



# POLICY BRIEF

Briefs can be downloaded at [www.bit.ly/UAFpolicy](http://www.bit.ly/UAFpolicy)

March 4, 2016

## Decriminalizing Childhood for Youth of Color

*by Laura Ridolfi and Tracy Benson, Burns Institute*

From the day children are born, we dream of their bright future and imagine that their lives are ripe with opportunities to thrive. We send them off to elementary school with aspirations of one day attending their college graduation and celebrating their journey toward self-sufficiency. We envision them growing into young adults with access to opportunities to create a good life. However, for far too many, this is a dream deferred.

For youth of color, the journey along the path of opportunity toward self-sufficiency is frequently derailed by criminalization, arrest, and incarceration.<sup>1</sup> One reason is that the margin of error that our society grants to youth of color is razor thin. This is true for youth of color who are simply exhibiting normal childhood behavior, as well as those who commit crime. The American justice system, reflecting societal values and norms, has a long and unconscionable tradition of using policing and incarceration as a form of social control for children of color. It is imperative that we protect their right to childhood by reforming the justice system in ways that strive for structural racial equity.

The racial and ethnic disparities that exist in youth justice today are symptoms of [a system that, from inception](#), treated children of color poorly and that continues to use misguided and ineffective approaches.<sup>2</sup>

There are nearly 1 million young people involved in the youth justice system today. The overwhelming majority are youth of color. On an average day in 2013, nearly 55,000 young people across the United States were incarcerated—87 percent were for nonviolent offenses.<sup>3</sup> Youth of color were significantly more likely to be incarcerated; black youth were more than six times as likely to be incarcerated as white youth.

The American emphasis on incarceration as a response to misbehavior and misconduct by youth of color is punitive, deficit-based, and ultimately counterproductive. This “mass incarceration” has come under public scrutiny in the United States in recent years. Across party lines, our nation agrees, the “American experiment in mass incarceration has been a moral, legal, social, and economic disaster.”<sup>4</sup> But mass incarceration is more accurately described as hyper-incarceration because communities of color experience excessive incarceration disproportionately.<sup>5</sup>

As a nation, we have become so accustomed to the portrayal of youth of color—particularly black and brown boys—as troublemakers and thugs that we do not bother to examine the limited data available about the actual use of our justice system and its negative consequences. For example, a UCLA study revealed that law enforcement view youth of color very differently than white youth. In the study, law officers consistently overestimated the age of black and Latino youth and described youth of color as less child-like and more culpable than their white counterparts.<sup>6</sup>

Nor do we apply modern science, which teaches us the following critical and relevant facts that public systems should consider when implementing policies and practices:

- Adverse childhood experiences are prevalent among Americans of all socioeconomic and racial backgrounds.<sup>7</sup> When children experience toxic stress at an early age, it harms brain development and impedes their ability to function in school and society.<sup>8</sup>
- The brain—even when not affected by toxic stress in early childhood—is not fully developed until a person is in his or her mid-twenties.<sup>9</sup>
- The vast majority of young people “age out” of crime. When kids make mistakes, inappropriate system interventions impede positive youth development.<sup>10</sup>
- First-time youth offenders who are kept out of the formal justice system have better long-term outcomes than those who are formally processed.<sup>11</sup>
- Whereas punitive justice system responses to youthful misbehavior consistently fail, recent research confirms what common sense suggests: kids who have positive role models, education, and access to the resources they need commit fewer crimes than those who are removed from their support structures and forced into confinement.<sup>12</sup>

It is time to shift our frame of public safety from one that is merely transactional to one that is transformative. For too long, we have been short-sighted in our approach. No longer can we afford to equate public safety with punishment and confinement, particularly given the demographic shifts in our population that are expected in coming decades. By 2060, 22 states will be majority people of color, representing 67 percent of the population.<sup>13</sup> Our current approach is unjust, inhumane, ineffective, wasteful, and prohibitively costly.<sup>14</sup> These failures weigh most heavily on communities of color, but harm our entire society.

A new, transformative youth justice policy framework would acknowledge and [challenge the structural racial injustices](#) that contribute to and perpetuate disparities. The following key changes must be pursued as part of a modern civil rights agenda:

**We must shift institutional policies and practices** away from criminalizing children to providing opportunities to thrive. This includes training adults who interact with youth about structural racism and implicit bias, child development, the impact of trauma on development, and conflict de-escalation; removing police officers from schools; expanding the funding for and application of diversion programs; and providing basic opportunities for young people to engage in positive activities in their community.

**We must invest in community solutions** as a response to developmentally appropriate behaviors as well as youthful law violations. Communities know their young people—as well as the

community's needs, challenges, opportunities, and assets—and will come up with solutions that work.

**We must stop the prosecution of children in adult courts**, ban extreme sentences without the opportunity for review, and end all incarceration of young people with adults. The science shows that even young people who are alleged to have committed serious crime have tremendous potential to be habilitated.

**We must require that these systems use data** to understand and improve the decisions they are making, *and* share these data with the public. It is critical that each decision-making agency collects and analyzes data to ensure that they are not creating or exacerbating racial and ethnic disparities. This includes law enforcement agencies, district attorneys, the courts, and probation.

Ultimately, we must demand that systems that are using billions of dollars of public resources are transparent and accountable for positive outcomes.

As our nation is forced into a long overdue conversation about race and justice, the structural and historical inequity that contribute to our current crisis in the justice system must be acknowledged. Given our history, [achieving equal opportunity](#) requires that any policy reforms aimed at reducing system involvement for youth acknowledge our nation's long-standing tradition of disparate treatment of children of color, who continue to suffer disproportionately at the hands of the justice system. Racial equity must be an explicit goal of policy efforts, with youth of color at the center of any policy strategy to improve the youth justice system.

**Laura Ridolfi** is the director of policy at the Burns Institute.

**Tracy Benson** is the senior manager of the Community Justice Network for Youth at the Burns Institute.

*Funding for this project was made possible by grants from the Ford Foundation, W.K. Kellogg Foundation, Kresge Foundation, and Atlantic Philanthropies.*

The views expressed are those of the authors and do not necessarily reflect the views of the University of Chicago.

---

<sup>1</sup> For a brief overview of these disparities, see The Sentencing Project, "Disproportionate Minority Contact in the Juvenile Justice System." Policy brief. (Washington, DC: The Sentencing Project, May 2014), [http://sentencingproject.org/doc/publications/jj\\_Disproportionate%20Minority%20Contact.pdf](http://sentencingproject.org/doc/publications/jj_Disproportionate%20Minority%20Contact.pdf).

<sup>2</sup> This history is described briefly in the W. Haywood Burns, "Repairing the Breach: A Brief History of Youth of Color in the Justice System" (Oakland, CA: Burns Institute, 2015), [www.burnsinstitute.org/wp-content/uploads/2015/09/Repairing-the-Breach\\_BI.pdf](http://www.burnsinstitute.org/wp-content/uploads/2015/09/Repairing-the-Breach_BI.pdf). Also see, Robynn J.A. Cox, "Where Do We Go from Here? Mass Incarceration and the Struggle for Civil Rights" (Washington, DC: Economic Policy Institute, January 16, 2015), [www.epi.org/publication/where-do-we-go-from-here-mass-incarceration-and-the-struggle-for-civil-rights/](http://www.epi.org/publication/where-do-we-go-from-here-mass-incarceration-and-the-struggle-for-civil-rights/).

<sup>3</sup> M. Sickmund et al., "Easy Access to the Census of Juveniles in Residential Placement" (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 2015), [www.ojjdp.gov/ojstatbb/ezacjrp/](http://www.ojjdp.gov/ojstatbb/ezacjrp/). Nonviolent offenses include status offenses such as running away or underage drinking, and technical violations once a child is under the supervision of the justice system.

---

<sup>4</sup> The editorial board, "End Mass Incarceration Now," *New York Times*, May 24, 2014, [www.nytimes.com/2014/05/25/opinion/sunday/end-mass-incarceration-now.html](http://www.nytimes.com/2014/05/25/opinion/sunday/end-mass-incarceration-now.html)

<sup>5</sup> L. Wacquant, "Class, Race and Hyperincarceration in Revanchist America," *Daedalus*, 139(3)(Summer 2010): 74-90.

<sup>6</sup> P.A. Goff et al., "The Essence of Innocence: Consequences of Dehumanizing Black Children," *Journal of Personality and Social Psychology*, 106(4)(2014): 526-45, [www.apa.org/pubs/journals/releases/psp-a0035663.pdf](http://www.apa.org/pubs/journals/releases/psp-a0035663.pdf).

<sup>7</sup> R. Anda, "The Health and Social Impact of Growing Up with Adverse Childhood Experiences: The Human and Economic Costs of the Status Quo." (San Diego: The ACEs Study, n.d.), [http://acestudy.org/files/Review\\_of\\_ACE\\_Study\\_with\\_references\\_summary\\_table\\_2\\_.pdf](http://acestudy.org/files/Review_of_ACE_Study_with_references_summary_table_2_.pdf).

<sup>8</sup> National Child Traumatic Stress Network, "What Is Child Traumatic Stress?" (Washington, DC: NCTSN, n.d.), [www.nctsn.org/sites/default/files/assets/pdfs/what\\_is\\_child\\_traumatic\\_stress\\_0.pdf](http://www.nctsn.org/sites/default/files/assets/pdfs/what_is_child_traumatic_stress_0.pdf)

<sup>9</sup> L. Steinberg, "Should the Science of Adolescent Brain Development Inform Public Policy?" *Issues in Science and Technology*, 28 (Spring 2012), <http://issues.org/28-3/steinberg/>.

<sup>10</sup> The Federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) funded a powerful, longitudinal study exploring desistance from crime. One key finding was that "the vast majority of juvenile offenders, even serious offenders, grow out of antisocial activity by early adulthood as they develop more impulse control and future orientation as a natural part of maturing in general." L. Steinberg, E. Cauffman, and K.C. Monahan, "Psychosocial Maturity and Desistance from Crime in a Sample of Serious Juvenile Offenders," *OJJDP Pathways to Desistance Bulletin* (NCJ 248391) (March 2015).

<sup>11</sup> These are preliminary findings from the Crossroads Study, another study funded by OJJDP that explores the long-term effects on first-time youth offenders of formal versus informal processing in the justice system. The Crossroads Study controlled for myriad variables, including offense, socioeconomic status, race, gender, geographical location, and others. Preliminary findings tell us that youth who are kept out of the formal justice system have better long-term outcomes than those who are formally processed.

<sup>12</sup> S. Fazal, "Safely Home" (Youth Advocate Programs, Inc., June 2014), <http://safelyhomecampaign.org/Safely-Home-Report>.

<sup>13</sup> W. Frey, R. Griffin, and R. Teixeira, "States of Change: The Demographic Evolution of the American Electorate, 1974-2060" (Washington, DC: American Enterprise Institute, Brookings Institution, and Center for American Progress, February 2015).

<sup>14</sup> R. Mendel, "No Place for Kids: The Case for Reducing Juvenile Incarceration" (Washington, DC: Annie E. Casey Foundation, 2011), [www.aecf.org/noplacementforkids](http://www.aecf.org/noplacementforkids).