (JDAI), one of the most widely recognized of these reform efforts, uses a set of core strategies to reduce entry into juvenile detention prior to a young person's adjudicatory hearing. JDAI presumes that limiting the number of youth placed prior to adjudication will also narrow the population of young people placed post-adjudication,<sup>105</sup> and this thesis has proven true, with more significant reductions in placement in JDAI sites than in other jurisdictions.<sup>106</sup> The JDAI model, which has been used in Pennsylvania, relies on local and statewide collaborations. By further embedding such reforms in statutes, rules, and regulations—for example, by limiting detention only to older youth or to certain categories of offenses—states can further shore up these successes.<sup>107</sup>

Jurisdictions have also explicitly limited the criteria for post-adjudication placement. Some jurisdictions, for example, have categorically prohibited placement for certain offenses as well as ascertain types of placements. Mississippi prohibits sending youth to placement when they are adjudicated of a non-violent felony or fewer than three misdemeanors.<sup>108</sup> California sets 12 years old as the minimum age for prosecution in juvenile court, except in cases of murder or rape, and emphasizes that youth under 12 should receive school, health, and community-based services.<sup>109</sup> California law also makes clear that curfew violations cannot result in juvenile court jurisdiction and that young people under juvenile court supervision for truancy cannot be placed in secure detention or removed from their parents for any purpose other than education.<sup>110</sup>

Limiting entry to placement also requires identifying and addressing the drivers of such placement. As described in Part I, in Pennsylvania, the majority of young people are confined for technical violations of probation. Nationally, the population of youth in placement for technical violations is also disproportionately Black and Brown youth, suggesting that this is an area in which reforms can help address both placement rates and disparities.<sup>111</sup> The National Council of Juvenile and Family Court Judges' resolution encourages juvenile courts to ensure that detention or incarceration is never used as a sanction for youth who fail to meet their probation goals.<sup>112</sup> Transforming probation by narrowing it to only serious offenders and focusing on supports rather than surveillance can further support these goals.<sup>113</sup>

While state legislation can create sustainable and more uniform change, many of these reforms can be launched at the local level and through practice changes. In Lucas County, Ohio, for example, youth with misdemeanors are now either fully diverted from probation and court involvement or are overseen by a special unit of case managers focused on misdemeanors.<sup>114</sup> After an assessment, these youth are referred to community-based services including evidence-based family services, mentoring, or pro-social activities.<sup>115</sup> Although they may have to perform community service or pay restitution, they do not have typical probation requirements like drug testing or regular meetings. Youth are not “punished” or returned to court if they fail to complete their service plan,<sup>116</sup> although new felony charges can lead to court involvement and formal probation.<sup>117</sup> Similarly, the New York “Close to Home” reforms limited out-of-home placements to youth who were both high-risk and had serious felony charges by using risk assessment instruments and structured decision making to promote their goal of limiting unnecessary institutional placement.<sup>118</sup>

## D. Expanding the Continuum

Fiscal incentives and capturing and redirecting money from incarceration into community-based services can play a key role in expanding the continuum of services available to respond to youth in the home and community, promoting community-based services, and decreasing reliance on incarceration. Recent legislative reform in Kansas, for example, created a Juvenile Justice Improvement Fund to directly capture costs savings related to decarceration and direct them into community-based programs for youth. In the first year, over \$12 million dollars has been invested

in these community-based programs.<sup>119</sup> Another strategy is to provide up-front funding to support the cost of shifting from an institution- or placement-focused model to one that relies more heavily on community-based services, as has been done in the California Youth Justice Reinvestment Grant Program.<sup>120</sup>

To further enhance reforms, legislators can directly engage youth in how to spend the money saved through reinvestment strategies. For example, Boston's "Youth Lead the Change" program, created by the mayor's office in 2013, gave youth a direct say in developing parks, playgrounds, and art spaces. Similarly, Seattle's "Youth Voice, Youth Choice" program in 2015, allowed more than 3,000 youth to decide how to spend \$700,000 from the city's budget. These reforms suggest possible new approaches to engaging impacted individuals in budget decisions.<sup>121</sup>

A report by the National Council on Crime and Delinquency researched the impact of budget incentives and budget realignment strategies, analyzing stakeholder responses to legislation enacted in Alabama, California, Illinois, Michigan, New York, Ohio, and Texas. The report concluded that although these legislative and budgetary changes were widely viewed as improvements, during implementation the approaches still fell short. Most notably, although the overall state budget might benefit from reduced spending on youth incarceration, not enough of the savings made it back to the youth and communities who needed them to address the underlying issues that often led to justice system involvement.<sup>122</sup> As discussed in our recommendations below, Pennsylvania should take steps to ensure that savings from reduced out-of-home placements are captured specifically to develop and expand youth services in the community.<sup>123</sup>

The continuum of services can also be expanded through state or local practice changes. Lucas County, Ohio's success in dramatically reducing incarceration is due in large part to the development of an assessment center and related services "so that young people who didn't need to be detained or committed could get the services they needed without being removed from their homes."<sup>124</sup> The assessment center, which is staffed primarily by social workers (and not correctional officers), is part of a larger shift from a punitive to a more rehabilitative approach.<sup>125</sup> Other steps Lucas County took to reduce out-of-home placements and ensure that youth and families could have their needs met in the community included: engaging in staff and community training, expanding diversion options, offering mentors through Youth Advocate Programs (see below), and supporting the provision of family navigators.

Similarly, New York put significant effort into ensuring an array of services to help reduce reliance on out-of-home placement. Even before the Close to Home initiative began, New York, like Pennsylvania, had seen significant drops in placement rates and had worked to expand the available services to meet the needs of young people in their homes and communities.<sup>126</sup> Despite significant reductions in out-of-home placements, "gaps" in services still led to youth who posed no significant public safety risks being placed out-of-home.<sup>127</sup> Before Close to Home, New York had implemented programs that primarily provided family therapy, including the use of evidence-based interventions like Multi-Systemic Therapy and Functional Family Therapy.<sup>128</sup> Although "all stakeholders acknowledged that these programs and services are needed, there was a desire to create a more diverse continuum that included a broader and tailored spectrum of approaches."<sup>129</sup>

Population forecasting was key to identifying those gaps. It was particularly valuable in identifying young people who did not pose a significant risk to public safety but who nonetheless couldn't receive community-based services because they "did not meet the program eligibility criteria, had a different set of needs than the family therapy and evidence-based models available... or lacked viable family resources that could support them."<sup>130</sup> Population forecasting also made clear the high rates of placement for youth who violated terms of probation. "Ultimately, these presentations of data not only helped answer specific questions, but also enabled stakeholders to have deeper conversations about how they envisioned serving youth in the system."<sup>131</sup> Other research has confirmed that identifying needs and gaps within the context of the continuum of services is key to decarceration

efforts.<sup>132</sup> The new continuum established in New York included an intervention that focused on advocacy and mentoring, programming that uses a “life coaching model” and supports youth in transitioning to adulthood, and an education-focused intervention focused on youth who have not succeeded in school previously.<sup>133</sup>

While the crux of the changes in New York focused on the array of community-based services, the model also shifted the understanding of what placement should look like for those few young people placed outside the home.<sup>134</sup> The remaining placements are much smaller and more homelike environments than what young people previously experienced. “[Non-Secure placement (NSP)] facilities are small and home-like, while [Limited Secure placement (LSP)] facilities tend to look and feel more like group homes.” For non-secure placements, bed capacity ranges from six to 13, and limited secure placement bed capacity ranges from six to 18.<sup>135</sup> These placements also have significantly better youth-to-staff ratios (3:1 for LSP and 6:1 for NSP).<sup>136</sup> Similarly, limiting length of stay for young people who are placed can be a vital component of reforms.<sup>137</sup>

Although recidivism data is not yet available for Close to Home, data suggests that Close to Home has been highly successful on measures beyond placement reduction. Arrest rates in New York City dropped 52% between 2012 and 2016 (compared to 41% statewide); 91% of youth involved in Close to Home passed their school courses; and 82% of Close to Home youth went to live with a parent or other family member or guardian.<sup>138</sup>

All of these practice and policy changes preceded the passage of the federal Family First Act and the more recent re-authorization of JJDP. As described above, these federal laws will provide additional opportunities for reform as well as additional sources or funding for community-based services.

## COMMUNITY INTERVENTIONS FOR HIGH-NEEDS YOUTH

Although decision-makers increasingly recognize the importance of community-based services, stakeholders tend to assume that high-risk/high-needs youth cannot be safely served without placement. In truth, many programs around the country are successfully serving these youth in their own homes and communities with strong results:

**Credible Messengers** is a program where “men and women who were themselves justice-involved are hired to engage young people on their own terms in structured and intentional relationships.”<sup>1</sup> These paid mentors, facilitating small peer-based groups, are able to reach “some of the most hard to engage youth,” because their own shared past experiences allow them to become trusted role models and supporters.<sup>2</sup> Credible Messenger programs have been credited with reducing arrest rates for youth and improving positive life outcomes for participants. The program is also an important model for improving public safety in ways that channel resources into underserved communities, rather than pulling youth out of them.<sup>3</sup>

**Youth Advocate Programs (YAP)**, which was founded in Pennsylvania, now serves youth in 28 states and Washington D.C. through intensive non-residential services anchored by advocates (paid mentors) recruited because they are from and have deep connections to the communities they serve. YAP specializes in succeeding with youth who might otherwise be considered “too difficult” to serve outside of institutions. Researchers from John Jay College have found that YAP involvement was associated with significant drops in secure placements: 49% for youth charged with felonies and 62% for youth with misdemeanor charges.<sup>4</sup> Shaena Fazal, YAP’s Chief of Public Policy and Advocacy, says that what allows YAP, and other programs working with youth with intensive needs, to be successful include: providing highly individualized and flexible services to each young person, engaging families in services, and maintaining a no reject/no eject policy.<sup>5</sup> For a discussion of the other elements that are essential for programs serving youth with complex needs in their own homes and communities, see YAP’s 2015 publication *Safely Home*.<sup>6</sup> Fazal also points out that having a comprehensive service array is essential—YAP believes that when communities have adequate resources, often as a result of redirecting funds away from incarceration, “anything that can be done in an institution can be done in a community, only better.”<sup>7</sup> YAP services are available in some Pennsylvania counties but could be expanded to reach more youth throughout the state.

**Community Passageways**, a Seattle nonprofit, serves youth charged with felonies and lesser offenses through a diversion program, often referred by prosecutors who have developed faith in the program after seeing its successes.<sup>8</sup> Community Passageways’ model includes community ambassadors who “work with youth and their families to determine what their needs and interests are, and then help the whole family to get back on the right track, so that the youth can live in an environment that will allow him or her to succeed.”<sup>9</sup>

1-3 Ruben Austria & Julie Peterson, *Credible Messenger Mentoring For Justice Involved Youth*, THE PINKERTON FOUNDATION (Jan. 2017), <http://www.thepinkertonfoundation.org/wp-content/uploads/2017/02/Pinkerton-Papers-credible-messenger-monitoring.pdf>.

4 Doug Evans & Sheyla Delgado, *YAP Helps to Keep Youth Out of Secure Facilities*, RESEARCH AND EVALUATION CENTER AT JOHN JAY COLLEGE (June 1, 2014), <https://johnjayrec.nyc/2014/06/01/yapfacts20143/>.

5 Ariana Brill, *Bringing Youth Safely Home: Why It Is Better To Serve Youth In Their Communities Than In Institutions*, JUVENILE LAW CENTER (Aug. 6, 2018), <https://jlc.org/news/bringing-youth-safely-home-why-it-better-serve-youth-their-communities-institutions>.

6-7 Shaena M. Fazal, *Safely Home*, YOUTH ADVOCATE PROGRAMS POLICY & ADVOCACY CENTER (June 2014), <http://www.yapinc.org/Portals/0/Documents/Safely%20Home%20Preview/safelyhome.pdf>.

8-9 Lisa Pilnik, & Marcy Mistrett, *If Not the Adult System Then Where? Alternatives to Adult Incarceration for Youth Certified as Adults*, CAMPAIGN FOR YOUTH JUSTICE (2019), [http://www.campaignforyouthjustice.org/images/ALT\\_INCARCERATION\\_FINAL.pdf](http://www.campaignforyouthjustice.org/images/ALT_INCARCERATION_FINAL.pdf).

## E. Ensuring System Accountability

To ensure that reforms meet key goals around decarceration, equity, and youth participation, they must include accountability measures. This includes collecting data, gathering input from impacted individuals and other stakeholders, ensuring oversight, and making needed adjustments.

A number of reforms supported by The Pew Charitable Trusts (“Pew”) provide examples of this approach. For example, in 2017, Utah enacted comprehensive juvenile justice reform legislation designed to reduce out-of-home placements, address racial disparities, and expand use of pre-court diversion and evidence-based practices.<sup>139</sup> In a research brief describing the reforms, Pew explains that after passage of the initial legislation, “Juvenile Justice Oversight Committee members helping with implementation of the law reached out to stakeholders to explain the changes and gather input.”<sup>140</sup> As a result of the feedback from over 500 individuals, additional legislation was enacted in 2018 that “clarified some aspects of the 2017 reform law and made minor substantive changes to others.”<sup>141</sup>

In Kansas, juvenile justice reforms enacted in 2016 included expanded data collection and sharing requirements and the creation of a statewide committee that meets at least quarterly.<sup>142</sup> The body’s charge is “to oversee implementation of the reforms and continue reviewing the system to uncover other areas in need of improvement,” including the responsibility to “create and review performance measures to gauge policy outcomes, calculate and recommend investment of savings from incarceration reductions, and study new areas for additional policy reform.”<sup>143</sup> Data collection and an oversight body was also a key to reforms enacted in Kentucky, also with Pew’s support. The state oversight body continues to use data to evaluate how their reforms and the juvenile justice system are working and what adjustments may be needed.<sup>144</sup>

Data should also assess progress toward race equity goals. For example, although Close to Home reforms dramatically reduced placement in New York City, racial disparities also increased in the years following Close to Home’s implementation. For that reason, stakeholders who were essential to those reforms urge other jurisdictions to create an overarching set of measures to track progress toward achieving the reform vision; collect data to capture and report all outcomes by race, gender, LGBTQIA and other characteristics; develop specific strategies to reduce disproportionate confinement of youth of color; and to report data publicly to promote accountability.<sup>145</sup>

## PART IV: RECOMMENDATIONS

The recommendations in this section reflect our analysis of effective reforms in other jurisdictions (as set forth in Part III), input from key stakeholders on where these reforms have fallen short, and insights from young people with experience in the system. The most successful reform efforts have:

1. addressed inequity;
2. limited entry points into the system;
3. expanded the continuum of services;
4. improved system accountability; and
5. relied on youth and family leadership.

Pennsylvania can take steps in each of these areas to transform and design a juvenile justice system that serves and meets the needs of our children, families, and communities. These recommendations are targeted at state-level reforms with roles for all three governmental branches.

### SUCCESSFULLY REDUCING YOUTH INCARCERATION: LESSONS FROM OTHER JURISDICTIONS

From 2012-2013 the National Council on Crime and Delinquency asked stakeholders in jurisdictions that had successfully reduced youth incarceration about their experiences. The recommendations they developed based on that research included many of the same strategies suggested (and illustrated by examples) in this report:

- Take legislative action to redirect funding from facilities to communities.
- Reduce overall out-of-home placements, develop local options, and reduce lengths of stay for those youth who do need to be in an out-of-home setting.
- Improve juvenile supervision to reduce unnecessary oversight and overly harsh responses to violations.
- Better engage impacted youth and family members, including (but not exclusively) through advisory groups; improve relationships between youth and families, community providers, and juvenile probation staff.
- Dig deeper and work more intentionally on eliminating racial and ethnic disparities in juvenile placements and secure custody.

Antoinette Davis, Angela Irvine, & Jason Ziedenis, *Stakeholders' Views on the Movement to Reduce Youth Incarceration*, Nat'l Council on Crime & Delinquency (Apr. 2014), [http://www.nccdglobal.org/sites/default/files/publication\\_pdf/deincarceration-summary-report.pdf](http://www.nccdglobal.org/sites/default/files/publication_pdf/deincarceration-summary-report.pdf).

### A. Address Inequity

Despite progress in lowering arrest rates and juvenile incarceration, Pennsylvania's record on reducing racial disparities is poor, with our disparities among the worst in the country. Admittedly, no state has yet successfully eliminated racial disparities in their justice system. Our youth reviewers particularly highlighted the importance of representation of Black and Brown staff in the juvenile justice system workforce and as participants in committees addressing these issues. Many of these recommendations reflect or expand upon those set forth in the Juvenile Justice and Delinquency Prevention Subcommittee's 2019 Plan to the Governor, with citations to that plan where relevant. In addition, throughout all of our recommendations, we highlight specific steps that should be taken to address disparities in placement for LGBTQIA youth, youth with disabilities, and youth with prior experience in the child welfare system.

## Recommendations:

- **Racial Impact Assessments:** Before enacting any legislation or policy reform, Pennsylvania stakeholders should require a racial impact assessment on the likely impact on communities of color. The state should commit to passing only those reforms that will improve outcomes and reduce disparities.
- **Race Equity Task Force:** Pennsylvania should create and support a race equity taskforce to research disparities and identify solutions. The taskforce should include representatives of entities such as JJDPIC and its DMC Subcommittee, the Pennsylvania Commission on Sentencing, the Commissions on African-American and Latinx Affairs, along with individuals with lived experience. The task force itself should be racially diverse. The state should charge the task force with the responsibility to respond to state-level policy and practice proposals.<sup>146</sup>
- **Increase Workforce Diversity:** Pennsylvania should enact policies and practices that expand diversity and inclusion in recruitment, funding, hiring, promotion, and retention to establish state and county juvenile justice workforces with diversity of race, ethnicity, sexual orientation, gender identity, disability, and system experience. The workforce should also increasingly be from the communities they serve.<sup>147</sup>
- **Consider equity issues at every decision point in system reform:** As described below, the state should integrate equity goals in limiting the entry point, establishing a continuum of care, and ensuring accountability.

## B. Limit Entry Points to Placement

### 1. Impose Statutory Limits on Detention and Commitment

Pennsylvania has made strides in reducing detention and placement in recent years. To truly tackle this issue, the legislature must update the Juvenile Act to circumscribe permissible justifications for detention or placement. For example, current law permits detention when the young person has no parent or guardian to provide care; this may suggest a need for child welfare intervention but is not a permissible purpose of detention. Similarly, while current law requires judges to state that an out-of-home placement is the “least restrictive placement,” it does not provide sufficient guidance as to circumstances that do not warrant placement.

## Recommendations:

- **Prohibit detention absent specific judicial findings:** The legislature should amend 42 Pa. C.S. § 6325 to prohibit detention unless there is a finding on the record that the youth is likely to fail to appear as evidenced by prior failures to appear in court or to commit a new violent offense prior to adjudication. The provisions permitting detention in cases of property offenses or when a child does not have a “parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required” should be repealed.
- **Limit commitment and detention in specified circumstances:** Pennsylvania should pass legislation limiting the circumstances under which youth can be held in secure detention or placed in an institution or facility at disposition or disposition review. This legislation should include limits on detention and placement for:
  - Youth age 14 and under;
  - Youth charged with a status offense, technical probation violation, misdemeanor, nonviolent offense, or non-payment of fines, fees or restitution;
  - Youth who are low-risk according to a risk instrument validated and reviewed to ensure that it is reducing placement and disparities; and
  - Youth who are pregnant or who have given birth in the past 6 months.

## 2. Improve Disposition Decisions

Many young people who do not fall within the proposed statutory exclusions above could have their needs met in the community. As one of the only states left nationwide that relies exclusively on local, county funding for indigent defense services, Pennsylvania reinforces justice by geography and fails to provide effective representation to all youth. Moreover, given the significant racial disparities in placement, focused attention should be given to reducing bias in decision-making.

### Recommendations:

- **Ensure high quality representation for youth in juvenile court proceedings:** Pennsylvania should elevate the quality of defense representation by establishing a state-based funding stream for juvenile defense<sup>148</sup> by creating a state-level oversight mechanism to ensure adherence to state and national standards of juvenile representation, and by ensuring that compensation rates are adequate to support zealous advocacy supported by full investigation and social work support.
- **Address bias in decision-making:** Pennsylvania should proactively work to address bias in decision-making, including developing and implementing training for all persons working in any aspect of the juvenile justice system on: implicit bias, racial and ethnic disparities, de-escalation, diversion of youth from the system, immigration and juvenile justice, and strategies for community engagement.<sup>149</sup> The Juvenile Court Judges' Commission and the Council of Chief Juvenile Probation Officers should develop specific debiasing techniques for judges and probation. In addition, to the extent that decision-makers rely on risk assessment instruments, they should be reviewed and used only if they are limiting placement and reducing disparities. (See text box.)
- **Transform probation:** The state should establish through legislative, policy, or practice change that probation is only imposed for youth who pose a significant risk for serious reoffending; all other cases should be diverted without ongoing court supervision. When probation is imposed, legislation or court rules should clarify that any youth should have a combined limit of only three probation and court terms, combined. The state must provide sufficient resources and training so that probation departments can shift to intensive and supportive services for youth.

### ASSESSING RISK ASSESSMENTS

While risk assessment instruments can sometimes be used to reduce placement, recent research suggests that such instruments also run the risk of reinforcing disparities. For that reason, such instruments should be reviewed carefully and used only to the extent that they reduce placement, disparities in the system, and reliance on placement.

For more information on risk assessments, see *Transforming Juvenile Probation: A Vision for Getting it Right*, by The Annie E. Casey Foundation, <https://www.aecf.org/resources/transforming-juvenile-probation/>.

## 3. Eliminate Placements Due to Poverty

The Juvenile Act permits the imposition of fines, costs and restitution. Failure to pay such costs can lead to further system involvement and ultimately to detention or incarceration, and can deepen poverty, increase racial disparities, and increase recidivism rates. Administrative costs, in particular, do not have a penological justification. Moreover, while restitution serves an important goal of making the victim whole, neither the victim nor the young person benefits when the amount imposed is more than a young person can pay and the failure to pay results in further system involvement.<sup>150</sup>

### Recommendations:

- **Prohibit the imposition of administrative court fees and fines on youth and families:** The legislature should repeal all laws that impose the cost of the administration of the justice system

on youth or their families, including costs of confinement or treatment, court costs, and diversion costs. The legislature should also repeal the imposition of fines on youth and ensure that any alternatives to fines do not involve juvenile placement.<sup>151</sup>

- **Limit the imposition of restitution to specified situations:** Legislation should establish that restitution should never be imposed on parents; should never be imposed on a young person jointly and severally with co-defendants; should be imposed only upon proof of actual costs to the victim; and should be imposed only for an amount that the young person can reasonably pay while under juvenile court supervision.
- **Support restitution alternatives:** The state should make funding available for restorative justice programs, for funds to compensate victims of juvenile offenses, and for programs that assist young people to pay off restitution without deepening their involvement in the justice system and without interfering with the youth's education. Judges should be authorized to direct payments from these funds to be made to victims when youth participate in positive activities such as school, after-school programs, and job training. Youth participation in programming tied to repayment and the related debt should always be time-limited and developmentally appropriate.
- **Prohibit deeper system involvement for failure to pay:** The legislature should enact a law ensuring that failure to pay fines, fees, or restitution does not lead to more severe juvenile justice involvement, such as automatic probation revocation or incarceration; and under no circumstances should the youth's failure to pay convert to a civil judgment.
- **Address high rates of referrals from district magisterial and municipal court judges for nonpayment of fines:** Alternatives to fines should be created for district magisterial and municipal court judges to impose on youth. Such alternatives should be time-limited, such as one-day volunteer opportunities or credits awarded for school or after-school participation, and should take the place of referrals to juvenile court.

### C. Expand the Continuum of Services

For Pennsylvania to successfully reduce reliance on juvenile justice placements, the state must ensure that it has a full continuum of community-based services available to meet the needs of youth and families. This continuum must be tailored to the specific needs of the youth involved in or at risk of entering the justice system, and it must include services for youth with high-needs who are charged with serious offenses.

#### MINIMIZING CONTACT WITH THE ADULT CRIMINAL JUSTICE SYSTEM

The juvenile justice system can hold youth who commit even the most serious offenses accountable for their conduct. In contrast, the adult system exposes youth to harm and interferes with their positive development. To the greatest extent possible, youth under age 18 are should be prosecuted in the juvenile justice system; youth who are tried as adults should be protected from the potential harms and most extreme sentencing consequences of that system. We therefore recommend that Pennsylvania:

- Pass legislation requiring all youth charged or convicted as adults to be served in the community or held in juvenile facilities, which would bring Pennsylvania into compliance with the JJDP.A.
- Pass legislation to repeal Act 33, eliminating mandatory charging of certain children as adults, so that children are presumed to be children, and judges maintain discretion over whether children should be processed through the adult criminal justice system.
- Pass legislation to amend Section 704.1 of the Public Welfare Code to ensure counties can receive reimbursement for youth charged or convicted as adults who are held in juvenile facilities.

## 1. Assess Services and Service Needs

To ensure that they have the continuum of services needed, Pennsylvania counties should assess both their service needs and the services currently available, so that gaps can be identified and filled. The state can support this effort by coordinating data collection processes and enlisting assistance from state agencies (in addition to DHS) in conducting a service inventory. The recommended assessments below should not be viewed as prerequisites to other system reforms. However, they can be undertaken alongside other changes, such as the proposed legislative exclusions above, to assist in building the continuum at the same time as the state limits entry points.

### Recommendations:

- **Conduct a comprehensive needs assessment:** The state should coordinate with county agencies to collect and analyze available data on the needs of the youth currently in juvenile justice placements, including their education needs, any mental health or other diagnoses, any prior child welfare involvement, prior contact with the juvenile justice system, and placement history through either system (or the behavioral health system).
- **Conduct a cross-systems service inventory:** State agencies, including OCYF, OMAP, ODP, and OMHSAS, and PDE, should jointly conduct an inventory of community- and family-based services that are or could be available to serve youth in the justice system and their families. This inventory should include available kinship care supports and family foster care resources, including specialized settings such as Medical Foster Care; mental health services, substance abuse treatment, and other services funded through Medicaid; and workforce development programs and pre-employment transition services through WIOA. The inventory should also identify services not currently available and strategies for filling those gaps, such as funding through the Family First Services Act.

## 2. Redirect Resources to Needed Community-Based Services

Pennsylvania should shift its funding structures to support and incentivize community-based services and to recapture funding saved on reducing incarceration for these goals. As discussed above, other states have succeeded with reinvestment strategies, including Reclaim Ohio, Redeploy Illinois, and California's realignment strategy. This reinvestment of resources is essential not only to ensure the availability of necessary services statewide, but also so that current providers can shift their services and business models toward a community-based approach with adequate resources to provide fair wages and support to front-line staff and administrators. Pennsylvania is also well-positioned to build its

## Problems with Electronic Monitoring

Electronic GPS monitoring is increasingly being used by juvenile justice systems to monitor youth and enforce conditions of probation. As Media Justice has explained, "The prison rate is dropping but the use of electronic monitoring is growing. Electronic Monitoring threatens to become a form of technological mass incarceration, shifting the site and costs of imprisonment from state facilities to vulnerable communities and households." Research has shown that electronic monitoring disproportionately impacts Black youth and has a stigmatizing effect that can exacerbate mental health problems, damage family dynamics, and drive families deeper into poverty when they have to foot the bill for repairs and other expenses. We therefore recommend that the state limit use of electronic monitoring to situations where no other intervention (other than placement) could ensure public safety, and require that it only be used in combination with other services and that data be tracked to ensure that it is used equitably along lines of race and class. For additional information on this issue, see <https://mediajustice.org/resource/electronic-monitoring-guidelines/>.

continuum of care by claiming federal IV-E dollars for community services, as the state already has a shared case management structure in place to facilitate IV-E eligibility.

## Recommendations:

- **Further incentivize community-based services:** Current state law uses a sliding reimbursement scale designed to encourage counties to invest in community-based services. The statute could go further by limiting payment to larger, more secure, and farther from home placements.<sup>152</sup>
- **Modify the Needs-Based Plan and Budget guidelines to incentivize counties to reduce out-of-home placement through diversion, prevention, and community-based services:** Pennsylvania DHS, through its Needs Based Budget and Planning guidelines, should provide incentives—in addition to reimbursement—to counties that reduce out-of-home placement through diversion, prevention and community-based services.<sup>153</sup> The budget should also increase funding for special grants, reimbursed at 85-95% depending on the program area, for effective community-based programs that decrease reliance on placement.<sup>154</sup>
- **Provide transition funding to counties that demonstrate a plan for relying less on institutional care and more on community-based services:** Pennsylvania, through DHS, PCCD, or other agencies, should make multi-year transition funding available to counties that demonstrate a plan for relying less on institutional care and more on community-based services to assist them with the costs of converting from institution-based systems to community-based systems.<sup>155</sup>
- **Share savings with counties so they can reinvest those dollars in diversion, prevention, and community-based programs:** The state should share savings from the reduction in reliance on placement with counties. Counties should be authorized to take savings and reinvest them in diversion and prevention services that then become a routine part of future needs-based budgets.
- **Expand funding for family- and community-based alternatives using federal child welfare funding:** Particularly after the passage of the Family First Prevention Services Act (“Family First Act”), there are many ways Pennsylvania could use federal funding through Title IV-E of the Social Security Act<sup>156</sup> to strengthen the continuum of care and expand services for youth in the justice system. In particular, the state should:
  - **Encourage counties to claim Title IV-E dollars for family- and community-based options for eligible youth adjudicated delinquent:** Title IV-E funds can be used for placement and administrative costs if the child is deemed “eligible” and the placement setting is reimbursable. Reimbursable placement settings include many family- and community-based options, including family foster care and community-based small group settings, that could serve as delinquent placements (particularly given that the Juvenile Act permits the full array of dependent services as delinquent dispositions). The state should encourage counties to claim Title IV-E money for eligible youth in the juvenile justice system, taking steps to ensure this does not lead to unnecessary child welfare involvement or oversight.
  - **Make prevention, independent living, and other child welfare services available to youth in the juvenile justice system:** With the Family First Act’s extension of Title IV-E funding for prevention services, Pennsylvania could make these services available to youth in the justice system by including such youth in the state’s definition of “candidate for foster care.” Additionally, current DHS policy permits counties to provide independent living services to youth in the juvenile justice system, and the state could expand availability of these services to justice-involved youth by making that a requirement, rather than an option. Youth for whom the county is able to claim IV-E reimbursement

may also be entitled to additional child welfare services, including transition planning services, which could help support them in their communities.

- **Respond to the group care limitations in the Family First Act by investing in family- and community-based supports and placement options:** As Pennsylvania adjusts its child welfare service array to respond to the Family First Act's limits on funding for group care, it should do so by identifying ways to expand and strengthen family-based settings, which remain reimbursable under Title IV-E, for example by revising and expanding its Medical Foster Care program; strengthening respite programs and other supports available to kinship and other resource parents caring for youth with behavioral health conditions; and financing and supporting recruitment and training for foster parents specializing in older youth.
- **Support providers in converting models away from residential placement:** The state should assist provider associations as well as individual providers through funding, training opportunities, and guidance in the work to convert existing business models away from residential placement and toward community-based services. The state should be attentive to ensuring that providers offer sufficient wages, benefits, and other support to recruit, train, and retain frontline staff.
- **Ensure a wide array of culturally responsive programming:** In all efforts to expand the array of services, Pennsylvania should ensure that such services are culturally responsive and that services exist within a youth's own community/neighborhood.<sup>157</sup> The array of services must meet the needs of youth with disabilities, LGBTQIA youth, youth adjudicated dependent, girls, and pregnant and parenting youth. The state should increase support for grassroots organizations providing community-based services to these youth.
- **Allow youth to continue services without ongoing court involvement:** Services should not be contingent upon continued court involvement. When a young person is receiving an effective service through a diversion or other program, they should be able to continue voluntarily accessing that service without continued court involvement if the need for oversight has ceased.

## D. Ensure System Accountability

The Juvenile Court Judges Commission tracks and makes public a significant amount of data regarding youth in the justice system, reasons for adjudication, case disposition, and reliance on detention and placement. The data also highlights demographic information that provides information to stakeholders about inequities as well as progress toward a more just system. This gives Pennsylvania a strong starting point in the goal of creating a transparent system in which youth, family members, and all stakeholders can easily track data and in which all stakeholders are held accountable for shared goals of reducing placement, reducing disparities, and improving outcomes. Pennsylvania should build on this system to ensure that the system tracks and shares data about LGBTQIA youth, youth with dependency system involvement, and youth with disabilities. The state should also develop additional oversight and response systems.

### Recommendations:

- **Collect and report on more comprehensive demographic data:** Pennsylvania, and in particular JCJC, should enhance its data collection to include information about youth with prior or concurrent child welfare experience, youth with disabilities including but not limited to youth with IEPs, and youth who are LGBTQIA. Reports should be made public on placement rates and length of stay for all demographic groups.
- **Collect data on disposition decision-making:** Pennsylvania's Juvenile Case Management System should collect and report on county disposition, disposition review, and probation

revocation hearings so that the reasons for placement are transparent and included in JCJC's annual report.

- **Collect data from youth in the system and their families:** Data should also be collected directly from youth in the system and their family members to track experiences, identify problems, and ensure accountability. This information should be de-identified and then shared with oversight bodies, relevant task forces, and the public.
- **Establish oversight committee:** The executive branch or the legislature should establish an oversight committee to monitor reforms and to review the system to uncover other areas in need of improvement. The oversight committee should include significant membership of youth in the system (or young adults previously in the system) and their family members, in accord with our recommendations on youth and family leadership. The oversight committee should also release a report based on the annual JCJC data and stakeholder input highlighting trends, problems, and suggested responses.

## E. Rely on Youth and Family Leadership

Authentic community engagement recognizes that young people with lived experience and their family members are experts in the justice system whose experience and insights are essential to reform. It also establishes processes to work in partnership with them in efforts to improve and transform the juvenile system. Such engagement has achieved greater policy responsiveness to community needs, improved system effectiveness, and better accountability and equity.<sup>158</sup> At the individual level, authentic youth and family engagement promotes positive youth development, engenders a sense of community and purpose, and promotes prosocial behaviors.<sup>159</sup>

### Recommendations:

- **Establish a statewide youth and family advisory group and support county-level advisory groups:** Pennsylvania should create a state-level commission or advisory board that will advise on the juvenile justice reform and implementation. Members should help design both the process for their involvement and the strategies to improve transparency and communication with families around the state. Members should also provide substantive input into all state level juvenile justice reforms. The board membership should consist of youth and young adults with system involvement and their families.
- **Ensure significant youth and family participation in all stakeholder groups and task forces:** Any reform councils, state advisory groups, or other task forces working on justice reform should include significant participation by youth in the system or young adults with previous system experience and their family members. Asking a single individual to fill this role is insufficient. Youth and families should have the opportunity to participate with peers who can support their full involvement.
- **Fully support youth and family participation:** Stipends and travel costs should be available for any youth or family member participating in justice reform efforts, unless that individual is separately compensated for this work through their employment in another agency or organization. Childcare should also be provided to support meeting attendance. Supports should also be put in place to ensure that youth participants have necessary preparation to participate fully. In addition, the format of the discussion should be designed to maximize input and discussion from individuals with varying backgrounds and experiences.
- **Implement participatory budgeting:** Engage youth and family members in participatory budgeting processes in which directly impacted individuals help to guide juvenile justice investment decisions.

## YOUTH SAFETY REMAINS PARAMOUNT

Although the best way to ensure the safety of young people at risk of harm in juvenile justice placements is to bring them back to their families and communities, we and the young people we work with recognize the urgency and necessity of also taking steps to protect youth who are currently in placement. While any young people remain in facilities, the state must take utmost care to prevent harm and ensure safety. Therefore, we offer the following recommendations for ensuring the safety of youth in facilities:

- Pass legislation and/or amend state regulations to tighten the limits on harmful practices in facilities, including eliminating seclusion and exclusion, prohibiting strip searches except when based on probable cause, and strictly limiting manual restraints.
- Develop and require facilities to adopt an effective, youth-friendly grievance procedure that provides meaningful relief when abuses occur; engage youth in ensuring the process is user-friendly.
- Encourage counties to conduct standardized exit interviews of all youth after discharge from placement.
- Track and make accessible public information about problems in facilities, including incident reports and licensing violations.
- Require installation of video cameras in facility common areas and regular review of footage by both facility management and county or state oversight agencies.
- Shift away from reliance on large institutions, and encourage counties to contract with small (under 12 beds), high-quality facilities that offer individualized services and community access.
- Cease reimbursement for services provided in for-profit institutional placements.

## CONCLUSION

Youth in Juveniles for Justice's *Broken Bridges* report made clear why we need to transform our system:

All young people deserve the opportunity to grow up in safe environments that promote development. Going to placement, even for a short time, is an interruption to young people's ability to grow within their own community. It interrupts their family life, education, and development. Being in placement often changes young people in a way that isn't rehabilitative even though one of the primary goals of the juvenile justice system is to rehabilitate youth.

We believe children should have and deserve opportunities to stay in or close to their communities, or if they are in the juvenile justice system, that it is supportive, safe and rehabilitative. We must accomplish these goals to ensure children are given a second chance.

Their words are grounded in research which clearly shows that youth do better in their homes and communities. Research also shows that by collaborating with youth and families, centering equity in the search for solutions, and shifting funding from placement to investment in communities, we can create a system that supports rather than harms our children. It's time for Pennsylvania stakeholders to join together to make this vision a reality.

**APPENDIX: AGGREGATE DATA – SNAPSHOT OF YOUTH IN DELINQUENT PLACEMENT ON JULY 12, 2019  
(DEFENDER ASSOCIATION OF PHILADELPHIA CLIENTS)**

**TABLE 1: RACE OF DEFENDER YOUTH CLIENTS**

<b>RACE</b>	<b>NUMBER OF YOUTH</b>
Black	102
Black/Latinx	3
Latinx	4
Multi-Racial	3
White	1
White/Latinx	9
<b>Grand Total</b>	<b>122</b>

**TABLE 2: GENDER OF DEFENDER YOUTH CLIENTS IN PLACEMENT**

<b>GENDER</b>	<b>NUMBER OF YOUTH</b>
Female	8
Male	114
<b>Grand Total</b>	<b>122</b>

**TABLE 3: AGE OF DEFENDER CLIENTS IN PLACEMENT**

<b>AGE</b>	<b>NUMBER OF YOUTH</b>
14	2
15	14
16	26
17	36
18	31
19	5
20	8
<b>Grand Total</b>	<b>122</b>

**TABLE 4: DEFENDER CLIENTS WITH DEPENDENCY HISTORY**

DEPENDENCY HISTORY	NUMBER OF YOUTH
No	71
Yes	51
<b>Grand Total</b>	<b>122</b>

**TABLE 5: NUMBER OF PRIOR DELINQUENCY PLACEMENTS**

NO. OF PRIOR DELINQUENCY PLACEMENTS	NUMBER OF YOUTH
0	25
1	27
2	8
3	11
4	1
5	1
0 (DFJ)	21
1 (DFJ)	10
2 (DFJ)	8
3 (DFJ)	6
4 (DFJ)	2
5 (DFJ)	2
<b>Grand Total</b>	<b>122</b>

**TABLE 6: REASON FOR PLACEMENT AT CURRENT DELINQUENCY PLACEMENT – DEFENDER CLIENTS**

REASON FOR PLACEMENT	NUMBER OF YOUTH
Adjudication	12
Adjudication (DFJ)	31
Technical	45
Technical (DFJ)	10
Transfer-AWOL	7
Transfer-AWOL (DFJ)	3
Transfer-Negative Discharge	9
Transfer-Negative Discharge (DFJ)	5
<b>Grand Total</b>	<b>122</b>

**TABLE 7: HIGHEST GRADE OF CHARGE FOR ADJUDICATION OF DELINQUENCY – DEFENDER CLIENTS**

HIGHEST GRADE	NUMBER OF YOUTH
M3	1
M2	8
M1	15
M1 (DFJ)	6
M (ungraded)	7
F3	13
F3 (DFJ)	4
F2	15
F2 (DFJ)	8
F1	4
F1 (DFJ)	26
F (ungraded)	10
F (ungraded) (DFJ)	5
<b>Grand Total</b>	<b>122</b>

**TABLE 8: NUMBER OF MONTHS IN PLACEMENT – DEFENDER CLIENTS**

MONTHS IN PLACEMENT	NUMBER OF YOUTH
0	1
1	12
2	7
3	11
4	3
5	6
6	9
7	10
8	3
9	2
10	5
11	3
17	1

(continued on next page)

**TABLE 8 CONTINUED: NUMBER OF MONTHS IN PLACEMENT – DEFENDER CLIENTS**

MONTHS IN PLACEMENT	NUMBER OF YOUTH
0 (DFJ)	1
1 (DFJ)	10
2 (DFJ)	4
3 (DFJ)	6
4 (DFJ)	8
5 (DFJ)	5
6 (DFJ)	6
7 (DFJ)	1
8 (DFJ)	2
9 (DFJ)	2
10 (DFJ)	1
11 (DFJ)	1
13 (DFJ)	1
14 (DFJ)	1
<b>Grand Total</b>	<b>122</b>

**TABLE 9: DEFENDER CLIENTS IN PLACEMENT WITH DISABILITIES OR MENTAL HEALTH DIAGNOSES**

DISABILITY OR MENTAL HEALTH DIAGNOSIS	NUMBER OF YOUTH
Unknown	46
Yes	76
<b>Grand Total</b>	<b>122</b>

**TABLE 10: DEFENDER CLIENTS IN PLACEMENT WITH IEPS**

IEP	NUMBER OF YOUTH
Unknown	60
Yes	62
<b>Grand Total</b>	<b>122</b>

## ENDNOTES

- 1 42 PA. STAT. AND CONS. STAT. ANN. § 6301(b) (West).
- 2 For an overview of the history of juvenile incarceration and the evolution of court responses to youth, see Patrick McCarthy, Vincent Schiraldi, and Miriam Shark, *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, *New Thinking in Community Corrections Bulletin*. Washington, D.C.: U.S. Department of Justice, National Institute of Justice (Oct. 2016).
- 3 Juvenile Justice and Delinquency Prevention Committee (JJJPC), 2019 Pennsylvania Juvenile Justice and Delinquency Prevention Plan (Jan. 2019), <https://www.pccd.pa.gov/Juvenile-Justice/Documents/2019%20Pennsylvania%20Juvenile%20Justice%20and%20Delinquency%20Prevention%20Plan.pdf>.
- 4 See Pennsylvania Commission on Crime and Delinquency, *Juvenile Justice and Delinquency Prevention*, <https://www.pccd.pa.gov/Juvenile-Justice/Pages/default.aspx>.
- 5 Pennsylvania Juvenile Court Judges' Commission, 2018 Pennsylvania Juvenile Court Annual Report, <https://www.jjc.pa.gov/Research-Statistics/Disposition%20Reports/2018%20Juvenile%20Court%20Annual%20Report.pdf>.
- 6 See, e.g., Jennifer A. Tallon, Melissa Labriola, & Joseph Spadafore, *Creating Off-Ramps: A National Review of Police-Led Diversion Programs*, *CTR. FOR CT. INNOVATION* (2018), [https://www.courtinnovation.org/sites/default/files/media/document/2018/Creating\\_Off\\_Ramps.pdf](https://www.courtinnovation.org/sites/default/files/media/document/2018/Creating_Off_Ramps.pdf).
- 7 Sandra Pavelka & Douglas Thomas, *The Evolution of Balanced and Restorative Justice*, 70 *JUV. AND FAM. CT. J.* (2019), <https://onlinelibrary.wiley.com/doi/full/10.1111/jfcj.12125>.
- 8 Pennsylvania Juvenile Court Judges' Commission, 2018 Pennsylvania Juvenile Court Annual Report, <https://www.jjc.pa.gov/Research-Statistics/Disposition%20Reports/2018%20Juvenile%20Court%20Annual%20Report.pdf>.
- 9 C. Puzzanchera & W. Kang, *Easy Access to FBI Arrest Statistics 1994-2014*, *OFF. OF JUV. JUST. AND DELINQ. PREVENTION* (2017), <http://www.ojdp.gov/ojstatbb/ezaucr/>.
- 10 C. Puzzanchera, S. Hockenberry, T.J. Sladky, & W. Kang, *Juvenile Residential Facility Census Databook*, *OFF. OF JUV. JUST. AND DELINQ. PREVENTION* (Mar. 27, 2018), <https://www.ojdp.gov/ojstatbb/jrfcdb/>; M. Sickmund, T.J. Sladky, W. Kang, and C. Puzzanchera, *Easy Access to the Census of Juveniles in Residential Placement*, *OFF. OF JUV. JUST. AND DELINQ. PREVENTION* (Apr. 23, 2019), <http://www.ojdp.gov/ojstatbb/ezacjrp/>; *W. Haywood Burns Institute, Unbalanced Youth Justice*, <http://data.burnsinstitute.org/decision-points/39/pennsylvania#comparison=2&placement=3&aces=2,3,4,5,6&offenses=5,2,8,1,9,11,10&odc=1&dmp=0&dmp-comparison=2&dmp-decisions=5&dmp-county=-1&dmp-races=1,2,3,4,7,5,6&dmp-year=2012>.
- 11 The Pittsburgh Foundation, *A Qualitative Study of Youth and the Juvenile Justice System, A 100 Percent Pittsburgh Pilot Project*, <https://pittsburghfoundation.org/sites/default/files/2017-03/100%20Percent%20Pittsburgh%20--%20Youth%20and%20Juvenile%20Justice%20Report.pdf>.
- 12 Pennsylvania Juvenile Court Judges' Commission, 2018 Pennsylvania Juvenile Court Annual Report, <https://www.jjc.pa.gov/Research-Statistics/Disposition%20Reports/2018%20Juvenile%20Court%20Annual%20Report.pdf>.
- 13 *Id.*
- 14 *Id.* Allegheny and Philadelphia County court placements dropped 18.5% and 15.1% respectively, from 2017 to 2018.
- 15 *Id.*
- 16 Pennsylvania Juvenile Court Judges' Commission, 2018 Pennsylvania Juvenile Court Annual Report, <https://www.jjc.pa.gov/Research-Statistics/Disposition%20Reports/2018%20Juvenile%20Court%20Annual%20Report.pdf>.
- 17 Pennsylvania Juvenile Court Judges Commission (JCJC), 2018 Pennsylvania Juvenile Justice System Outcomes, <https://www.jjc.pa.gov/Research-Statistics/Documents/2018%20Pennsylvania%20Juvenile%20Justice%20Outcome%20Measures%20Report.pdf>; see also MACARTHUR FOUNDATION MODELS FOR CHANGE, *RESEARCH ON PATHWAYS TO DESISTANCE: DECEMBER 2012 UPDATE 6* (2012), [https://www.pathwaysstudy.pitt.edu/documents/MfC\\_RPD\\_2012\\_final.pdf](https://www.pathwaysstudy.pitt.edu/documents/MfC_RPD_2012_final.pdf); Jessica Feirman, Kacey Mordecai & Robert Schwartz, *TEN STRATEGIES TO REDUCE JUVENILE LENGTH OF STAY 2* (2015), [https://jlc.org/sites/default/files/publication\\_pdfs/LengthofStayStrategiesFinal.pdf](https://jlc.org/sites/default/files/publication_pdfs/LengthofStayStrategiesFinal.pdf).
- 18 Pennsylvania Juvenile Court Judges Commission (JCJC), 2018 Pennsylvania Juvenile Justice System Outcomes, <https://www.jjc.pa.gov/Research-Statistics/Documents/2018%20Pennsylvania%20Juvenile%20Justice%20Outcome%20Measures%20Report.pdf>. After Cameron, the counties that had the highest delinquency placement rates (as a percentage of all delinquency dispositions) were, Sullivan (20%), Juniata (18.4%), Erie (15.4%), Monroe (13.3%), Montour (12.5%), Jefferson (12.5%), and Lebanon (12.4%).

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- 25 *Id.*
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- 28 U.S. Dept. of Justice, *OJJDP Statistical Briefing Book: Juveniles in Corrections* (June 1, 2017), <https://www.ojjdp.gov/ojstatbb/corrections/qa08601.asp?qaDate=2015>.
- 29 C. Puzanchera, S. Hockenberry, T.J. Sladky, & W. Kang, *Juvenile Residential Facility Census Databook*, OFF. OF JUV. JUST. AND DELINQ. PREVENTION (Mar. 27, 2018), <https://www.ojjdp.gov/ojstatbb/jrfcdb/>.
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55 42 PA. STAT. AND CONS. STAT. ANN. § 6352 (West).

56 *Id.*

57 42 PA. STAT. AND CONS. STAT. ANN. § 6352(c) (West).

58 42 PA. STAT. AND CONS. STAT. ANN. § 6352 (West).

59 Pennsylvania juvenile probation has a laudable history of reinventing itself. In the early 1980s, juvenile probation became a partner with county children and youth agencies in capturing federal IV-E dollars for delinquent youth who were in private, non-profit placements. Later in the 1980s, juvenile probation revisited the way it addressed juvenile detention (a reform that is embedded in JJC's Detention Standards and grant-in-aid program). Juvenile probation in the 1990s embraced Balanced and Restorative Justice (BARJ). Probation departments adapted their practices and reporting requirements to address public safety, victims, and youth needs. In the first decade of this century, juvenile probation partnered with MacArthur Foundation's Models for Change initiative.

60 Under the Juvenile Act, the powers and duties of probation officers include: making investigations, reports, and recommendations to the court; receiving complaints and charges of delinquency for the purpose of considering whether to commence proceedings against the child; supervising and assisting a child placed on probation; making appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable; and taking a youth into custody for violating conditions of probation. 42 PA. STAT. AND

CONS. STAT. ANN. § 6304 (West). The Juvenile Act also gives probation officers permission to search youth or their property if they have reasonable suspicion that a youth has violated conditions of probation. *Id.* Juvenile Court Rule 195 reiterates these duties, with a couple qualifications. Probation officers may “perform other functions as designated by the court” and the president judge in each county may “limit the power and duties of its juvenile probation officers by local rule.” PA. JUV. CT. R. 195(A)(13) & (B).

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The takeaway is the same: age-appropriate, community based services that come with connection with family and caring adults support healthy development as youth transition to adulthood.)

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141 *Id.*

142 Pew Charitable Trusts, *Kansas' 2016 Juvenile Justice Reform* (June 2017).

143 *Id.*

144 Ted Alcorn, *Making Impactful Juvenile Justice Reform: Lessons from Recent State Efforts*, ABELL FOUNDATION, (May 2019).

145 Youth First, *Breaking Down the Walls: Lessons Learned from Successful State Campaigns to Close Youth Prisons* (Mar. 2019), <https://backend.nokidsinprison.org/wp-content/uploads/2019/03/YF-Lessons-Learned-PAGES-FINAL.pdf>.

146 Juvenile Justice and Delinquency Prevention Committee (JJJPC), 2019 Pennsylvania Juvenile Justice and Delinquency Prevention Plan (Jan. 2019), <https://www.pccd.pa.gov/Juvenile-Justice/Documents/2019%20Pennsylvania%20Juvenile%20Justice%20and%20Delinquency%20Prevention%20Plan.pdf>.

147 *Id.*

148 Juvenile Law Center, *Lessons from Luzerne County: Promoting Fairness, Transparency and Accountability: Recommendations to the Interbranch Commission on Juvenile Justice*, [https://jlc.org/sites/default/files/publication\\_pdfs/Lessons%20From%20Luzerne%20County%20Report.pdf](https://jlc.org/sites/default/files/publication_pdfs/Lessons%20From%20Luzerne%20County%20Report.pdf).

149 Juvenile Justice and Delinquency Prevention Committee (JJJPC), 2019 Pennsylvania Juvenile Justice and Delinquency Prevention Plan (Jan. 2019), <https://www.pccd.pa.gov/Juvenile-Justice/Documents/2019%20Pennsylvania%20Juvenile%20Justice%20and%20Delinquency%20Prevention%20Plan.pdf>.

150 Juvenile Law Center, *Debtors Prison for Kids: The High Cost of Fines and Fees in the Juvenile Justice System*, <https://debtorsprison.jlc.org/?#/state/pennsylvania>.

151 *Id.*

152 Pennsylvania's juvenile justice system was once governed by the same financial incentives seen in other states: even though youth were arrested locally and could be managed with local or community resources, it often cost counties less to send delinquent children to distant institutions managed and paid for by the state. This pre-1976 financial architecture meant that counties had little incentive to develop local programs or services for troubled youth; there were thus fewer local treatment options than were needed. Act 148 of 1976 was designed to reverse this incentive. Under Act 148, counties pay a larger part of the cost of confining a child in a state institution than they do for youth in non-secure or community-based settings. The sliding scale of state reimbursement to counties for juvenile justice services encourages counties to develop local programs and services to keep troubled youth at home. DHS reimburses counties for most of the costs of community-based services for children, while counties are required to pay 40% of the cost of confining a child at a state facility. Act 148 provides reimbursement of 80% of the cost of services designed to keep children at home (after-school programs, evening reporting centers, outpatient counseling, case management services). It also reimburses 80% of the cost of group homes and other types of non-secure residential or treatment programs that allow children to attend public schools and hold jobs in their communities. Act 148 sets the lowest reimbursement rates for secure detention in local facilities (50%) and secure residential or institutional commitments (60%). (Prior to 1993, the state reimbursed counties for 55% of the cost of secure residential care.) Thus, the cost of the most restrictive placement is the most onerous for the county because the per diem is high and the state share is low. The Act 148 funding scale is also embedded in DHS regulations, 55 PA Code §§ 3140 et seq. See also *A Fiscal and Operational Review of the Youth Development Center/Youth Forestry Camp System*, Legislative Budget and Finance Committee, October 2018.

153 Act 148 was amended in the early 1990s to create a system of Needs Based Budgeting and Planning. See 62 P.S. § 704.1 et. seq. With participation and "sign off" by the county juvenile court, each county's child welfare agency develops a plan that shows the predicted service needs for court-involved youth and the cost of those services. Pennsylvania's Department of Human Services (DHS) tallies the approved costs for all 67 counties. The Governor then submits an aggregate budget allocation request to the legislature that includes the state share of county services. The Needs Based Budgeting process requires DHS to consider whether a county's plan and budget is reasonable in relation to past costs, projected cost increases, number of children in the county, number of children served, service level trends, and estimates of other sources of revenue. New initiatives and services must be reasonable. The county must identify cost savings or reduced rates of increase within its major service categories, and indicate whether a new service is less expensive or more effective than the currently available service. Needs Base Budgeting incorporates Act 148's sliding scale of state-county share of services.

154 For information on the special grants program, see Appendix 7 of the OCYF Needs Based Plan and Budget Guidelines FY 2017-18, <http://www.ocfpcourts.us/assets/files/list-10275/file-1684.pdf>. Currently available special grants programs are: Evidence-Based Programs (including Multi-Systemic Therapy, Functional Family Therapy, Treatment Foster Care Oregon Model, and Family Group Decision Making); Pennsylvania Promising Practices; Housing Grants; and Alternatives to Truancy Prevention.

155 Juvenile Law Center addressed the cost of such a system conversion in its 1994 publication, *Building Bridges: Strategic Planning and Alternative Financing for System Reform*. We pointed out that there are often hidden costs to system conversion that must be identified, such as zoning battles, start-up costs for new programs, transportation to get youth to local programs, and paying for institutional beds that aren't used to ensure a smooth transition. Because such a conversion often takes more than one year, the state and local governments will need to do Need-Based forecasting for several fiscal years. While this is a challenge, it is doable. PCCD, for example, often makes grants to support multi-year efforts.

156 The Social Security Act has long been a source of funding for children's services, primarily through Titles IV-B and IV-E. They were first passed into law as part of the Adoption Assistance and Child Welfare Act of 1980. That law, which has been amended several times (most recently as the Family First Prevention Services Act), provides for federal financial participation to state child welfare systems if certain conditions are met. Title IV-B provides a specific allocation of flexible funds to state child welfare agencies that can be used for an array of services, including prevention services. Title IV-E is an uncapped federal entitlement that is provided to the states for the cost of services for eligible children who enter the foster care system, and in some instances for prevention services. It allows states to be reimbursed by the federal government for maintenance payments made to provide shelter, food, and clothing for eligible children. In addition, it covers administrative costs, training of child welfare staff and foster parents, recruitment of foster parents, and data collection.

157 Juvenile Justice and Delinquency Prevention Committee (JJJPC), 2019 Pennsylvania Juvenile Justice and Delinquency Prevention Plan (Jan. 2019), <https://www.pccd.pa.gov/Juvenile-Justice/Documents/2019%20Pennsylvania%20Juvenile%20Justice%20and%20Delinquency%20Prevention%20Plan.pdf>.

158 Benjamin Mason Meier, Caitlin Pardue & Leslie London, *Implementing Community Participation through Legislative Reform: A Study of the Policy Framework for Community Participation in the Western Cape Province of South Africa*, 12 BMC INT HEALTH HUM RIGHTS, 15 (Aug. 25, 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3532148/>.

159 Texas State School Safety Center, *The Positive Effects of Youth Community Engagement* (Apr. 2013), <https://txssc.txstate.edu/topics/youth-leadership/articles/positive-effects-of-youth-engagement>. Crooks et al. (2010) concluded that youth community engagement is connected to a wide range of positive outcomes such as higher academic performance, lower rates of pregnancy, and lower rates of marijuana use. Some programs have even begun to incorporate youth engagement aspects into intervention/prevention efforts (Altman & Feighery 2004; Wilson et al., 2008).



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