



FUTURES IN THE BALANCE

Disrupting the School-to-Prison Pipeline

Why less court intervention leads to more success

Although it may be difficult to gauge the appropriate response when young people test limits, decades of research indicate that most young people simply grow out of the majority of undesirable behaviors.¹ Research on interventions designed to divert youth from the court system demonstrate that, for many youth, interventions that do not involve formal court or police processing are significantly more effective.²

There may be times when schools need to seek assistance from other systems. However, referring young people to the legal system can have a detrimental impact on them, their families, and the community at-large. Research paints a striking picture of the importance of keeping youth in school and out of the juvenile court system.

KEY POINTS:

- Testing limits is normal adolescent behavior. Young people act out, make mistakes, and push boundaries largely because the parts of their brains that regulate these behaviors are still being formed.
- Diverting youth from the legal system by keeping them in school can result in better life outcomes for young people.
- The legal system is fraught with racially disparate treatment and outcomes, insufficient educational programming, traumatic impact, and other negative consequences that can derail a young person's future.
- Formal legal system interventions frequently result in little to no positive change in behavior.
- Schools disproportionately discipline (suspend, expel, or reassign to alternative schools) youth of color, and also refer them to court and for arrest at disproportionate rates.
- Youth of color are disproportionately arrested, charged, detained, adjudicated, and incarcerated.
- Youth who are formally processed through the court system often become disengaged and disconnected from school, resulting in higher drop-out rates and lower college enrollment.
- Youth who are incarcerated are often the victims of sexual and/or physical assault and are more likely to have worse general and mental health problems as adults.

Testing Limits is Normal Youth Behavior

Three tenets of normal adolescent development help us understand youth behavior: susceptibility to peer influence, greater impulsivity, and lack of future orientation (inability to appreciate consequences of their actions).³ These normal developmental characteristics impact youth behavior and require responses that allow youth to make mistakes and learn from them, not be liable for them for the rest of their lives.

Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 *CHILD DEV.* 28 (2009).⁴

This study found younger adolescents were less likely to think about the future and anticipate future consequences of decisions. Further, the research suggests that adolescents' preference for immediate versus delayed rewards is more closely linked to their inability to think about the future and anticipate impending consequences, and not their inability to self-regulate.

Lia O'Brien et al., *Adolescents Prefer More Immediate Rewards When in the Presence of Their Peers*, 21 *J. RES. ON ADOLESCENCE*, 747 (2011).⁵

Results suggest that youth tend to make riskier decisions in the presence of their peers due to differences in how their brains process rewards when compared to adults. Youth are more likely to value the immediate rewards of a risky decision than to consider the long-term consequences of such a decision.

Ashley R. Smith et al., *Peers Increase Adolescent Risk Taking Even When the Probabilities of Negative Outcomes Are Known*, 50 *DEV. PSYCH.* 5 (2014).⁶

This study "suggests that the presence of peers increases risky decision making during adolescence even when explicit information about the probability of negative outcomes is provided, and even (perhaps especially) when these negative outcomes are portrayed as highly likely...Specifically, our results yield evidence that providing adolescents with information about the likelihood of negative outcomes may not be as effective as might be expected when the targeted behaviors are those that tend to occur when adolescents are with their peers, such as substance use, reckless driving, or unprotected sex."

"[W]e cannot claim that adolescents 'ought to know better' if, in fact, the evidence indicates that they do not know better, or more accurately, cannot know better, because they lack the abilities needed to exercise mature judgment."⁷





Diverting Young People from the Legal System by Keeping Them in School

School officials have a compelling opportunity to divert young people from the legal system by addressing behaviors within the school system rather than referring youth for formal processing through the legal system.⁸

“Changing school discipline policies and developing alternatives to arrests are critical steps in cultivating a positive school environment. School-based diversion programs, especially those with a restorative justice focus, have the potential to reorient traditionally punitive approaches toward prevention and rehabilitation, while also allowing students to take responsibility for their misconduct.”⁹

Elizabeth Cauffman et al., *Crossroads in juvenile justice: The impact of initial processing decision on youth five years after first arrest*, DEV. & PSYCHOPATHOLOGY (2020).¹⁰

“The results of the present study indicate that formal processing [through the court system] for an adolescent charged for the first time with a relatively moderate offense does more harm than good.”
“Specifically, youth who were formally processed during adolescence were more likely to be rearrested, more likely to be incarcerated, and reported more violence. Thus, formal processing of youth leads to less safe communities.”

Holly A. Wilson & Robert D. Hoge, *The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review*, 40 CRIM. JUSTICE & BEHAVIOR 497, 505-541 (2012).¹¹

Researchers found that diversion programs are “significantly more effective in reducing recidivism than the traditional justice system.” “For low-risk youth, caution programs [those that are ‘least invasive and serve to divert the youth out of the system with no further action, aside from a warning or formal caution’] appeared to be more effective in reducing recidivism than programs providing some form of intervention.” “[U]nder many circumstances, involvement in the judicial system provides negative outcomes.”

Anthony Petrosino et al., *Formal System Processing of Juveniles: Effects on Delinquency*, CAMPBELL SYSTEMATIC REVIEWS, 6 (2010).

“Based on the evidence presented in this report, juvenile system processing appears to not have a crime control effect, and across all measures appears to increase delinquency. This was true across measures of prevalence, incidence, severity, and self-report.”

“Given that the vast majority of adolescent delinquency is transient and exploratory, punitive justice system interventions may be unnecessary and ineffective at best, and dangerous at worst, for the majority of first-time arrested youth who commit moderately serious crimes.”¹³

Addressing Racial Disparities in School Discipline, Arrests, & Court Referrals

Data on responses to youth behavior in schools reveals significant disparities in the treatment of youth of color. During the 2015-2016 school year, more than 290,600 young people were either arrested at school or referred to law enforcement by their school.¹⁴ Despite only making up 15 percent of the overall enrollment in schools, Black youth comprised 31 percent of youth referred to law enforcement or subjected to school-related arrests.¹⁵ Native American and Hawaiian youth, though one percent and 0.4 percent respectively of those enrolled in school, made up two percent and one percent of students referred to law enforcement or subjected to school-related arrests.¹⁶

Research has shown that the racial disparities in school discipline, arrests, and court referrals are not due to differences in behaviors between white youth and youth of color.¹⁷ Individual and policy-level school discipline decisions should not lead to differential treatment of youth of color.

Russell J. Skiba et al., *Race is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 SCHOOL PSYCH. REV. 1 (2011).¹⁸

Researchers studied the “documented patterns of office discipline referrals in 364 elementary and middle schools during the 2005-2006 academic year... [R]esults indicate that students from African American and Latino families are more likely than their White peers to receive expulsion or out of school suspension as consequences for the same or similar problem behavior.”

Russell J. Skiba et al., *Parsing Disciplinary Disproportionality: Contributions of Behavior, Student, and School Characteristics to Suspension and Expulsion* (2012).¹⁹

“When it comes to the contribution of race to discipline, however, these results indicate that systemic school level variables are far more important in determining the over-representation of Black students in discipline than are any behavioral or student characteristics...Such a finding strongly suggests that those wishing to have an effect on racial disparities in discipline would be well advised to seek interventions that focus on the school rather than the characteristics of students or their behaviors.”²⁰

Rebecca Epstein et al., *Girlhood Interrupted: The Erasure of Black Girls’ Childhood*, CTR. ON POVERTY AND INEQUALITY, GEORGETOWN LAW, 28 (2017).²¹

“Across all age ranges, participants [in this study] viewed Black girls collectively as more adult than white girls. Responses revealed, in particular, that participants perceived Black girls as needing less protection and nurturing than white girls. . . .”

“Simply put, if authorities in public systems view Black girls as less innocent, less needing of protection, and generally more like adults, it appears likely that they would also view Black girls as more culpable for their actions and, on that basis, punish them more harshly despite their status as children. Thus, adultification may serve as a contributing cause of the disproportionality in school discipline outcomes, harsher treatment by law enforcement, and the differentiated exercise of discretion by officials across the spectrum of the juvenile justice system.”

Travis Riddle & Stacey Sinclair, *Racial Disparities in School-based Disciplinary Actions are Associated with County-level Rates of Racial Bias*, 116 PROCEEDINGS OF THE NAT’L ACADEMY OF SCIENCES OF THE U.S.A. 8255, (2019).²²

This study analyzed data from 1.6 million visitors to Project Implicit²³ (measuring implicit biases) and federal school discipline data of almost 96,000 schools and more than 32 million students. Researchers found a solid correlation between the county-level rate of racial bias and the rate of racial disparities in school discipline (in-school suspensions, out-of-school suspensions, law enforcement referrals, school-related arrests, and expulsions).

Using data from the 2015-2016 Civil Rights Data Collection, researchers also noted the vast disparities between Black and white students with each type of disciplinary action in the table below.

Table 1. Percentage of students of each race receiving each type of disciplinary action

Metric	Black	White
School arrests	0.28%	0.08%
Expulsions	0.51%	0.18%
Law enforcement referral	0.91%	0.34%
In-school suspension	11.22%	4.23%
Out-of-school suspension	13.46%	3.5%

“[R]acial disparities in discipline can occur even when Black and White students behave in the same manner.”²⁴

Recognizing Racial Disparities in Juvenile Court

Youth of color are more likely to face arrest and retention within the juvenile court system relative to their white counterparts for the same offenses.²⁵ These disparities are especially true for Black youth, who are overrepresented at every stage of the juvenile court system and are more likely to receive harsher dispositions²⁶ than white youth.²⁷ These disparities are most apparent at the front end of the system, creating a “cumulative disadvantage” for minority youth where, due to overrepresentation in the initial stages of the juvenile court system, they continue to be disadvantaged and overrepresented at later stages in the process.²⁸

The W. Haywood Burns Institute, *United States of Disparities* (2020).²⁹

Utilizing data from the Office of Juvenile Justice and Delinquency Prevention, this web-based “tool provides customizable searches that help illustrate the extent of racial and ethnic disparities in the use of incarceration in each state and nationwide. There is additional state and county level data available by clicking on any state.”

“In 2017, Black youth were 4.6 times as likely as White youth to be incarcerated; Native American youth were 2.9 times as likely; and Latino youth were 1.4 times as likely. With 72 percent of all youth locked up for non-violent offenses, the U.S does not have an alarming crime problem; we have an alarming incarceration problem - one that harms primarily youth of color.”

Jamie J. Fader, *The Color of Juvenile Justice: Racial Disparities in Dispositional Decisions*, SOCIAL SCIENCE RESEARCH 44, (2014).³⁰

Researchers found that “for every white youth receiving a commitment to a program emphasizing physical regimen instead of a therapeutic program, there were 5.7 [B]lack youth and 2.8 Latino youth committed.” This trend of racial disparities continues for commitments to traditional reform schools: for every white youth committed to a traditional reform school, there were 4.42 Black youth and 2.32 Latino youth committed. The “preference for traditional reform schools and even more so for physical regimen programs for [B]lack and Latino [youth] is not explained by the type or severity of the crime committed by the youth, the youth’s prior record, or his/her current supervision level with the court.”

Donna M. Bishop & Michael J. Leiber, *Racial and Ethnic Differences in Delinquency and Justice System Responses*, 6 JUVENILE COURT CLIENTELE 445, 446-453 (2011).³¹

“Because minority youth are more likely to be arrested, charged with more serious offenses, and formally processed than their white counterparts, race bias is incorporated into and masked by the offense, prior record, and prior disposition variables that inform processing decisions. . . . [I]t is clear that much of the effect of race is indirect and hidden due to selection effects: minority youth are considerably more likely than legally similar whites to be detained, and detainees receive more intrusive dispositions.”

“[U]nconscious stereotypes can be activated in police and probation officers; once activated, stereotypes influenced attributionally relevant judgments about offenders’ negative traits, culpability, likely recidivism, and deserved punishment.”³²





Juvenile Court Involvement Disrupts Education

When youth are removed from schools and sent to court, it causes multiple layers of harm and disruption in their lives. Juvenile court often disrupts education by requiring a young person to miss time from school for court-related activities. Young people who are detained or incarcerated generally receive deficient educational programming.³³ Additionally, research has found young people are less likely to get their high school diploma once involved in the legal system.³⁴ School success requires allowing young people to stay in school, where the youth can learn from their adolescent missteps and stay on a path toward a positive future.

David S. Kirk & Robert J. Sampson, *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*, 86 *SOCIO. OF EDUC.* 36, 49 (2013).³⁵

Kirk and Sampson sought to “assess whether and why early contact with the criminal justice system delays or alters the transition to adulthood for American youth in high school completion and college enrollment.” They found that “arrest in adolescence hinders the transition to adulthood by undermining pathways to educational attainment. Among Chicago adolescents otherwise equivalent on pre-arrest characteristics, 73 percent of those arrested later dropped out of high school compared with 51 percent of those not arrested, a substantial difference of 22 percent. . . . Among otherwise equivalent young adults with high school diplomas or GED certification, 18 percent of arrestees later enrolled in four-year colleges relative to 34 percent of nonarrestees.” The study controlled for a variety of factors when analyzing and comparing outcomes, including socioeconomic status, parental marital status, family structure, neighborhood of residence, and peer groups.

Paul Hirschfield, *Another Way Out: The Impact of Juvenile Arrests on High School Dropout*, 82 *SOCIO. OF EDUC.* 368, 368-393 (2009).³⁶

After studying almost 5,000 students from Chicago public schools in neighborhoods where a majority of residents were people of color, Hirschfield’s findings suggest that involvement in the legal system increased the rate of young people dropping out of high school.

Jön Gunnar Bernburg & Marvin D. Kroh, *Labeling, Life Chances, and Adult Crime: The Direct and Indirect Effects of Official Intervention in Adolescence on Crime in Early Adulthood*, 41 *CRIMINOLOGY* 1287, 1287-1318 (2003).³⁷

Testing the labeling theory, Bernburg and Kroh’s research examined whether “official intervention increases the probability of involvement in subsequent delinquency and deviance because intervention triggers exclusionary processes that have negative consequences for conventional opportunities.” They found that “[e]xperiencing official intervention in adolescence is significantly associated with reduced odds in favor of staying in school in a subsequent period.”

“[B]oth police intervention and juvenile justice intervention are positively and significantly related to periods of nonemployment in adulthood.”³⁸

Risks of Incarcerating Youth

Incarceration increases the risk of young people being victimized, dropping out of school, being unemployed or underemployed, and experiencing depression or other physical or mental health problems.

Andrea J. Sedlak et al., *Nature and Risk of Victimization: Findings from the Survey of Youth in Residential Placement*, JUVENILE JUSTICE BULLETIN (2013).³⁹

Young people are put at risk when incarcerated. The Survey of Youth in Residential Placement was conducted on a national representative sample of more than 7,000 juvenile court-involved youth who were in custody (detention or other residential placements). The results showed that 56 percent of incarcerated youth experienced one or more types of victimization (theft, robbery, physical assault, or sexual assault).

Elizabeth S. Barnert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?*, 139 PEDIATRICS 1 (2017).⁴⁰

The harms of incarceration can be life-long. Findings from this study revealed that those who were incarcerated for less than a month during adolescence were more likely to have depressive symptoms as an adult. Youth who were incarcerated for a cumulative period of one to 12 months experienced worse general health outcomes as an adult. And those who experienced more than one year of cumulative incarceration as an adolescent were more likely to have functional limitations, depressive symptoms, and suicidal thoughts as an adult.

Umberto Gatti et al., *Iatrogenic Effect of Juvenile Justice*, 50 J. CHILD PSYCH. & PSYCHIATRY 591 (2009).

Results of this study indicate that youth who received more restrictive interventions (i.e., placement in facilities) when involved with the juvenile court system were more likely to be arrested as an adult. The authors use the term “iatrogenic effect” to explain this process, where well-intended interventions have unintended negative consequences.

When court systems interfere, youth may miss critical opportunities to learn from their mistakes and gain the skills to be autonomous—and instead, often acquire negative messages about their identity and worth.⁴¹

Conclusion

Piling onto the already heavy loads court-involved youth are saddled with, youth face lifelong consequences of a juvenile record. Information about their juvenile court involvement (arrests and/or adjudications) may appear on background checks that, in turn, create barriers to education, employment, and housing.⁴²

Most youth will naturally mature and desist—and no longer participate in risky or unlawful behavior.⁴³ School response to adolescent behavior should be measured by what we know: **less is more**. And responses outside the juvenile legal system are overwhelmingly more effective for both youth and communities.

“By perpetuating a system in which youth are unable to succeed, we deprive our community of the energy, skills, and creativity that young people would contribute if they were not so hobbled by their juvenile [court] past.”⁴⁴

Endnotes

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AASA, the School Superintendents Association

1615 Duke St
Alexandria, VA 22314
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