PennState Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 125 | Issue 3

Spring 2021

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Emily Haney-Caron

Erika Fountain

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Emily Haney-Caron, JD, PhD &
Erika Fountain, PhD*

ABSTRACT

The term wrongful conviction typically refers to the conviction or adjudication of individuals who are factually innocent. Decades of research has rightfully focused on uncovering contributing factors of convictions of factually innocent people to inform policy and practice. However, in this paper we expand our conceptualization of wrongful conviction. Specifically, we propose a redefinition that includes other miscarriages of justice: A wrongful conviction is a conviction or adjudication for someone who never should have been involved in the juvenile or criminal legal system in the first place. Although there are various miscarriages of justice that might appropriately be categorized under this reconceptualization, in this paper we focus specifically on those whose system involvement was the result of engaging in no wrongdoing beyond normative adolescent behavior. With this reconceptualization in mind, we highlight how the intersection of youthfulness and race puts youth of color at risk of both wrongful conviction based on factual innocence and wrongful conviction based on criminalization of normative youthful behavior. We rely on a cumulative disadvantage framework to demonstrate how system responses to both youthfulness and race drive youth of color deeper into the legal system and further contribute to their wrongful conviction. In doing so, we describe how the disadvantage created by youthfulness and racial bias compound within and across each stage of system processing. We also illustrate that it is the behavior of youth of color, not white youth, that is disproportionately criminalized. Youth of color are cur-

* Emily Haney-Caron – Assistant Professor of Psychology, John Jay College of Criminal Justice and the Graduate Center, the City University of New York; Director, Youth Law & Psychology Lab. Erika Fountain – Assistant Professor of Psychology, University of Maryland, Baltimore County; Director, Youth Justice Lab. The authors would like to thank Prof. Kris Henning for invaluable input during the conceptualization of this Article as well as for her impactful scholarship that heavily informed our thinking on this topic.

rently and have historically been overrepresented within the juvenile and criminal legal systems; this disparity can be seen even amongst the youngest system-involved youth. We conclude by presenting recommendations for future research efforts to account for multiple system time points, race, and youthfulness. Finally, we describe what we believe to be important considerations for changes to policy and practice that might begin to correct the unnecessary and disproportionate wrongful charging and conviction of youth of color.

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INTRODUCTION

Huwe Burton was 16 years old when he came home to find his mother murdered; he called 911. He was soon the investigators' primary suspect and was wrongfully accused of murdering his mother. Huwe's story is similar to that of other wrongfully convicted youth: He was a Black teen who was interrogated without an attorney present, denied contact with his father, threatened by police if he did not cooperate, wrongly implicated by someone else who likely was involved with the crime, and had exculpatory evidence withheld by the prosecutor. This combination of events occurring two days after losing his mother led Huwe to falsely confess to being high on crack cocaine and fatally stabbing his mother. His confession was full of contradictory statements that did not support the physical evidence of what had actually happened that night. Before his trial, Huwe recanted his confession and argued it was the result of coercive interrogation practices. Nevertheless, Huwe was convicted of second-degree murder and spent the next 18 years behind bars before being paroled. Huwe's father drained his financial

resources on Huwe's defense and appeals and died while Huwe was still in prison. At 45 years old, a decade after his release, Huwe was finally exonerated and his charges dismissed.[1]

At 13 years old, Michael was an active, responsible big brother living with his parents in central Maryland. While he was hanging out with friends, he and his friend stole another teen's cellphone. This was Michael's first "offense" and gained him entrance to the juvenile justice system. After he pled "involved," the Department of Juvenile Services recommended that he write an apology letter for stealing the iPhone and remain at home under community supervision while receiving counseling and abiding by a curfew. The judge overseeing Michael's case disagreed. Instead, the judge sent Michael to a 90-day wilderness program for juvenile offenders two-hours away from his parents' home. Michael's stay at the wilderness program was the first stop on an eight-facility tour through the Maryland juvenile justice system for this young Black boy, including the state's maximum-security facility for juveniles. Facility staff reports described him as becoming increasingly verbally abusive and instigating altercations. Discharge recommendations consistently suggested that he would fare better at home with his family under community supervision. The interventions were doing more harm than good. The judge continued confining Michael, who ultimately spent 891 days and three birthdays incarcerated for stealing another teen's iPhone; a harsher punishment than an adult in the criminal legal system would have faced. As Michael's mother put it, "It felt like my son had been kidnapped." When he finally returned home, she struggled to connect with him. He was less engaged in school and more defiant and angrier than before. Within four months of returning home, he was rearrested and facing adult-charges for car theft.[2]

Though these stories differ in several important ways, they both represent cautionary tales of wrongful or problematic system involvement in the lives of young, Black boys. Although Huwe Burton was factually innocent and Michael factually guilty, *both*

1. *See* Ken Otterbourg, *Huwe Burton,* NAT'L REGISTRY OF EXONERATIONS (Oct. 29, 2020), http://bit.ly/3uJoy46 [https://perma.cc/65PM-CPLS]; *Huwe Burton,* BLUHM LEGAL CLINIC: CTR. ON WRONGFUL CONVICTIONS, http://bit.ly/2MCYCG2 [https://perma.cc/7R6J-Y8LR] (last visited Jan. 26, 2020); Leonard Greene, *Exonerated Bronx Man Who Spent 20 Years in Jail Suing City Over Wrongful Murder Conviction,* NY DAILY NEWS (Oct. 28, 2020), http://bit.ly/3bLwsRC [https://perma.cc/9835-B72E].

2. *See* Erica L. Green, *A Stolen Cellphone, Then an Odyssey Through Maryland's Juvenile Justice System,* BALT. SUN (Dec. 30, 2020), http://bit.ly/2PkOxhY [https://perma.cc/RV7R-7BNB].

lives were unnecessarily set off course by legal system involvement. By the time Huwe was finally released, he had lived more time incarcerated than free. According to the National Registry for Exonerations, about a quarter of exonerees were teenagers when they were accused, just over 10 percent were under 18, and they waited an average of 14 years before being exonerated.[3] The outrage at the legal actors who facilitated the system's unjust suspicion and ultimate conviction of people like Huwe Burton is rightfully placed.

Michael's story represents a more common and insidious form of system involvement that systematically and disproportionately affects the lives of youth of Color. Arresting and charging youth like Michael unnecessarily places them on an often-irreversible trajectory toward increasing system involvement. Instead of treating problem behaviors as teachable moments, our society now functions such that "[a] typical schoolyard fight is labeled as a felony assault, and students who play 'catch' with a teacher's hat are charged with robbery."[4] Juvenile justice stakeholders and scientists alike recognize that applying overly punitive sanctions to low-risk youth can actually increase recidivism.[5] Rule-breaking, limit-testing, and risky behavior are a normal—and necessary—part of adolescent development; it is how youth grow, learn, and appreciate the responsibilities that will eventually be bestowed upon them as adults.[6] Most adolescents will age out of this behavior with little to no intervention at all, which is partially why the legal system does not hold youth to the same level of legal culpability as adults.[7] Michael's case is characteristic of how system involvement problematizes and exacerbates typical adolescent behavior; yet

3. *See Detailed View,* NATIONAL REGISTRY OF EXONERATIONS, http://bit.ly/3dUMGdL [https://perma.cc/X36R-MGKK] (last visited Jan. 25, 2020).

4. Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform,* 98 CORNELL L. REV. 383, 386 (2013).

5. *See* James Bonta & D. A. Andrews, *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation,* 6 REHAB. 1, 9 (2007); Leah Brogan, Emily Haney-Caron, Amanda NeMoyer & David DeMatteo, *Applying the Risk-Needs-Responsivity (RNR) Model to Juvenile Justice,* 40 CRIM. JUST. REV. 277, 280 (2015).

6. *See* Natasha Duell & Laurence Steinberg, *Positive Risk Taking in Adolescence,* 13 CHILD DEV. PERSP. 48, 48 (2019).

7. *See generally* Laurence Steinberg, *The Influence of Neuroscience on US Supreme Court Decisions about Adolescents' Criminal Culpability,* 14 NATURE REV. NEUROSCIENCE 513 (2013). In a series of cases over the past three decades, the U.S. Supreme Court has applied adolescent developmental science to rulings restricting death penalty and life without parole sentences for youth under age 18 at the time of the offense in part because of their reduced culpability. *Id.* at 514. *See also* Roper v. Simmons, 543 U.S. 551 (2005); Graham v. Florida, 560 U.S. 48 (2010); Miller v. Alabama, 567 U.S. 460 (2012).

there is very little outrage or pushback for this overreaching by the legal system.

In this Article, we argue that each of these cases is best conceptualized as a type of wrongful conviction, and we argue for an expansion of prevailing definitions of wrongful conviction in research, scholarship, and policy. Additionally, we complicate traditional analyses of wrongful conviction with youthful status and racial bias, which we argue both result in risk for wrongful conviction both greater in degree and of a different nature than the risk faced by a White adult. This Article is a first attempt to explore the ways in which youth—particularly youth of Color—experience risk of a wrongful conviction from the very beginning of justice system processing, and the ways in which this risk is built upon and compounded at every subsequent stage.

Part I of this Article argues for an expansion of the term *wrongful conviction* to include two types of wrongful conviction: Convictions of individuals who are factually innocent and convictions of individuals whose conduct has been inappropriately criminalized. Part II provides an overview of adolescent development science and explores how this science should lead to a particular focus on the issue of wrongful convictions among youth, as well as how a youth's race shapes legal conceptions of adolescent development. In Part III, we then analyze the ways in which youth face particular risk of wrongful conviction at every stage of justice system processing, exploring both research and scholarship on the risk posed by youthfulness as well as the risk posed by minoritized racial status. Part IV applies this conceptualization of risk of youthful wrongful conviction to make recommendations for research, legal practice, and policy. Specifically, we call for researchers to develop more complex research designs that account for race, youthfulness, and multiple stages of system contact in exploring wrongful convictions of both types discussed in this Article. We draw on recommendations for practice that individual prosecutors, defense attorneys, and judges can implement now, while the research literature is still developing—utilizing their discretion to move kids out of the system, reducing the risks of wrongful conviction and its lasting consequences. Finally, we call for major policy changes to address the overcriminalization of youth related to policing adolescence, building robust systems for providing community-based interventions for youth outside of the justice system, and ensuring youth strong legal representation through all stages of processing, including post-disposition.

I. THE PROBLEM OF WRONGFUL CONVICTION IN THE MODERN JUSTICE SYSTEM

A. Convicted Though Innocent: The Traditional Wrongful Conviction Lens

The case of Huwe Burton, described above, typifies the wrongful convictions long studied by legal scholars and social scientists[8] and recently made prominent in public discourse by portrayals in popular media.[9] Convictions of those who are factually innocent are now a well-studied and publicly recognized phenomenon. Consensus that *wrongful conviction* refers to the conviction of people who are factually innocent is so widely accepted that much of the scholarly literature on wrongful convictions does not define the term.[10] Research-to-date has focused on identifying the frequency of, risk factors for, and causes of factually innocent wrongful convictions.[11]

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8. American wrongful convictions legal scholarship began more than 100 years ago and burgeoned into a robust area of study in the late 1980s. *See* Jon B. Gould & Richard A. Leo, *One Hundred Years Later: Wrongful Convictions after a Century of Research,* 100 J. CRIM. L. & CRIMINOLOGY 825, 826–29 (2010) [hereinafter Gould & Leo]. More recently, the field of legal psychology has produced a large body of research on wrongful convictions, much of it focused on interrogations, forensic confirmation bias, eyewitness testimony, and jury decision making. *See* Kyle C. Scherr, Allison D. Redlich & Saul M. Kassin, *Cumulative Disadvantage: A Psychological Framework for Understanding How Innocence Can Lead to Confession, Wrongful Conviction, and Beyond,* 15 PERSPS. ON PSYCH. SCI. 353, 354–56 (2020).

9. *See* Greg Stratton, *Wrongful Conviction, Pop Culture, and Achieving Justice in the Digital Age, in* CRIME, DEVIANCE AND POPULAR CULTURE: INTERNATIONAL AND MULTIDISCIPLINARY PERSPECTIVES 177, 177–79 (Dimitris Akrivos & Alexandros K. Antoniou eds., 2019). Over the last decade, multiple podcasts and television shows have reported in-depth explorations of cases of possible wrongful conviction, reaching a combined tens of millions of viewers and listeners. For example, the 2014 podcast *Serial,* one of the most popular podcasts ever, detailed the murder conviction of a teenager and explored the possibility of his innocence. Sarah Koenig & Julie Snyder, *Serial* (2014), https://bit.ly/3s1gfhc [https://perma.cc/UB9U-WTZL]. A year later, the Netflix documentary series *Making a Murderer* focused on a man who had been exonerated for sexual assault and attempted murder, but was subsequently charged with another murder (along with his teenage nephew, Brendan Dassey); the series presented this murder conviction as also very questionable and highlighted the likelihood that a confession given by Dassey was a false confession. MAKING A MURDERER (Netflix 2015); Stratton, *supra.* More recently, Netflix released *When They See Us*, a 2019 mini-series following the proven wrongful convictions of the so-called Central Park Five for a violent rape in the 1980s. Gabrielle Bruney, *An Excruciating Timeline of the Central Park Five Tragedy*, ESQUIRE (May 31, 2019), http://bit.ly/3cd3tGr [https://perma.cc/P8EK-LPBD].

10. *See, e.g.*, Richard A. Leo, *The Criminology of Wrongful Conviction: A Decade Later,* 33 J. CONTEMP. CRIM. JUST. 82 (2017).

11. *See generally* Gould & Leo, *supra* note 8.

Estimates of the frequency of wrongful convictions of individuals who are factually innocent draw on cases of proven exonerations to gauge the scope of the problem, though the true rate of wrongful convictions is likely unknowable.[12] These estimates—relying on a large number of assumptions and extrapolating from a variety of data sources—suggest that three to five percent of convictions may be of someone who is factually innocent.[13] More recently, research on guilty pleas has raised the possibility that, in addition to the significant number of wrongful convictions by jury verdicts, a large number of cases resolved via guilty plea may also constitute wrongful convictions.[14] Because the above estimates predate much of the research on false guilty pleas, and guilty pleas make up 95 percent of convictions but only 10 percent of known exonerations,[15] accounting for wrongful convictions resulting from a guilty plea may substantially increase estimates of convictions of factually innocent defendants.

Given the near consensus that convictions of factually innocent defendants occur at an unacceptably high rate within the United States criminal justice system, researchers have sought to identify defendant risk factors that increase the likelihood of wrongful convictions as well as the mechanisms through which the system con-

12. Because individuals convicted of a crime may be motivated to claim factual innocence even when they are factually guilty, emphasis has been placed on proven exonerations, which are a poor proxy for the true scope of the problem because proven exoneration almost exclusively occurs for only the most serious charges—rape and murder. This is commonly the result of exonerations based on DNA evidence, which is unavailable for most types of crime, as well as due to the very large amount of resources necessary to prove a conviction was wrongful—resources that will only be expended when the wrongfully imposed sentence is very severe. Gould & Leo, *supra* note 8, at 834–35.

13. *Id*. at 832. *But see* Paul G. Cassell, *Overstating America's Wrongful Conviction Rate? Reassessing the Conventional Wisdom about the Prevalence of Wrongful Convictions,* 60 ARIZ. L. REV. 815 (2018).

14. *See, e.g.*, Allison D. Redlich, Stephanos Bibas, Vanessa A. Edkins & Stephanie Madon, *The Psychology of Defendant Plea Decision Making,* 72 AM. PYCH. 339, 348–49 (2017). More than a third (37 percent) of offenders with mental illness report having falsely pled guilty at least once, as do 18 percent of juvenile offenders. *Id. See generally* Allison D. Redlich, Alicia Summers, & Stephen Hoover, *Self-Reported False Confessions and False Guilty Pleas Among Offenders with Mental Illness,* 34 L. & HUM. BEHAV. 79 (2010); Lindsay C. Malloy, Elizabeth P. Shulman, & Elizabeth Cauffman, *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders,* 38 L. & HUM. BEHAV. 181 (2014). The National Registry of Exonerations notes that 15 percent of known exonerees pled guilty. *Innocents Who Plead Guilty*, NAT'L REGISTRY OF EXONERATIONS (Nov. 24, 2015), https://bit.ly/3rsmfQO [https://perma.cc/89EG-MJZS].

15. Redlich et al., *supra* note 14, at 339; Samuel R. Gross, *What We Think, What We Know, and What We Think We Know About False Convictions,* 14 OHIO ST. J. CRIM. L. 753, 778 (2017).

victs innocent individuals.[16] Defendant risk factors identified in the literature include youthfulness and a prior criminal record,[17] and additional risk factors—e.g., mental illness, cognitive and intellectual disabilities, suggestibility—have been identified for false confession, which in turn increases the risk of wrongful conviction.[18] Wrongful convictions of factually innocent defendants differ from cases in which a wrongful conviction was narrowly avoided in a number of ways, such as intentional misidentification, forensic errors, prosecutorial misconduct in withholding exculpatory evidence, false testimony, and inadequate lawyering on the part of the defense attorney.[19] Although the main contributors to a wrongful conviction appear to vary by case type, significant causes of conviction of the innocent include mistaken eyewitness identification, false accusations, false confessions, misleading forensic evidence, and official misconduct.[20]

Although an extensive body of research and scholarship has focused on wrongful convictions of factually innocent defendants, only a small subset has included a robust analysis of two variables strongly associated with wrongful conviction: Youthfulness and minoritized race.[21] Commonly, research and scholarship on wrongful

16. Gould & Leo, *supra* note 8, at 838–58.

17. Jon B. Gould, Julia Carrano, Richard A. Leo & Katie Hail-Jares, *Predicting Erroneous Convictions,* 99 IOWA L. REV. 471, 494–505 (2014).

18. *See generally* Saul M. Kassin, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo & Allison D. Redlich, *Police-Induced Confessions: Risk Factors and Recommendations,* 34 L. & HUM. BEHAV. 3 (2010).

19. Jon Gould & Richard A. Leo, *The Path to Exoneration,* 79 ALA. L. REV. 325, 335–36 (2015).

20. Gross, *supra* note 15, at 769–73.

21. Many books and articles have raised this issue and identified the critical importance of race and of youthfulness. *See, e.g.*, MARVIN D. FREE, JR. & MITCH RUESINK, RACE & JUSTICE: WRONGFUL CONVICTIONS OF AFRICAN AMERICAN MEN (2012); Earl Smith & Angela J. Hattery, *Race, Wrongful Conviction & Exoneration*, 15 J. AFRICAN AM. STUD. 74 (2011); Elizabeth Webster & Jody Miller, *Gendering and Racing Wrongful Conviction: Intersectionality, Normal Crimes, and Women's Experiences of Miscarriage of Justice*, 78 ALA. L. REV. 973 (2014); SAMUEL R. GROSS, MAURICE POSSLEY, & KLARA STEPHENS, RACE AND WRONGFUL CONVICTIONS IN THE UNITED STATES (2017); Patrick Webb, Dennis Savard, & Aimee Delaney, *The Color of Confinement: Examining Youth Exoneration Decisions and the Critical Race Theory,* 18 J. ETHNICITY CRIM. JUST. 206; Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 RUTGERS L. REV. 943 (2009); Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257 (2007). However, that *any* articles on wrongful conviction or its contributors have been published in the past 10 years without robust discussion of race and youthfulness highlights the need for a framework for discussing and researching the impact of minoritized racial status and adolescence in creating convictions of those who are factually innocent.

convictions and their causal factors, such as false confessions, present a single narrative focused on system variables[22] allegedly common to all defendants. This approach thereby does not fully examine that the way system involvement plays out for Black innocent defendants may be profoundly different than for White innocent defendants, or that age may also play a role.[23] Although one would not know it from much of the relevant literature, race profoundly shapes the trajectory toward a wrongful conviction: One analysis concludes that a Black individual convicted of murder is 38 percent more likely to be innocent than a non-Black individual, an individual convicted of sexual assault is 3.5 times more likely to be innocent if he is Black than if he is White, and ten times as many innocent Black people are convicted of drug crimes than are innocent White people.[24]

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22. *See, e.g.*, Gary L. Wells, Amina Memon & Stephen D. Penrod, *Eyewitness Evidence: Improving Its Probative Value,* 7 PSYCH. SCI. PUB. INT. 45, 47–48 (2006). The focus on system variables, or those things over which the system has control, has often been to the exclusion of estimator variables, which include many of the ways in which racial bias shapes wrongful convictions (e.g., racial dynamics of eyewitness identification). *Id*.

23. *See generally, e.g.*, Scherr et al., *supra* note 8 (a recent article presenting a framework for thinking about the cumulative disadvantage of innocence compounded at each stage of justice system processing, but mentioning only a single time that the phenomena they identify may play out differently for defendants of Color and identifying adolescence as a notable risk factor during interrogation and pleas but describing a full discussion of youthfulness as beyond the scope of the article); James R. Acker, *Taking Stock of Innocence: Movements, Mountains, and Wrongful Convictions*, 33 J. CONTEMP. CRIM. JUST. 8 (2017) (presenting an overview on extant knowledge regarding the innocence movement and discussing racial bias in only three sentences and referencing youthfulness only once in a list of factors associated with wrongful convictions as opposed to near misses); Kassin et al., *supra* note 18 (providing a comprehensive overview of research on false confessions in the form of a white paper and making no mention of race other than to describe defendants in case vignettes, though discussing the risk of adolescence/immaturity at length); Robert J. Norris, James R. Acker, Catherine L. Bonventre, & Allison D. Redlich, *Thirty Years of Innocence: Wrongful Convictions and Exonerations in the United States, 1989–2018,* 1 WRONGFUL CONVICTION L. REV. 1 (reviewing research from 30 years of the innocence movement and discussing race as a variable in need of further examination but not referencing age or youthfulness).

24. Gross*, supra* note 15, at 778–84. Notably, because of limitations in the way ethnicity data is recorded, these same figures cannot be clearly generated for Latinx defendants. Barbara O'Brien, Klara Stephens, Maurice Possley & Catherine M. Grosso, *Latinx Defendants, False Convictions, and the Difficult Road to Exoneration*, 66 UCLA L. REV. 1682, 1706–14 (2019). For a discussion of the particular vulnerabilities of Latinx defendants to wrongful conviction and the ways in which they are disadvantaged in securing exoneration, see generally *id.*

Youth are also at heightened risk of wrongful conviction.[25] They face not only the same risks as adults (e.g., risk of wrongful eyewitness identification or false testimony) but are appreciably at *greater* risk than adults in some domains (youth are profoundly over-represented in proven false confessions, for example).[26] Additionally, youth face a number of structural disadvantages in the way the legal system processes their cases that may lead to higher likelihood that a wrongful conviction will not be caught and stopped before it can happen,[27] or may result in a youth being convicted or adjudicated *even though* the relevant legal actors do not believe they are guilty.[28] These disadvantages are, at times, amplified by features of the juvenile justice system for youth who are processed as juveniles.[29] For example, the quality of legal representation in juvenile court may be especially poor or may not focus on zealously advocating for the child's rights,[30] and lack of due process protections related to probable cause and to the right to a jury trial may make youth in juvenile court especially vulnerable.[31] Additionally, the system does not devote resources to identifying wrongful adjudications in juvenile court, either because the penalties wrongfully adjudicated juveniles face are less severe than those of individuals wrongfully convicted in adult court,[32] or because the focus on rehabilitation within juvenile court creates a less adversarial process that does not prioritize appeals.[33]

Although each has a meaningful impact on system trajectory on its own, youthfulness and racial bias do not just exist as separate disadvantages. They must be considered together to develop a robust understanding of how wrongful convictions of these youth are created by decisions of a variety of legal actors throughout the

25. Gould et al., *supra* note 17, at 513–14; Joshua A. Tepfer, Laura H. Nirider & Lynda M. Tricarico, *Arresting Development: Convictions of Innocent Youth,* 62 RUTGERS L. REV. 887, 891–93 (2010).

26. Drizin & Luloff, *supra* note 21, at 259–60; SAMUEL R. GROSS & MICHAEL SHAFFER, EXONERATIONS IN THE UNITED STATES, 1989–2012: REPORT BY THE NATIONAL REGISTRY OF EXONERATIONS 60 (2012), https://bit.ly/2Qb3kvW [https://perma.cc/U6P6-ATFA]. Of proven exoneration cases, 42 percent of cases involving a defendant under the age of 18 included a false confession, compared to 8 percent of cases of adults with no known mental disabilities. *Id.*

27. Drizin & Luloff, *supra* note 21, at 260.

28. *See generally* Victor Streib, *Intentional Wrongful Conviction of Children,* 85 CHI.-KENT L. REV. 163 (2010).

29. *Id.* at 172–74; Drizin & Luloff, *supra* note 21, at 260.

30. Streib, *supra* note 28, at 172– 74; Drizin & Luloff, *supra* note 21, at 289–92.

31. Drizin & Luloff, *supra* note 21, at 300–06.

32. *Id.* at 321.

33. *Id.* at 296.

court process.[34] Given the profound impact of race and of youthfulness on convictions of those who are factually innocent, we argue that *no* research or scholarship on wrongful convictions or their contributing factors should present a conceptualization devoid of discussion of age and race. This Article is, in part, an attempt to create a framework for thinking about the ways in which minoritized racial status—particularly being Black—and youthfulness interact with each other and with innocence to produce wrongful convictions. In Section III, we present a preliminary, incomplete analysis of the ways in which these variables may shape a defendant's experiences, both individually and when combined. We hope that this conceptualization may be part of a paradigm shift in the fields of legal psychology and legal scholarship that complicates our understanding of wrongful conviction by accounting for the realities of those who are frequently wrongfully convicted: Young, Black men.[35]

B. Wrongful Conviction as Profound Miscarriage of Justice

Although research and scholarship on wrongful conviction tacitly agree on a shared definition of the term as a conviction of someone who is factually innocent,[36] this definition creates a focus on only a small segment of the cases in which someone is adjudi-

34. *See generally* Webb, Savard & Delaney, *supra* note 21. Although our conceptualization of these disadvantages is heavily influenced by intersectional theory on multiply marginalized identities and interactions between oppressions, we do not use the term in this paper because of the ongoing debates about the appropriate applications of intersectionality and because of popular misconceptions of the meaning of the term. *See* Jennifer C. Nash, *Re-Thinking Intersectionality,* 89 FEMINIST REV. 1, 9–10 (2008); Sumi Cho, Kimberle Williams Crenshaw & Leslie McCall, *Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis,* 38 J. WOMEN CULTURE & SOC'Y 785, 787–92 (2013); Claudia Garcia-Rojas, *Intersectionality Is a Hot Topic—And So Is the Term's Misuse*, TRUTHOUT (Oct. 17, 2019), https://bit.ly/3tliIV5 [https://perma.cc/82GB-KDHU].

35. *See generally* Webb, Savard & Delaney, *supra* note 21.

36. There are a few notable exceptions. For example, a 2010 article on wrongful convictions of children defines wrongful convictions as "convicting a criminal defendant or adjudicating a juvenile respondent for the offense charged without proof beyond a reasonable doubt. The defendant or respondent may or may not have actually committed the offense, but in all cases the proof offered by the state failed to meet the required burden beyond a reasonable doubt, thus making the conviction violate the Due Process clause. Streib, *supra* note 28, at 163 n.1. Despite individual attempts to reconceptualize wrongful conviction, however, the dominant definition has not shifted across multiple decades of scholarship. More recently, some scholars have included partial innocence, that is, situations in which someone confesses or pleads guilty to something they did not do although they *were* factually guilty of some wrongdoing related to the allegations made against them, within the definition of wrongful conviction. *See, e.g.*, Tina M. Zottoli, Tarika Daftary-Kapur, Georgia M. Winters & Conor Hogan, *Plea Discounts, Time*

cated delinquent or convicted despite having not committed meaningful wrongdoing. Factual innocence is an incomplete focus given who and what the American criminal and juvenile justice systems choose to criminalize; if we are concerned with wrongful charging and wrongful convictions or adjudications, factual innocence is a faulty lens. The astoundingly exponential expansion of criminalization in the United States[37] has specifically targeted Americans of Color, particularly Black Americans.[38] Criminal law has been applied to make poverty, mental illness, and homelessness punishable offenses[39] but has failed to hold accountable police who murder Black Americans[40] or corporate officers committing malfeasance that destroys the livelihoods or lives of huge numbers.[41] Additionally, discretion built into the system—exercised by police officers, prosecutors, and judges—ensures that not everyone who engages in conduct that *could* be criminalized *is, in fact,* criminalized.[42] This uneven and inappropriate criminalization also has a profound impact on youth; indeed, "much of youth crime and delinquency is the product of normal adolescent development."[43] The law has increasingly treated children as criminals for youthful behavior occurring in schools[44] and in the community[45] and then processed them as

Pressures, and False-Guilty Pleas in Youth and Adults Who Plead Guilty to Felonies in New York City, 22 PSYCH., PUB. POL'Y, & L. 250, 255–56 (2016).

37. The number of people incarcerated in the United States has quadrupled since 1980, and the number of federal prisoners has increased tenfold. ANTHONY B. BRADLEY, ENDING OVERCRIMINALIZATION AND MASS INCARCERATION: HOPE FROM CIVIL SOCIETY 24–25 (2018). When including probation and parole, 2.8 percent of Americans are incarcerated within or supervised by the criminal justice system. *Id.* at 23.

38. *See, e.g.*, MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLOR BLINDNESS (2010).

39. *See generally* PETER EDELMAN, NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA (2019) (discussing the ways in which the law criminalizes behavior that is normative or unavoidable for people living in poverty).

40. *See generally* Somil Trivedi & Nicole Gonzalez Van Cleve, *To Serve and Protect Each Other: How Police-Prosecutor Codependence Enables Police Misconduct*, 100 B.U. L. REV. 895 (2020) (describing the mechanisms through which police officer avoid accountability for serious misconduct, including murder).

41. Gregory M. Gilchrist, *Individual Accountability for Corporate Crime,* 34 GA. STATE U. L. REV. 335, 336 (2018).

42. Henning, *supra* note 4, at 426–29.

43. *Id.* at 385.

44. For a discussion of the criminalization of children and adolescents in school, see generally Paul J. Hirschfield, *Preparing for Prison? The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79 (2008).

45. *See, e.g.*, VICTOR M. RIOS, HUMAN TARGETS: SCHOOLS, POLICE, AND THE CRIMINALIZATION OF LATINO YOUTH (2017) (exploring Latino youths' experiences of criminalization within their communities).

adults rather than as children.[46] As Professor Kristin Henning explains, "The prevalence of minor, low-impact offenders in juvenile courts today reflects society's continued unwillingness to tolerate 'normal' adolescent misconduct—particularly among poor youth of color."[47] Certainly, avoiding the profound harm done when an innocent person is convicted is critical, but focusing on those cases *to the exclusion* of the rest of those who are inappropriately criminalized is problematic.

In a foundational article on the criminalization of normative adolescent behavior, Henning provided a number of case examples of youth charged with delinquency following "allegations that, if true, meet the statutory elements for the crimes listed" but nevertheless should not result in justice system involvement:[48]

JAQUAN: Several boys are sitting outside in a public park. Jaquan, aged fifteen, finds marijuana in his older brother's room and brings it out to share with his friends. All of the boys try it—each one excited about the opportunity to experiment and afraid of appearing lame in front of his friends. Police arrest all of the boys and prosecutors charge each with possession of marijuana. Prosecutors also charge Jaquan with distribution.

JAMES: Fifteen-year-old James is wearing a hoodie sweatshirt in public, a violation of an obscure city ordinance prohibiting such attire. James mouths off at the police officer who tells him to take it off. The police officer arrests James. Prosecutors charge James with resisting a police officer for refusing to comply with the officer's instructions.

ERIC, MARK, & DERRICK: Fifteen-year-old Eric sees twelve-year-old Robert standing in line at an ice cream truck. Eric grabs Robert's money, throws it in the air, and runs away laughing. Robert runs away in the opposite direction without picking up the money. Mark and Derrick, two other twelve-year-olds standing in line at the ice cream truck, pick up the money from the ground and pocket it. Mark and Derrick are prosecuted in juvenile court for taking property without right. Prosecutors charge Eric with robbery.

RODNEY & ROLAND: Two African American boys, Rodney and Roland, throw pebbles across the train tracks at a young Hispanic boy, José, for no reason other than they are bored and José is

46. BARRY C. FELD, THE EVOLUTION OF THE JUVENILE COURT: RACE, POLITICS, & THE CRIMINALIZING OF JUVENILE JUSTICE, 105–55 (2017).

47. Henning, *supra* note 4, at 403–04.

48. *Id.* at 427.

different. Rodney and Roland, both aged fourteen, are charged in juvenile court with assault with a dangerous weapon.

SHANNON: Sixteen-year-old Shannon is riding a public bus with five classmates from her special education school when she notices one of the teacher's aides from her school at the back of the bus. Shannon snatches the aide's hat and tosses it to one of her classmates. After playing a game of catch with the hat through peals of laughter, the children drop the hat and get off the bus. Police arrest Shannon at school the next day. Prosecutors charge her with robbery.

JACOB: For several weeks, two or three classmates verbally tease Jacob, a chubby thirteen-year-old. Jacob is visibly pained and distraught by the verbal abuse. About two months into the school year, a group of unknown youth approach Jacob as he is sitting alone at a lunch table. Unsure of their motives, but without any physical provocation to justify a claim of self-defense, Jacob throws a book, hitting one of the youth in the face and breaking his glasses. Prosecutors charge Jacob with felony assault and destruction of property.[49]

These offenses are a representative—though certainly not exhaustive—list of the types of adolescent behavior that may initiate a serious justice system response although the behavior could well be handled entirely outside of a justice system context. These cases will be familiar to anyone who has worked with youth within the justice system, and we believe these impulsive adolescent behaviors will be familiar to anyone who has spent time with teenagers or, at one point, has been a teenager themselves. What is different about these instances, though, is that for these youth, normative youthful behavior resulted in serious legal consequences and disrupted their lives.

With this understanding, the case of Michael described in the introduction is the same as the case of Huwe Burton; both are stories of a Black boy who was a typical teenager, engaged in no wrongful conduct beyond what most adolescents do. They both experienced justice system involvement, lost years of their lives to incarceration, and had their life trajectories profoundly reshaped because of the unreasonable criminalization to which they were subjected. Both boys were youth who never should have been pulled into the justice system, but were. They were both, under the plain meaning of the words, wrongfully convicted. We propose, then, a redefinition of wrongful conviction to include more of the

49. *Id.*

miscarriages of justice that could properly carry that label: A wrongful conviction is a conviction or adjudication for someone who never should have been involved in the justice system in the first place.

We propose a two-prong conceptualization of wrongful conviction. One type of wrongful conviction involves the conviction or adjudication of someone who is factually innocent of the crime with which they are charged; we refer to this as Type A. The other type of wrongful conviction involves the conviction or adjudication of someone who has engaged in no wrongdoing worse than age-normative behavior, but nevertheless is adjudicated delinquent or convicted in criminal court; we refer to this as Type B. This Article will explore these two types of wrongful conviction, as well as wrongful charging—that is, justice involvement (whether via charges in criminal court or a delinquency petition filed in juvenile court) of one of the above two types that ends short of a criminal conviction or a delinquency adjudication. In so doing, we focus specifically on youth of Color in the juvenile and criminal justice systems. We recognize that the second category of wrongful conviction we propose may also extend to youth or adults whose poverty or mental illness or homelessness or gender has been policed and criminalized, but our focus is on wrongful charging and convictions emerging from the criminalization of normative adolescent behavior. The next section contextualizes this focus.

II. A DEVELOPMENTALLY INFORMED FRAMEWORK FOR EXPLORING RISK OF WRONGFUL CONVICTION—THE IMPORTANCE OF AGE AND MINORITIZED RACE

The wrongful charging and conviction of youth in juvenile courts—of both Type A and Type B—has received surprisingly little attention given the vulnerabilities posed by adolescent development and the closed nature of juvenile proceedings.[50] A separate juvenile justice system was originally developed in part as a response to the recognition that adolescents are normatively different from adults such that they are less culpable for their behavior and more responsive to treatment.[51] This recognition is what informs the juvenile justice system's theoretical prioritization of rehabilitation, accountability, and confidentiality over the retributive prac-

50. Drizin & Luloff, *supra* note 21, at 265, 306–10.

51. For a history of the juvenile justice system, see generally FELD, *supra* note 46 (describing the evolution of the juvenile justice system from the emergence of the first juvenile court through the present era).

tices of the criminal justice system.[52] Theoretically, the original juvenile courts were meant to rehabilitate delinquent youth into productive citizens, not punish them.[53] However, the consequences of being adjudicated delinquent are real and lasting. Juvenile justice involvement is not insignificant; juvenile courts, though less punitive, do punish and confine youth, and initial system involvement leads to future juvenile and criminal system involvement and is associated with a host of collateral consequences and stigma.[54]

A. Developmental Science and Youth Justice Involvement

Decades of developmental and neuroscience research underscore the commonsense understanding that adolescents are different from adults in ways that make adolescents prone to risky behavior. Adolescents are more likely than children and adults to engage in risky behavior of all kinds, and some scholars have argued that involvement in law-breaking behavior is really just one "instance of risk-taking more generally," as adolescents are also more likely to engage in risky sex, reckless driving, or self-inflicted injury.[55] Behavioral studies show that while youth, on average, reach cognitive maturity by mid-adolescence, their judgment and decision-making capacities continue to mature well beyond this point.[56] Even though older adolescents are able to identify risks like adults, the way they value and respond to risk and reward is different from adults in important ways that are relevant to understanding delinquent behavior. For one, when adolescents are around their peers or in otherwise emotionally salient or stressful situations, they value or prioritize the immediate and positive consequences of a potential decision.[57] Although adults may find a ra-

52. *Id*.

53. Kristin Henning, *The Challenge of Race and Crime in a Free Society: The Racial Divide in 50 Years of Juvenile Justice Reform,* 86 GEO. WASH. L. REV. 1604, 1623 (2018). For an analysis of how the juvenile justice system was developed specifically to rehabilitate White youth, to the exclusion of Black youth, see generally GEOFF K. WARD, THE BLACK CHILD-SAVERS: RACIAL DEMOCRACY AND JUVENILE JUSTICE (2012).

54. Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. REV. 520, 525–38 (2004).

55. Steinberg, *supra* note 7, at 515.

56. Laurence Steinberg, *Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science*, 16 CURRENT DIRECTIONS PSYCH. SCI. 55, 56 (2007). Neural development—and the judgment and decision-making abilities that extend from this neural development—extends into the early-to-mid-twenties. *Id.*

57. Philip David Zelazo & Stephanie M. Carlson, *Hot and Cool Executive Function in Childhood and Adolescence: Development and Plasticity*, 6 CHILD DEV. PERSPS. 354, 356 (2012); Margo Gardner & Laurence Steinberg, *Peer Influ-*

tional decision to be one that maximizes benefits and minimizes costs, adolescents are more likely to find a rational decision to be one that maximizes the immediate, social, and emotional benefits, regardless of the longer-term costs. This aspect of youth decision making is why adolescents, as a class, are more likely to make risky decisions that are impulsive[58]—and that often occur in the presence of their peers—even when they know the potential for negative consequences.[59] Therefore, Michael's decision to steal a cell phone when he was hanging out with his friends is not entirely surprising, given what we know about adolescent behavior.

The increase in reckless behavior during adolescence correlates with underlying brain development. According to recent advances in developmental neuroscience, risk taking and decision making during adolescence is partially informed by the asymmetric developmental trajectories of two distinct systems in the brain: the socioemotional system, which is made up primarily of the limbic areas of the brain, and the cognitive control system, which involves the prefrontal cortex.[60] According to this dual-systems theory, scholars propose that a window of opportunity for risky decision making emerges between the earlier development of the socioemotional system and the later, more gradual developmental trajectory of the cognitive control systems.[61] Specifically, the limbic system, which is sensitive to social and emotional rewards and stimuli, matures during puberty; this developmental change is believed to result in increases in sensation and reward seeking behavior during early adolescence.[62] The cognitive-control system, which is implicated in executive functions such as planning ahead, self-regulation, and impulse control, develops more gradually into young adulthood.[63] This perspective can help explain why in emotionally salient situations or in the presence of peers—stimuli that are

ence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study, 41 DEV. PSYCH. 625, 629–32 (2005); Dustin Albert, Jason Chein & Laurence Steinberg, *The Teenage Brain: Peer Influences on Adolescent Decision Making*, 22 CURRENT DIRECTIONS PSYCH. SCI. 114, 114–15 (2013).

58. *See* Steinberg, *supra* note 56, at 56.

59. Ashley R. Smith, Jason Chein & Laurence Steinbeg, *Peers Increase Adolescent Risk Taking Even When the Probabilities of Negative Outcomes Are Known,* 50 DEV. SCI. 1564, 1567–68 (2014).

60. Steinberg, *supra* note 56, at 56.

61. Laurence Steinberg, *A Dual Systems Model of Adolescent Risk-Taking,* 52 DEV. PSYCHOBIOLOGY 216, 216 (2010).

62. *Id.*

63. *Id.*; Alexandra O. Cohen et al., *When Is an Adolescent an Adult: Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 PSYCH. SCI. 549, 560 (2016).

particularly activating to the socioemotional system—adolescents are less likely to think ahead, consider the long-term consequences of their actions, or self-regulate.[64] Adult-like decision making in stressful and emotional contexts is thought to rely on both of these mature systems such that even under highly emotional circumstances, adults have the capacity to exhibit greater impulse control than children or adolescents.[65] Although some adults are primed to engage in risky and reckless behavior, on average, adolescents are more vulnerable to this type of decision making due to the increased sensitivity to rewards and ongoing development of the prefrontal cortices implicated in executive functions.

Many of the same developmental features of adolescence that result in criminal or delinquent charging of normative adolescent behavior leave youth vulnerable to pressures that increase risks of wrongful conviction. Innocent suspects ascribe to a naïve sense that justice will prevail, the truth will set them free, and therefore, will waive their *Miranda* rights during interrogation and speak to police.[66] As we describe later, youth are more likely than adults to waive these rights[67] in part because they not only naively believe that justice will prevail but also because they are more likely than adults to give in to the pressures of authority figures,[68] to prioritize immediate outcomes such as putting an end to an aversive interrogation process,[69] or to protect their friends.[70] Interrogators are often more confrontational with innocent suspects who attempt to deny involvement and maintain their innocence.[71] These practices are difficult for even adults to resist,[72] and adolescents' susceptibility to the influence of authority figures places youth at even greater

64. *See generally* Alexandra O. Cohen & B.J. Casey, *Rewiring Juvenile Justice: The Intersection of Developmental Neuroscience & Legal Policy,* 18 TRENDS COGNITIVE SCI. 63 (2014).

65. *See* Steinberg, *supra* note 56, at 56.

66. Saul M. Kassin, *On the Psychology of Confessions: Does Innocence Put Innocents at Risk?,* 60 AM. PSYCH. 215, 218–19 (2005).

67. *Infra* Section III.B.

68. Thomas Grisso, Laurence Steinberg, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci & Robert Schwartz, *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & HUM. BEHAV. 333, 353 (2003).

69. Malloy et al., *supra* note 14, at 185–87.

70. *Id.*

71. Saul M. Kassin, Christine C. Goldstein & Kenneth Savitsky, *Behavioral Confirmation in the Interrogation Room: On the Dangers of Presuming Guilt*, 27 L. & HUM. BEHAV. 187, 197–98 (2003).

72. Kassin, *supra* note 66, at 219–20.

risk of giving into this interrogative pressure.[73] It also makes it more likely that adolescents acquiesce to attorney recommendations even if they disagree with what the attorney recommends.[74] Adolescents may be more likely than adults to feel pressured to go along with attorney recommendations to plead guilty[75] and less likely to speak up when they disagree. A robust literature has highlighted the cumulative disadvantage of innocence;[76] developmental science tells us that this cumulative disadvantage is greater for innocent or wrongfully charged youth.

B. Youth Vulnerability from Racial Bias

Developmental maturity and the corresponding vulnerability to systemic pressures do not exist in a racial vacuum. Adding to the developmental vulnerability of youth, the experiences of youth of Color make them particularly vulnerable to the pressure of authority figures, especially those in law enforcement.[77] Racial disparities in legal system involvement can be seen even among the youngest youth. A recent review of cases in California revealed Black youth as young as 5 to 11 years old are disproportionately impacted by the legal system and that the overrepresentation of Black youth increases with each stage of justice system contact.[78] The juvenile and criminal legal systems have consistently treated youth of Color more harshly than White youth and scholars have argued that this is "in part because decision makers throughout the system are less inclined to recognize their developmental immaturity."[79] In fact, research has shown that both the public and police officers overestimate the age of young Black felony defendants by an average of four years, which often means that Black youth are inaccurately perceived as adults.[80] These errors are not due to legal factors such as crime severity but are instead the result of racial bias and associ-

73. *Infra* Section III.B.

74. Jodi L. Viljoen, Jessica Klaver & Ronald Roesch, *Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Pleas, Communication with Attorneys, and Appeals*, 29 L. & HUM. BEHAV. 253, 268 (2005).

75. *See* Grisso et al., *supra* note 68, at 357.

76. For a review, see Scherr et al., *supra* note 8.

77. Kristin Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 AM. U. L. REV. 1513, 1529–33 (2018).

78. Laura S. Abrams, Matthew L. Mizel & Elizabeth S. Barnert, *The Criminalization of Young Children and Overrepresentation of Black Youth in the Juvenile Justice System*, 13 RACE & SOC. PROBS. 73, 78, 81 (2021).

79. Henning, *supra* note 4, at 387.

80. Phillip Atiba Goff, Matthew Christian Jackson, Brooke Allison Lewis Di Leone, Carmen Marie Culotta & Natalie Ann DiTomasso, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526, 530–35 (2014).

ated with implicit dehumanization of Black youth. White youth are not subjected to these mistakes; police officers perceive White youth suspects as significantly younger than Black youth suspects, and in fact perceive White youth suspected of a felony as *younger* than their actual age.[81]

The disparate treatment of youth of Color is not a symptom of a modern legal system but rather a consequence of its original design.[82] The original juvenile courts were meant to assimilate or rehabilitate the influx of European immigrants who were determined delinquent or in need of intervention.[83] However, these citizen-building efforts were reserved for non-Black youth.[84] Segregationist policies denied rehabilitative services for Black youth.[85] While White youth were provided education and skills training, Black youth were "trained to meet the agricultural and other manual labor needs of the day."[86] The racial disparities inherent in our system today are unsurprising given that the system was built on racist policies and practices that ensured the mistreatment of youth of Color.[87] We do not have to look very far to see evidence of our society's continued refusal to recognize the developmental immaturity of youth of Color. In the 1990s, the coded language warning of the imminent rise of the *superpredator* led to swift racialized policy reforms that led to a dramatic increase in the number of young Black boys tried as adults,[88] a practice that continues today. This disparate treatment is more evident than ever before given how often police killings of Black youth such as Tamir Rice, Antwon Rose, Michael Brown, Frederick Cox, Cameron Tillman, and others force into focus legal actors' racist treatment of Black youth. Black youth are therefore doubly vulnerable to being unjustly involved and harmed by the legal system.

Scholars have warned that the confidential nature of juvenile court, though having important benefits and protecting youth from public scrutiny, makes it incredibly difficult to explore wrongful charging and convictions.[89] The vulnerabilities that exist for inno-

81. *Id.*

82. For the definitive history of youth justice focused on the ways in which racial conceptualizations shaped the development of juvenile justice practices, see generally WARD, *supra* note 53.

83. Henning, *supra* note 53.

84. WARD, *supra* note 53, at 48–76.

85. *Id.*

86. Henning, *supra* note 53, at 1616.

87. WARD, *supra* note 53.

88. Tamar R. Birckhead, *The Racialization of Juvenile Justice and the Role of the Defense Attorney*, 58 B.C. L. Rev. 379, 411–12 (2017).

89. Drizin & Luloff, *supra* note 21, at 273.

cent adults are greater for youth. Developmental immaturity puts adolescents at risk for engaging in risky and reckless behavior, caving to pressure from authority figures like police and attorneys, and making impulsive and shortsighted decisions that could have important legal consequences. Further, the still-developing nature of adolescents' cognitive and reasoning skills results in them understanding less about their rights, interrogation practices, court processes, and potential consequences and puts them at risk for wrongful convictions—of both types. Beyond developmental immaturity, race also places youth at risk for disparate treatment; youth of Color are more likely to be suspected of criminal behavior, more likely to have their behavior criminalized, and more likely to be punitively punished than White youth. Understanding how these demographic variables shape a youth's trajectory through the justice system is necessary to fully conceptualize how wrongful convictions are created.

III. THE CUMULATIVE DISADVANTAGE OF YOUTHFULNESS AND RACIAL BIAS IN CREATING WRONGFUL OUTCOMES FROM JUSTICE SYSTEM PROCESSING

In this section, we explore the complex impacts of youthfulness, minoritized racial identity, and the intersection of the two on each stage of justice processing for youth who have been wrongfully caught up in the system. Although we primarily discuss the impacts on justice processing generally, we specifically delineate ways in which the adult or juvenile systems particularly disadvantage youth, when relevant. There are numerous ways to conceptualize the stages of processing. For this paper, we have delineated the process into eight stages based on the extant literature we present: Initial police contact, police investigations, charging, pre-trial detention, plea bargains, trial or adjudicatory hearing, sentencing or disposition, and post-disposition including termination of supervision or incarceration, appeals, and long-term collateral consequences of justice involvement. Disadvantages experienced in any one stage, from youthful status or racial bias or both, often continue to impact youth into future stages, compounding the likelihood of an adverse outcome at each step.

A. Initial Police Contact

For most youth, entanglement with the justice system begins with an encounter with law enforcement.[90] Therefore, policing practices profoundly shape whether—and how—a youth will be charged with a crime or have a delinquency petition filed. Law enforcement policies dictate which communities are surveilled, which youth are suspected of illegal activity, and which youth are arrested.[91] A police officer's decision to intervene in a youth's life, then, is the first step in wrongfully convicting a youth. As discussed above, this intervention may occur when police choose to investigate a youth who is factually innocent of illegal or delinquent behavior, or when police choose to respond to typical adolescent behavior in a way that leads to justice involvement.[92] As we discuss further in future sections, this initial policing decision has far-reaching implications in shaping the trajectory of a youth's life well beyond the law enforcement encounter.

Status offenses, or conduct that is illegal only because of legal status as a minor,[93] by definition pull youth into the justice system for normative adolescent rule-breaking or boundary testing. Because these behaviors are not wrongful or problematic *other than* because a youth is involved, criminalizing them fails to "take into account the normal experimentation of childhood and adolescence."[94] Every year, nearly 100,000 youth have a status offense petition filed against them, thereby bringing the youth into contact with the justice system, and the system ultimately adjudicates the youth as a status offender in more than a third of those cases.[95] Although youth engaged in status offending may be in need of ser-

90. COMM. ON ASSESSING JUV. JUST. REFORM, *Reforming Juvenile Justice: A Developmental Approach* 49 (2013).

91. Tony A. Barringer & Belinda E. Bruster, *The Juvenile Justice System: An Analysis of Discretion and Minority Overrepresentation*, *in* 1 COLOR BEHIND BARS: RACISM IN THE US PRISON SYSTEM 191, 194–98 (Scott William Bowman ed., 2014).

92. *See supra* Section I.B; Henning, *supra* note 77, at 1529–38.

93. Status offenses include truancy, curfew violations, running away, alcohol consumption, and ungovernability or incorrigibility. Zachary Auspitz, *Juvenile Status Offenses: The Prejudicial Underpinnings of the Juvenile Justice System*, 8 U. MIA. RACE & SOC. JUST. L. REV. 1, 5 (2018).

94. OFF. OF JUV. JUST. & DELINQ. PREVENTION, STATUS OFFENDERS LITERATURE REVIEW: A PRODUCT OF THE MODEL PROGRAMS GUIDE 1 (2015), https://bit.ly/2Qd8h7F [https://perma.cc/D5WB-TM9K]. "Children and adolescents commonly experiment with behaviors that are not considered positive or prosocial, such as lying, being truant, or defying parents. Such experimentation allows youths to discover the negative consequences of their behaviors and learn from their mistakes." *Id.*

95. SARAH HOCKENBERRY & CHARLES PUZZANCHERA, JUVENILE COURT STATISTICS 2018, 63–79 (2020), https://bit.ly/2P0O3NT [https://perma.cc/TSD5-

vices, those services do not require police or justice system contact.[96] The justice system continues to detain or place youth in residential care because of status offending, as many as 40,000 per year.[97]

Police enter encounters with adolescents ill-equipped to understand or respond effectively to youths' developmental needs; in most states, less than one percent of officer training time is spent on information specific to youth.[98] However, almost a third of police use-of-force incidents involve 16–19-year-olds—despite youth these ages making up only 3.5 percent of police contacts generally.[99] Thus, officers appear to have a uniquely challenging time safely and effectively navigating contacts with adolescents. Developmentally, adolescents are primed to act impulsively, to have strong emotional responses to situations, to assert independence, and to choose behaviors that feel good in the moment despite potential serious long-term consequences.[100] In encounters with police, this may translate to adolescents challenging police authority—especially when police have treated the youth or others in their community unfairly in the past[101]—in ways that are developmentally appropriate but that may lead to arrest and/or police use-of-force.[102] Indeed, police may be especially likely to arrest youth for "contempt of cop," or behaving in a way that police find disrespectful or offensive despite the ab-

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7J9K]. A substantial portion of these cases are referred by law enforcement (17 percent in 2018), and a large portion are referred by schools. *Id.* at 76.

96. *See, e.g.*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, *supra* note 94, at 7.

97. Jay D. Blitzman, *Are We Criminalizing Adolescence?,* 30 CRIM. JUST. 22, 25 (2015). Notably, incarcerating status offenders violates at least the spirit of the law, if not the letter of the law, as juvenile justice system funding from the federal government to the states requires deinstitutionalization of status offenders. Emily Haney-Caron & Erika Diaz Ortiz, *Legal Update: The Reauthorization of the Juvenile Justice and Delinquency Prevention Act*, AM. PSYCH.-L. SOC'Y NEWSL. (John Jay Coll. of Crim. Just.), Feb. 2019, at 1–2, https://bit.ly/3eITa01 [https://perma.cc/2GAM-YH9T].

98. STRATEGIES FOR YOUTH, IF NOT NOW, WHEN? A SURVEY OF JUVENILE JUSTICE TRAINING IN AMERICA'S POLICE ACADEMIES 4 (2013), https://bit.ly/3qJ2Qtz [https://perma.cc/X45T-8V3M]. Five states report requiring *no* training for officers on juvenile justice specific issues, and only two states include training adolescent development specifically. *Id*.

99. *Id*. at 8.

100. See *supra* Section II.A.

101. Perceptions of police legitimacy are associated with compliance with police, especially for youth. Glenn D. Walters & P. Colin Bolger, *Procedural Justice Perceptions, Legitimacy Beliefs, & Compliance with the Law: A Meta-Analysis,* 15 J. EXPERIMENTAL PSYCH. 341, 347 (2019).

102. *See generally, e.g.*, Jeff Q. Bostic, Lisa Thurau, Mona Potter & Stacy S. Drury, *Policing the Teen Brain,* 53 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 127 (2014).

sence of dangerous or illegal conduct.[103] Notably, the youth who have developed the least self-control are more likely to have police contact, and those contacts are more likely to involve police hostility than the contacts of youth who have developed greater self-regulation skills.[104] Youthfulness, then, and the attendant developmental immaturity, are unique risk factors for wrongfully being pulled into the justice system—that is, for conduct that is noncriminal, creating the first step toward a Type B wrongful conviction.

Although youthfulness itself functions as a risk factor for wrongful arrest—and, therefore, a potential wrongful adjudication—youthfulness intersects with race to create an especially high vulnerability of wrongful arrest for youth of Color. Black youth have significantly lower perceptions of police legitimacy than White youth, and this difference emerges in adolescence as Black youth experience negative interactions with police.[105] Black youth make up 17 percent of the youth population but 31 percent of juvenile arrests.[106] Accounting for contextual and behavioral factors, Black young adults are seven times more likely to be arrested than White young adults.[107] After initial contact, police use their discretion to remove White youth from formal justice system processing, but do not do so for youth of Color.[108] Police exercise discretion in prob-

103. See generally Christy E. Lopez, *Disorderly (mis)Conduct: The Problem with Contempt of Cop Arrests,* 4 ADVANCE 71 (2010), for a discussion of the phenomenon of "contempt of cop" arrests made on charges such as disorderly conduct, resisting arrest, disturbing the peace, and obstructing a police officer. Such arrests may also be initiated *following* inappropriate officer use-of-force, to retroactively attempt to justify problematic police conduct. *Id*. at 76. For a discussion of "contempt of cop" charges of youth, specifically, see Bostic et al. *supra* note 102, at 127.

104. Dylan B. Jackson, Alexander Testa & Michael G. Vaughn, *Low Self-Control and the Adolescent Police Stop: Intrusiveness, Emotional Response, and Psychological Well-Being,* 66 J. CRIM. JUST. 1, 6–7 (2020). Importantly, youth low in self-control also experience the most significant harmful impacts stemming from police stops, including social stigma and post-traumatic stress. *Id*. at 8.

105. Adam D. Fine, Kathleen E. Padilla & Kelsey E. Tom, *Police Legitimacy: Identifying Developmental Trends & Whether Youths' Perceptions Can Be Changed,* J. EXPERIMENTAL CRIMINOLOGY 1, 7–10 (2020).

106. Lisa Chiu, *After Decades of Spending, Minority Youth Still Overrepresented in System,* JUV. JUST. INFO. EXCH. (Feb. 26, 2014), https://bit.ly/3lhr6BO [https://perma.cc/JF2A-VZRR].

107. Cydney Schleiden, Kristy L. Soloski, Kaitlyn Milstead & Abby Rhynehart, *Racial Disparities in Arrests: A Race Specific Model Explaining Arrest Rates Across Black & White Young Adults,* 37 CHILD & ADOLESCENT SOC. WORK J. 1, 7–11 (2019).

108. Rebecca D. Ericson & Deborah A. Eckberg, *Racial Disparity in Juvenile Diversion: The Impact of Focal Concerns & Organizational Coupling,* 6 RACE & JUST. 35, 45–46 (2016). In some jurisdictions, almost two-thirds of White youth

lematic ways even for more minor charges: Data show disparities in post-arrest case handling for Hispanic and racial minority youth, such that police are more likely to refer these youth to the courts than White youth.[109] This may be, at least in part, because police hold unconscious biases that Black youth are more likely to recidivate, more culpable, and have more negative traits.[110]

Youth of Color experience police presence and contact in their daily lives, even when they have no history of delinquency, and often beginning at very young ages.[111] Urban Black boys report experiencing police harassment at extremely high levels, even if they have never engaged in delinquent behavior, and both Black boys and girls report knowing people who the police have harassed.[112] Justice-involved boys describe an often predominantly White police force giving many chances to White youth (giving just a verbal warning when an arrest could be made) but only rarely extending these chances to youth of Color.[113] Despite the disparities present in policing, police training generally does not include information about disproportionate minority involvement of youth

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eligible for police diversion are in fact diverted, compared to approximately one-third of non-White youth eligible for diversion. *Id.*

109. Ronald E. Claus, Sarah Vidal & Michele Harmon, *Racial and Ethnic Disparities in the Police Handling of Juvenile Arrests,* 64 CRIME & DELINQ. 1375, 1386–87 (2017).

110. Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders,* 28 L. & HUM. BEHAV. 483, 492–93 (2004). Officers who were primed with words associated with Black reported worse perceptions of a youth in a vignette even when the youth's race was not specified, and this effect was not attributable to explicit biases. *Id.*

111. *See generally* Ana Lilia Campos-Manzo, Marisol Flores, Denise Perez, Zoe Halpert & Kevin Zevallos, *Unjustified: Youth of Color Navigating Police Presence Across Sociospatial Environments,* 10 RACE & JUST. 297 (2020). One of the reasons youth of Color experience such high levels of police contact is the proliferation of police in schools, creating schools that "run more like a prison than a high school." Hirschfield, *supra* note 44, at 79. Coupled with racial biases among school personnel, Black youth, in particular, are pushed from schools and toward justice involvement when school disciplinary issues receive a police response. *Id.* at 92; Lauren A. Maddox, *His Wrists Were Too Small: School Resource Officers and the Over-Criminalization of America's Students*, 6 U. MIA. RACE & SOC. JUST. L. REV. 193, 195–206 (2015–2016).

112. Rod K. Brunson & Jody Miller, *Gender, Race, and Urban Policing: The Experience of African American Youths,* 20 GENDER & SOC'Y 531, 528–39 (2006). In this qualitative study, youth reported police are disrespectful to them, treat Black people like they "are worthless," search youth to try to identify a ground for arrest, and refuse to view Black youth (even those for whom the police cannot identify an arrestable offense) as innocent. Many youth also reported that family or friends had been victims of police violence. *Id.* at 539–45.

113. Rachel Feinstein, *A Qualitative Analysis of Police Interactions and Disproportionate Minority Contact*, 13 J. ETHNICITY CRIM. JUST. 159, 170–71 (2015).

in the justice system.[114] When Black youth experience these interactions with police, either as a suspect or as a bystander, they come to see police interactions as fueled by racism and experience a sense of degradation, and these interactions become commonplace *before* youth have the developmental maturity to effectively respond or process what is happening to them.[115] In adolescence, youth are developing their own perceptions of the law and of justice.[116] When youth experience the law—and law enforcement—as fair, consistent, and just, they view the legal system as more legitimate and are more likely to comply with the law.[117] Alternatively, when youth experience police contact that they perceive as illegitimate, unfair, or unjust, the respect they hold for the law reduces, and so does their future compliance.[118] Being stopped by the police then, in turn, increases future delinquency for Black and Latinx youth, partially driven by the psychological distress youth experience following such a troubling encounter.[119] Rather than what one might expect, that delinquency triggers policing, the reverse is true: Policing happens to youth of Color regardless of delinquency, and that policing then *creates* delinquency among youth, which is then policed.[120] A wrongful arrest, one that results from unreasonably *criminalized* conduct despite the absence of genuinely *criminal* conduct and which may or may not trigger a subsequent Type B wrongful adjudication, ultimately leads to future justice involvement that is *not* wrongful. The system then creates justification for the involvement of the youth within it, because once a youth has been criminalized, the youth then acquiesces by becoming criminal. Notably, the average age for first false admission—either a false con-

114. STRATEGIES FOR YOUTH, *supra* note 98, at 18.

115. *See* Nikki Jones, *"The Regular Routine": Proactive Policing and Adolescent Development Among Young, Poor Black Men,* 143 NEW DIRECTIONS FOR CHILD & ADOLESCENT DEV. 33, 39–48 (2014).

116. Henning, *supra* note 53, at 1633–36.

117. *Id.* "Because adolescence is a critical time during which youth form their own beliefs and norms about the law and legal institutions, youths' perceptions of fairness and justice during adolescence may have a substantial impact on their willingness to obey the law as they transition into adulthood." *Id.* at 1634.

118. *See id.*

119. Juan Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black & Latino Boys,* 116 PROCEEDINGS NAT'L ACAD. SCIS. 8261, 8266 (2018). This longitudinal study found that law-abiding behavior did not predict fewer police stops in the future; that is, boys could not avoid encounters with police by avoiding delinquency. *See id*. at 8267.

120. *Id*. at 8267. This impact is greatest when the first police contact happens at a younger age; that is, race and youthfulness interact to create an especially harmful impact on young boys of Color. *See id*.

fession or a false guilty plea—is 14.2 by youth self-report.[121] Therefore, the possibility that a youth's first system contact is wrongful, due to unreasonable criminalization or factual innocence or both, is uncomfortably high.

The first, wrongful, arrest leads to the next arrest, pushing a youth further into the justice system. Controlling for self-reported offending, youth who are involved with the justice system are more likely to be arrested than youth who had avoided prior justice system involvement.[122] Even for youth who manage to overcome this push into delinquency, system contact continues: Black youth report less offending prior to first arrest than White youth, and once they are arrested, Black youth are more likely than White youth to be rearrested, controlling for offending following the first arrest.[123] Police exercise discretion in choosing whether to formally book a youth they detain, issue a citation, or issue an informal warning, and once a youth has been formally booked, police are much more likely to formally book that youth again in the future.[124] Notably, the decision to formally book is profoundly disparate for Black and Hispanic youth compared to White youth, such that differential booking rates by race account for a substantial portion of the disparity in juvenile arrest history between youth of Color and White youth.[125] Policing sets off a cascade of consequences for a youth that make youthfulness and racial minority status contributors to wrongful system involvement, both for youth who are factually innocent of the conduct with which they are charged (Type A), and for youth who are factually guilty of criminalized typical adolescent behavior (Type B). The impact from initial policing then extends into the next stage, police investigations.

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121. Malloy et al., *supra* note 14, at 186. More than a third (35.2 percent) of justice-involved youth indicate they have given a false admission at least once. *Id.*

122. Jordan Beardslee et al., *Under the Radar or Under Arrest: How Is Adolescent Boys' First Contact with the Juvenile Justice System Related to Future Offending and Arrests?* 43 L. & HUM. BEHAV. 342, 348–351 (2019).

123. Namita Tanya Padgaonkar et al., *Exploring Disproportionate Minority Contact in the Juvenile Justice System Over the Year Following First Arrest,* J. RSCH. ON ADOLESCENCE 1, 6–7 (2020).

124. *See* Steven Raphael & Sandra V. Rozo, *Racial Disparities in the Acquisition of Juvenile Arrest Records,* 37 J. LABOR ECON. S125, SS132–33 (2019). Youth explain that a police officer "'seeing them before' or knowing of them as 'trouble makers,' influences the police's decision to stop them 'for the littlest reasons.'" Feinstein, *supra* note 113, at 168. Thus, "[w]ithin the juvenile justice system, racial subordination is maintained in part by an increased likelihood that youth of color will be repeatedly arrested and will continue to cycle in and out of the justice system, reducing their access to mainstream education and institutions." *Id*.

125. *See id*. at 168–73.

B. Police Investigations

As described in detail above,[126] youth often become involved in the justice system because of criminalization of normative adolescent behavior. However, youth are also at high risk for a Type A wrongful adjudication when police incorrectly target them for others' serious criminal behavior.[127] This incorrect targeting happens when police initiate an investigation after a report of a crime and identify a youth as a suspect even though the youth was not involved in the crime. These two processes may reinforce each other; as noted above, youth who have prior police contact are at heightened risk of future police contact, regardless of their behavior,[128] and deciding to arrest someone increases an officer's perception of that person's guilt.[129] Therefore, youth who have been wrongfully caught up in the justice system for normative adolescent conduct may, once they are known to police and have arrest records, be more likely to be identified as suspects when genuinely criminal conduct is committed by an unknown person in the future. Regardless of previous justice involvement, however, once police suspect a youth of serious criminal conduct that the youth did not actually commit, youthfulness increases the risk that they will be wrongfully prosecuted through a number of mechanisms. This risk is highest for Black youth; although African Americans make up 13 percent of the United States population, they make up almost half of proven exoneration cases, and racial bias in selecting suspects plays a role in this differential.[130]

1. Becoming a Suspect

Youth who may have some knowledge of a crime may be at increased risk of *becoming* a suspect compared to adults because of their difficulty effectively navigating a pre-custodial interview.[131]

126. *See supra* Section I.B.

127. Youth may be wrongfully convicted of serious crime at disproportionately high rates compared to their level of justice involvement overall. *See supra* notes 25–33 and accompanying text.

128. *See supra* notes 122–24 and accompanying text.

129. Moa Liden, Minna Grans & Peter Juslin, *The Presumption of Guilt in Suspect Interrogations: Apprehension as a Trigger of Confirmation Bias and Debiasing Techniques,* 42 L. & HUM. BEHAV. 336, 342–344 (2018). In a vignette-based study, Swedish police officers who themselves made the decision to arrest a suspect selected more guilt-presumptive questions during interrogation and rated the suspect as less trustworthy than when the suspect was not arrested. *See id*.

130. *See* GROSS ET AL., *supra* note 21, at 9–10.

131. A popular police training manual distinguishes between interviews, which are designed to gather information, and interrogations, which are accusatory and designed to gather proof of guilt, including confessions. *See* FRED E. INBAU,

Although there is no research that directly examines youth presentation in police interviews, in contrast to interrogation, research on adolescent development[132] and on youth misperceptions of police and legal processes[133] suggests that many youth are likely more naive during police interviews than are most adults.[134] Police are trained to establish strong rapport during a nonaccusatory interview so that the suspect comes to "trust the investigator's objectivity and sincerity,"[135] which may be even more persuasive with children and adolescents than with adults. If factually innocent youth do not realize an investigator's true role and intentions—and the risk of becoming a suspect—they may fail to carefully monitor their responses to avoid saying or doing anything the officer may deem suspicious. Police investigators, though, are trained to be suspicious of someone they are interviewing when that person behaves in ways that may be normative for adolescents, including: Providing less detail than the officer believes is appropriate in response to questions, not reporting their thoughts or emotions as part of a narrative of a distressing event, using present verb tense when describing an event in the past, providing unrealistic hypotheses about what may have occurred, pausing before answering a question, not making eye contact, or even slouching, or crossing their arms.[136] Researchers in this area have noted that adolescents are generally more likely than adults to demonstrate these kinds of behaviors, even when not engaging in deception.[137] Without the necessary training on typical adolescent behavior, police may come to suspect a youth

JOHN E. REID, JOSEPH P. BUCKLEY & BRIAN C. JAYNE, CRIMINAL INTERROGATIONS AND CONFESSIONS 3–6 (2013). Police interrogators are trained to use interviews to gather information and observe behavioral cues that may then lead them to identify the person interviewed as a suspect, at which point questioning may switch to a guilt-presumptive interrogation. *See id*.

132. *See supra* Section II.A.

133. As further described below, children and adolescents have poor understanding of their rights in police encounters and in legal contexts generally, often do not appreciate police motivations, and are overly deferential to authority, including police officers. Naomi E.S. Goldstein, Emily Haney-Caron, Marsha Levick & Danielle Whiteman, *Waving Good-Bye to Waiver: A Developmental Argument against Youths' Waiver of* Miranda *Rights*, 21 N.Y.U. J. LEGIS. & PUB. POL'Y 1, 24–44 (2018).

134. *See* Drizin & Luloff, *supra* note 21, at 274. Youth are more likely than adults to view police as friendly, suggesting they "do not fully grasp that an interrogating officer's interests may be adverse to their own." Goldstein et al., *supra* note 133, at 38.

135. INBAU ET AL., *supra* note 131, at 6.

136. *See id.* at 89–135.

137. *See* Jessica R. Meyer & N. Dickon Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility,* 25 BEHAV. SCIS. & L. 757, 762–63 (2007).

of criminal wrongdoing simply because that youth behaves in age-appropriate ways.

The likelihood that an interview will turn into an interrogation may be especially high when police are interrogating youth of Color, as these youth may respond to police differently because of the stereotype threat they are experiencing.[138] Stereotype threat is "the apprehension one experiences when at risk of being perceived in light of a negative stereotype that applies to one's group"; during a police interview, Black interviewees may be aware of stereotypes related to Black criminality and dishonesty and may experience pressure to appear both innocent and credible.[139] Paradoxically, the anxiety, emotional arousal, and efforts at impression management triggered by stereotype threat may lead Black interviewees to act in ways that police view as suspicious, such as making less eye contact or increased hand movements.[140] Najdowski explains that "monitoring a situation for evidence of threat and controlling one's behavior to offset threat each require cognitive effort"[141] and, given that adolescents are still developing the executive functioning skills necessary for self-monitoring,[142] this cognitive load may be even greater for youth interviewees, making them appear disengaged. This phenomenon may also combine with police racial biases that lead them to find youth of Color more suspicious than White youth,[143] such that the vulnerability of youthfulness at this stage is compounded for youth of Color. Whatever the contributing factors in a specific case, once a youth becomes a suspect, their youthfulness creates a serious disadvantage by increasing the likelihood of two of the most common types of evidence leading to a Type A

138. *See generally* Cynthia J. Najdowski, *Stereotype Threat in Criminal Interrogations: Why Innocent Black Suspects Are at Risk for Confessing Falsely,* 17 PSYCH., PUB. POL'Y, & L. 562 (2011). African American adolescent boys, for example, are acutely aware of police racial biases and how those biases shape police decision making. *See generally* Rod K. Brunson, "*Police Don't Like Black People": African-American Young Men's Accumulated Police Experiences,* 6 CRIMINOLOGY & PUB. POL'Y 71 (2007); Cynthia J. Najdowski, Bette L. Bottoms & Phillip Atiba Goff, *Stereotype Threat & Racial Differences in Citizens' Experiences of Police Encounters,* 39 L. & HUM. BEHAV. 463 (2015).

139. Najdowski, *supra* note 138, at 565–70.

140. *Id.* at 570–78; Deborah Davis & Richard A. Leo, *Interrogation-Related Regulatory Decline: Ego Depletion, Failures of Self-Regulation, & the Decision to Confess,* 18 PSYCH., PUB. POL'Y, & L. 673, 688–90 (2012).

141. Najdowski, *supra* note 138 at 570.

142. *See supra* note 63 and accompanying text.

143. *See, e.g.*, Keisha April, Lindsey M. Cole & Naomi E. S. Goldstein, *Police Endorsement of Color-Blind Racial Beliefs and Propensity to Interact with Youth of Color,* 37 BEHAV. SCI. & L. 681, 687–90 (2019); Kimberly Barsamian Kahn & Karin D. Martin, *Policing and Race: Disparate Treatment, Perceptions, and Policy Responses,* 10 SOC. ISSUES & POL'Y REV. 82, 89–97 (2016).

wrongful conviction: Unreliable witness statements and false confessions.[144]

2. False Identifications

Although data are not available directly on this point, youth may be more likely to be falsely implicated than are adults, because children and adolescents who observe or are otherwise questioned about a crime often implicate other children or adolescents.[145] A false implication may happen in a variety of ways. First, child and adolescent witnesses are more likely than adults to incorrectly identify a culprit when a lineup does not, in fact, include the true perpetrator, and also more likely to choose the wrong person even when the true culprit is present in the lineup.[146] If, as relevant scholarship has postulated,[147] children and adolescents are more likely to be present when crimes are committed by other children and adolescents, youth are at increased risk of being wrongfully charged because of the possibility of an incorrect identification by a witness or victim. Second, children and adolescents may be implicated by other youth who are themselves suspects. That is, because of youthful vulnerability to police interrogation tactics, described below, youth may be pressured into telling police that another youth was involved in committing the crime with them, even when that is not true.[148] Of 103 proven exonerations of youth, another youth's unreliable statement implicating the exoneree contributed to the wrongful conviction in 34.9 percent of cases.[149] This risk may be especially strong for Black youth, given research showing that Black men with stereotypical facial features are at greater risk of a wrongful eyewitness identification.[150]

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144. *See generally* Clanitra Stewart Nejdl & Karl Pettitt, *Wrongful Convictions and Their Causes: An Annotated Bibliography,* 37 N. ILL. U. L. REV. 401 (2017) (describing five major causes of wrongful convictions).

145. Tepfer et al., *supra* note 25, at 893–94.

146. Ryan J. Fitzgerald & Heather L. Price, *Eyewitness Identification Across the Life Span: A Meta-Analysis of Age Differences,* 141 PSYCH. BULL. 1228, 1230 (2015).

147. Drizin & Luloff, *supra* note 21, at 278.

148. Tepfer et al., *supra* note 25, at 908–09.

149. *Id.* at 909.

150. Heather M. Kleider-Offutt, Leslie R. Knuycky, Amanda M. Clevinger & Megan M. Capodanno, *Wrongful Convictions and Prototypical Black Features: Can a Face-Type Facilitate Misidentifications?*, 22 LEGAL & CRIM. PSYCH. 350, 354–56 (2017).

3. Interrogations and Confessions

However a youth initially becomes a suspect, youthfulness is a profound risk factor for wrongfully incriminating oneself during interrogation.[151] First, before an interrogation begins, youth almost always waive their *Miranda* rights and therefore are subject to police questioning due to failure to invoke the right to counsel or to remain silent.[152] This waiver is unsurprising given that youth have substantial deficits in their understanding and appreciation of what the *Miranda* rights are and how they function.[153] As described above, children and adolescents especially struggle with reasoning and decision making in emotional or stressful contexts[154] and so, under the stress of interrogation, youth have an even harder time figuring out what their rights mean or whether—and how—to exercise them.[155] Police capitalize on youth misconceptions and susceptibility to pressure from authority figures by minimizing the importance of *Miranda* and giving youth the impression that talking is in their best interest to increase the likelihood of waiver.[156]

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151. For a full analysis of the ways in which youthful immaturity disadvantages children and adolescents in interrogation contexts, see generally Goldstein et al., *supra* note 133.

152. Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids,* 23 CORNELL J.L. & PUB. POL'Y 395, 429 (2013).

153. Thomas Grisso, *Juveniles' Capacities to Waive* Miranda *Rights: An Empirical Analysis,* 68 CAL. L. REV. 1134, 1143–49 (1980); Naomi E. Sevin Goldstein et al., *Juvenile Offenders'* Miranda *Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 ASSESSMENT 359, 365–66 (2003); Kaitlyn McLachlan et al., *Examining the Role of Interrogative Suggestibility in* Miranda *Rights Comprehension in Adolescents,* 35 L. & HUM. BEHAV. 165, 167 (2011); Allison D. Redlich et al., *Pre-Adjudicative and Adjudicative Competence in Juveniles and Young Adults*, 21 BEHAV. SCI. & L. 393, 400–04 (2003); Jennifer L. Woolard et al., *Examining Adolescents' and their Parents' Conceptual & Practical Knowledge of Police Interrogation: A Family Dyad Approach*, 37 J. YOUTH & ADOLESCENCE 685, 690–94 (2008); Heather Zelle et al., *Juveniles'* Miranda *Comprehension: Understanding, Appreciation, and Totality of Circumstances Factors*, 39 L. & HUM. BEHAV. 281, 287–88 (2015). "[Y]ounger age, lower intelligence, lower academic achievement, lower socioeconomic status, and greater interrogative suggestibility predict poorer *Miranda* comprehension, with large numbers of juveniles having inadequate comprehension of at least one right." Goldstein et al., *supra* note 133, at 31.

154. See *supra* Section II.A.

155. Even adults have significantly reduced understanding of their *Miranda* rights when under stress; this effect is likely magnified for youth. *See* Kyle C. Scherr & Stephanie Madon, *You Have the Right to Understand: The Deleterious Effect of Stress on Suspects' Ability to Comprehend* Miranda, 36 L. & HUM. BEHAV. 275, 278–79 (2012).

156. *See* Richard A. Leo & Welsh S. White, *Adapting to* Miranda*: Modern Interrogators' Strategies for Dealing with the Obstacles Posed by* Miranda, 84 MINN. L. REV. 397, 432–36 (1999–2000); BARRY C. FELD, KIDS, COPS, AND CONFESSIONS: INSIDE THE INTERROGATION ROOM 76–82 (2013).

Youth of Color may be especially likely to learn misconceptions from their parents about the ways in which their rights function in an interrogation context.[157] Additionally, Black youth may be at an even greater risk for waiving because they may be less likely than White youth to believe that police will actually respect their *Miranda* rights if they do invoke them.[158]

Once a youth has waived their rights, police are free to begin interrogating them, and the goal of interrogation is to extract a confession from the youth.[159] Youth are much more susceptible to police pressure during interrogation than are adults, and police use similar coercive techniques on both adult and child suspects.[160] In fact, a commonly used police interrogation training manual indicates that when interrogating youth over the age of 10, in general—though some caution may be warranted for individual youth—the same techniques apply to both adolescents and adults, and the manual includes a special section on how to persuade juvenile suspects to confess.[161] The ways in which police interrogate youth "inadvertently or not, play[s] on the susceptibility to pressure and developmental immaturity that are the hallmarks of childhood and adolescence."[162] Because of their developmental immaturity, including high suggestibility, children and adolescents are at much greater risk than adults of providing false incriminating information to police.[163] One study analyzing recorded interrogations found that virtually all youth—96 percent—who quickly waived their *Mi-*

157. In a study of justice-involved youth and their parents, family dyads had poorer rights understanding when the parent was a racial minority. Woolard et al., *supra* note 153, at 695.

158. Matthew B. Johnson & Kimberly Citron-Lippmann, Christina Massey, Chitra Raghavan, & Ann Marie Kavanagh, *Interrogation Expectations: Individual & Race/Ethnic Group Variation Among an Adult Sample*, 13 J. ETHNICITY CRIM JUST. 16, 21–24 (2015). Among adults, White participants are more likely to believe police will respect a suspect's *Miranda* rights once invoked than are Black participants, which has likely implications for whether someone undergoing interrogation chooses to invoke their rights. *Id.*

159. *See* Feld, *supra* note 152, at 432–40.

160. Meyer & Reppucci, *supra* note 137, at 761–77. Some especially coercive interrogation techniques—lying and saying there is evidence of the suspect's guilt; not allowing the suspect to deny guilt—police use *more* frequently with child suspects than they do with adults. *Id.*

161. INBAU ET AL., *supra* note 131, at 250–55.

162. Goldstein et al., *supra* note 133, at 40. For a review of research on interrogations of children and adolescents, see *id.* at 35–47.

163. *Id.* at 42. "More than a quarter of youth incarcerated for serious offenses reported having given true confessions, and seventeen percent reported having given false confessions. Indeed, three-quarters of juvenile interrogations end within fifteen minutes of starting, and over ninety percent end within thirty minutes, suggesting that children and adolescents provide confessions readily once *Miranda* rights are waived." *Id.*

randa rights ultimately made a self-incriminating statement to police, as did 57 percent of youth who did not immediately waive.[164] Therefore, once police identify a youth as a suspect and decide to conduct an interrogation, the likelihood that the youth will say something that the prosecutor can use for conviction is extremely high. When police interrogate innocent youth, then, a false confession is the likely outcome, which is borne out by the data: A large, disproportionately high, percentage of proven false confessions were given by youth.[165] The presence of a confession all but ensures conviction,[166] which means that once law enforcement suspect a youth of a crime they did not commit, it sets off a chain of events ultimately resulting in a Type A wrongful conviction.

C. Charging

After arrest, the justice system provides incredible discretion to prosecutors to determine whether to dismiss, divert, or formally prosecute juvenile cases.[167] In 2018, approximately 57 percent of all delinquency cases were formally processed, 17 percent were dismissed at intake, and about a quarter were referred to diversion programs or services.[168] Of those cases that were formally processed, about a quarter were subsequently dismissed, which is one indication that the rates of formally processed cases are unnecessarily high. Rates of formal processing have increased because of tough-on-crime reforms and the increased prosecutorial discretion over intake decisions.[169] Formally processing cases that either lack legal sufficiency or in which formal prosecution is legally unnecessary increases the risk of both Type A and Type B wrongful convictions. Dismissing or diverting many of these cases at intake can ameliorate this risk.

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164. Feld, *supra* note 152, at 441, 444.

165. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post- DNA World*, 82 N.C. L. REV. 891, 944 (2004); Brandon L. Garrett, *Contaminated Confessions Revisited*, 101 VA. L. REV. 395, 400 (2015).

166. *See* Saul M. Kassin, *Confession Evidence: Commonsense Myths and Misconceptions*, 35 CRIM. JUST. & BEHAV. 1309, 1315 (2008).

167. Josh Gupta-Kagan, *Rethinking Family-Court Prosecutors: Elected and Agency Prosecutors and Prosecutorial Discretion in Juvenile Delinquency and Child Protection Cases,* 85 U. CHI. L. REV. 743, 751 (2018).

168. *Easy Access to Juvenile Court Statistics, 1985-2018*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, https://bit.ly/3qLVaqs [https://perma.cc/SH4C-3AUP] (click "case processing" to access data) (last visited Jan. 28, 2021).

169. Gupta-Kagan, *supra* note 167, at 779. In 1985, prior to tough-on-crime reforms, approximately 45 percent of cases were formally prosecuted. *Id.* The number of formally petitioned cases increased in the late 1990s, which was also a time marked by a shift in prosecutorial control resulting in greater prosecutorial discretion on intake decisions. *Id.*

1. Diversion

Diverting youth from formal court processing can prevent both Type A and Type B wrongful convictions; although it cannot mitigate the harm caused by wrongful arrest, diversion can prevent a youth from having a record of delinquency adjudication or conviction. Diversion is an essential feature of the juvenile justice system[170] and avoids formal processing by choosing not to file a formal delinquency petition or criminal charge against the youth and instead refer the youth to programs and services. Diversion is less costly to the state while providing interventions absent formal adjudication and related stigmatization and collateral consequences.[171] Diverting youth from formal prosecution is often seen as a positive outcome for youth and the community, especially given that prosecuting rather than diverting youth may actually increase recidivism.[172]

Unfortunately, the decision to divert disproportionately benefits White youth. A review of over 23,000 delinquent and status offenders in Arizona revealed that prosecutors were significantly less likely to informally process Black and Indigenous youth.[173] In a separate analysis reviewing a decade of delinquency referrals from a Northeastern state, Black youth were nearly twice as likely as White youth to be referred at intake for further court proceedings.[174] Some of the greatest disparities in diversion decision making can be seen in misdemeanor offenses or lower-level offenses that may be more subjective, prone to racial bias, and potentially more likely to be in response to typical adolescent conduct. For example, in a review of delinquency cases in Arizona, youth charged with obstruction of justice were less likely to be diverted from formal processing.[175] In South Carolina, 76 percent of the

170. Gupta-Kagan, *supra* note 167, at 750.

171. *Id.* at 751. Collateral consequences of justice involvement for youth may include limitations on future career choices (e.g., being unable to serve in the military or in any profession requiring a license), loss of access to public benefits including public housing, suspension of expulsion from school, suspension or revocation of driving privileges, difficulty getting into college, getting a job, sentence enhancements in criminal court, and many other possible impacts on a youth's future. *See* Jennica Janssen, *Collateral Consequences for Justice-Involved Youth: A Model Approach to Reducing the Number of Collateral Consequences*, 20 MARQ. BENEFITS & SOC. WELFARE L. REV. 25, 35 (2018).

172. Gupta-Kagan, *supra* note 167, at 751–52.

173. Nancy Rodriguez, *The Cumulative Effect of Race and Ethnicity in Juvenile Court Outcomes and Why Preadjudication Detention Matters*, 47 J. RSCH. CRIME & DELINQ. 391, 400–02 (2010).

174. Jennifer H. Peck & Wesley G. Jennings, *A Critical Examination of "Being Black" in the Juvenile Justice System*, 40 L. & HUM. BEHAV. 219, 224 (2016).

175. Rodriguez, *supra* note 173, at 403.

youth charged with *disturbing schools* were Black.[176] When applied to adolescents, charges such as these often—if not always—constitute Type B wrongful charging. These lower-level, and arguably subjective, offenses would likely benefit from alternatives to formal prosecution yet are often applied to Black youth and formally processed through the juvenile court system.

Combined with the over-policing of youth of Color and the criminalization of normative adolescent behavior, formally processing youth of Color at higher rates than White youth further disadvantages and drives them deeper into the system. This can be clearly seen when considering the impact of prior referrals on further system processing. Having prior referrals is also associated with prosecutors overlooking a youth for diversion and instead results in prosecutors being more likely to refer a youth for further court involvement.[177] This means that, once a youth—regardless of race—receives a Type B wrongful charge, they are more likely to be pushed deeper into the system with any future charges. As discussed in previous sections, it is easier for youth of Color to have a greater number of priors because they are more likely than White youth to be unjustly arrested and charged.[178] Interestingly, some research has found that courts are more likely to afford Black youth leniency at adjudication, a judicial correction that may stem from a greater proportion of Black youth being unjustly arrested or factually innocent and inappropriately referred for prosecution.[179] Deciding to charge youth for normative adolescent conduct is therefore not only an outcome of racially disparate treatment but also a contributing factor to greater inequity at later stages of court processing.

2. Transfer

Formally charging youth in juvenile court sets the stage for increasingly punitive responses; however, one of the harshest outcomes involves transferring youth to the criminal legal system. Several discretionary mechanisms exist which allow the adult system to try youth,[180] a decision prosecutors often justify as in the

176. *Disturbing Schools Data, FY 2008–2009*, SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE, https://bit.ly/3vyNgVc [https://perma.cc/7TR2-MPXN] (last visited Jan. 28, 2021).

177. Rodriguez, *supra* note 173, at 402.

178. *See supra* Section III.A.

179. Peck & Jennings, *supra* note 174, at 228.

180. Most states have multiple transfer mechanisms: Judicial waiver which allows judges to approve the waiver of a juvenile to adult court following a formal hearing; prosecutorial discretion, which allows prosecutors to decide whether to

interest of public safety. Transferring youth to criminal courts is meant to be reserved for those charged with the most heinous offenses that proponents argue cannot be responded to within the bounds of juvenile jurisdiction.[181] Recent reports, however, contradict prosecutors' arguments by highlighting that many transferred youths often end up serving similar sentences to those youth who remain in the juvenile system (i.e., they remain on probation under community supervision)[182] or, after transfer, have their charges reduced to ones that would not be eligible for processing in the adult system[183] and many are even waived back to juvenile court.[184] Further, many states allow youth to be transferred for even non-violent offenses depending on their age and previous system involvement,[185] begging the question of whether this mechanism is truly reserved for the most serious offenders.

Transfer policies may increase the risk of wrongful convictions. Transferred youth are unfortunately perceived as more culpable for their behavior and their offenses more severe than adult defendants.[186] Therefore, the act of transferring youth to adult court in and of itself increases the overall likelihood of conviction and, therefore, potentially Type A wrongful convictions. The threat of transfer to adult court alone may motivate youth to falsely plead guilty if it ensures they are tried in juvenile court. Pleading guilty to

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try youth in juvenile or criminal court absent a hearing; statutory exclusion, which predetermines jurisdiction (*i.e.,* juvenile or criminal court) based on a matrix of charges by age of the juvenile. Some states have "once an adult, always an adult" policies that require juveniles to be prosecuted as adults if they have previously been convicted in criminal court. Reverse waiver policies are another transfer mechanism that allows juveniles charged in criminal court to petition to be remanded to juvenile court. *See* COMM. ON ASSESSING JUV. JUST. REFORM, *supra* note 90*,* at 52–53.

181. David S. Tanenhaus, *The Evolution of Transfer Out of the Juvenile Court, in* THE CHANGING BORDERS OF JUVENILE JUSTICE 13, 13–44 (Jeffrey Fagan & Frank E. Zimring eds., 2000).

182. S. POVERTY L. CTR., MORE HARM THAN GOOD 1 (2016), https://bit.ly/3tgAYyE [https://perma.cc/3447-SAVJ].

183. *Id.*

184. Sheryl Goldstein & Katherine McMullen, *Fact Check: A Survey of Available Data on Juvenile Crime in Baltimore City*, 31 ABELL REPORT 1, 1 (2018), https://bit.ly/31USqgH [https://perma.cc/9WC7-YT22].

185. PATRICK GRIFFIN, SEAN ADDIE, BENJAMIN ADAMS & KATHY FIRESTINE, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING 7 (2011), https://bit.ly/3liecU9 [https://perma.cc/ZB9R-Z88B] (showing that, of cases transferred, the most serious charge included person, property, drug, and public order offenses or were the result of once adult/always adult policies).

186. Connie M. Tang, Narina Nunez & Martin Bourgeois, *Effects of Trial Venue and Pretrial Bias on the Evaluation of Juvenile Defendants*, 34 CRIM. JUST. REV. 210, 222–24 (2009).

charges in juvenile court becomes the goal of plea bargain negotiations when prosecutors use transfer as leverage.[187] The threat of criminal court is incredibly motivating and, in discussing their client's wish to avoid adult court, one attorney stated, "I think it renders the plea kind of involuntary, frankly . . . it's hard not to look at this situation and say, '[t]hat is a coerced plea.'"[188] When faced with the option of being tried as an adult or falsely pleading guilty, it is hard to argue with taking the plea. Transfer to adult court becomes yet another condition, like charge bargaining, that prosecutors can stack against the youth only to bargain them away to ensure a guilty plea.[189]

Youth tried as adults will face severe consequences over and above the more punitive sentencing options that are only available within the criminal legal system. For example, unlike youth who are never transferred, transferred youths' records are publicly available, which creates barriers to employment and to opportunities in higher education.[190] Publicly available records can even have a negative impact on youth who are ultimately remanded back to juvenile court.[191] In some jurisdictions, youths' records are available until a judge decides to remand them to juvenile court and a petition for expungement is filed.[192] During that period, which can often take months, the public and the media are able to view youths' records and publish their photos and identity; the protections afforded to youth in juvenile court are stripped from transferred youth. This is particularly concerning given the findings of a recent review of juvenile arrests in Baltimore, Maryland, revealing the court ultimately remanded the majority of youth (67 percent) charged as adults who requested a transfer hearing back to juvenile court for formal processing; half of those who remained in the adult system had their charges dropped, dismissed, or were found not

187. Erika Fountain & Jennifer Woolard, *How Defense Attorneys Consult with Juvenile Clients About Plea Bargains*, 24 PSYCH., PUB. POL'Y, & L. 192, 198–201 (2018).

188. *Id.* at 198.

189. *See* Stephanos Bibas, *The Myth of the Fully Informed Rational Actor*, 31 ST. LOUIS U. PUB. L. REV. 79, 80 (2011).

190. *See* Robert Stewart & Christopher Uggen, *Piling On: Collateral Consequences and Community Supervision*, 99 MINN. L. REV. 1871, 1876–77 (2015); Robert Stewart & Christopher Uggen, *Criminal Records and College Admissions: A Modified Experimental Audit*, 58 CRIMINOLOGY 156, 178 (2020).

191. Erika N. Fountain & Bronwyn A. Hunter, *Keep All Youth Criminal Records Confidential*, BALT. SUN (JAN. 27, 2020), https://bit.ly/2OhMsDn [https://perma.cc/2DVN-UUA6] (describing how youth in Baltimore, MD, who were initially charged as adults but ultimately remanded to juvenile court continued to have their records publicly available for the public and media to see).

192. *Id.*

guilty[193] and a quarter of those cases transferred back to juvenile court ultimately had their charges dismissed.[194] These youth, then, narrowly escaped wrongful conviction—likely Type A for some youth, Type B for others, and perhaps both types at once for a few. However, they still experience the damaging effects of justice involvement. These youth who were transferred to adult court should have never been there in the first place yet still suffered many consequences of transfer, such as having their information made publicly available and being removed from their homes and held pretrial—for an average of 4.5 months, according to the same report.[195] These youth were overwhelmingly young Black boys.[196]

The justice system is more likely to transfer Black youth, typically boys, to adult court, making them the most vulnerable among all youth to harsh direct and collateral consequences of this practice.[197] Transferring Black youth at disproportionately higher rates than White youth not only creates the opportunity for harsher sanctions and collateral consequences but also increases the chances that Black youth will recidivate.[198] The fact that these youth are disproportionately young men of Color should not come as a surprise. Instead, it is further evidence of how the legal process systemically and disproportionately penalizes youth of Color over others. Publicizing their records makes it more difficult for these youth to eventually work or attain higher education and removing them from their homes and communities while awaiting a transfer hearing eliminates any chance that they benefit from a developmentally appropriate environment during this crucial period.[199] The prosecutor's decision to transfer further disadvantages these youth, especially those who are ultimately remanded to juvenile

193. Goldstein & McMullen, *supra* note 184, at 10.

194. *Id* at 13.

195. *See id* at 10. Youth who requested a transfer hearing were detained for an average of 139 days. *Id.*

196. MD. DEPT. OF JUV. SERVS., DATA RESOURCE GUIDE FISCAL YEAR 2019, 117 (2019), https://bit.ly/30AXYvY [https://perma.cc/BC4Y-MGH8] (showing data from Maryland indicating that 79.9% of all youth awaiting transfer hearing in pretrial detention in 2019 were Black and 94% were male).

197. *See* Sara L. Bryson & Jennifer H. Peck, *Understanding the Subgroup Complexities of Transfer: The Impact of Juvenile Race and Gender on Waiver Decisions*, 18 YOUTH VIOLENCE & JUV. JUST. 135, 146 (2020).

198. *See generally* Lawrence Winner, Lonn Lanza-Kaduce, Donna M. Bishop & Charles E. Frazier, *The Transfer of Juveniles to Criminal Court: Reexamining Recidivism over the Long Term*, 43 CRIME & DELINQ. 548, 558–59 (1997).

199. *See* Julia Dmitrieva, Kathryn C. Monahan, Elizabeth Cauffman & Laurence Steinberg, *Arrested Development: The Effects of Incarceration on the Development of Psychosocial Maturity*, 24 DEV. & PSYCHOPATHOLOGY 1073, 1080–89 (2012).

court or who were actually innocent to start and had their charges dismissed.

Scholars have correctly noted that various Supreme Court decisions[200] have prompted changes in sentencing practices for youth tried as adults; however, we have not seen similar progress made regarding how juvenile or criminal courts charge youth.[201] Given the great discretion afforded to prosecutors, deciding how to charge (or not) normative adolescent behavior and whether to transfer (or not) youth are potential areas for intervention. While it is the responsibility of each legal actor to reduce the chance for wrongful charging, wrongful convictions, and the disparate treatment of youth of Color, it is too late to begin correcting at the adjudication stage. By then, youth may have already experienced improper arrest, detention, and formal petitions, which is why prosecutors must intervene at the charging phase.[202]

D. Pre-trial Detention

Whether the juvenile system ultimately retains youth or transfers them to the adult system, perhaps one of the most impactful and problematic decisions throughout the pre-adjudicatory phase is whether or not to detain the youth at arraignment.[203] The court may detain youth for several reasons including to protect public safety, to ensure their appearance at future hearings, or for evaluation; in 2018, courts detained youth in 26 percent of all delinquency cases.[204] Unlike in the criminal legal system, when a juvenile court detains youth the court does not have the option of bail for conditional release, resulting in these youth remaining in detention until their hearing, about a month on average.[205] This decision is critically important because detaining a youth before they are adjudicated delinquent pushes them toward conviction, as described below; for youth who have been wrongfully charged under either type of wrongful charging, detention will help convert those wrongful charges into wrongful convictions.

The consequences of pretrial detention cannot be overstated. Aside from the psychological consequences of removing youth from

200. *See* Roper v. Simmons, 543 U.S. 551, 579 (2005); Graham v. Florida, 560 U.S. 48, 82 (2010); Miller v. Alabama, 567 U.S. 460, 465 (2012).

201. *See* Henning, *supra* note 4, at 386.

202. *Id.* at 429–30.

203. Perry L. Moriearty, *Combating the Color-Coded Confinement of Kids: An Equal Protection Remedy*, 32 N.Y.U. REV. L. & SOC. CHANGE 285, 291 (2008).

204. HOCKENBERRY & PUZZANCHERA, *supra* note 95, at 29, 32.

205. *See* The Annie E. Casey Found., *Juvenile Detention Explained*, CASEY CONNECTS (Nov. 13, 2020), https://bit.ly/3lcgB2G [https://perma.cc/G2YD-G4KY].

their families and home environments, detaining youth at this stage is practically deterministic on later court outcomes.[206] Youth who are detained are more likely to have petitions filed against them, less likely to have charges dismissed, more likely to plead guilty, more likely to be adjudicated delinquent, more likely to be placed in out-of-home placement following adjudication, and more likely to recidivate.[207] Detention increases guilty plea decisions and also results in increased offending post-release.[208] In fact, pretrial detention increases guilty pleas even for charges that would have otherwise been dismissed or for defendants who would have been acquitted or had their charges dropped.[209] Youth have explicitly described accepting plea offers to get out of jail quickly or to avoid awaiting trial in detention.[210] Therefore, the legal system pushes youth who are detained toward both Type A and Type B wrongful convictions.

As with arrest and charging decisions, youth of Color are overrepresented in juvenile detention.[211] Race predicts detention decisions over and above various other legal and extra-legal factors that may contribute to the decision to detain a youth awaiting their adjudicatory hearing.[212] Although race directly increases the chances

206. *See* Moriearty, *supra* note 203, at 291; Megan T. Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 J.L. ECON. & ORG. 511, 512 (2018). Using a natural experimental design in Philadelphia, PA, the study shows that pretrial detention in adult courts has "significant downstream consequences: a detained defendant is more likely to be convicted, to receive a lengthy incarceration sentence, and to accrue more courtroom debt." *Id.* at 538. *See also* Tarika Daftary-Kapur & Tina Zottoli, *A First Look at the Plea Deal Experiences of Juveniles Tried in Adult Court*, 13 INTL J. FORENSIC MENTAL HEALTH, 323, 328–335 (2014), Rodriguez, *supra* note 173, at 403–05.

207. Daftary-Kapur & Zottoli, *supra* note 206; Rodriguez, *supra* note 173, at 403–05; Stevenson, *supra* note 206, at 512–513; Sarah Cusworth Walker & Jerald R. Herting, *The Impact of Pretrial Detention on 12-Month Recidivism: A Matched Comparison Study*, 66 CRIME & DELINQ. 1865, 1873–82 (2020).

208. Paul Heaton, Sandra Mayson & Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 752, 762, 771 (2017). The authors compared similarly situated defendants (controlling for "offense, defendant demographics, prior criminal record, zip code of residence, indigence, public defender representation, and time and court of adjudication") and found that detained individuals had significantly (statistically and practically) more new charges than those released on bail. *Id.* at 761–62. They also found that detained individuals are 25 percent more likely to plead guilty "for no reason relevant to guilt." *Id.* at 771. "In other words, the results suggest that approximately 17 percent of the detained misdemeanor defendants in the Harris County dataset who pleaded guilty would not have been convicted at all had they been released pretrial. They pleaded guilty because they were detained." *Id*.

209. *See id.*; Stevenson *supra* note 206, at 512–13.

210. Daftary-Kapur & Zottoli, *supra* note 206, at 328–31.

211. Rodriguez, *supra* note 173, at 402.

212. *Id.*

of being detained, there are also indirect race effects that can be seen in line with a cumulative disadvantage framework. For example, having prior referrals increases the chances that a young person is detained[213] and, as discussed previously, youth of Color are disproportionately more likely to have prior referrals through no fault of their own.[214] These prior referrals likely include Type B wrongful charges for normative adolescent behavior that then become justification for treating youth more harshly the next time they arrive in court. In the example of Michael's case, these data suggest the court would use his initial referral to the system for normative adolescent misbehavior—stealing a friend's phone—as justification for detaining him while awaiting his hearing. While some may argue that the decision to detain youth only occurs in the most serious instances, research has shown that even extralegal factors, such as the neighborhood in which the youth resides, influence the detention decision.[215] Simply residing in neighborhoods marked by structural disadvantage significantly increased the chance that a court will detain a youth, regardless of offense.[216] Reviews of court officials' case notes revealed they perceived youth affected by residential instability or concentrated poverty as being in need of court intervention or oversight, often in the form of detention and confinement.[217] This coincides with other research showing courts were less likely to detain and offered lower bail amounts to defendants in Harris County, Texas, who could afford to retain private counsel than to defendants of Color who did not retain private counsel.[218] What the authors note quite tragically is that defendants who are poor ultimately remain detained, which significantly impacts the outcome of their case.[219] Detaining youth for extralegal reasons—such as their race or economic circumstance—increases the likelihood that juvenile courts are wrongfully detaining youth whose charges may have otherwise been dismissed. Systematically detaining youth of Color for normative adolescent behavior or who are factually innocent virtually assures wrongful conviction.

213. *Id.*

214. *See supra* notes 101–120 and accompanying text.

215. Nancy Rodriguez, *Concentrated Disadvantage and the Incarceration of Youth: Examining How Context Affects Juvenile Justice,* 50 J. RSCH. CRIME & DELINQ 189, 206–07 (2013).

216. *Id.*

217. *Id.*

218. Rod V. Hissong & Gerald Wheeler, *The Role of Private Legal Representation and the Implicit Effect of Defendants' Demographic Characteristics in Setting Bail and Obtaining Pretrial Release*, 30 CRIM. JUST. POL. REV. 708, 726 (2019).

219. *Id.* at 711, 726.

Detaining youth who may have been wrongfully charged puts those youth at risk for future offending and punitively punishes youth who may have otherwise aged out of normative adolescent offending. A recent review of 46,000 cases across more than 30 jurisdictions found that the practice of detaining youth awaiting adjudicatory hearings increased the risk of felony and misdemeanor recidivism in the year following their release.[220] These effects were strongest for youth with no offending history or minimal offending history (between one and four prior offenses),[221] which suggests that court intervention may be contributing to, instead of deterring, problem behavior. The overrepresentation of youth of Color combined with the damaging impacts of juvenile detention on later court outcomes and offending behavior highlights the very nuanced, troublesome, and cumulative effects of this practice. This is particularly concerning given the fact that some youth who courts detain pretrial ultimately plead guilty in cases that courts would have otherwise dismissed (i.e., they may have been factually innocent) thereby increasing the risk of both Type A and Type B wrongful convictions.[222]

E. Plea Bargaining

Plea bargains account for approximately 90–95 percent of adult convictions and juvenile adjudications[223] and carry with them a host of direct and collateral consequences. Adolescents are known for making decisions that are short sighted and without appreciation of the long-term consequences of the decision.[224] This age-appropriate tendency is partially why many youth engage in risky behavior, and it also explains why youth, more so than adults, often waive their *Miranda* and trial rights.[225] Recent work has increasingly found that the capacity for shortsighted decision making applies to the plea bargain context as well. Youthfulness is a risk factor for accepting guilty pleas when adults would not,[226] falsely pleading

220. Walker & Herting, *supra* note 207, at 1870, 1876–80.

221. *Id.* at 1879–80.

222. Stevenson, *supra* note 206, at 512–13.

223. JUDITH B. JONES, JUVENILE JUSTICE BULLETIN: ACCESS TO COUNSEL 5 (2004), https://bit.ly/3vfeFLw [https://perma.cc/Y7ML-FEK8]; *see* Barbara Kaban & Judith C. Quinlan, *Rethinking a "Knowing, Intelligent, and Voluntary Waiver" in Massachusetts' Juvenile Courts*, 5 J. CTR. FAM., CHILDREN, & CTS. 35, 37 (2004); Redlich et al, *supra* note 14, at 339.

224. Grisso et al., *supra* note 68, at 354.

225. *See id.*

226. *See id.* at 353.

guilty,[227] and acquiescing to others' recommendations[228] while lacking the legal knowledge and appreciation of the decision they are making.[229] Factually innocent youth and youth whose normative behavior has been criminalized are both, then, at greater risk of entering a wrongful guilty plea than are adults. Scholars have also begun to question the voluntariness of youth's waiver of their trial rights.[230] It is possible that youth who have been wrongfully charged, and especially those who are detained, are at greater risk of falsely pleading guilty. It is becoming increasingly clear that youthfulness is a risk factor for rash and uninformed plea bargain decisions,[231] and Black youth in particular are again at the greatest risk as they are also the least likely to benefit from plea concessions.[232]

1. Developmental Incompetence

Youthfulness increases the chance that juveniles plead guilty for immediate gratification and without consideration of the strength of the evidence or long-term consequences of their decision.[233] Youthfulness also places youth at risk of making decisions that are not knowing, intelligent, and voluntary.[234] Grisso and col-

227. Malloy et al., *supra* note 14, at 186; Allison D. Redlich & Reveka Shteynberg, *To Plead or Not to Plead: A Comparison of Juvenile and Adult True and False Plea Decisions*, 40 L. & HUM. BEHAV. 611, 611–25 (2016); Zottoli et al., *supra* note 36, at 254.

228. *See* Grisso et al., *supra* note 68, at 353; Erika Fountain, Adolescent Plea Bargains: Developmental and Contextual Influences of Plea Bargain Decision Making 80 (2017) (Ph.D. dissertation, Georgetown University) (on file with the Georgetown University library system); Viljoen, Klaver & Roesch, *supra* note 74, at 265.

229. Tina M. Zottoli & Tarika Daftary-Kapur, *Guilty Pleas of Youths and Adults: Differences in Legal Knowledge and Decision Making.* 43 L. & HUM. BEHAV. 166, 166–79 (2019).

230. *See generally* Jean J. Cabell & Shawn C. Marsh, *Swing and a Miss: Reflections on the "Voluntariness" of Pleas in Juvenile Court,* 117 CHILD. & YOUTH SERVS. REV. 1 (2020).

231. Zottoli & Daftary-Kapur, *supra* note 229, at 166–79.

232. John D. Burrow & Patrick G. Lowery, *A Preliminary Assessment of the Impact of Plea Bargaining among a Sample of Waiver-Eligible Offenders*, 13 YOUTH VIOLENCE & JUV. JUST. 211, 219 (2015); Vanessa A. Edkins, *Defense Attorney Plea Recommendations and Client Race: Does Zealous Representation Apply Equally to All?*, 35 L. & HUM. BEHAV. 413, 413 (2011); Patrick G. Lowery, *Plea Bargains Among Serious and Violent Girls: An Intersectional Approach Exploring Race in the Juvenile Court*, 14 FEMINIST CRIMINOLOGY 115, 126 (2019).

233. Daftary-Kapur & Zottoli, *supra* note 206, at 331; Michele Peterson-Badali & Rona Abramovitch, *Grade Related Changes in Young People's Reasoning about Plea Decisions*, 17 L. & HUM. BEHAV. 537, 544–49 (1993).

234. Zottoli & Daftary-Kapur, *supra* note 229, at 176; *see generally* Cabell & Marsh *supra* note 230. *See also* Boykin v. Alabama, 395 U.S. 238, 242 (1969)

leagues found that youth were more likely to recommend accepting a plea offer than adults; the older adolescents were, the less likely they were to recommend accepting the plea.[235] This finding also extends to false guilty pleas, as youth are more likely to recommend pleading guilty even when they are factually innocent.[236] Youth are also more likely to make decisions that comply with authority figures' suggestions;[237] specifically, youth are more likely to plead guilty when they know their attorney, their parents, or their peers believed they should do so.[238] This is not surprising given that adolescence is a period in which decisions are normatively influenced by peers and authority figures. Youth, then, may be pushed toward a wrongful guilty plea of either type when an adult would not be.

In line with this work on juvenile legal decision making, scholars have recently cast doubt on the validity of juvenile plea bargain decisions given the awesome influence of the legal system combined with the ongoing development of adolescents' decision-making capacities.[239] Given that defense attorneys perceive adolescents as less engaged with the legal process than adults,[240] it is perhaps not surprising that their ultimate plea decisions are more passive as well. Recent findings have also raised questions about whether adolescents have the necessary capacities to competently plead guilty.[241] Researchers who interviewed adolescents and adults who had pled guilty to criminal charges in New York City found that youth knew significantly less than adults about the consequences of their plea and misunderstood the rights they had waived.[242] For example, youth were less likely to know that pleading guilty would result in a criminal record or to know what a trial actually is.[243] That youth are less likely than adults to have the capacities necessary to competently plead guilty is worsened by the reality that

(holding that a defendant's plea of guilty must be made intelligently and voluntarily to be considered valid).

235. Grisso et al., *supra* note 68, at 350–53.

236. Redlich & Shteynberg *supra* note 227, at 611–25.

237. Grisso et al., *supra* note 68, at 357.

238. *Id.* at 353; Viljoen, Klaver & Roesch, *supra* note 74, at 265.

239. Zottoli & Daftary-Kapur, *supra* note 229, at 166–79; *see generally* Cabell & Marsh, *supra* note 230.

240. Skye A. Woestehoff, Allison D. Redlich, Elizabeth J. Cathcart & Jodi A. Quas, *Legal Professionals' Perceptions of Juvenile Engagement in the Plea Process,* TRANSLATIONAL ISSUES PSYCH. SCI. 121, 127 (2019).

241. *See* Boykin v. Alabama, 395 U. S. 238, 242 (1969). To plead guilty, a defendant must, constitutionally, be competent to proceed (see *infra* notes 259–67 and accompanying text) and waive the rights inherent in a guilty plea in a knowing, intelligent, and voluntary manner. Godinez v. Moran, 509 U.S. 389, 396–99 (1993).

242. Zottoli & Daftary-Kapur, *supra* note 229, at 170–77.

243. *Id.*

youth spend very little time discussing the plea with their attorneys.[244] Indeed, attorneys describe feeling rushed themselves and having difficulty evaluating competence "on the fly."[245] Even when attorneys do recognize that competence to plead guilty may be an issue, many attorneys describe not raising it for strategic reasons[246] which increases the likelihood that youth are more likely than adults to accept pleas without being legally competent to do so.[247]

2. False Guilty Pleas

That youth may not have the necessary capacities to plead guilty is incredibly concerning and may help explain why youth are more likely to enter false guilty pleas. A recent study found that youth were twice as likely compared to adults to recommend accepting a guilty plea when factually innocent.[248] Approximately a quarter of youth who were interviewed after pleading guilty to felonies in New York City claimed to be entirely innocent of all the charges.[249] Similarly, interviews with incarcerated youth revealed that approximately 18 percent had falsely pled guilty and the average age of first false admission was 14 years old.[250] These early false admissions beg the question of how often first offenses might be the result of a false guilty plea. Allowing youth to consider plea offers without the necessary time to consult with an attorney or the oversight of a competency hearing may result in youth falsely pleading guilty to crimes of which they were factually innocent.

3. Racial Disparities in Plea Offers

Compounding the disadvantage posed by developmental incompetence is the well documented fact that defendants of Color, particularly Black defendants, are less likely to benefit from favorable pleas.[251] Some evidence suggests that Black defendants

244. Fountain & Woolard, *supra* note 187, at 192.

245. *Id.* at 196.

246. Amanda Nemoyer, Sharon Kelley, Heather Zelle & Naomi E.S. Goldstein, *Attorney Perspectives on Juvenile and Adult Clients' Competence to Plead Guilty*, 24 PSYCH., PUB. POL'Y, & L. 171 (2018).

247. *Infra* notes 259–67 and accompanying text.

248. Redlich & Shteynberg, *supra* note 227, at 616.

249. Zottoli et al., *supra* note 36, at 254.

250. Malloy et al., *supra* note 14, at 6.

251. *See generally* Burrow & Lowery, *supra* note 232; Besiki Luka Kutaleladze, Nancy R. Andiloro & Brian D. Johnson, *Opening Pandora's Box: How Does Defendant Race Influence Plea Bargaining?*, 33 JUST. Q. 398 (2016); Christi Metcalfe & Ted Chiricos, *Race, Plea, and Charge Reduction: An Assessment of Racial Disparities in the Plea Process*, 35 JUST. Q. 223 (2018); Alexander Testa & Brian D.

are less likely than White defendants to plead guilty,[252] which means that, when a plea really is the best available option, youth of Color may access it less frequently than White youth. When prosecutors offer pleas, several studies indicate plea terms vary by race resulting in more favorable pleas for White defendants: Prosecutors are less likely to offer Black defendants pleas to lesser charges,[253] more likely to offer pleas to the current charge,[254] and more likely to offer Black defendants pleas that include a term of confinement.[255] Though prosecutors certainly contribute to the racial bias observed in plea offers, defense attorneys also contribute to these disparities through their negotiations and subsequent recommendations to clients. Even when defense attorneys perceived White defendants as guiltier, they still recommended Black defendants take pleas with harsher terms than they recommended to White defendants.[256] For example, research found defense attorneys to be three times more likely to recommend a plea that included jail time to Black defendants compared to white defendants.[257] This could be a result of their implicit bias or might be their belief that they would be less successful negotiating a more favorable plea for defendants of Color. As a result, those charged with protecting youths' rights can only do so much to combat the systemic injustices that exist and "at worst, actively contribute to the harm imposed on black youth through implicit bias colorblindness, benign neglect, and outright discrimination."[258]

Youthfulness and race both increase the risk of problematic outcomes in the plea bargain context. Developmental incompetence leaves youth vulnerable to making uninformed and potentially involuntary plea bargain decisions. When adolescents are charged with a crime of which they are factually innocent (a Type A wrongful charging), the system functions to put a Black youth at greater risk of a terrible outcome compared to a White youth. Even when pleading guilty is the best outcome for the youth's case, Black youth are less likely to benefit from advantageous terms.

Johnson, *Paying the Trial Tax: Race, Guilty Pleas, and Disparity in Prosecution,* 31 CRIM. JUST. POL'Y REV. 500 (2020).

252. Metcalfe & Chiricos, *supra* note 251; Testa & Johnson, *supra* note 251.

253. Metcalfe & Chiricos, *supra* note 251; Kutaleladze et al., *supra* note 251.

254. Kutaleladze et al., *supra* note 251.

255. *Id.*

256. Edkins, *supra* note 232.

257. *Id.*

258. *See* Kristin Henning, *Race, Paternalism, and the Right to Counsel,* 54 AM. CRIM. L. REV. 649, 649–50 (2017).

F. Trial or Adjudicatory Hearing

Even for youth who resist the pressure to admit guilt in exchange for a plea, the cumulative disadvantage pushing youth toward a wrongful conviction continues. At the trial stage (for youth processed as adults in criminal court) or the adjudicatory hearing stage (for youth processed in juvenile court), the same system biases and youth vulnerabilities due to immaturity increase the likelihood of a conviction or delinquency adjudication. This happens through at least two mechanisms: Youth difficulty participating meaningfully in the trial or adjudicatory hearing, and disadvantage created by challenges in the youth/attorney relationship.

1. Youth Adjudicatory Competence

Children and adolescents, as a whole, have poor adjudicatory competence—they do not have fully developed "capacities to assist counsel and to understand the nature of the proceeding sufficiently to participate in it and make decisions about rights afforded all defendants."[259] Specifically, roughly twice as many youth under the age of 16 as compared to young adults have impaired understanding and appreciation of aspects of the trial or trial-related rights or impaired reasoning related to trial.[260] These deficits are especially pronounced for youth who also have lower IQs[261]—who are also at greater risk of false confession during the interrogation phase,[262] and therefore see the impact of their vulnerability compounded at trial.

Despite robust research illustrating that children and adolescents often do not possess an adequate understanding of trial sufficient to participate meaningfully in their own defense,[263] the law is

259. Grisso et al., *supra* note 68, at 334. For a criminal court proceeding to provide sufficient due process to satisfy constitutional requirements, trial can occur only when a defendant is competent to stand trial, which means that they have a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him." *See* Dusky v. United States, 362 U.S. 402, 402 (1960). This legal standard has been operationalized within psycholegal scholarship and research as requiring a defendant have "a basic comprehension of the purpose and nature of the trial process (Understanding), the capacity to provide relevant information to counsel and to process information (Reasoning), and the ability to apply information to one's own situation in a manner that is neither distorted nor irrational (Appreciation)." Grisso et al., *supra* note 68, at 335.

260. Grisso et al., *supra* note 68, at 343–51.

261. *Id.*

262. *See* Goldstein et al., *supra* note 133, at 43.

263. *E.g.*, Grisso et al., *supra* note 68, at 356; Jodi L. Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights & Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney, Contact, & Psychologi-*

structured in a way that makes it unlikely a youth's lack of competence will prevent their adjudication or conviction. First, the issue of a defendant's lack of competence is most commonly raised by defense attorneys, who are in the best position to identify problems in a client's reasoning about trial or ability to effectively help their attorney with their defense.[264] However, attorneys who represent children and adolescents report that, even though attorneys commonly have concerns about their young clients' trial competence, they do not always raise the issue for the court—including in cases in which the charges are relatively minor,[265] as may often be the case for youth whose normative behavior has been criminalized. Even though youth are more likely than adults to lack trial competence, in many jurisdictions developmental immaturity is not a legally sufficient basis for a finding of incompetence—instead, in these states, a defendant can only be found incompetent if incompetence results from mental illness or cognitive disability.[266] In states that do not recognize developmental immaturity as a grounds for incompetence, some youth will proceed to trial even when they do not understand what is happening and cannot help their attorney.[267] As a result, the possibility of a court convicting a youth who is incompetent to proceed is present both for youth who were wrongfully criminalized through their factual innocence (Type A) or through being charged with a minor offense that should not be considered criminal in the first place (Type B).

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cal Symptoms, 29 L. & HUM. BEHAV. 723, 736 (2005); Susan LaVelle Ficke, Kathleen J. Hart & Paul A. Deardorff, *The Performance of Incarcerated Juveniles on the MacArthur Competence Assessment Tool-Criminal Adjudication*, J. AM. ACAD. PSYCHIATRY & L. 360, 371 (2006); Kathryn A. Cunningham, *Advances in Juvenile Adjudicative Competence: A 10-Year Update*, 38 BEHAV. SCI. & L. 406, 407 (2020).

264. Pate v. Robinson, 383 U.S. 375, 384 (1966); Mark C. Bardwell & Bruce A. Arrigo, *Competency to Stand Trial: A Law, Psychology, and Policy Assessment*, 30 J. PSYCHIATRY & L. 147, 203 (2002).

265. Jodi L. Viljoen, Kaitlyn McLachlan, Twila Wingrove & Erika Penner, *Defense Attorneys' Concerns About the Competence of Adolescent Defendants,* 28 BEHAV. SCI. & L. 630, 636–39 (2010). Almost all—86.9 percent—attorneys surveyed about their representation of young clients reported having concerns about competence for some of their clients, but these juvenile defense attorneys also indicated they only request a competence evaluation in roughly half of the cases in which they think the youth may not be competent. *Id*. at 636–42.

266. Nancy Ryba Panza, Emily Deutsch & Kelsey Hamann, *Statutes Governing Juvenile Competency to Stand Trial Proceedings: An Analysis of Consistency with Best Practice Recommendations,* 26 PSYCH., PUB. POL'Y, & L. 274, 277 (2020). Only 15 states have statutes specifically indicating a finding of incompetence can be predicated on developmental immaturity. *Id.*

267. Twila A. Wingrove, *Is Immaturity a Legitimate Source of Incompetence to Avoid Standing Trial in Juvenile Court?*, 86 NEB. L. REV. 488, 506–09 (2007).

2. Youth–Attorney Relationships

Whether or not they have adequate understanding of the adjudicatory process, challenges in the youth-defense attorney relationship may disadvantage some youth. First, deficient legal representation is commonplace in juvenile court, where attorneys:

> [D]o not interview witnesses or visit the crime scene. They do not file pre-trial motions. They do not prepare for dispositional hearings . . . In many instances, . . . attorneys do not meet with their juvenile clients outside of court appearances. Often, they meet with them for the first time on the day of trial.[268]

Even attorneys who are passionate advocates and would like to carefully handle every case may find themselves unable to do so given juvenile defense attorney caseloads of 500–1,500 cases per year.[269] Although these practices would be extremely problematic for an attorney representing an adult client, when the client is a child or adolescent, the client cannot advocate effectively for themselves, "thus all but ensuring a delinquent adjudication."[270] Additionally, such poor lawyering reinforces a youth's perception of the system as unjust, which may itself lead to future system involvement.[271] Youth who receive ineffective legal representation in juvenile court do, in theory, have access to the same mechanisms for redress as adults do: Filing an appeal raising an ineffective assistance of counsel claim.[272] However, in practice, juveniles almost never file such claims and, when they do, the claim almost never results in appellate relief.[273] Consequently, when a youth is inappropriately charged (a Type B wrongful charge) and is subsequently adjudicated delinquent because, in part, of substandard lawyering, the wrongful delinquency adjudication is likely to stand.

Even when an attorney provides an adequate defense to a child or adolescent, youth of Color may have an especially hard time receiving robust representation, given both attorney biases and youth response to system inequalities. A large majority of attorneys in the United States are White—nearly 90 percent[274]—which means

268. Barbara Fedders, *Losing Hold on the Guiding Hand: Ineffective Assistance of Counsel in Juvenile Delinquency Representation*, 14 LEWIS & CLARK L. REV. 771, 792–93 (2010).

269. Drizin & Luloff, *supra* note 21, at 291.

270. Fedders, *supra* note 268, at 792–95.

271. *Id.* at 797. *See also supra* notes 117–120 and accompanying text.

272. Fedders, *supra* note 268, at 802–03.

273. *Id.* at 806. See *id.* at 807–13 for a discussion of the barriers to ineffective assistance of counsel claims arising from deficient representation in juvenile court.

274. AM. BAR ASS'N, 2016 NATIONAL LAWYER POPULATION SURVEY (2016).

that White attorneys usually represent youth of Color. White attorneys may be less likely to experience empathy for their young Black or Latinx clients, less likely to challenge racialized language or biases about their client that are presented in court,[275] *and* less likely to hold their Black clients in high regard.[276] These biases may mean that defense attorneys are less likely to believe in the innocence of their young clients of Color, which may shape the ways in which they represent these youth and whether or not the youth ultimately receives a Type A wrongful conviction. Additionally, when youth of Color are aware of an attorney's biases against them, it rightfully impacts youths' perceptions of their attorney, such that Black youth perceive their attorneys as less trustworthy.[277] This lack of trust may negatively impact youths' willingness to talk openly with their attorney or follow attorney recommendations, and "may put them at a considerable disadvantage when compared with other defendants."[278] Among individuals who are wrongfully charged, then, because of factual innocence or because of criminalization of developmentally normative behavior, youthfulness creates a greater risk of wrongful charging turning into a Type A or Type B wrongful conviction/adjudication. Further, as in every stage of justice system processing—the disadvantage is worse for youth of Color than for White youth.

G. Juvenile Dispositions

Youth who are ultimately adjudicated delinquent will proceed to disposition hearings in which courts may place youth on probation or community supervision or confine them to a residential treatment facility.[279] For youth who were wrongfully convicted—either due to factual innocence (Type A) or wrongful charging of normative adolescent behavior (Type B)—the disposition phase presents several unfortunate situations that may all lead to sustained justice system involvement. Even though courts place the majority of youth on court supervision,[280] many youth fail to meet

275. Birckhead, *supra* note 88, at 454–57.

276. Joseph J. Avery, Jordan Starck, Yiqiao Zhong, Jonathan D. Avery & Joel Cooper, *Is Your Own Team Against You? Implicit Bias & Interpersonal Regard in Criminal Defense*, J. SOC. PSYCH. 1, 8–10 (2020). This study of criminal defense attorneys found anti-Black implicit bias among a large majority of defense attorneys, which was associated with lower regard for their Black clients. *Id*.

277. Melinda G. Schmidt, N. Dickon Reppucci & Jennifer L. Woolard, *Effectiveness of Participation as a Defendant: The Attorney-Juvenile Client Relationship*, 21 BEHAV. SCI. & L. 175, 190 (2003).

278. *Id.* at 192.

279. COMM. ON ASSESSING JUV. JUST. REFORM, *supra* note 90*,* at 56–57.

280. HOCKENBERRY & PUZZANCHERA, *supra* note 95, at 50.

the court-mandated requirements: A recent review of 120 case files found that half of the youth failed to meet all requirements.[281] Failure to meet these requirements can lead to probation revocation and confinement.[282] In fact, approximately one in five confined youth are held for technical violations of their probation.[283] If courts do not initially place youth on community supervision, they may refer youth to out-of-home placement at a residential facility. In each of these scenarios, wrongfully convicted youth are placed in situations that increase the likelihood of sustained system involvement. In the case of community probation, noncompliance holds youth back from reentry; out-of-home placement does not have the rehabilitative effects intended and, in some cases, can increase offending post-release.[284]

As with each previous stage of justice processing, Black youth, particularly males, experience more punitive dispositions than White youth[285] and are less likely to successfully comply with probationary requirements.[286] Researchers reviewed probation officers' written court reports, finding that probation officers were more likely to attribute Black youth's offending behavior to individual characteristics such as a deficient or criminal personality.[287] Comparatively, these same officers described White youth's offending behavior as influenced by their extenuating circumstances, such as their social environment. In other words, these officers perceived Black youth as more culpable and blameworthy for their offending behavior compared to White youth. As a result, these probation officers would recommend more punitive dispositions for Black youths and attribute those recommendations to their perception that Black youth are more dangerous or had a deviant personality.[288] On the other hand, officers perceived White youth as

281. Amanda NeMoyer, Naomi E. Goldstein, Rhona L. McKitten, Ana Prelic, Jenna Ebbecke, Erika Foster & Casey Burkard, *Predictors of Juveniles' Noncompliance with Probation Requirements,* 38 L. & HUM. BEHAV. 580, 583 (2014).

282. *Id.*

283. *Easy Access to the Census of Juveniles in Residential Placement*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, https://bit.ly/3vqM9Xi [https://perma.cc/37BX-T2Q3] (last visited Jan. 28, 2021).

284. Thomas Loughran et al., *Estimating a Dose-Response Relationship between Length of Stay and Future Recidivism in Serious Juvenile Offenders,* 47.3 CRIMINOLOGY 699, 726 (2009).

285. Rodriguez, *supra* note 173, at 406.

286. Nemoyer et al., *supra* note 281, at 584.

287. George S. Bridges & Sara Steen, *Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms*, 63 AM. SOCIO. REV. 554, 567 (1998).

288. *Id.*

benefitting from more therapeutic responses.[289] This means that the sanction may be more serious for wrongfully adjudicated Black youth than for wrongfully adjudicated White youth.

1. Out-of-Home Placement

Youth with a prior wrongful conviction are at greater risk of more severe sanctions in the future. Having prior offenses and having been detained pre-trial both increase the chance that courts will refer youth to out-of-home placement.[290] Black youth, in particular, are more likely to be removed from their homes and confined in residential facilities. In a review of 23,000 delinquency cases in Arizona, Black youth were more likely than White youth to receive out-of-home placement.[291] Even within confinement, some evidence suggests that Black youth are less likely to be placed in mental health treatment or drug treatment facilities and more likely than White youth to be placed in programs that emphasize punishment or physical labor such as traditional detention facilities, boot camps, or wilderness programs similar to the program to which the court referred Michael.[292] In other words, legal decision makers take a racialized view on how to best respond to youth and ultimately may see White youth as more deserving of treatment than Black youth. This coincides with other research described earlier that shows probation officers attribute Black youths' behavior as indicative of internal characteristics as opposed to White youth who officers perceived as responding to conditions of their environment.[293]

Compared to adults, youth may face additional disadvantage because their family's economic circumstances might inform how legal decision makers perceive their need for intervention.[294] Juvenile court officials perceive youth residing in areas marked by concentrated poverty as in need of intervention which ultimately results in confinement.[295] This stems from a belief that youth who reside in areas marked by concentrated poverty or structural disadvantage are more likely to recidivate and would benefit from correctional confinement over continuing to reside with their

289. Jamie J. Fader, Megan C. Kurlychek & Kristin A. Morgan, *The Color of Juvenile Justice: Racial Disparities in Dispositional Decisions*, 44 SOC. SCI. RSCH. 126, 134–37 (2014).

290. Rodriguez, *supra* note 173, at 404.

291. *Id.* at 404–05.

292. Fader et al., *supra* note 289, at 134.

293. Bridges & Steen, *supra* note 287, at 562–64.

294. *See generally* Rodriguez, *supra* note 215.

295. *Id.*

families.[296] Further, officials are more likely to confine youth whose families receive public assistance.[297] The economic condition of the youth's family impacts how severely the court may respond to the child's offense. Therefore, the youthfulness disadvantage begins with the criminalization of normative adolescent behavior (Type B charging) and again for their status as dependent minors who depend on their family for financial support. Black youth whose families experience poverty are "doubly disadvantaged by their economic situation and by their race" insofar as these factors increase the likelihood that they will receive more severe sanctions.[298]

2. Fines and Fees

Given court officials' awareness of family economic circumstances and their perception that poverty negatively influences justice-involved youths' behavior, it is surprising how often officials place fines, fees, and restitution on justice-involved youth and their families. Imposing financial sanctions on families is incredibly problematic, particularly for youth of Color: Research has linked economic sanctions to increases in recidivism and probation revocation for Black youth.[299] A review of California fines and fees revealed that justice involved youth are liable for thousands of dollars in fines and fees with Black families being liable for more than double the amount of fees as White families.[300] Youth of color are also more likely to have outstanding costs after their case is closed.[301] Given that the legal system disproportionately impacts youth in poverty and of Color, these practices unnecessarily exacerbate these existing disparities and further push youth of Color and

296. *Id.* at 207.

297. *Id.* at 201.

298. Patrick G. Lowery, John D. Burrow & Robert J. Kaminski, *A Multilevel Test of the Racial Threat Hypothesis in One State's Juvenile Court,* 64 CRIME & DELINQ. 53, 74 (2018).

299. Stacy Hoskins Haynes, Allison C. Cares & R. Barry Ruback, *Juvenile Economic Sanctions: An Analysis of Their Imposition, Payment, & Effect on Recidivism,* 13 CRIMINOLOGY & PUB. POL'Y 31, 46–47 (2014).

300. Jeffrey Selbin, *Juvenile Fee Abolition in California: Early Lessons and Challenges for the Debt-Free Justice Movement,* 98 N.C. L. REV. 401, 408 (2020). "[C]ompared to White families ($1637), Black families with a youth in the juvenile legal system were liable for more than double the fees ($3438), Latinx families were liable for more than one and a half times the fees ($2563), and Asian families were liable for almost forty percent more fees ($2269)." *Id.*

301. Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE & JUV. JUST. 325, 331 (2016).

youth in poverty into the system.[302] These youth are ultimately pushed deeper into the system because in many states (half or more), the inability to pay these fines and fees can result in punitive sanctions such as being confined, the inability to request expungement, cases remaining open longer, or youth remaining in placement for longer time periods.[303] For wrongfully convicted youth, remaining indebted to the juvenile courts is yet another way to ensure their sustained system involvement.

H. Post-Disposition

Wrongful conviction, youthfulness, and race each decrease the likelihood of a good outcome *following* sentencing or disposition and, for wrongfully convicted youth of Color, the path following disposition is likely especially difficult. After disposition, those who are factually innocent—youth with a Type A wrongful conviction—ideally will be able to appeal their conviction or adjudication and have their innocence vindicated. Those whose normative conduct has been wrongfully criminalized—youth with a Type B wrongful conviction—ideally will be able to quickly resolve their court involvement and return to their lives. Both groups should be able to move forward minimizing the negative lasting impacts of justice involvement. However, youth, and particularly youth of Color, face numerous barriers to concluding their justice involvement and moving on following wrongful conviction.

1. Correcting Wrongful Adjudications/Convictions

First, when something has gone wrong in the justice process resulting in a wrongful conviction, either public outrage or the legal appeal structure should create momentum to correct the wrong. When a court processes a youth as a juvenile, however, the likelihood of redress through either public outrage or through a successful appeal is greatly reduced. In many states, juvenile delinquency hearings—unlike criminal court hearings—are closed to the public, and this sometimes also means exclusion of the press.[304] As a result, juvenile courtrooms escape public scrutiny, and wrongful out-

302. Leigh Shapiro, *The Crippling Costs of the Juvenile Justice System: A Legal and Policy Argument for Eliminating Fines and Fees for Youth Offenders*, 69 EMORY L.J. 1305, 1341 (2020).

303. Jessica Feierman, Naomi Goldstein, Emily Haney-Caron & Jaymes Fairfax Columbo, *Debtors' Prison for Kids? The High Cost of Fines & Fees in the Juvenile Justice System*, JUV. L. CTR. 3–4 (2016), https://bit.ly/3wAaTNH [https://perma.cc/X6M7-B4XE].

304. See Courtney R. Clark, *Collateral Damage: How Closing Juvenile Delinquency Proceedings Flouts the Constitution and Fails to Benefit the Child*, 46 U.

comes in juvenile court may occur without public outrage—or even public knowledge. Scholars in this area note, "The closure of juvenile courtrooms to the general public and press can result in shielding 'improper judicial behavior' from 'public view,' and thereby deny the juvenile victims of that judicial misconduct the opportunity for 'executive redress through the medium of public indignation.'"[305]

At the same time, the oversight that appellate courts should provide is much less present for juvenile proceedings than for criminal court cases.[306] Although juvenile cases may, in theory, provide the same right to appeal, most states do not provide counsel for juveniles at the appellate stage.[307] Children and adolescents, who have deficits in their understanding of legal processes[308] and are developmentally ill-equipped to navigate complex legal decision making,[309] are profoundly unable to initiate an appeal of a wrongful adjudication on their own, much less to do so successfully. Collateral relief, resulting from an individual filing a post-conviction petition after exhausting their direct appeal, is a common avenue to raising evidence of innocence to seek an exoneration.[310] However, some states bar youth adjudicated delinquent from seeking collateral review: Juvenile cases may be excluded from statutes providing for post-conviction DNA testing, prohibited from writs of habeas corpus in state court, or given an unreasonably short period to pursue collateral relief.[311] Because of this exclusion, many children and adolescents who have a Type A wrongful delinquency adjudication in juvenile court have no route to vindicating their rights—or their innocence. Wrongfully convicted juveniles, then, are at increased risk compared to wrongfully convicted adults that the wrongful conviction will stand.[312]

LOUISVILLE L. REV. 199, 213–21 (2007), for a review of statutory approaches to juvenile court confidentiality. *See also* Drizin & Luloff, *supra* note 21, at 306–10.

305. Martin Guggenheim & Randy Hertz, *Selling Kids Short: How Rights for Kids Turned into Kids for Cash*, 88 TEMP. L. REV. 653, 670 (2016) (quoting McKeiver v. Pennsylvania, 403 U.S. 528, 555 (1971)).

306. Drizin & Luloff, *supra* note 21, at 294–95.

307. Fedders, *supra* note 268, at 812.

308. Grisso et al., *supra* note 68, at 343–51.

309. *See supra* Section II.A.

310. Joshua A. Tepfer & Laura H. Nirider, *Adjudicated Juveniles & Collateral Relief,* 64 ME. L. REV. 553, 554 (2012).

311. *Id.* at 558–63.

312. *Id.* at 574.

2. Ending Justice Involvement

Because delinquency dispositions are generally indeterminate in nature,[313] a youth with a Type B wrongful adjudication will remain under juvenile court supervision either until aging out of juvenile court jurisdiction[314] or until the court is satisfied that the system has rehabilitated the youth.[315] Children and adolescents who are under juvenile court supervision for nothing more than typical adolescent behavior face the challenge, then, of convincing a judge they have been rehabilitated. However, if all that was "wrong" with the youth was normative developmental immaturity, how do they illustrate that they have been "fixed," other than waiting for neural and psychosocial development to occur? Not all states guarantee representation for juveniles at this post-disposition stage, making it even more challenging for a youth to convince the court to terminate court supervision.[316] This results in situations like Michael's, described in the introduction: A youth is wrongfully criminalized, and then cannot prove their criminality has been cured because, in fact, it was never present. A similar barrier to post-disposition justice may exist for youth who are factually innocent. After conviction, juvenile courts (for youth processed in the juvenile system) or parole boards (for youth tried as adults) may expect that the youth take responsibility and express remorse as a condition of release.[317] For those who are factually innocent, with Type A wrongful convictions, admitting guilt may be morally reprehensible to the degree that they choose instead to remain incarcerated.[318] Additionally, although we are aware of no data on this point, for those who *do* decide to wrongfully admit responsibility, it may be difficult for the innocent to convey convincing remorse for something they did not do,[319] especially for Black boys who these legal actors may view through the lens of the superpredator.[320]

313. Marsha Levick & Neha Desai, *Still Waiting: The Elusive Quest to Ensure Juveniles A Constitutional Right to Counsel at All Stages of the Juvenile Court Process,* 60 RUTGERS L. REV. 175, 181–82 (2007).

314. Commonly at age 21. *Id.* at 181.

315. *Id.*

316. *See generally id.*

317. *See generally* Nicole Bronnimann, *Remorse in Parole Hearings: An Elusive Concept with Concrete Consequences*, 85 MO. L. REV. 321 (2020). *See also* Leslie Scott, *It Never, Ever Ends: The Psychological Impact of Wrongful Conviction*, 5 CRIM. L. BRIEF 10, 11 (2010); Levick & Desai, *supra* note 313, at 189.

318. Daniel S. Medwed, *The Innocent Prisoner's Dilemma: Consequences of Failing to Admit Guilt at Parole Hearings*, 93 IOWA L. REV. 491, 513–28 (2008).

319. *Id.* at 496.

320. For a discussion of the impact of the superpredator myth on the experiences of youth of Color within the justice system, see generally Robin W. Sterling,

Wrongful conviction, then, does not end with conviction; it has the potential to extend through a lengthy disposition or sentence with little hope of redress.

3. Lasting Stigma and Disrupted Futures

Finally, once a wrongfully convicted youth has completed their sentence or disposition and the court releases them from supervision, they may have a hard time returning to the developmental path they were on before their court involvement—both because of the stigma stemming from their justice involvement *and* because wrongful conviction may increase future criminality. When the system processes youth as adults, their legal records are fully public; even for youth processed as juveniles, no state provides full confidentiality for juvenile court records.[321] The existence of a delinquency or criminal record can limit a youth's access to educational opportunities, make it difficult for the youth to get a job or limit a youth's available career options, or even prevent the youth from securing housing.[322] Additionally, if the public knows of their justice involvement, youth may face stigma within their communities.[323] This stigma may be particularly extreme and harmful for Black boys, who face the added stigma of the societal myth of the young, Black male as a superpredator.[324] Even apart from the impact of this stigma, justice involvement itself is often iatrogenic for youth; involvement in the system disrupts the natural desistence from delinquent behavior that would otherwise occur as youth

"Children Are Different": Implicit Bias, Rehabilitation, and the "New" Juvenile Jurisprudence, 46 LOY. L.A. L. REV. 1019, 1044–62 (2013).

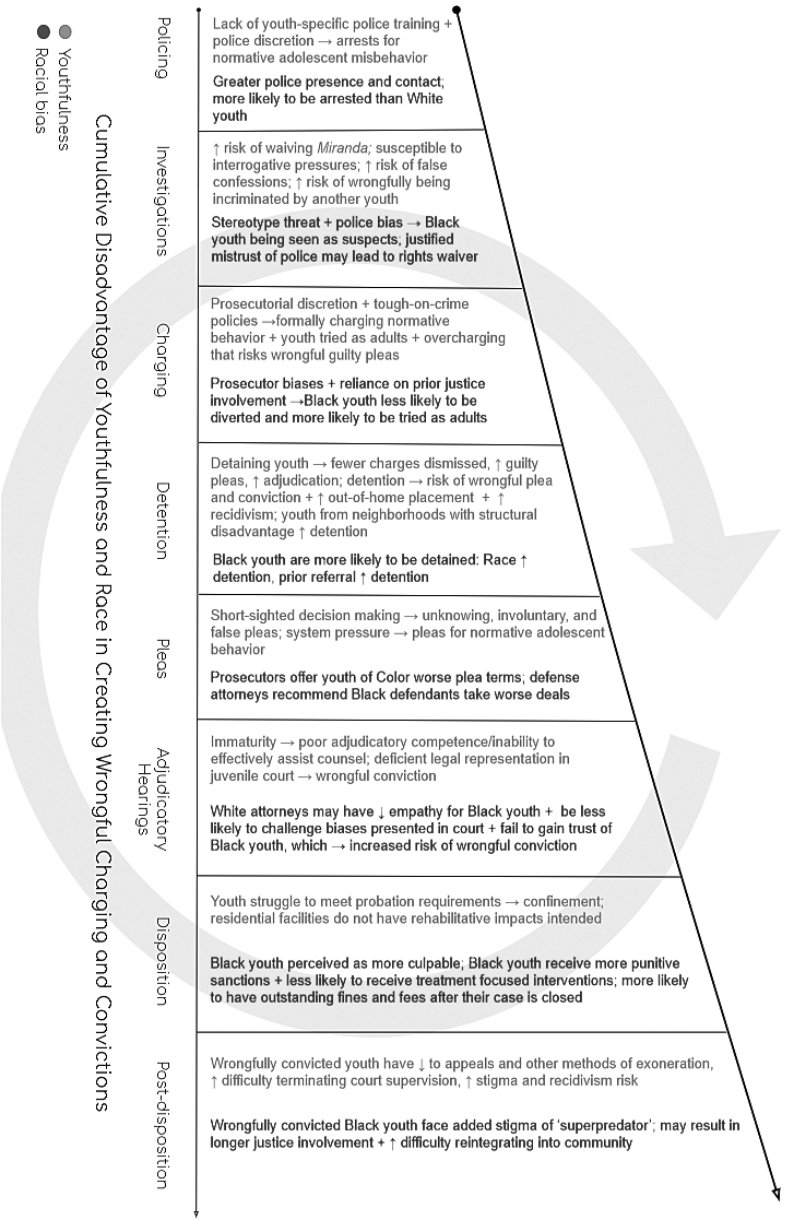
321. *See* JUVENILE LAW CENTER, FAILED POLICIES, FORFEITED FUTURES: REVISING A NATIONWIDE SCORECARD ON JUVENILE RECORDS, 2–8 (2020), https://bit.ly/3mbBxri [https://perma.cc/HCY5-LMG8].

322. *See* RIYA SAHA SHAH & JEAN STOUT, FUTURE INTERRUPTED: THE COLLATERAL DAMAGE CAUSED BY PROLIFERATION OF JUVENILE RECORDS 6–9 (2016), https://bit.ly/3tJQy63 [https://perma.cc/7WU5-RUHC]; *see generally* Henning, *supra* note 54. For research on the experiences of stigma faced by individuals seeking expungement, see, e.g., Simone Ispa-Landa & Charles E. Loeffler, *Indefinite Punishment and the Criminal Record: Stigma Reports Among Expungement-Seekers in Illinois,* 54 CRIMINOLOGY 387, 398, 406 (2016).

323. Erika Diaz Ortiz, Charise Peters, & Emily Haney-Caron, *Innocent until Proven Arrested? Youth Justice System Involvement and Public Perceptions of Guilt*, AMERICAN PSYCHOLOGY-LAW SOCIETY VIRTUAL POSTER SESSION (2021). The greater a youth's justice involvement, the more that stigma of guilt attaches, and perceptions of a youth's guilt may begin as early as when a youth is questioned for a crime (well before guilt is legally determined). *Id.*

324. Michael E. Jennings, *Trayvon Martin and the Myth of Superpredator, in* TRAYVON MARTIN, RACE, & AMERICAN JUSTICE: WRITING WRONG 191, 192–93 (Kenneth J. Fasching-Varner, Rema E. Roynolds, Katrice A. Albert & Lori L. Martin eds., 2014).

age.[325] Therefore, a youth who was not engaging in truly criminal behavior *prior* to involvement in the justice system may be more likely to do so once their involvement with the system ends. Youth who are wrongfully charged and convicted, with either type, then, are pushed down a path increasing the likelihood of another—potentially *not* wrongful—conviction in the future.



325. *See* Henning, *supra* note 4, at 453–56.

I. Conceptualizing the Cumulative Effect

The disadvantages faced by youth, and particularly youth of Color, build across each point of system processing, so that we can only guess at the true cumulative effect. It may look something like this: A Black teenage boy, sitting in class, gets angry with what he perceives as disrespect from his teacher in front of the class. He throws his earbuds at her in frustration. She tells him to leave, and he refuses. She calls a school resource officer, who brings a sworn police officer onto the scene. The officer places the boy under arrest for *disturbing school*[326] and *assault* and takes him to the police station. The prosecutor considers diversion but dismisses it because this boy does not feel like a good candidate to her (though just that morning, she diverted a White youth with the same charges). Instead, she decides to file a delinquency petition alleging he resisted arrest and committed aggravated assault, on the basis that the earbuds constituted a weapon. The prosecutor anticipates ultimately reducing the charges, but she uses these initial charges to gain leverage in plea bargaining. Given that the charges could be considered violent, she decides to seek pre-hearing detention, which she also knows will make plea bargaining smoother. The boy's attorney meets with him only briefly and recommends he take the deal offered by the prosecutor: That he admit the allegations for simple assault, and the prosecutor amends the petition to remove the other charges. The boy does not really understand what is happening and so decides he should follow his attorney's recommendation, since he really wants to get out of detention. The judge places him on probation. This youth has now experienced a Type B wrongful adjudication. The boy recognizes that almost all the kids in the juvenile court each time he attends a hearing are Black or Latinx, and he wonders whether he has been the victim of racial bias in how the police and prosecutor responded to him. He becomes angry and withdrawn, and starts skipping school. The judge threatens him with a probation violation for testing positive for marijuana in a routine urinalysis, which was one of his probation conditions though he had no documented history of drug use. His lawyer does not attend these post-dispositional hearings, and so the youth's parents do their best to convince the judge that he is a good kid who has just hit a rough patch.

Six months later, an armed robbery occurs two blocks away from the boy's school, the police are called, and the victim describes

326. *See* Amanda Ripley, *How America Outlawed Adolescence,* ATLANTIC (Nov. 2016), https://bit.ly/38juTJX [https://perma.cc/9QM2-P2YV].

the perpetrator as a Black teenager. During a routine patrol later that evening, the sworn officer who responded to the above incident in school sees the boy standing on the street corner on which the armed robbery occurred, talking to his friends. The officer recognizes this youth and remembers how disrespectful he was during the school incident six months before. He decides to pull the youth in for questioning. The youth goes to the police station and waives his rights, because he does not trust that the police will actually get him a lawyer even if he asks for one—and because he did not really trust his public defender, anyway. Following interrogation, the youth confesses to the armed robbery, even though he was not involved. He assumes it will all get sorted out later, and the police tell him he can go home if he tells them he was involved. School records show that he was not present in class when the robbery occurred. Based on this evidence and given that this is now arguably the youth's second violent offense, the prosecutor successfully seeks judicial waiver of the youth into the adult system. Based on the boy's confession and prior delinquency adjudication, his attorney tells him he is unlikely to win at trial and strongly encourages that he take a deal. The prosecutor offers one year incarceration in exchange for a guilty plea, given the youth's prior offending. Because he faces a much longer sentence if convicted at trial, the boy accepts the deal even though he continues to assert his innocence. During the plea colloquy, the youth does not follow what is happening, but his attorney has told him to say "yes" every time the judge asks if he understands something. As part of the plea, without understanding that he is doing so, the boy waives his appellate rights. He serves a year in jail. He has now experienced a Type A wrongful conviction. Because of this conviction, his school expels him, and when he leaves jail he drops out. He is unable to get a job because of his lack of a high school diploma and his criminal record.

Although this account is fictional, extant research makes clear that this is not beyond the realm of possibility. The cumulative disadvantages build in ways similar to this, compounding to increasingly reduce a youth's chances of success. To seek justice for youth who are wrongfully convicted, then, means seeking to disrupt the negative impact at each stage of processing—and seeking to more fully understand how these forces shape the trajectory of actual system-involved youth.

IV. WHERE DO WE GO FROM HERE? RECOMMENDATIONS FOR RESEARCH, LEGAL PRACTICE, AND POLICY IN ADDRESSING WRONGFUL CONVICTIONS OF YOUTH

Compounding disadvantage increases the likelihood of wrongful conviction of youth—especially youth of Color, and most especially Black youth—across every stage of justice processing. Therefore, change is critically needed to reduce the number of youth whose lives are derailed when they never should have been involved in the system to begin with. To best combat wrongful convictions of youth, change must occur in at least three domains: Research, practice, and policy.

A. Research

Although we present a framework for thinking through the cumulative disadvantage faced by young, Black defendants who are wrongfully charged, this framework in some cases represents only educated guesses about the ways in which youthfulness, race, and system involvement interact to push youth toward conviction or adjudication. Unfortunately, much of the research and scholarship in these areas has tackled only one—at most, two—of these variables at a time.[327] We, along with many of our psychology and law colleagues, have, as peer reviewers for academic journals or members of thesis or dissertation committees, pushed for an inclusion of race in research designs intended to explore plea bargaining, interrogations, or other aspects of justice involvement. Too often, these recommendations are ignored because the inclusion of race "unnecessarily complicates the research design" or "is not necessary for an initial study on x or y topic."[328] Certainly, we are not

327. *See supra* notes 22–26 and accompanying text.

328. As Stevenson, Bottoms & Burke explain,

> [P]sychologists have been slow to explore how American institutions contribute to systematic racial oppression, focusing instead almost exclusively on basic cognitive components of racism and prejudice (e.g., categorization, implicit attitudes). . . . Although other social scientists have embraced the goals in King's call [for psychologists to examine racism and prejudice within complex real-world contexts] by incorporating critical race theory, context, and intersectionality into their research, psychologists by and large, have not. And those who have are sometimes marginalized, considered "do-gooders" uninterested in "basic science." In turn, high-quality psychological research on the topic of racial minority youth within the legal system is sparse and has only recently become more mainstream.

Margaret C. Stevenson, Bette L. Bottoms, & Kelly C. Burke, *The Legacy of Racism for Children's Interactions with the Law: Exploring Themes with Psychological Science, in* THE LEGACY OF RACISM FOR CHILDREN: PSYCHOLOGY, LAW, & PUB-

the first researchers to note the profoundly problematic colorblind nature of a research literature, nor is this problem unique to psychology and the law.[329] However, within the field of legal psychology, the failure to grapple with the impact of race on *any* aspect of the justice system is inexcusable. In critiquing extant research, we include our own work, and invite our colleagues to join us in critically examining what we study and how we study it.

We must, therefore, move away from the impulse to create straightforward research designs that do not account for the complicating factors that actually shape people's experiences within the system; such designs produce easily interpretable data, but at the cost of the data having full relevance and application to the system as it truly exists. Rather than attempt to create a single narrative that applies to everyone and instead creating a narrative that, in truth, applies to no one,[330] it is time for our field to embrace the nuance of people's lived experiences in the way we design our research and in the conclusions we draw. By bringing together differ-

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LIC POLICY 1, 5 (Margaret C. Stevenson, Bette L. Bottoms & Kelly C. Burke eds., 2020).

329. Within psychology and law, see, e.g., Jennifer Woolard, *Engaging Science, Engaging Justice,* AMERICAN PSYCHOLOGY-LAW SOCIETY (Mar. 2016), https://bit.ly/2OakfOG [https://perma.cc/2DXF-E5X5]; R. T. Carter & J. M. Forsyth, *Examining Race and Culture in Psychology Journals: The Case of Forensic Psychology,* 38 PRO. PSYCH.: RSCH & PRAC. 133 (2007); THE LEGACY OF RACISM FOR CHILDREN: PSYCHOLOGY, LAW, & PUBLIC POLICY 5 (Margaret C. Stevenson, Bette L. Bottoms & Kelly C. Burke eds., 2020); Haley M. Cleary, *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations: New Directions for Research, Policy, and Practice,* 23 PSYCH. PUB. POL'Y & L. 118 (2017). Outside of psychology and law, many fields have been called to grapple with their colorblind methodologies, the ways in which race is included in research designs, and the racial bias within the field. *See generally, e.g.*, Matthew O. Hunt, Pamela Braboy Jackson, Brian Powell & Lara Carr Steelman, *Color-Blind: The Treatment of Race and Ethnicity in Social Psychology,* 63 SOC. PSYCH. Q. 352 (2000); Eric P. Baumer, *Reassessing and Redirecting Research on Race and Sentencing,* 30 JUST. Q. 231 (2013); Nasar Meer & Anoop Nayak, *Race Ends Where? Race, Racism & Contemporary Sociology*, 49 SOCIO. NP3 (2015); Meda Chesney-Lind & Nicholas Chagnon, *Criminology, Gender, & Race: A Case Study of Privilege in the Academy,* 11 FEMINIST CRIMINOLOGY 311 (2016).

330. For readers familiar with statistical analysis, one way to think about it is that there may be an interaction effect between race or youthful status and many of the variables we study that shape wrongful convictions; when we fail to include these variables as a central part of our research designs, we find significant main effects, but we *miss* the interaction effect. We interpret the main effect, believing it explains the phenomenon we are studying, but given the presence of the interaction effect, the main effect is misleading—it presents, for example, the *average* experience *across* Black and White defendants, in cases in which both groups' experience may be so markedly different from the main effect that the average is meaningless. When we leave out these critical identity variables, we risk wrongly generalizing data that only apply to one group.

ent research methodologies—qualitative research, mixed methods approaches, community-based participatory research, policy analysis—we can better address the *messiness* inherent to this work and ensure we are asking the right questions. In so doing, we will build a research literature that can meaningfully identify needed reforms and may manage to avoid the criticism so often levied against our work by lawyers, judges, and legislators—that it is out of touch with the realities of the system. This may mean that researchers no longer design research on the justice system without engaging system stakeholders—lawyers, judges, legislators, *and* impacted community members—in decisions of methodology and in data interpretation.

In addition to calling for researchers in this area to *always* include race and, when appropriate, youthfulness in conceptualizing any aspect of justice processing, we also join our colleagues' recent call for research integrating multiple stages of justice system processing.[331] Echoing the words of Scherr et al.:

> [W]e do not advocate that all projects must simultaneously examine all aspects of the framework but rather that projects incorporate more than a single temporal point and their interactive effects. In so doing, a body of research can help to delineate how innocents move from one disadvantageous stage to another and to provide a model of their growing disadvantage, all serving as the basis of reform.[332]

Of course, in echoing this call, we expand it: Research must not only consider the cumulative disadvantage of innocence, but rather *all* wrongful charging—charging of those who should never have been justice involved. By expanding our focus beyond convictions of those who are factually innocent to instead embrace the importance of understanding the mechanisms underlying *all* wrongful convictions, whether due to factual innocence or inappropriate criminalization, we will be able to inform system change that reaches a far greater number of defendants. It is important, as a field, that our research represent our values and that we recognize that the number of lives unjustly caught up in the system go beyond those who are factually innocent.[333] In making these shifts, we would conduct research that can provide a foundation for justice

331. Scherr et al., *supra* note 8, at 373–74.

332. *Id.*

333. For example, the mission of the American Psychology-Law Society, the primary professional organization of legal psychology researchers, "is to enhance well-being, justice, and human rights through the science and practice of psychology in legal contexts," and the organization's core values include social justice,

not just for the Huwes in our society, but also the Michaels. If we fail to prioritize research on Type B wrongful convictions, and fail to account for the cumulative disadvantage of race in wrongful convictions of innocent youth, we fail to meaningfully address the disproportionate criminalization of people of Color we have long decried.

B. Practice

As the relevant research literature continues to develop, research and scholarship to date make clear a number of changes to practice for prosecutors, defense attorneys, and judges that could substantively reduce the likelihood of wrongful charging and wrongful convictions of both types. Given that each of these legal system actors hold significant discretion, individuals (and individual offices) can make changes *now* in how they handle youths' cases within the juvenile and criminal justice systems to reduce the likelihood of wrongful outcomes. As an initial step, all systems actors should actively seek to identify their own biases and the ways in which those biases may—often inadvertently—shape their work. Additionally, the following concrete steps would likely substantively improve outcomes for many youth who wrongfully become system-involved.

1. Prosecutors

Prosecutors have a meaningful role in addressing wrongful charging and wrongful convictions of youth of both the types delineated in this Article. First, prosecutors hold profound discretion in deciding whether—and how—to charge a youth who someone accuses of wrongdoing.[334] Therefore, prosecutors can, and should, decline to prosecute or dismiss charges against a youth when they have serious questions either about the youth's factual guilt or about the need for system involvement.[335] Second, prosecutors must move away from common practices of overcharging youth as leverage in negotiations in plea deals or to facilitate transfer to the adult system.[336] Instead, prosecutors should shift their approach to plea bargaining to be consistent with adolescent development and

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diversity, and inclusion. *AP-LS Mission, Vision and Core Values,* AM. PSYCH.-L. SOC'Y (2013), https://bit.ly/3bKZ2E9 [https://perma.cc/78J2-AWP7].

334. *See* Henning, *supra* note 4, at 430.

335. *See id.* at 456–60.

336. *See* Fountain & Woolard, *supra* note 187, at 198.

to prioritize positive youth outcomes.[337] Third, prosecutors should aim to reduce or eliminate transfer of youth to the adult system, both by choosing to exercise prosecutorial discretion to process youth in the juvenile system in cases of dual jurisdiction, and by choosing not to seek judicial waiver of juvenile court jurisdiction. This would avoid pushing youth who may have been wrongfully charged deeper into the system and would increase the likelihood of positive youth outcomes.[338] Fourth, once a court adjudicates delinquent or convicts a youth, prosecutors should seek to maintain youth within the community whenever possible, avoiding incarcerating youth who may be caught in a cycle of system involvement triggered by an initial, wrongful conviction.[339] Finally, prosecutor offices should develop office procedures for identifying and remedying wrongful convictions *and* wrongful juvenile adjudications, which are presently much more likely to go undiscovered and unremedied.[340] These policies should include procedures for routinely reviewing whether case outcomes and decision making differ by defendant race. Although the system ultimately requires more global reform, these steps would begin to shift the needle on the number of children and adolescents wrongfully convicted each year, and the impact of those wrongful convictions on youths' lives.[341]

2. Defense Attorneys

Defense attorneys exercise much less discretion in the outcome of a case than prosecutors or judges. However, defense attorneys *do* exercise discretion in the way they approach the defense of any one youth and in the amount of resources they devote to a case.[342]

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337. Alexandra Cohen, Erika Fountain, Emily Haney-Caron & Gail Rosenbaum, *Juvenile Pleas: A Developmentally Informed Approach for Prosecutors*, https://bit.ly/3qIdYXy [https://perma.cc/R5HV-D3D5] (last visited Jan. 26, 2020).

338. *See supra* notes 180–202 and accompanying text.

339. *See supra* Section III.G.

340. *See* Drizin & Luloff, *supra* note 21, at 321 (noting that, as of 2007, Innocence Projects had not taken on a single case from juvenile court, given the common practice of focusing on cases with the most severe sanctions); *see also* Tepfer et al., *supra* note 25, at 922 (discussing the need for innocence-based post-conviction remedies for youth).

341. Some prosecutor offices have begun shifting office policies to be more in line with developmental science and youth needs, though overall, much work remains to be done. For an example, see Press Release, Philadelphia Dist. Att'y's Off., *Philadelphia District Attorney Larry Krasner Announces Juvenile Justice Reforms,* JUST. WIRE (Feb. 6, 2019), https://bit.ly/38ztRJQ [https://perma.cc/DYT5-CRNE].

342. We acknowledge that defense attorneys, and maybe especially attorneys who represent youth, are chronically under-resourced and often are unable to provide the level of zealous representation they would like to provide. *See* Drizin & Luloff, *supra* note 21, at 289–91. Structural reform of the resources devoted to

First, defense attorneys should provide the same level of adversarial defense to every client, youth or adult, and should provide that level of defense regardless of whether the case is in juvenile or criminal court.[343] This would mean conducting full interviews with every youth client, conducting pre-trial or pre-plea investigation when warranted, filing pretrial motions, and filing appeals.[344] Second, defense attorneys should bring adolescent development science, and the relevant social science literature, into their advocacy for *all* youth, at all stages—in arguing against pretrial detention, questioning youth competency, evaluating whether a youth understands a plea, attempting to suppress a confession, or advocating for a youth's disposition to keep them within the community.[345] Third, to provide zealous representation and to reduce wrongful convictions of youth, public defender offices should create office norms around appealing adjudications of delinquency or criminal court convictions of youth even when the sanction the youth faces is relatively minor.[346] Robust appellate practices will create a mechanism for uncovering and trying to reduce the harm from wrongful convictions of youth when they do occur. Fourth, defense attorneys—individually and as an office practice—should track case outcomes and the quality of the attorney-client relationship for young clients and explore whether outcomes differ by client race.[347] In doing so, attorneys may be able to identify when bias—their own or someone else's—is shaping outcomes for youth and develop creative strategies for reducing the disparate impact of wrongful convictions on youth of Color. Together, these steps would make it more challenging for the system to turn wrongful charging into wrongful convic-

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public defense is critically needed to enable defenders to fully implement the changes in representation that are needed. However, we offer these recommendations as a starting point for defense attorneys to implement as much as possible given the resources with which they work.

343. *See supra* Section III.F.2.

344. Drizin & Luloff, *supra* note 21, at 290–91; *see generally* Randy Hertz, Martin Guggenheim & Anthony G. Amsterdam, *Trial Manual for Defense Attorneys in Juvenile Delinquency Cases,* NAT'L JUV. DEF. CTR. (2020), https://bit.ly/3br14ce [https://perma.cc/48FS-M998].

345. *See generally, e.g.*, Kristin N. Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases,* 81 NOTRE DAME L. REV. 245 (2005); *Child & Adolescent Development,* NAT'L JUV. DEF. CTR., https://bit.ly/3rtf0Ie [https://perma.cc/NNZ2-S8S5] (last visited Jan. 28, 2021). Juvenile defenders should "be knowledgeable of the science and research regarding child and adolescent development, and [ ] integrate it strategically in their daily practice." *Id.*

346. Drizin & Luloff, *supra* note 21, at 320.

347. *See supra* Section III.F.2.

tion and would potentially shift court norms in a direction of all system actors focusing more on youth rights.

3. Judges

Judges in juvenile court are the ultimate gatekeepers for ensuring that youth are not wrongfully adjudicated, and those in criminal court can shape the procedures that make a wrongful conviction more or less likely. Judges working within juvenile or criminal court must familiarize themselves with research on adolescent development, youth functioning within the justice system, and racial disparities within justice system processing as an initial step in reducing the cumulative disadvantage system-involved youth experience.[348] Next, armed with this research—particularly on youth competence, confessions, plea comprehension, and outcomes following transfer to the adult system—judges should take very seriously their responsibility in preventing wrongful convictions by exercising their gatekeeping role related to admission of confessions, accepting pleas, allowing youth to proceed to adjudication, and waiving juvenile court jurisdiction. Third, judges should seek to reduce youth detention and incarceration with the recognition that these worsen youth outcomes and, for youth who have been wrongfully charged, increase the likelihood of a future, not wrongful, system involvement.[349] These approaches together have the potential to both avoid wrongful conviction for youth who are wrongfully charged and reduce the negative impact of wrongful conviction on youth who are factually innocent or who have been inappropriately criminalized.

C. Policy

A large body of research and scholarship has identified critical policy reforms needed to reduce the likelihood of Type A wrongful convictions, both in general and for youth. We echo these calls from our colleagues. As Scherr, Redlich, and Kassin identified, interrogation protections are critical, for all suspects but especially for youth: Suspects should not be required to self-invoke *Miranda* rights but instead should not be questioned unless their rights are explicitly waived; police should never be permitted to lie to or mislead suspects; all interrogations should be video recorded.[350] Additionally, new rules are needed to curb the risk of false guilty pleas,

348. Tepfer et al., *supra* note 25, at 923–24.
349. *See supra* Sections III.D and III.G.
350. Scherr et al., *supra* note 8, at 37–72.

including open-file discovery rules that ensure a defendant fully understands the case against them before making a decision to accept a plea.[351] As Drizin & Luloff recommend, the law on youth *Miranda* waiver must catch up to the science, such that children and adolescents never face interrogation without the presence of an attorney.[352] Once youth have been charged, they must have zealous advocacy throughout the process, with a non-waivable right to an attorney who has actually received developmentally informed training on how to work effectively with youth.[353] Additionally, Henning's recommendations lay out a clear path toward reducing Type B wrongful convictions: Prosecutorial discretion in charging youth must be narrowed and channeled, such that prosecutors are required to apply a developmental lens to their conceptualizations of *all* youth, not just White youth or wealthy youth.[354] Prosecutors should be required by statute to document and periodically publicly report aggregated data on their charging decisions, including the decision to dismiss, divert, or formally prosecute, the factors that went into the decision, and how charging varies by defendant race and neighborhood.[355] In addition to these reforms, we call attention to three systemic reforms we believe are most critical for reducing wrongful convictions of both types, especially for youth of Color: Policing reform, prevention and intervention for at-risk youth, and youth representation post-disposition.

1. Policing Reform

In conceptualizing how disadvantage builds across each stage of justice involvement, we kept returning to one important reality: Without wrongful charging, there are no wrongful convictions. Recommendations for prosecutors, defense attorneys, and judges can attempt to reduce the likelihood that a youth wrongfully suspected ultimately becomes wrongfully convicted, but no matter what these legal actors do, they cannot ameliorate the harm of police contact. As described above,[356] arresting youth who are factually innocent or who have done nothing wrong beyond normal teenage behavior causes profound harm, *even if* prosecutors choose not to proceed. In our current approach to policing, "[g]iven our obsession with security and safety in inner-city areas, consistent

351. *Id.*
352. Drizin & Luloff, *supra* note 21, at 313–15.
353. *Id*. at 315.
354. Henning, *supra* note 4, at 436–49.
355. *Id*. at 446–49.
356. *See supra* Sections III.A–B.

with neoliberal policies, and the expansion of the criminal legal system to urban schools, coupled with a retreat of the welfare state, it is [ ] innocent youth who remain at risk of being sacrificed on the altar of public safety."[357] Once we criminalize these youth, their experiences of criminalization in fact create more crime.[358]

The most impactful policy shift, then, would be to radically change policing practices to drastically reduce youth contact with police and arrests. Any meaningful reform must be a top-down shift in policing priorities and values. Recent legislation proposed in multiple states would make it so that police officers cannot interrogate a youth unless public safety is at imminent danger;[359] these bills would protect youth from false confession but cannot undo the harm of initial police contact. One possible solution would be for state legislatures to extend this prohibition earlier than interrogation, such that police cannot *arrest* youth unless the youth's safety or public safety is at imminent risk. This recommendation would not appreciably limit police power to protect communities or respond to serious crime. Police may arrest young suspects in any cases of violent crime that the youth could possibly repeat. In cases in which youth were engaging in serious criminal conduct not presenting a public safety risk, officers may issue the youth a citation and initiate juvenile or criminal justice proceedings, but without creating the pressures—interrogation, pre-trial detention—that push youth toward pleading guilty to something they did not do. If youth were engaging in minor delinquency, officers could work with a youth's family as needed to connect the youth to intervention services within the community, without the trauma of arrest and without the iatrogenic effect of justice involvement; we describe this possibility more in the next recommendation. As impacted communities call for abolition of traditional models of policing,[360] this reform would be an important and necessary step toward providing decriminalized responses to noncriminal behavior.

2. Prevention and Intervention for At-Risk Youth

A shift away from arresting and prosecuting youth does not mean ignoring juvenile crime. Instead, we could shift resources

357. Claudio G. Vera Sanchez & Ericka B. Adams, *Sacrificed on the Altar of Public Safety: The Policing of Latino and African American Youth,* 27 J. CONTEMP. CRIM. JUST. 322, 338 (2011).

358. *See supra* Section III.A.

359. *E.g.*, S.B. 2800, 2021–2022 Leg., Sess. (N.Y. 2021); H.B. 315, 442d Gen. Assemb., Reg. Sess. (Md. 2021).

360. *See generally, e.g.*, Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform,* 108 CAL. L. REV. 1781 (2020).

away from prosecution and toward developing effective, evidence-based supports and interventions for youth and their families that operate *outside* the legal system. Henning explains, "Efforts to reduce racial disparities in juvenile court are not likely to succeed without adequate community-based, adolescent-appropriate alternatives to prosecution."[361] Neither, we believe, will efforts to reduce Type B wrongful convictions succeed without effective community prevention and intervention services. Ideally, such a shift in funding would involve "realignment of financial resources in communities of color from traditional law enforcement interventions to efforts designed to improve failing schools, dilapidated housing, mental health services, family counseling, and drug treatment,"[362] giving communities the support needed to both prevent and respond effectively to youth delinquency without court intervention. Calls for reconceptualizing justice system responses away from a criminalization/police-driven model and toward effective community intervention are not new.[363] Freeing up financial resources by reducing police contact with youth would allow for robust investment in programing associated with improved, rather than worsened, outcomes for youth.[364] Doing so would protect youth from both types of wrongful convictions by disrupting the processes that typically turn youth into suspects, both for serious conduct they did not commit and for minor conduct that should never have been criminalized.

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361. Henning, *supra* note 4, at 456.

362. *Id.* at 457.

363. *See generally* S'Lee Arthur Hinshaw II, *Juvenile Diversion: An Alternative to Juvenile Court,* 1993 J. DISP. RESOL. 305 (1993); Joseph J. Cocozza et al., *Diversion from the Juvenile Justice System: The Miami-Dade Juvenile Assessment Center Post-Arrest Diversion Program*, 40 SUBSTANCE USE & MISUSE 935 (2005); Edgar Cahn & Cynthia Robbins, *An Offer They Can't Refuse: Racial Disparity in Juvenile Justice and Deliberate Indifference Meet Alternatives that Work*, 13 U. D.C. L. REV. 71 (2010); Traci Schlesinger, *Decriminalizing Racialized Youth through Juvenile Diversion*, 28 FUTURE OF CHILD. 59 (2018), Scott Wm. Bowman, *The Kids Are Alright: Making a Case for Abolition of the Juvenile Justice System,* 26 CRITICAL CRIMINOLOGY 393 (2018). For a similar call for radically disrupting approaches to youth justice in the UK, see Stephen Case & Kevin Haines, *Abolishing Youth Justice Systems: Children First, Offenders Nowhere,* 0 YOUTH JUSTICE 1 (2020).

364. These approaches must include stakeholders who "view these youth as a truly vulnerable population, rather than an overwhelming threat" and must understand and address cultural mistrust. Shantel D. Crosby, *Trauma-Informed Approaches to Juvenile Justice: A Critical Race Perspective,* 67 JUV. & FAM. CT. J. 5, 12 (2016).

3. Representation Post-Disposition

As system actors seek to change practices to reduce the number of youth wrongfully charged and wrongfully convicted, it is critical to also create a safety net to identify and rectify the wrongful convictions that still occur. To that end, we must guarantee access to legal representation post-disposition for youth both within the juvenile justice and criminal justice system.[365] However, given the realities of funding of indigent defense, state legislation in every state must initiate a requirement for free post-disposition counsel for youth coupled with legislative funding for these legal services.[366] This legislation must grant youth processed as juveniles the same appellate and collateral relief rights as adults.[367] For youth who face a Type A wrongful conviction—youth who are factually innocent—post-disposition counsel will help youth initiate direct appeals and seek habeas relief to have the court overturn their convictions or adjudications.[368] For youth who face a Type B wrongful conviction—youth who are guilty of nothing more than typical adolescent risk taking—post-disposition counsel will be able to advocate for youth to stay within the community or return to the community as quickly as possible, and can argue for termination of juvenile court supervision when youth are not actually in need of intervention.[369] Although the ultimate goal should be to eliminate both Type A and Type B wrongful convictions, a right to post-disposition counsel and full access to post-disposition proceedings provides youth who *are* wrongfully convicted the chance to have their rights vindicated and to return to their lives.

CONCLUSION

Individuals who are wrongfully charged face cumulative disadvantage within the justice system, compounded at every stage. So do youth. So do people of Color. When a justice-involved individual faces all three of these disadvantages, the impact is multiplied, and research and scholarship to date have only scratched the surface at detailing the intersecting role of race, youthfulness, and wrongful charging in producing wrongful convictions. Because

365. Drizin & Luloff, *supra* note 21, at 294–99.

366. Tepfer & Nirider, *supra* note 310, at 555–63.

367. *Id.*

368. Drizin & Luloff, *supra* note 21, at 29.

369. *See e.g.*, NAT'L JUV. DEF. CTR., JUVENILE DEFENDER POST-DISPOSITION PRACTICE TOOL 4–6 (2017), bit.ly/2OOTQWJ [https://perma.cc/BT37-4TLY]; MODELS FOR CHANGE, ADDRESSING THE LEGAL NEEDS OF YOUTH AFTER DISPOSITION 1–2 (2013), https://bit.ly/3aeuxFd [https://perma.cc/6W32-XNKH].

there is so much we still do not know, instead of conclusions, we leave the reader with questions.

How might Huwe Burton's case have played out differently if he did not find himself at the intersection of youthfulness and racial bias in facing his wrongful charging? If Huwe was not a teenager, would police pressure compel him to confess? If he was not Black, would police have suspected him in the first place? If he was not a Black teenager, fitting our popular conceptions of the youthful superpredator, would he have been convicted?

What about Michael—how might his trajectory have been different if our society did not criminalize normative adolescent misbehavior? Would he have been diverted from formal processing if he was White? Would he have pled "involved" if he had adult decision-making capacities, or more robust legal representation? How might the sanction the court imposed be different if he had been an adult charged with the same behavior, or if he was not Black? And if he had been diverted from formal processing, would he have gone on to be arrested again in the future?

What would it have meant for Huwe and for Michael if police had not arrested them in the first place? **What would it mean for us—as researchers, practitioners, and policymakers—to be as concerned about what happened to Michael as about what happened to Huwe?** Until we can grapple with these questions, we cannot begin to achieve justice for our youth.