



# Weaving Life and Law

## to Transform Youth Justice



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- Jessica Feierman

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# I. Introduction

Jessica Feierman

Youth justice advocates, including lawyers, organizers, and other youth and adult movement builders, want to replace the current damaging, discriminatory, and ineffective juvenile and criminal legal systems<sup>1</sup> with better approaches. We envision approaches that support children, help them flourish, and contribute to a safe, equitable, and healthy community. How do we do it? And what role can the law – with its history of and ongoing role in racial oppression – play in realizing our shared goals?

This publication suggests that lawyers must work hand in hand with leaders in the field with direct experience in juvenile or criminal court — those who have appeared as defendants, witnesses, or survivors or who have been incarcerated or had family members incarcerated. People with these lived experiences know better than anyone where it falls short, and what not to do. These leaders have also begun creating something new – a system that works by building, not destroying. Even as other institutions falter, this community - centered work creates cause for hope.

The current system's problems are deeply rooted in its history. Despite a valid goal of treating children differently from adults, the U.S. youth “justice” system carries with it the imprint of cruel and discriminatory practices that date back to slavery and have been reinforced decade after decade.<sup>2</sup> The juvenile legal system purports to offer rehabilitation and support adolescent development. The constitution establishes unique procedural protections for youth. Ultimately, however, both systems disproportionately pull Black, Indigenous, and Latine young people and other youth of color, as well as LGBTQIA+ youth, young people with disabilities, and youth living in poverty from their families<sup>3</sup> and expose them to abuse and other damaging conditions of confinement. While teenagers are highly resilient, the juvenile and criminal legal systems interfere at a moment of important brain development and, rather than playing to youth strengths, they cause physical and emotional distress, interrupt education, take resources away from communities, and silence youth voices.<sup>4</sup> The system also overwhelmingly fails to meet the needs of victims and survivors.<sup>5</sup>

Legal advocacy to date has curtailed some of the worst abuses of the juvenile and criminal legal systems, but it has also fallen short of creating an equitable and restorative approach. The U.S. Supreme Court has ruled that children cannot be punished with the death penalty or certain life without parole sentences,<sup>6</sup> and that children deserve some unique procedural protections during police interrogations<sup>7</sup> and a right to an attorney and other due process protections in juvenile delinquency proceedings.<sup>8</sup> Federal district courts have limited the use of solitary confinement and other harsh conditions for youth, in at least some circumstances.<sup>9</sup> While these cases have conferred significant practical benefits, they have tempered the harshest treatment in the system rather than promoting transformation. Even these holdings, however, are now at risk with a new U.S. Supreme Court focused on interpretations of the Constitution based on narrow, and sometimes incorrect,<sup>10</sup> historical interpretation of constitutional rights.<sup>11</sup>

Amidst this legal backlash, leaders who have survived these failed systems are shaping advocacy to focus on equitable and restorative responses to youth, responses that protect and value young people's childhood, bodies, communities, voices, and resources.<sup>12</sup> These insights can play a key role in shaping the transformation of the system.

The vision of justice set forth in this publication emerged at a convening on Weaving Life and Law hosted by Juvenile Law Center. The convening centered the insights and vision of a powerful group of transformative leaders: Jeannette Bocanegra, the Executive Director of Justice for Families, an expert in transforming the system so that it is driven by the insights and input of youth and families; Hernan Carvente, the Founder and CEO of Healing Ninjas and Executive Director of Alianza for Opportunity; Johnny Perez, Director of U.S. Prison Program for the National Religious Campaign Against Torture, and a leading voice against solitary confinement; Amir Whitaker, Senior Policy Counsel at the American Civil Liberties Union of Southern California and author of Project Knucklehead. Juvenile Law Center staff, fellows, and alums also contributed their leadership to this project: Anahi Figueroa, who was serving as a Youth Advocacy Program Fellow; Marcus Jarvis, who was serving as the Debt Free Justice Communications and Outreach Associate; and current Juvenile Law Center Stoneleigh Youth Advocacy Fellows Aqilah David and Jihid. This publication relies heavily on this group's discussion at the convening as well as each member's previous writing, interviews, and other contributions. The insights of these leaders are not meant to be broadly representative. They do, however, offer crucial insights to inform the work.

The ideas in this publication also build upon the expertise of abolitionist leaders, movement lawyers, and youth justice advocates who have been crafting alternatives for years. They borrow from the vision, inspiration, and hard work of abolitionist movements, largely led by Black, Latine, and Indigenous community members who have long recognized the failings of our existing legal system and the need for alternatives.<sup>13</sup>

**While inspired by the actions of movements, this publication seeks to develop litigation strategies that support transformation of the system and to clarify when and how lawyers need to step up and when we should step back** or offer our support for organizing, policy advocacy, and other social change strategies. The questions about the role of litigation are rooted in the work of movement and community lawyers who have pressed the legal field to recognize our place in larger efforts for liberation, and in the insights of scholars who pose questions about whether and how a legal system, built on racial oppression, can be used as a tool for liberation.



The approaches highlighted here also expand upon the movement for a developmental jurisprudence – a history of legal advocacy and resulting case law that recognizes the importance of childhood and adolescent development to youth culpability and capacity, and on key legal advocacy for civil rights and racial justice.<sup>14</sup>

Section II of this report, co-authored with Mustafa Ali-Smith, provides a brief overview of the history of our juvenile legal system, recognizing that without a clear-eyed understanding of the roots of the system, our reforms may miss the mark. Section III highlights the harms of the system. Section IV, co-authored with the transformative leaders mentioned above, sets forth a shared vision of fairness and dignity. Section V highlights concrete legal strategies, focused on new approaches to advocating against harsh conditions of confinement that can ultimately contribute to divestment from the current system and investment in youth and families. The report aims to set the stage for legal advocacy to support restorative, equitable, and effective responses to youth.



## II. History & Context: The Myth of Juvenile Justice

Jessica Feerman & Mustafa Ali-Smith

**The history of the juvenile justice system is often told as a fairy tale.... The system is no fairy tale by any means. - Amir Whitaker<sup>15</sup>**

Scholar and poet Clint Smith explains, “The history of slavery is the history of the United States. It was not peripheral to our founding; it was central to it. It is not irrelevant to our contemporary society; it created it. This history is in our soil, it is in our policies, and it must, too, be in our memories.”<sup>16</sup> By “smothering conversations” about how the past shapes the present, we avoid responsibility; by recognizing the history, we can reckon with it.<sup>17</sup>

For years, many juvenile justice advocates described the history of the juvenile legal system this way: In 1899, reformers created the first juvenile court, with a focus on rehabilitation. In the 1960s, the Supreme Court clarified the right to certain procedural protections. In the 1980s there was a tough on crime era with racist overtones, and then in the 2000s a new era emerged that focused on adolescent development and age-appropriate treatment.<sup>18</sup>

Those eras did occur, but this description falls far short of confronting the impact of race, class, and ethnicity on the system and its development. It ignores the influence of post-slavery racial subjugation on criminal laws imposed on both adults and youth, the differential treatment that grew out of those laws, and the persistence of this inequality today.<sup>19</sup>

As Dorothy Roberts explains: “[t]he pillars of the U.S. criminal punishment system — police, prisons, and capital punishment — all have roots in racialized chattel slavery.”<sup>20</sup> Today’s juvenile legal system, too, carries the echoes of slavery. The system takes youth from their families,<sup>21</sup> shackles them,<sup>22</sup> strips them of agency,<sup>23</sup> causes disruptions in education,<sup>24</sup> and extracts economic resources.<sup>25</sup> It also surveils, punishes, and sometimes even kills teenagers, especially Black teenagers, for normal adolescent behavior like going to parties, or for choices of music, clothing, and hairstyle.<sup>26</sup>

**Ignoring the history of the system has devastating consequences. It justifies widespread punishment and abuse of young people, disproportionately Black, Latine, and Indigenous youth, and other youth of color.** This discriminatory system also hides and entrenches subjugation on the basis of race, disability, LGBTQ+ identity, and economic status. “The physical expansion of prisons is facilitated by criminalizing subordinated people so that caging them seems ordinary and natural.”<sup>27</sup> Thousands of children are locked up for misdemeanors on any given day, with many more under justice system surveillance.<sup>28</sup>

**This telling of the history also ignores the voices of those who experienced the system,** including young people and family members describing their own experiences and viewpoints, as well as organized resistance movements fighting to dismantle oppressive structures and create alternatives. While it’s beyond the scope of this publication to center stories of resistance in recounting the history of the system, section IV of this publication places youth and community voices at the center not just in identifying problems, but more importantly, in setting forth novel solutions and approaches.

This section reviews the key eras of the development of the system with the goal of highlighting the racialized history that, despite groundbreaking scholarship on the issue by James Bell, Geoff Ward,<sup>29</sup> and others has too often been hidden or ignored.<sup>30</sup>

### A. Slavery & Reconstruction

**Fairness cannot be achieved... until we acknowledge the years of historical violence that have been imposed on communities of color. - Hernan Carvente<sup>31</sup>**

“Today’s carceral punishment system can be traced back to slavery and the racial capitalist regime it relied on and sustained.”<sup>32</sup> When Black youth and other youth of color navigate the criminal punishment system, including facing disproportionate surveillance, arrest, and incarceration, they confront a system of laws, policies, and practices that first began to take shape during slavery and then further evolved during reconstruction.

**From its inception, enslavement relied heavily on surveillance, policing, abuse, and family separation rooted in racial and economic hierarchy.** Beginning in the 1700s in the Carolinas, the Black community faced “slave patrols,” the earliest form of modern-day policing, imposing a system of terror and control.<sup>33</sup> Patrols pursued, apprehended, and returned runaway enslaved people to their owners; deterred revolts; and maintained discipline for enslaved workers.<sup>34</sup> These patrols became the de facto police, engaging in extensive surveillance and violence to “maintain order among the enslaved”<sup>35</sup> and to support the accumulation of white wealth. Black children, like adults, had no legal rights. “Their connection to their family was not respected. They could be separated from their parents and sold away whenever the slaveholder so desired. African American children’s only socially recognized function was to work at hard labor for the economic benefit of whites.”<sup>36</sup>

**When the 13th Amendment abolished slavery, it contained a striking caveat: slavery would continue to be permitted as punishment for a crime.** “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”<sup>37</sup> **The exception set the stage for the criminalization and appropriation of Black labor by the white community.**



This approach was quickly reinforced by Black codes, laws enacted throughout the Southern states that restricted Black people's right to conduct business, own property, buy and lease land, and move freely in public spaces, and that criminalized activities like selling crops without permission from a white person, being too close to a white person in public, walking "without purpose," walking next to railroad tracks, or assembling after dark. Black youth and adults could be punished for these so-called offenses and conscribed to years – and sometimes even lifetimes – of involuntary servitude, further perpetuating a racial capitalist hierarchy.<sup>38</sup>

Lawmakers continued to expand the criminal legal system's ability to appropriate Black labor through the establishment of convict leasing,<sup>39</sup> supported by laws that allowed plantation owners to "lease" convicted people to service private railways, mines, or large plantations. These individuals earned no pay and generally faced inhumane, dangerous, and often deadly work conditions while states profited from their labor.<sup>40</sup> Youth were no exception, with a significant portion of teenagers conscripted to convict leasing, and even some children as young as ten or eleven years old.<sup>41</sup> Apprenticeship statutes similarly allowed former slaveholders to "force African American children back into virtual slavery."<sup>42</sup> Conditions were so severe that most incarcerated people leased for labor did not survive to complete 10-year sentences.<sup>43</sup>

## B. The Origins of the Juvenile Court

*In 1899, none of those laws was written for Black people. The punishment for those people was being hung, lynched, firebombed... - Marcus Jarvis<sup>44</sup>*

Alongside enslavement and convict leasing, a new juvenile legal system – initially focused on "rehabilitating" white children – began to emerge. Prior to the 1800's, the U.S. had no separate legal system for children; young people in trouble with the law went to adult court. The rapid urbanization of the 1800s shifted social structures and laid the groundwork for a new juvenile legal system. Crowded tenement houses meant more children playing in communal city spaces.<sup>45</sup> Families in poverty meant more children selling newspapers, shining shoes, working in factories.<sup>46</sup> And an influx of immigrants brought cultural differences into the mix.<sup>47</sup> A movement, led largely by white middle- and upper-class women and men, pushed for institutional settings designed to pull young people away from "vice" and "debauchery," and toward "respectability" and self-sufficiency.<sup>48</sup>

In 1825, reformers established the first Houses of Refuge to rehabilitate young people "by training . . . [them] to industry; by imbuing their minds with the principles of morality and religion; by furnishing them with means to earn a living; and above all, by separating them from the corrupting influences of improper associates."<sup>49</sup> By the 1840s there were approximately 25 such institutions across the country.<sup>50</sup>

While these facilities purported to focus on rehabilitation, in practice they were plagued by overcrowding and abuse.<sup>51</sup>

The first juvenile court, established in 1899 in Cook County, Illinois, created a separate court process for young people; the model rapidly spread around the country.<sup>52</sup> Most descriptions of this court focus on the "rehabilitative" goal of the juvenile court, when reformers, also known as "child savers," argued that the criminal legal system was too punitive for children, and that courts should respond to "the child's need and not the deed."<sup>53</sup> A careful look at the first juvenile court act, however, reveals a more complex history. Reformers brought to the work their own biases about culture, immigration, religion, and values.<sup>54</sup> The legal system reflected this reality. The Illinois Act, for example, gave broad authority to "reputable citizens" to represent young people in court and to house young people adjudicated delinquent, but provided few procedural protections.<sup>55</sup> The law provided no right to counsel – instead, volunteer probation officers acted on behalf of young people and simultaneously represented the interest of the court.<sup>56</sup> **The heavy reliance on "reputable citizens" and the severe lack of procedural protections gave the judges broad discretion over youth.** Within a few decades, similar acts governed juvenile legal systems in almost every state in the country.<sup>57</sup>

Black youth appeared in juvenile court as much or more frequently than white youth, but to the extent the houses of refuge offered rehabilitation, Black youth did not typically reap the benefits. **As white children entered houses of refuge, most Black children still faced enslavement and convict leasing,<sup>58</sup> and then later incarceration in adult facilities, with longer sentences and harsher conditions,<sup>59</sup>** as well as, in at least some contexts, being forced to participate in chain gangs.<sup>60</sup> Some houses of refuge explicitly pushed for the removal of Black youth, urging that they be "placed out" to Africa, rather than integrated into their programs.<sup>61</sup> The court also responded differently to young people based on gender, with girls more likely to enter the system for "immorality" and at heightened risk of placement in a reform school.<sup>62</sup>



Extrajudicial responses to youth behavior also shaped this era. Black youth faced the risk of being lynched;<sup>63</sup> indigenous children were pulled from their homes and families and placed in boarding schools that aimed to strip them of their indigenous language, culture, and connections;<sup>64</sup> and Latine youth faced the risks of illegal deportation and mob violence.<sup>65</sup>

Over time, the juvenile courts and houses of refuge did begin to include youth of all races. **Once Black, Indigenous and Latine youth entered the juvenile system, the subjectivity and broad authority of the juvenile courts opened the door for disparate treatment.** Black youth lived in inferior facilities and were held longer than their white peers.<sup>66</sup> Race also influenced the type of training young people received, with Black youth being pushed into farming and other physical labor and Black girls into cooking and sewing.<sup>67</sup> Some Black community members were wary of the justice system,<sup>68</sup> refusing to report their children to the courts, turning instead to mutual aid and support to address youth behavior.<sup>69</sup> Others argued that a juvenile legal system for Black youth, including institutional placement, would provide a vital alternative to having youth punished as adults.<sup>70</sup> Some advocates also worked to create alternative reform schools for Black youth to further support these goals.<sup>71</sup>



## C. Constitutionalization: Progress & Pushback

*Our ancestors have been demanding justice.*  
- Amir Whitaker<sup>72</sup>

The 1960s ushered in the next key era in the evolution of the juvenile and criminal legal systems as the U.S. Supreme Court issued seminal decisions establishing constitutional protections for young people. In *In re Gault*, the Court held that “the condition of being a boy does not justify a kangaroo court” and that due process is not “for adults alone.”<sup>73</sup> The decision explicitly recognized that the juvenile court’s paternalism had led to procedural arbitrariness and harsh treatment of young people.<sup>74</sup> Instead, the Court concluded, **youth in juvenile court deserved procedural protections that would guarantee them “fundamental fairness,”** including the right to counsel, notice, and cross-examination.<sup>75</sup>

*In re Gault* didn’t take on the question of racial justice or the rights of protestors; instead, it addressed constitutional protections for a 15-year-old white boy accused of a prank phone call. The case, which came on the heels of widespread and effective civil rights protests led by Black youth<sup>76</sup> met with harsh, and often violent, law enforcement responses,<sup>77</sup> left open the question of how well the constitutional framework would protect Black, Latine, and Indigenous youth and other youth of color.



Just a few years later, the next U.S. Supreme Court case on youth in the justice system, *McKeiver v. Pennsylvania*, touched on, but did not explicitly address, the issue of racial and political justice.<sup>78</sup> The Court addressed two consolidated cases. The first involved two teenagers whose race is never mentioned in the decision accused of robbery, theft, and assault.<sup>79</sup> The second involved a group of Black youth in North Carolina who had been protesting school consolidation.<sup>80</sup> The Court’s decision clarified that **children in juvenile court are not entitled to all constitutional protections required in criminal court**, and, in particular, that the Constitution does not require jury trials for youth in juvenile court. The damaging consequences of this legal framework on Black, Latine, and other youth of color would play out over the next few decades.

## D. The Tough on Crime Era

*What if we treated all the children the way we want our children to be treated? What if the judge saw me as his child, worthy of the second chances his child is worthy of?*  
- Amir Whitaker<sup>81</sup>

Beginning in the 1960s, public officials increasingly stoked a racialized fear of crime in public debate. In 1964, Republican presidential candidate Barry Goldwater decried the “violence in our streets” and the “aimlessness of our youth.”<sup>82</sup> The following year, President Lyndon B. Johnson called for a thorough “war against crime.”<sup>83</sup> In 1968, President Nixon claimed that crime was increasing exponentially and “If we allow it to happen, then the city jungle will cease to be a metaphor. It will become a barbaric reality, and the brutal society that now flourishes in the core cities of America will annex the affluent suburbs.”<sup>84</sup> The Reagan era built on these fears, focusing on drug crimes and linking crack usage to violence and criminality in Black and brown communities.<sup>85</sup>

In 1995, criminologists John Dilulio, then of Princeton University, coined the term “superpredator” in a report incorrectly predicting that the number of youth in custody would increase drastically in the following years and that, by 2010, there would be “an estimated 270,000 more young predators on the streets than in 1990.”<sup>86</sup> He went on to describe these young people as pure criminals who were “radically impulsive, brutally remorseless... elementary school youngsters who pack guns instead of lunches.”<sup>87</sup>

Spurred on by the media narrative and inaccurate research, legislators across the country passed “tough on crime” bills creating harsher treatment for young people in contact with the legal system. At the federal level, politicians and other public-facing officials urged that we “take back our streets from crime, gangs, and drugs,” and that we fight back against the “superpredators” with “no conscience, no empathy.”<sup>88</sup> Federal “zero tolerance” laws engaged police and the courts in what had previously been school disciplinary issues.<sup>89</sup> The U.S. Supreme Court, explaining that children are “always in some form of custody,” permitted pre-trial detention for young people with minimal due process protections.<sup>90</sup> State legislation, too, focused on harsh punishments. Almost every state passed laws requiring designated youth cases to be heard in adult court, often with no opportunity for judicial review.<sup>91</sup> At the same time, state legislatures amended the purpose of their juvenile court systems to focus on “punishment” and “accountability,” rather than just rehabilitation.<sup>92</sup>





Dilulio’s predictions that juvenile crime would increase never materialized. In fact, youth crime inside and outside of the schools declined year after year following his report.<sup>93</sup> By 2000, the rate of serious violent crime by youth was about one fifth of what it had been at its peak in the early 1990s.<sup>94</sup> By 2001, Dilulio publicly admitted his mistake and announced that he would not make any future predictions about crime trends.<sup>95</sup>

By then, however, the die had been cast; the narrative around youth criminality had taken hold in the media and the law. Despite declining youth arrests, youth incarceration persisted, the number of youth in the adult system rose to an all-time high, and the system reflected overwhelming racial disparities.<sup>96</sup> Heightened policing in schools and zero tolerance laws led to increased criminalization of youth across genders.<sup>97</sup> The harsh and racist narratives of the ‘80’s and ‘90’s also persisted; the sentiment that young people, especially those who are Black or Brown, may be prone to crime is still deeply embedded in the minds of many Americans<sup>98</sup> and may have an outsized influence on policy-making even now.

## E. The Developmental Era

**The juvenile justice system has disrupted growth.... How do we create the roadmaps, these steps, to help our young people thrive?**  
- Jeannette Bocanegra<sup>99</sup>

In the early 2000s, advocates and researchers pushed back against the “adultification” of children by conducting psychological and neuroscience research that highlighted the differences between adults and children, and using that research in advocacy, including arguments before the U.S. Supreme Court. The strategy worked; beginning in 2005, the Supreme Court articulated a jurisprudence that recognized the differences between teenagers and adults, issuing a series of seminal decisions highlighting that **children deserve unique protections under the law because of their developmental status**.

In *Roper v. Simmons*, the Supreme Court held the death penalty unconstitutional as applied to children, noting that relative to adults, children have a “lack of maturity and an undeveloped sense of responsibility,” children are “more vulnerable or susceptible to negative influences and outside pressures, including peer pressure,” and their characters are “more transitory” and “less fixed” than that of adults.<sup>100</sup> In 2010, the Court extended this approach, striking as unconstitutional a life without parole sentence for a young person in a nonhomicide offense. The Court echoed the key differences between youth and adults established in *Roper*, noting further that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.”<sup>101</sup> Thus young people should be provided with a meaningful opportunity for release. In *J.D.B. v. North Carolina*, the Court clarified that the developmental jurisprudence applied beyond the sentencing context, establishing that adolescence matters when determining if a child is in custody and must receive *Miranda* warnings prior to police questioning. **A child is not just a “miniature adult,” and “the differentiating characteristics of youth are universal,” the court concluded.**<sup>102</sup>

In 2012, the Court returned again to sentencing, holding in *Miller v. Alabama* that any child facing life without parole must receive an individualized sentencing determination. A mandatory sentence unconstitutionally “precludes consideration of... chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences.”<sup>103</sup> The Court also recognized that children’s experiences are practically different from those of adults because children have no control over their family and home environment. Fully retracting his earlier position, John Dilulio joined other researchers providing the Supreme Court with an amicus (friend of the court) brief recognizing that “the fear of an impending generation of superpredators proved to be unfounded” and that prison sentences of life without parole do not have a deterrent effect on crime or reduce crime rates.<sup>104</sup>

The principles set forth by the Supreme Court also drove widespread reforms in state juvenile legal systems, with an emphasis on young people’s developmental needs and capacities. Subsequent reforms centered on reducing reliance on confinement and out-of-home placement,<sup>105</sup> limiting probation,<sup>106</sup> and shifting toward more targeted and evidence-based interventions.<sup>107</sup>

The case law applied categorically to all youth; the new juvenile legal practices and policies did the same. **Absent racial bias and disparities in the system, this should have been enough to create equitable outcomes for youth.** Yet throughout the 2000s, while the numbers of young people in the system declined, the disparities persisted and, in some states, even increased.<sup>108</sup> By failing to root out biases in policing and court practices or otherwise address the underlying causes of disparities, these reforms, while crucial, have fallen short. Moreover, as the current Supreme Court chips away at existing Constitutional protections in other contexts,<sup>109</sup> even the gains already secured are currently at risk.



# III. Harms of the Current Juvenile Legal System

Jessica Feierman

For many years, I thought it was the norm to experience these injustices. Our children’s futures have been disrupted through horrific policies and practices in the juvenile justice system – a system that has caused more harm than rehabilitation. - Jeannette Bocanegra<sup>110</sup>

Imagine a world where we invested more money in educating incarcerated people than punishing them. What if the children who need the most love were given mental health services and counseling instead of being funneled into... penal institutions? - Johnny Perez<sup>111</sup>

In the wake of this history – of a juvenile legal system protecting the interest of the wealthy and reinforcing hierarchies based on race, class, gender identity, and ability – a punitive approach to system-involved young people has emerged. Far too many young people face harm at the hands of the state, including unfair and traumatizing court experiences, separation from families and communities, and harsh or abusive conditions of confinement. Young people face physical risks and emotional trauma. They are also frequently deprived of agency in ways that can undermine their positive development. For a deeper look at system failings and proposals for alternatives from young people who have experienced the harms of institutional placement, see Advocates for Youth Justices’ publications *Broken Bridges: How Juvenile Placements Cut Off Youth from Communities and Successful Futures*<sup>112</sup> and *Broken Promises: Futures Denied*.<sup>113</sup>

Unfair treatment and harsh conditions of confinement create lasting scars, including long-term mental health challenges and barriers to success in school and work. The system can undermine positive family relationships. Young people who feel they have been treated unfairly may also develop a wariness of the law and legal system, putting them at risk of still more entanglement with the system as they grow into adulthood.<sup>114</sup> Despite the resilience of young people, research has shown that legal system involvement during childhood may lead to increased recidivism and worse health outcomes for youth well into adulthood.<sup>115</sup>

Given the disparities in the juvenile legal system, Black, Latine, Indigenous youth and other youth of color as well as LGBTQIA+ youth and youth with disabilities face heightened risks of all of the harms outlined in this section. What’s more, once in the system they are at risk of prejudice, verbal abuse, and physical abuse as well as a deprivation of needed services based on their identities.<sup>116</sup> This exacerbates the already significant trauma the system imposes.

## A. Silencing Youth Voice

The judge only listened to one side and did not ask me about the situation. She also made it seem like I was angry while in court. The judge could have listened by actually asking me what happened, instead of just going by what was on paper. - Jihid<sup>117</sup>

This is just so, so necessary that youth have some place to call for help. - Aqilah David<sup>118</sup>

Far too often, young peoples’ voices aren’t heard in the courtroom<sup>119</sup> because they do not trust or do not have sufficient time with their attorneys, because the judge does not inquire into their circumstances, or because speaking out about their underlying situation could have negative repercussions for their cases.<sup>120</sup> Although the U.S. Supreme Court has long recognized that children have basic constitutional rights, including the right to counsel, the right to notice and an opportunity to be heard, the right to confrontation, and the privilege against self-incrimination,<sup>121</sup> young peoples’ experiences often fall far short of even these basic guarantees.

Youth regularly appear in court without adequate representation by counsel.<sup>122</sup> Many attorneys are underfunded and overburdened, making it difficult for them to meaningfully investigate their clients’ cases.<sup>123</sup> In some cases, lawyers may not even meet with clients prior to the court appearance. Young people regularly report that they did not feel heard in court, either by their judge, the lawyer, or both.<sup>124</sup> The system purports to be about solving problems and rehabilitation, yet its very structure regularly inhibits both young people and victims from sharing about their lives and experiences, about the root causes of any problems they are facing, about opportunities they see for reparation. Bias based on race, disability, gender identity, sexuality, poverty, and involvement in the family regulation system can intensify these problems.

Research supports the conclusion **that juvenile court is falling short of meeting the needs of young people. In fact, young people who diverted from the court system tend to experience better outcomes than those who are formally processed**; youth who don’t have court contact are less likely to be suspended from school or rearrested, and they report less reoffending behavior than those formally processed in court.<sup>125</sup> Similarly, young people who participate in restorative justice processes that allow for a deeper look at the context for their actions and focus on repairing the harm that they have faced as well as any harm they have caused tend to have better outcomes than youth formally processed in the juvenile legal system.<sup>126</sup> These findings suggest that the rigid and punitive nature of juvenile court often falls far short of addressing the complex and nuanced challenges that impact youth behavior.



Youth continue to face barriers to being heard even after the initial court hearing, especially when trying to speak up about abuse and poor conditions.<sup>127</sup> Facility staff may silence youth by threatening violence, threatening to expose youth to harsher confinement and longer sentences, and threatening to block youth access to parents, police, medical professionals, or others who would help if they knew of the abuse.<sup>128</sup> Even when young people do not face direct threats or violence, the legal system creates obstacles to their complaints. Many juvenile facilities have complicated grievance procedures that require young people to submit complaints in writing following a designated format; often youth must file any appeals within strict timelines.<sup>129</sup> Failing to comply with the technical procedures can then bar cases from being heard in federal or state court, further insulating correctional officials from accountability and silencing the voices of those experiencing the system.<sup>130</sup>

And short of the active silencing of youth voice regarding their court cases or conditions, youth facilities regularly interfere with young people’s opportunities for self-expression; youth face heavily-regimented days, limited visitation, and interference with their ability to connect with loved ones via phone or internet.<sup>131</sup>

At a developmental stage focused on the development of identity,<sup>132</sup> the justice system too often silences, rather than embraces, youth voice.

## B. The Harms of Out-of-Home Confinement

A judge can sentence [a child] for whatever mistake . . . but then they go to these facilities, and they come back worse. So where does the fairness and the human treatment come in?  
- Jeannette Bocanegra<sup>133</sup>

You’ll find that folks in [prison] are literally no different than folks on the outside. If we value compassion and second chances but we ignore the people inside . . . , that’s cognitive dissonance. - Johnny Perez<sup>134</sup>

Once a judge adjudicates a child delinquent, the child is at risk of placement outside of the home, including being separated from family and community, facing harsh conditions of confinement, and experiencing educational disruptions.

### 1. Family Separation

The single most crucial factor in positive growth and development is having at least one supportive adult involved in a child’s life.<sup>135</sup> Yet the justice system regularly takes young people away from the supportive adults in their lives, including parents or guardians, teachers, coaches, and others. Not only must children in placement live separately from their families, they also face serious obstacles to staying in communication with their loved ones. Justice systems often place young people in facilities far from home, making visits difficult if not impossible.<sup>136</sup> Facilities limit visiting hours as well as access to the phone and internet.<sup>137</sup> To make matters worse, private companies often charge extortionate fees for phone calls and internet access, interfering even further with family connections.<sup>138</sup> This leaves children who may never have left home before starkly cut off from family members, as one advocate explained, “I didn’t

even get a chance to say goodbye to my family—not my little brother or sister” and “couldn’t see family or receive home passes until after 30 days.”<sup>139</sup>

Parents, like children, suffer from the separation;<sup>140</sup> they report that system actors regularly dismiss their expertise and their understanding of their children’s strengths and needs. “At every stage of the juvenile justice system, when critical decisions are being made about how a young person will be treated, families are either excluded outright or not provided with the information or tools necessary to actively participate in proceedings dominated by legalese and jargon.”<sup>141</sup> And when families try to participate, “they are far too often disrespected, disregarded, and blamed for their child’s involvement in the system.”<sup>142</sup> This means parents are not only separated from their families, the system also undermines them in ways that risk damaging their own ability to care for their children: “I think I’m a pretty decent parent, but those systems made me feel like I was the worst parent ever.”<sup>143</sup>

### 2. Physical Dangers

We’re still dealing with a system that traumatizes people. . . .  
The system is part of the reason that families are mourning.  
- Amir Whitaker<sup>144</sup>

#### a. Strip searches



Soon after arriving at a detention center or youth prison, most children are strip searched. Children also describe being forced to squat and cough naked in front of correctional staff.<sup>145</sup> While facility rules typically require strip searches to take place in a private location and in front of a staff member or members of the same gender as the young person, many young people describe facing strip searches in sight of other youth or staff.<sup>146</sup> Youth may be strip searched again before or after visits, when leaving the facility, when entering solitary confinement, or when there are fights and disturbances. These searches are invasive for anyone, but especially for teenagers, who may value bodily privacy even more than adults.<sup>147</sup> For those with histories of sexual abuse, the intrusion can be retraumatizing; this is particularly concerning given the high rates of sexual abuse among girls in the juvenile system.<sup>148</sup>

Strip searches take place even when youth are subject to so much surveillance that they could not have had access to contraband. “They would shake out our bras and touch around our waist and make us take our shoes off. For higher security places, they don’t need to do this when there is already heightened supervision of the youth.”<sup>149</sup>

When children resist strip searches, they are penalized and subject to physical restraints and other harms. “When I first entered the placement facility, I refused to be strip searched, and they called a code. They pulled me into another room with five or six guards, and a few of them held me while one guard forcibly searched me. This happened more than once because I refused every time.”<sup>150</sup>

Strip searches have been shown to result in anxiety, depression, loss of sleep, shame, guilt, difficulty in school, and other negative consequences, yet at many facilities across the country, they are imposed as a default even when there is no reason to suspect a child has contraband that could be discovered through the search.<sup>151</sup>

b. Restraints

Youth in placement face multiple types of restraints. Almost all youth are shackled during transport and at other key moments in their justice system placement. Others are restrained for violating the rules. **Youth may even be restrained for “talking back and refusing to do something.”**<sup>152</sup>

In addition to handcuffs, shackles, and manual restraints, some youth are shackled to a fixed object such as a table, or strapped to a restraint chair.<sup>153</sup> And in some facilities, staff use pepper spray on youth – even sometimes on youth who are already confined to their cells.<sup>154</sup> Moreover, far too often, restraints lead to physical violence. When young people don’t immediately comply with restraints, **“the staff would slam them on the wall or floor”**<sup>155</sup> or “call ‘code black’ or ‘code blue’” and “jump on the youth.”<sup>156</sup>

Restraints and pepper spray cause immediate and lasting damage. **Young people describe being shackled as being treated “like an animal,” “like a criminal,” or “like a slave.”**<sup>157</sup> Restraints can cause stress, anger, and fear and undermine rapport with staff members.<sup>158</sup> Pepper spray causes immediate damage, including “an almost immediate burning sensation of the skin and burning, tearing, and swelling of the eyes. When it is inhaled, the respiratory tract is inflamed, resulting in a swelling of the mucous membranes” and restricting breathing to shallow breaths. For youth with histories of abuse, restraints can trigger intense traumatic stress symptoms.<sup>159</sup> Experts underscore that the humiliation of restraints can lead to lasting psychological damage.<sup>160</sup> In the most tragic cases, restraints – both physical and manual – can be fatal.<sup>161</sup>

c. Violence and Sexual Abuse

There were times when I feared being killed by the same guards who had sworn to protect me.  
- Johnny Perez<sup>162</sup>

It goes without saying that witnessing or experiencing abuse during childhood can cause lasting effects. In fact, children’s exposure to crime and violence has been “declared a ‘national crisis’ and is estimated to be one of the most damaging and costly public health and public safety problems in our society.”<sup>163</sup> Exposure to crime and violence during childhood, can cause neurological damage and disrupt development.<sup>164</sup> Even when children witness, but do not directly experience, crime, the exposure can lead to lasting consequences.<sup>165</sup> These effects are seen in children exposed to community violence, those with victimized parents, and those impacted by parental incarceration.<sup>166</sup>

**Correctional confinement “exposes incarcerated youth to widespread mistreatment.”**<sup>167</sup> A 2015 study by the Annie E. Casey Foundation found evidence of such maltreatment of

young people in 43 states plus the District of Columbia and Puerto Rico since 1970, including numerous and repeated instances of staff-on-youth and youth-on-youth violence and sexual abuse.<sup>168</sup> Since then, lawsuits and news articles in still more states have revealed additional cases of institutional abuse.<sup>169</sup> LGBTQIA+ youth report significantly higher rates of sexual abuse by staff and other youth, as well as high rates of unfair discipline.<sup>170</sup>

Staff may use physical violence even as a response to typical teenage behavior. In one instance, for example, staff responded to a young person using social media instead of doing homework: “As soon as I stepped out of the room, one guard held me, and another punched me. Then they made me go back to class.”<sup>171</sup>

For youth with histories of abuse, this treatment can contribute to retraumatization and the negative consequences associated with polyvictimization.<sup>172</sup> For those entering the system without prior abuse histories, the system itself creates an initial, and deeply problematic, first exposure. While youth are incredibly resilient, the system itself creates serious obstacles to healthy development.

d. Solitary Confinement

Facilities across the country lock youth in solitary confinement, for days, weeks, or even months at a time.<sup>173</sup> Youth can be isolated for punishment, administrative convenience, or purportedly to protect them from violence by others or even from self-harm.<sup>174</sup> Solitary may also be used disproportionately to “protect” LGBTQIA+ youth from harm, despite the very real trauma it causes.<sup>175</sup> Often, youth have no personal possessions, no educational materials, and nothing to distract themselves from the small cell to which they are confined. They may also be placed in solitary with no books, pencils, pens, or even utensils for eating. They may lose access to therapy, programming, or even time outdoors.<sup>176</sup>

The consequences are well-proven: solitary confinement of children causes stress, anger, hallucinations, confusion, sleeplessness, depression, and can lead to suicide.

Psychologically, you try to escape because there’s really nothing to do.... **We have this need to hear a human voice and to touch people....**[I]n solitary, the most dehumanizing pieces are the fact that you have little to no meaningful human interactions.... [I]t does kind of chip at you a little bit. When you don’t have nobody to talk to, you’ll find that you’ll end up talking to yourself, you’ll talk loud.<sup>177</sup>

Solitary creates an overwhelming risk of harm to anyone; it can be particularly damaging for youth. It deprives teenagers of needed access to socialization and education that can support their positive growth and brain development.<sup>178</sup> Although courts have repeatedly held that such solitary confinement violates the Eighth and/or Fourteenth Amendments, and despite some policy advances in this area, solitary confinement of youth remains a widespread problem.<sup>179</sup>



# C. Economic Harms & Barriers to Success

There's been generational exploitation, there's been generational oppression... and now, their descendant is here, competing with others, competing with the people who hoarded all the power and money...  
— Amir Whitaker<sup>180</sup>

The juvenile and criminal legal systems create and exacerbate economic disparities by imposing fees and fines, disrupting education, and creating obstacles to employment.

Children living in poverty and Black and Brown youth are overrepresented in the legal system for a host of reasons: youth in wealthier and whiter neighborhoods face less policing at home and in school; system actors hold bias against Black and Brown youth; families with more resources can more easily access high quality community-based responses that allow them to avoid justice system involvement; system actors direct youth to the justice system to address gaps in community-based services in poor communities; and wealthier youth who do face justice system involvement can afford better resourced attorneys.<sup>181</sup>

Rather than building up needed resources in the community, however, the juvenile and criminal legal systems tend to interfere with pathways to success and strip youth and their families of needed resources.

## 1. Barriers to Education and Employment

Entering the justice system interrupts children's education. **Young people in the justice system often fall behind in school, and many never re-enter their schools after release** – often because they didn't receive education or received subpar courses while incarcerated, because credits earned while incarcerated don't transfer back to their home schools, or because public schools in the community make reentry difficult or even actively discourage re-enrollment after justice system involvement<sup>182</sup>: **My education was... dramatically impacted by the system. I was in the justice system for two years and only gained 3.5... credits when I was placed back into a community school.**<sup>183</sup>

Even if a child can stay on track educationally, their juvenile or criminal record will likely create obstacles to higher education, housing, and employment, creating still more barriers to educational and economic success.<sup>184</sup> **I just wanted to work. I just wanted to make my own money. Most stores were hiring, but you gave them the application [after having been in the system], you called back to the store, and they'd hit you with the same line: "No, we're not hiring."**<sup>185</sup> The result is a dramatic decrease in wealth for those who experience incarceration, with the disparity particularly profound for Black and Hispanic youth.<sup>186</sup>

## 2. Fees and fines

**Young people in the juvenile and criminal legal system also face fees and fines that cause economic harm and emotional stress and push young people deeper into the system.**<sup>187</sup>

While states have begun to roll back these laws, most still permit or require youth in the justice system and their family members to be billed for administrative court costs, probation fees, public defender fees, psychological evaluation costs, diversion program fees, treatment and service costs, a per diem or child support fee to cover the cost of confinement, and fines.<sup>188</sup> The total cost can range from a small fee to tens of thousands of dollars.<sup>189</sup> Children typically lack the resources to pay because they are in school full-time or because they are too young to hold a full-time job.<sup>190</sup>

Families report that these costs create economic stress, forcing them to choose between buying groceries or other necessities and paying off court fees.<sup>191</sup> These economic burdens can also cause family tension, heightening anxiety rather than supporting wellbeing.<sup>192</sup>

The fees cause stress to young people directly as well. Poverty increases the risk of exposure to the juvenile and criminal legal system; fees and fines exacerbate the problem. They make it more likely for young people to enter and go deeper into the system. Some young people report that they have engaged in or considered illegal activities to make enough money to pay the court.<sup>193</sup> Others have been adjudicated or placed in the system because they can't pay for alternatives. Still more have been unable to step down from incarceration to a less secure setting because they lack the resources to pay for needed programming. To the extent young people find employment to pay for fees, this, too, can negatively impact their education and wellbeing.<sup>194</sup> **With the fines, it's like, the system has got you... Even if you're free right now, you owe them. And it's nothing to take lightly. Because a lot of crime, a lot of bad behavior—it's related to money.**<sup>195</sup>



# IV. Redefining Justice

Jeannette Bocanegra, Hernan Carvente, Aqilah David, Jessica Feerman, Anahi Figueroa, Jihid, Johnny Perez, and Amir Whitaker, with artistic support from Lindsay Wilson at the Ink Factory

I try to ask myself, how is this decision going to leave the next group of folks in a better [place]? ... It's a collective effort of individual efforts that's going to tip the scale.  
- Johnny Perez<sup>196</sup>

Most people aren't going to speak up about the changes that need to happen... that's why I'm here.  
- Jihid<sup>197</sup>

This section reflects a collaborative vision of justice set forth in conversation with transformative leaders. Unlike other sections, it quotes our conversation directly throughout the text rather than highlighting participant perspectives solely as quotes at the beginning of each subsection. This section strives to share our collective vision as accurately as possible while still recognizing individual contributions and insights.

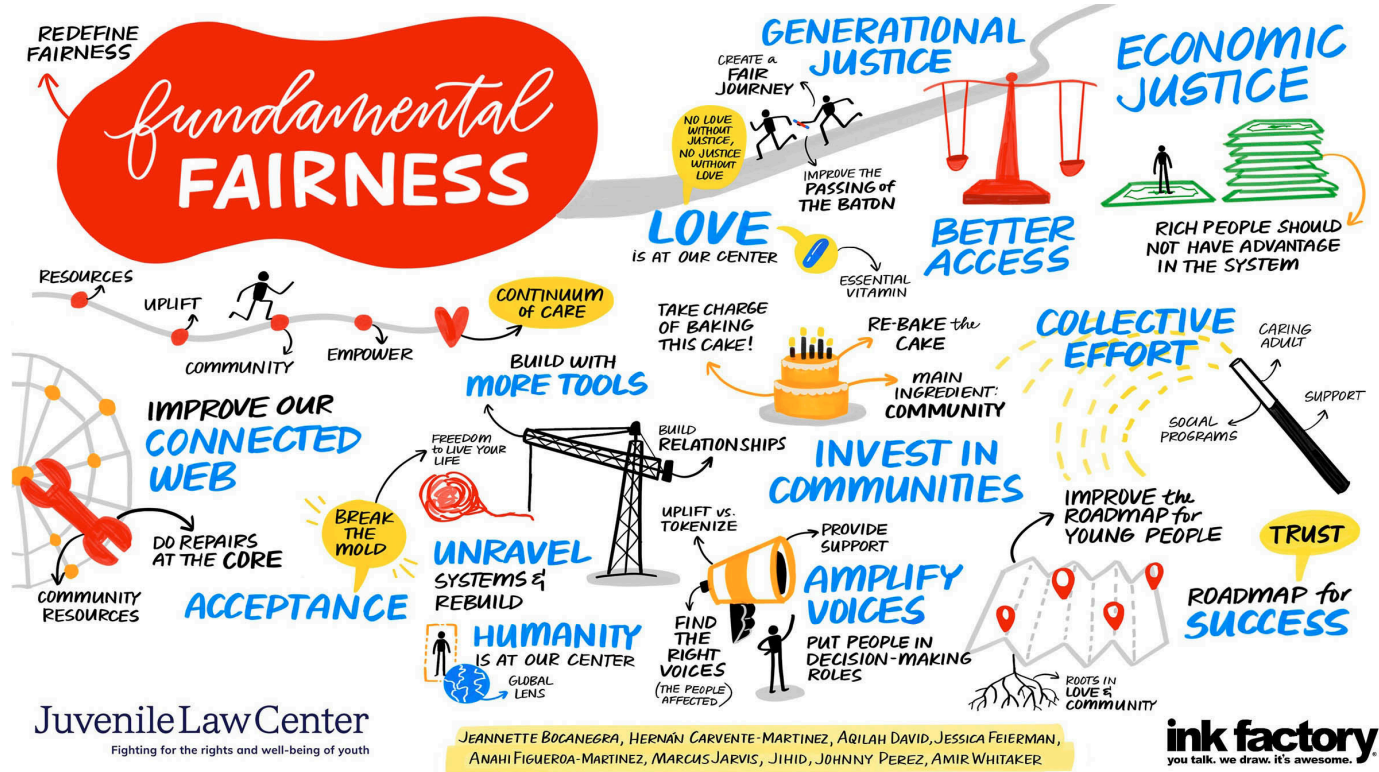
## A. Redefining Fairness

When we talk about fairness, we have to talk about whose fairness? This system... that was always intended to poison us, we've inherited it, and they've been calling it fair. We have our idea of fairness... it's not taking our families, it's not putting our children in cages... - Amir Whitaker<sup>198</sup>

U.S. Constitutional law to date has defined fairness and dignity narrowly – setting up basic procedural protections and minimal standards for conditions of confinement within a system still focused primarily on punishment and retribution. Leaders with lived experience, in contrast, set forth a shared vision of justice that rests on notions of community, connection, and equity and far exceeds the protections guaranteed by the Supreme Court.

Due Process clause case law clarifies that youth in the juvenile legal system are entitled to certain procedural rights, including, for example, the right to counsel, the right to timely notification of the charges, the right to confront witnesses, and the right against self-incrimination.<sup>199</sup> Youth, like adults, may not be adjudicated delinquent unless the case against them has been proven beyond a reasonable doubt.<sup>200</sup> Also like adults, they must be protected from double jeopardy.<sup>201</sup>

Transformative leaders, in contrast, set forth a vision of fairness that addresses historical wrongs, prioritizes the voices of impacted individuals, and develops systems of support, love, and connection for young people. Their insights, captured in real time by artist Lindsay Wilson of the Ink Factory, highlighted the deep divide between current legal protections and the group's concept of restorative and equitable justice.



### 1. Addressing History and Social Context

Fairness, defined by transformative leaders, requires confronting the history that has shaped the current system, and recognizing the social context that continues to influence it.

Confronting history requires us to rethink who the system has routinely harmed or protected, and how the system was built in the context of social and economic stratification and subjugation. “In 1899 [at the inception of the juvenile court], none of those laws was written for Black people. The punishment for those people was being hung, lynched, firebombed....” The State played a key role in this violence too. By failing to indict lynch mobs, it “murdered thousands of people....”<sup>202</sup> Inequity doesn’t just rest in the juvenile and criminal legal system, it permeates our social structure. “There are people walking around with money that they’ve inherited from generational oppression. If we’re going to have a question about fairness, we can’t just start today—because people have been held back in this race... the foundation has been very unfair.”<sup>203</sup>

These inequities persist as the legal system continues to privilege the rights of those in power, including corporate interests and political interests, over the interests of the community. “**We have to acknowledge that as long as there are interests that are not community interests, that are not societal interests, fairness is compromised.**”<sup>204</sup> And we need to look at the broader context of why violence happens – including the immediate challenges faced by an individual young person and also the social inequities and historical wrongs in which it occurs – so we can determine how best to respond.<sup>205</sup>

Young people will not trust the system until we do this. “Young people don’t have faith in what we say, because we tell them things that are completely ludicrous.” We protect big conglomerates like tobacco killing people regularly but lock up young Black people for things that happen in school. “We allow white people to mass murder and then demonize Black people for trying to survive. So many big conglomerates that make so much money off of what is happening... and then the government turns around and looks at the people.”<sup>206</sup>

Failing to get to the root of these problems dehumanizes those in the system and keeps us returning to failed punitive models. “**Until we acknowledge the years of historical violence that have been imposed on communities of color,**” **solutions grounded in healing, connection, and love will be “imaginative and radical,” but not reality.**<sup>207</sup>

2. Relying on People with Lived Experience as Decision-Makers

The voices and insights of youth and community members are central to transforming the system. Transformative leaders explained that “if you’re not part of putting those ingredients together for that meal, you’re going to be part of the menu—they’re going to eat you up.” Instead, we need to “invest in the main ingredient... which is the voices of communities.”<sup>208</sup>

Simply amplifying relevant voices, however, won’t transform the system. **Youth and families must have decision-making authority in “bodies of decision-making power.”**<sup>209</sup>

This requires more than bringing in a single voice or a few individuals and expecting the few to carry the burden of speaking for an entire population, “to be an exceptional individual at all times.” And it requires supporting young people thoughtfully and holistically rather than tokenizing them. Young people give us “hope to continue fighting. But are these systems supporting young people at home after they speak? How do we uplift every young person, not tokenize them, give that support they need? It’s not any wording, it’s actions.”<sup>210</sup>



Asking impacted individuals to share their vision and even to have decision-making authority isn’t enough. They also need to have the resources for transformation. When the advocacy community has the same conversations year after year and keeps repeating that the “people closest to the problems are the ones with the solutions,” we still come up short because “we don’t have the funding. We’re expecting the community to do the work with no funding.”<sup>211</sup> Supporting decision-makers also requires implementing the new practices they decide on.

3. Relying on Communities, not Systems

A transformative vision of change doesn’t create new systems, it builds up communities. “**No system” can create the kind of support we need.**<sup>212</sup> Instead of building systems, creating fairness requires us to “disrupt how this system has been treating us.”<sup>213</sup> Fairness means “rebuilding communities.”<sup>214</sup>

This perspective – that the answer doesn’t lie in systems, but in communities, is widely shared not only by the transformative leaders who participated in the convening, but also

by other young people the leaders work with. “None of the conversations” with young people about alternatives to our current juvenile legal system “mentioned more systems.” Instead, “they were talking about socio-economic mobility: buying homes, traveling outside their zip codes, owning a means of transportation, and building generational wealth. But to them, it was this far-fetched thing. It had nothing to do with systems or programs. It had to do with building their own lives and the capacity of their community.”<sup>215</sup>

For this approach to work, communities need resources. “When we say rebuild, it’s about investing.... Putting those dollars in providing young people with the supports that they need to thrive.”<sup>216</sup> These supports must respond to the individual young person, their strengths, and their needs. “We think about a baby all the way to adulthood... we’ve been conditioned to use the hammer for everything... to build a strong house, you need more than one tool. So how do we create these roadmaps with all of the tools that [are] needed to build?”<sup>217</sup>

Young people don’t just need programs, they need strong relationships, love, and support. “If we treated young people with love... our system would look much different. We can say in many ways that love has never truly been in our system.”<sup>218</sup> There is “so much more around love... that we should be doing in the context of this work.... Love conquers everything, but we’re not giving our young people and our families that foundation.”<sup>219</sup> Our path forward must be based in “honoring love for humanity.” Social science research confirms this; young people thrive when they have positive supportive relationships with adults.<sup>220</sup>

B. Redefining Dignity

*Dignity requires really intentional and explicit healing from the harms that the systems have caused.*  
- Amir Whitaker<sup>221</sup>

Case law on the Eighth Amendment right to be free from cruel and unusual punishment includes lofty descriptions of the importance of “broad and idealistic concepts of dignity, civilized standards, humanity, and decency,”<sup>222</sup> but simultaneously establishes only limited rights.

**The Eighth Amendment entitles individuals to be free from cruel and unusual punishment, which the Court has, to date, interpreted to mean that people must be protected from some of the harshest abuses when incarcerated.** The U.S. Supreme Court has held that prison staff may not exhibit “deliberate” indifference to an individual’s serious health needs,<sup>223</sup> has barred as unconstitutional holding seriously mentally ill prisoners in cages the size of a telephone booth without toilets,<sup>224</sup> and has prohibited the use of “excessive” force against incarcerated individuals.<sup>225</sup> In essence, the Court has prevented the most abusive practices, but has not typically required positive interventions or supports.

**Some lower courts have applied a more protective standard when considering youth as opposed to adults,** recognizing on children’s unique right to constitutional protections.<sup>226</sup> As a result, some courts have recognized the constitutional problems with punitive solitary confinement and pepper spray for youth,<sup>227</sup> and on occasion, even recognized a right to rehabilitation.<sup>228</sup>



Even the broadest interpretation of dignity set forth by the courts falls far short of transformative leaders' vision of dignity. Convening participants affirmed the need for clean, positive spaces with adequate nutrition, medical treatment, and mental health care. But they viewed safety as a baseline, not an end goal. Their view, as illustrated here, focused on healing, restoration, and community connections.

Not only do we separate people from their communities and families... we separate them even while they're in these spaces again. This idea of using separation as a tool to punish... punishment always leads to harm. Social interactions, interacting with each other, is one of the most basic things that makes us human. You can't even live without another human being.<sup>234</sup>

Ultimately, a system rooted in dignity must recognize and respect human connections and relationships.

2. Restoration, Not Punishment

Transformative leaders emphasized that dignity requires restoration that makes participants whole. Dignity “requires really intentional and explicit healing from the harms that the systems have caused... Until we can get to that, we have people reproducing the harms... and until we interject some healing ... how can we make them whole?”<sup>235</sup> This restorative focus echoes the conclusions of individuals formerly sentenced as children to life without parole sentences, who understand the Eighth Amendment right to dignity to require a recognition that “[t]he capacity for change is... core to the human condition, and all people regardless of their age, should have a basic human right to pursue personal redemption.”<sup>236</sup>

This requires responding to the needs of youth. We should provide them with supports “instead of just locking them up in a room.”<sup>237</sup> Healing is also rooted in culture, so we must look to indigenous practices and other culturally rooted approaches as we figure out our responses to young people.<sup>238</sup> The work entails a “holistic” approach that is “not just mental It’s also spiritual [and] financial.”<sup>239</sup>

Restoration doesn’t stop with addressing the needs of young people; it also responds to the needs of those harmed by the young person’s behavior. Our current legal system typically doesn’t address the issues at the root of a young person’s behavior. “That’s not rectifying what has actually happened. A lot of the time a person can be released right back into a community with the person they victimized, and there’s no interaction between them aside from the court proceeding.... There was no support... between the two individuals.”<sup>240</sup> How do we “help that person understand what they did, who they hurt, and how they can make it better?”<sup>241</sup>

Like fairness, restoration also must be rooted in community, not systems. There is a misconception that “the solution has to be provided to us, and not allowing the space for communities and families to hold themselves accountable.”<sup>242</sup>

Perhaps most importantly, restoration holds systems accountable and transforms the systems themselves, so we don’t keep replicating state-inflicted trauma. “We have to transform these systems if we are going to live with dignity.”<sup>243</sup>

In an immediate way, this includes seeking healing and support also for staff members who work in youth prisons.



1. Connection, not Separation

Transformative leaders centered their understanding of dignity in human connectedness. First and foremost, they focused on the importance of family, neighborhood, and community, and recognized that the current system undermines those goals. “The importance of keeping families connected—we do the opposite.... We punish young people for whatever happens... and keep them so far away from their families and their siblings.... We definitely do the opposite, and I can no longer continue feeling safe enough that a system is going to do a better job.”<sup>229</sup> Dignity entails “being able to be around people you love and care about and who love and care about you.”<sup>230</sup> This focus on connections is a stark contrast to the separation inherent in our current carceral system.

This vision also requires investing in neighborhoods. “Let children have somewhere to go instead of running the streets.”<sup>231</sup> This flips our current investments on their heads because now “they put more into jails than actually bettering different communities, or any programs in general that are helping the communities.”<sup>232</sup> We need to imagine an ecosystem in which no matter what you’re going through “this is home, this is safe, where young people feel held and supported by their community and know that there are people who will fight for them and not give up on them.”<sup>233</sup>

While leaders felt the essence of dignity is best served at home and in neighborhoods and communities, they also recognized the importance of harm reduction in facilities, noting the unique trauma of solitary confinement that separates young people from social contact.



We talk about the wellbeing and healing by those impacted... but then we forget that people in the systems also look like us... many of those system workers may be a sibling that resents that brother because mom had to focus so much on him.... We have to support and give those workers the level of... professional development, healing tools, because they go back home, and many of them deal with those same issues we're facing and we're talking about.<sup>244</sup>

But the task is greater than that – the focus must be on rethinking the systems entirely so that we don't continue to replicate oppression and abuse.

We're not holding systems accountable, and for the amount of money... it's just very heavy on my heart.... I feel like, the more I talk, the more it's like, am I wasting my time? Because we still trying to tell these people, don't treat these kids like that.... We're not holding systems accountable, we're giving them another four years to get it right."<sup>245</sup>

A transformative approach, in contrast, allows us to stop the cycle of abuse and create positive approaches instead. "We have to have transformative justice that actually looks at transforming those systems. ... I still remember my dad waking up on the couch feeling like he was still incarcerated, waking up in a cold sweat.... The systems are not restoring things, and we have to transform these systems if we are going to live with dignity."<sup>246</sup>

Dignity, then, is not just about adequate treatment as contemplated by current Eighth Amendment jurisprudence, but rather about healing for individuals, restoration for relationships, and transformation to create equitable and appropriate systems and communities.

## V. Transformative Legal Strategies

Legal advocacy shaped by the insights of transformative leaders will seek to: (1) support youth and community leadership; (2) confront racism and discrimination; (3) fight family and community separation and foster connection; and (4) advocate for healing and redemption.

The vision of justice set forth by transformative leaders requires a full rethinking of our legal responses to youth; this publication starts by considering how to challenge harmful conditions of confinement as a first step in that process, and a powerful tool for unmasking how the state imposes trauma and what we might do instead.

### A. Relying on Youth & Community Leadership

Transformative leaders emphasized the importance of youth and community voice. Movement lawyering or community-driven litigation models provide insights for effective lawyer/leader collaborations. These models place significant leadership, control and decision-making authority in clients, organizations, and movements.<sup>247</sup> They often seek to build up sustainable power for the movements themselves, rather than focusing on an individual case win as the end goal. They typically recognize how race, class, and power shape the social issues they are addressing.<sup>248</sup> **In essence, they create opportunities for youth and community partners, in collaboration with lawyers, to develop and fight for a shared vision of change.**<sup>249</sup>

#### 1. Initiating Litigation

The first question for youth and organizers will be when and whether to litigate, considering how litigation helps movement goals, and how and when it may fall short or even inadvertently undermine movement goals. **Decisions about when and whether to litigate must be made in conversation, exploring the risks and benefits, including the impact on movement strategy, with movement partners as well as impacted youth and their families.**

This approach may be particularly crucial in youth prison conditions cases. Litigation can and has played a vital role in protecting youth from institutional abuse, challenging solitary confinement, strip searches, pepper spray, restraints, physical and sexual abuse, and deprivation of education and services.<sup>250</sup> Such cases can support decarceration, both by highlighting the problems inherent in facilities, and by making it harder and more expensive to run facilities. However, they can also get in the way of system transformation by increasing staffing and otherwise taking resources away from the community and into the prison system.<sup>251</sup> Addressing these strategic questions square-on before litigating is therefore vital. Juvenile Law Center used this approach in *J.J. v. Litscher*, a lawsuit challenging the harsh and abusive conditions in two youth prisons in Wisconsin.<sup>252</sup>

Before filing suit, lawyers from Juvenile Law Center and organizers from Youth Justice Milwaukee discussed the potential impact of litigation on the active movement to close the facilities. Ultimately, organizers decided the immediate and grave risks to children currently incarcerated outweighed any concerns about the lawsuit undermining their organizing efforts, and the collaboration continued throughout the lawsuit, as further described below.

## 2. Movement Plaintiffs

The law typically focuses on relief for an individual or group of individuals; **lawyers pushing for transformative change can also engage in advocacy on behalf of a movement.** One strategy for doing so is to represent organizational plaintiffs. An organization, rather than individual, may have standing to sue when “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”<sup>253</sup> In one groundbreaking use of organizational standing, advocates in Chicago filed a case challenging police torture and brutality not only on behalf of individual plaintiffs, but also on behalf of several organizational members of a coalition.<sup>254</sup> This set the stage for creative settlements with heightened accountability to the community.

The challenge for youth justice lawyers will be identifying representative groups of young people who meet these standing requirements. It is rare, if not impossible, to find an organized group of currently incarcerated youth. Depending on the nature of the lawsuit, however, organizations serving and consisting of youth advocates currently under probation supervision, for example, might meet the standing requirements.

Even without organizational plaintiffs, however, lawyers can still seek broad class member input regarding settlement terms or other strategic decisions. In a Michigan prisoners’ rights case challenging the conditions of a super-maximum prison, the lawyers visited (adult) class members and shared a settlement offer that would have helped individual plaintiffs but would not have helped others going forward. After significant discussion through the slots in cell doors, the class members unanimously rejected the settlement, and ended up winning in court instead.<sup>255</sup> Similar strategies can be used in the youth justice context.

## 3. Shaping Relief

Most conditions of confinement lawsuits on behalf of young people result in money damages and/or injunctive relief with court-approved monitors tracking progress in a facility and communicating directly with lawyers. Advocates seeking transformative relief might also consider when, whether, and how to create accountability directly to the community.

A settlement in the case of *State v. City of Chicago* created police accountability directly to community members in innovative ways. It required the city to “solicit public input, through community engagement efforts, regarding the methods by which mediation will most effectively build trust between community members and police and foster mutual respect.”<sup>256</sup> The settlement also required the monitor to hold public meetings to explain the reports and “to hear community perspectives on police interactions”<sup>257</sup> and to participate in meetings with a coalition of community groups at least quarterly.<sup>258</sup> And the consent decree itself is not enforceable only by the parties, but also by the designated coalition of community groups.<sup>259</sup>

Similarly, a lawsuit on police brutality in West Philadelphia resulted in an agreement which requires that a Deputy Police Commissioner report to the community on incidents of violence.<sup>260</sup> In both Chicago and Philadelphia, advocates were also able to secure funds to support community healing and wellness, although they are still working to move resources away from police.<sup>261</sup> Lawyers for youth should consider when and how this deeper level of accountability to community might serve the interests of their clients and the broader movement.

**Even when lawyers represent youth directly rather than an organization, they can shift more power to class members.** In litigation on behalf of prisoners held in solitary confinement at Pelican Bay prison, for example, the settlement agreement provided a mechanism for Plaintiffs to be directly involved in monitoring, including requiring meetings between four prisoner representatives and the defendants to discuss implementation of the agreement.<sup>262</sup> More commonly, lawyers for plaintiffs meet directly with lawyers for defendants and use their judgment about how to address challenges in implementing a settlement. Occasionally, state agency actors join calls directly, as do monitors. It is rare, however, to see incarcerated individuals joining these meetings. Having them at the bargaining table would bring a more nuanced understanding of the settlement terms and institutional needs to the negotiators. It would also ensure more accountability to those with the most at stake.

Youth will often lack the internal organization of the Michigan or Pelican Bay plaintiffs because of their age and the shorter terms of their incarceration. While youth clients may need more support than adult clients in navigating such involvement, lawyers can consider when and how to engage young people directly in implementation and how to partner with them in the broader fight for transformative change. They can also work with community members who partner directly with youth. Attorneys are professionally bound to represent clients’ stated goals zealously; in developing clarity about those goals, however, movement lawyers can create opportunities to explore both individual and movement needs.

## 4. The Law as an Organizing Tool

This section would be incomplete without at least a brief recognition that the sole purpose of filing a lawsuit need not be the legal victory. **The law has repeatedly been used as one strategy to galvanize, support, or reinforce social movements.**<sup>263</sup>

In the Wisconsin case against solitary confinement, each phase of litigation revealed horrifying facts about the conditions of confinement in facilities – young people pepper sprayed through the slots in their doors even when they were already in solitary confinement, shackled to tables, confined for weeks or months in solitary confinement, strip searched in view of other youth. This information created opportunities for organizers and lawyers to speak out about the conditions to the press, as well as to engage in shared outreach on the need for change.<sup>264</sup> Ultimately, the legislature passed a bill to close down the facilities.<sup>265</sup> Although the bill has not yet been implemented, the numbers of incarcerated youth have dropped significantly<sup>266</sup> and the state and counties are still working to replace the facilities with smaller regional alternatives.<sup>267</sup>





While organizing for youth justice often involves collaborating with adult movement leaders, the work can and should also include working directly with young people. This approach requires careful attention, including protecting the confidentiality of young people as they speak to media and policy makers and supporting them as they navigate the emotional impact of the work. That said, young people have regularly spoken out about the juvenile legal system in ways that shape public discourse, and thoughtful guidelines can create more supportive processes for them to do so, including by ensuring adult colleagues and mentors can join them during interviews, advocating for young people to speak confidentially with reporters, preparing and debriefing with youth to minimize potential trauma, and ensuring that young people are compensated for their work.<sup>268</sup>

## B. Challenging Structural Injustice

Transformative leaders highlighted that there can be no fairness without confronting structural injustice; data confirms that the injustice persists throughout our system. State juvenile legal systems reflect racial and ethnic disparities, as well as disparities based on LGBTQIA+ identity, disability, and gender identity at each decision point: arrest, adjudication, detention, disposition, and transfer to adult court. While data is not readily available, public records requests or litigation discovery might also reveal similar disparities in the use of solitary confinement, the application of discipline, and other decisions within institutions.

**The constitutional right to equal protection should provide the legal framework for challenges to these disparities. Unfortunately, however, although the amendment was enacted to address discrimination in the wake of slavery, subsequent case law has drastically limited its impact.** Plaintiffs must now prove not only that they have suffered discrimination, but also that the discrimination was intentional, an incredibly high bar.<sup>269</sup> This does not wholly preclude cases that rest primarily on disparities in treatment, as “[s]ometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face.... But such cases are rare.”<sup>270</sup> This case law has created significant obstacles to challenging disparities in prosecution and sentencing.<sup>271</sup>

**One strategy to revive the equal protection statute is to argue that the science of implicit bias satisfies the intent requirement.** Research on implicit bias reveals that the ways in which our brains categorize information can lead to negative perceptions along lines of race, ethnicity, gender, disability or other traits, and ultimately to discriminatory behavior.<sup>272</sup> More specifically, research shows that young Black men are perceived of as older and more culpable than white youth.<sup>273</sup> Justice Marshall recognized this reality in *Batson v. Kentucky*:

A prosecutor’s own conscious or unconscious racism may lead him easily to the conclusion that a prospective black juror is ‘sullen,’ or ‘distant,’ a characterization that would not have come to his mind if a white juror had acted identically. A judge’s own conscious or unconscious racism may lead him to accept such an explanation as well supported.”<sup>274</sup>

That said, our current U.S. Supreme Court is unlikely to find such arguments persuasive.

**Advocates may be better served by making state law arguments in jurisdictions with positive case law.** In a case challenging racial disparities in traffic stops, for example, the Massachusetts Supreme Court recognized that it had previously “set the bar too high for defendants attempting to establish a reasonable inference” of discrimination,<sup>275</sup> that they needed a jurisprudence that could “address the role played by racism and other invidious classifications in the way facially neutral laws actually are enforced.”<sup>276</sup> The Court was clear that “[b]ecause implicit bias may lead an officer to make race-based traffic stops without conscious awareness of having done so,” simply denying racial intent “is insufficient to rebut the reasonable inference.”<sup>277</sup> In another Fourth Amendment case, the Court also recognized how structural racism might inform the analysis, noting that “the troubling past and present of policing and race are likely to inform how African-Americans and members of other racial minorities interpret police encounters.”<sup>278</sup> Similar arguments could be applied to facially neutral policies that result in racial disparities at the various decision-points of the juvenile legal system.

Similarly, the New Jersey Supreme Court recognized, in the context of the right to a fair jury trial, that “implicit bias is no less real and no less problematic than intentional bias” and “[f]rom the standpoint of the [New Jersey] Constitution, it makes little sense to condemn one form of racial discrimination yet permit another.”<sup>279</sup> In a subsequent case, the Court concluded that “[t]he problem of implicit bias in the context of policing is both real and intolerable. Accordingly, we hold evidence that permits an inference of implicit bias can satisfy a defendant’s preliminary obligation to establish a prima facie case of discrimination” in police actions.<sup>280</sup>

Other judges have signaled an interest in this approach as well. Justice Baker of the Montana Supreme Court noted in a concurrence on a jury selection case that “[i]n my view, we should revisit Montana’s approach to equal protection... consistent with the Montana Constitution and with society’s improved understanding of implicit bias.”<sup>281</sup> That the Montana Constitution explicitly prohibits discrimination on the basis of “race, color, sex, culture, social origin or condition, or political or religious ideas” further supports this interpretation.<sup>282</sup> Justice Appel of the Supreme Court of Iowa noted in a dissent that Government’s broad power to stop and arrest individuals “is highly troublesome in light of recent scholarship on implicit bias” and that “[i]t is no answer to say that the African-American defendant in this case must prove ‘invidious discrimination’ as such a demonstration would be virtually impossible in this case or in any case.”<sup>283</sup> These cases can be good jumping off points for arguments on implicit bias.

**In addition, certain states may offer greater statutory or constitutional protection against discrimination.** California passed the Racial Justice Act of 2020 with the explicit goal of establishing greater safeguards than the federal equal protection clause affords. The Act states that the “state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin.” In addition to protecting against intentional discrimination, the act applies when there are racial disparities in convictions and sentencing based on race,<sup>284</sup> and when implicit bias impacts the outcomes for criminal defendants. Pennsylvania also has a new constitutional amendment prohibiting racial discrimination.<sup>285</sup> Pennsylvania courts have not yet interpreted this provision, but advocates could argue that it requires greater protection than existing constitutional protections, or its passage would be superfluous.<sup>286</sup> This, too, may create opportunities to challenge disparities in youth incarceration and in youth conditions.



**These arguments might be further bolstered by recognizing how discrimination itself may be evidence of a disproportionate and cruel punishment** in violation of the Eighth Amendment or analogous state protections. Under the Eighth Amendment, a punishment disproportionate to the culpability of the offender and the seriousness of the offense violates the constitution. Moreover, the harshest punishments for youth should be reserved for the “rare,” irreparably corrupt child.<sup>287</sup> Evidence that a punishment is imposed disproportionately on Black, Latine, Indigenous youth and other youth of color calls into question the nexus between the punishment and the culpability of the offender. Similarly, evidence of disproportionality in conditions of confinement such as solitary confinement, pepper spray or restraints calls into question the penological need for such harsh treatment. Given recent rollbacks in Eighth Amendment interpretation at the U.S. Supreme Court,<sup>288</sup> advocates may wish to raise these arguments, as well, in state courts.

These arguments clearly push the bounds of the law – they won’t be easy wins. Failing to make these arguments at all, however, risks reinforcing a false narrative that the systems operate justly. Raising the arguments alone can help to shift the discourse, particularly when paired with the types of communications strategies raised above.

## C. Advocating for Connection to Family & Community

Transformative leaders emphasized that dignity requires connection to family and community. Legal strategies to confront incarceration can support this goal; by keeping youth out of locked facilities, these approaches eliminate obstacles to connection.

### 1. Using federal disability law

**Federal disability law can support decarceration.** The Americans with Disabilities Act (ADA) “may, at times, require not just modifications to policies and practices in the correctional setting but also alternatives to incarceration itself when appropriate.”<sup>289</sup> The Act recognizes institutionalization as a form of discriminatory segregation that is a “serious and pervasive social problem.”<sup>290</sup> In *Olmstead v. L.C.*, the U.S. Supreme Court shored up these protections, recognizing that “confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.”<sup>291</sup> The Court therefore held that states must provide community-based treatment for individuals with disabilities when appropriate to the individual’s needs and reasonably possible given state resources.<sup>292</sup>

As a result, advocates can argue that youth must not be incarcerated when a less restrictive alternative exists. In *M.G. v. New York State Office of Mental Health*, an adult plaintiff with psychiatric disabilities was incarcerated when he did not receive appropriate housing and supportive services in the community.<sup>293</sup> The District Court denied Defendants’ motion to dismiss, noting that a failure to provide adequate community-based services that puts individuals at risk of institutionalization was sufficient evidence of a violation to establish a claim under the ADA.<sup>294</sup> Similarly, in *Prisoner A. v. State of Vermont*, an adult prisoner sued the state when he remained incarcerated after having served his minimum sentence because there were no appropriate services in the community. The case resulted in a private settlement.<sup>295</sup> Young people who can prove their incarceration is due to a lack of available services in the community could file similar claims.

Disability law also provides a tool to argue for increased diversion opportunities. U.S. Department of Justice guidance underscores the importance of coordination with mental health providers to divert individuals with disabilities from the criminal legal system, highlighting a settlement in Portland, Oregon that “led to the creation of a crisis center available to first responders seeking to divert individuals with disabilities from the criminal justice system into the community mental health system,” a settlement agreement in Delaware creating community-based crisis intervention services that police could rely on for people facing mental health crises, and a settlement agreement in Hinds County, Mississippi in which the county “agreed to establish a criminal justice coordinating committee... to prevent unnecessary arrest and detention and connect individuals with disabilities to mental health services.”<sup>296</sup>

Applying the disability lens to youth in the justice system offers a helpful tool, but also contains potential pitfalls. On the one hand, as described above, disability law creates relatively robust protections for individuals, with a focus on community-based responses that would support many young people in the juvenile legal system with disabilities. On the other hand, youth in underserved neighborhoods are often overidentified as having disabilities because of school failures and other environmental factors;<sup>297</sup> legal theories should not depend on diagnoses, but rather on what will work best to support any young person to succeed.

### 2. Protecting youth from health risks

**Advocates can also argue that youth must be released from facilities to protect them from extraordinary dangers or health risks.** In the early days of the COVID pandemic, advocates filed lawsuits with the explicit goal of releasing young people from facilities given the heightened risk of disease transmission on the inside. The cases demonstrate both the potential and the limitations of such lawsuits; while they fell short of their goals in the courtroom, they did help spur positive policy changes.

In Pennsylvania, for example, Juvenile Law Center filed a King’s Bench petition seeking to release young people from confinement in the early days of the pandemic. We argued that keeping youth in crowded locked facilities with poor ventilation and sanitation violated the Constitution by exposing them to a heightened risk of COVID-19. More specifically, we argued that these conditions violated the Fourteenth Amendment by subjecting youth to unconstitutional punishment and violated the Eighth Amendment because the facilities could not guarantee “reasonable safety” to youth.<sup>298</sup> We petitioned the court to prohibit detention for a wide category of offenses and to require juvenile courts to consider releasing youth already confined. While the Court declined our petition, it did direct local courts to take actions that would ultimately, and significantly, reduce the population of confined youth. It directed courts to engage with other stakeholders to consider youth or classes of youth who could be released from placement,<sup>299</sup> and within months, the population had shrunk significantly; approximately half as many youth faced placement dispositions in court in 2020 and 2021 as compared with 2019.<sup>300</sup> Advocates filed a similar case in Maryland, with similar results.<sup>301</sup>

Had the courts responded with legal rulings rather than advisory opinions, these cases could have set a standard for litigation in other contexts, creating a model for litigation even absent a pandemic. Courts’ hesitation to do so was likely fueled by a reluctance to depart from the status quo; the fact that adolescents faced lower risks of COVID transmission, serious illness and death as compared to adults also likely contributed. Nonetheless the advisory opinions and policy recommendations offer a limited model for reducing population in facilities, and the placement population drop demonstrates that alternative approaches to youth justice can be effective.



Cases filed on behalf of medically vulnerable adults during COVID may provide a better model for future litigation, as a few of these cases did result in prisoner releases to protect individuals from serious health risks.<sup>302</sup> Advocates might consider arguments on behalf of classes of uniquely vulnerable young people, such as those with specific mental or physical health concerns, or those who are pregnant or parenting, as a tool for shrinking the number of youth confined away from home. These arguments could be bolstered in states with particularly protective Eighth or Fourteenth Amendment provisions and related case law.

3. Releasing youth from overcrowded facilities

**Overcrowding case law explicitly permits advocates to petition for prisoner release orders and prison population caps** as a remedy to unconstitutional conditions of confinement; these cases provide one tool to bring youth home rather than just to improve the conditions inside a facility. In *Brown v. Plata*, the U.S. Supreme Court held that overcrowding in California’s adult prison resulted in an unconstitutional deprivation of medical and mental health care that could not be remedied without reducing population.<sup>303</sup> The Court ordered the state to reduce its prison population within two years,<sup>304</sup> recognizing that reducing overcrowding could even improve public safety.<sup>305</sup> Lawyers may be able to further develop this approach by arguing that young people are uniquely vulnerable to harm from overcrowding, and relying on Eighth and Fourteenth Amendment case law establishing unique protections for young people in the legal system, and as described above, more protective state analogs.<sup>306</sup>

36 Overcrowding case law provides one avenue to push to bring youth back home, but it is far from a panacea. First, overcrowding without more does not violate the constitution; courts have held that relief is warranted only when overcrowding also leads to unconstitutional conditions that cannot be remedied through other means. If agencies can remedy the conditions through other means, such as increased staffing, courts will defer to them to do so; the order “leaves the choice of means to reduce overcrowding to the discretion of state officials.”<sup>307</sup> This is a high bar. Second, in federal court, pursuant to the Prison Litigation Reform Act, and similar laws passed in most states,<sup>308</sup> advocates can only seek release of individuals to address overcrowding when they have first tried all other methods to address the problem.<sup>309</sup> Still, by considering the possibility of overcrowding arguments early in litigation, and filing complaints that rest in part on overcrowding, advocates may create opportunities for remedies later in the litigation that will reunite children with their families and shrink the footprint of the juvenile legal system.

4. Using state statutory protections

State juvenile legal system codes also provide tools to keep children in their homes and communities; many explicitly call for young people to be served at home whenever possible. California’s juvenile act purpose clause, for example, directs the state to “preserve and strengthen the minor’s family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or the safety and protection of the public” and notes that if a child is removed from the home “reunification” is a primary objective. Relying on this, a California appellate court held an out-of-state placement of a child to be an abuse of discretion.<sup>310</sup> Similarly, Colorado code’s purpose is to “secure for each child... such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society.”<sup>311</sup> Nebraska’s juvenile act purpose is to assure youth care and protection in a safe and stable environment, “in the juvenile’s own home whenever possible.”<sup>312</sup> Washington statutes set limits to disposition length, absent extenuating circumstances.<sup>313</sup> Advocates have successfully relied on such laws in arguing for release.<sup>314</sup>

D. Advocacy for Connection & Restoration

As Terrell Carter, Rachel Lopez, and Kempis Songster have argued, **reconceptualizing dignity calls for a “dramatic reimagin[ing] of the U.S. criminal legal system into one that elevates humanity, not deprives it” and a recognition of a legal right to redemption in the Eighth Amendment.**<sup>315</sup> This concept of human dignity should be recognized as “latent in the Eighth Amendment” and a part of the “evolving standards of decency” at the core of the Eighth Amendment analysis.<sup>316</sup>

While the current climate in federal courts will pose immense challenges to these arguments, **some state constitutions set forth heightened protections against cruel punishment that may better support advocacy for restoration or redemption.**<sup>317</sup> Montana, for example, explicitly guarantees that “[t]he dignity of the human being is inviolable.”<sup>318</sup> Combining that commitment to dignity with their prohibition on cruel and unusual punishment, the Montana Supreme Court has recognized that “The plain meaning of the dignity clause commands that the intrinsic worth and the basic humanity of persons may not be violated” and that conditions of confinement that exacerbate mental illness violate the state constitution because they deprive “inmates of the basic necessity for human existence and have crossed into the realm of psychological torture.”<sup>319</sup>

Similarly, some states prohibit “cruel punishment,” which may provide greater protection than the federal prohibition on “cruel and unusual punishment.” The Washington Supreme Court, for example, has recognized that their constitution’s cruel punishment clause “is more protective than the Eighth Amendment.”<sup>320</sup> Where the Eighth Amendment requires officials to know and disregard the harm, the Washington provision establishes a violation based solely on objective standards.<sup>321</sup> And where Eighth Amendment case law refers to human dignity, the Washington constitution explicitly incorporates a commitment to recognizing “the basic necessities of dignity.”<sup>322</sup> Similarly, the Michigan Supreme Court has recognized that the state has “its own punishment provision, but it is broader than the Federal Eighth Amendment counterpart” as it prohibits cruel or unusual punishment.<sup>323</sup> Some states also have constitutional provisions protecting prisoners from being treated with “unnecessary rigor” that courts have interpreted to protect against “unjust treatment” or “abuse.”<sup>324</sup> Oregon, for example, held that opposite-sex pat-downs violated this clause.<sup>325</sup>

**Juvenile act provisions may also support connecting young people to positive interventions.** Alabama law, for example, notes that the juvenile system should “promote a continuum of services for children and their families” and “promote the use of community-based” alternatives and use the “least restrictive” interventions.<sup>326</sup> Arkansas emphasizes the importance of meeting the child’s “emotional, mental, and physical welfare.”<sup>327</sup> Minnesota’s code requires the state to use “means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth.”<sup>328</sup> Montana law explicitly disavows retribution and notes that “the youth is entitled to maintain ethnic, cultural, or religious heritage.”<sup>329</sup> Advocates can use these provisions, too, to ensure that young people are not placed in restrictive correctional settings but instead given access to appropriate treatment and services.<sup>330</sup>

Even the most protective state laws will likely fall far short of true transformation; nonetheless, they can be one tool in an effort to support movement goals.



# VI. Conclusion

If we're able to look at these cages and these systems and call out when they're not love... we'll be able to [rebuild].  
- Amir Whitaker<sup>331</sup>

Transformative leaders set forth a bold, but also common-sense, vision for youth justice. We should ensure that children are cared for by family and community and have the resources they need. We should repair the harms youth have faced because of structural injustice and allow young people to make amends if they have harmed others. Those impacted by the system should help to set the agenda for progress, with resources allocated to implementing change. Most importantly, responses to young people should be rooted in connection, love, and humanity.

Despite the serious limitations of the law, it can still provide a useful tool in chipping away at the failures of the system. When practiced with humility and in collaboration with transformative leaders, young people, and community organizations, it can bolster rather than undermine movement goals. Advocates should seek out the innovative strategies that will allow the law to contribute to the fight for fairness, dignity, justice, and restoration.



Endnotes

1. Throughout, we refer to juvenile and criminal “legal” systems rather than juvenile and criminal “justice” systems, since, as this publication highlights, the systems are rife with injustice.
2. See, e.g., James Bell, W. HAYWOOD BURNS INST., *Repairing the Breach: A Brief History of Youth of Color in the Justice System* (2020), <https://www.courts.ca.gov/documents/BTB24-4H-1.pdf>; see also Richard Mendel, Sent’g Project, *Why Youth Incarceration Fails: An Updated Review of the Evidence* (2022), <https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf>; Barry Holman & Jason Ziedenberg, JUST. POL’Y INST., *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006), [https://justicepolicy.org/wp-content/uploads/2022/02/06-11\\_rep\\_dangersofdetention\\_ji.pdf](https://justicepolicy.org/wp-content/uploads/2022/02/06-11_rep_dangersofdetention_ji.pdf).
3. See Joshua Rovner, SENT’G PROJECT, *Too Many Locked Doors: The Scope of Youth Confinement is Vastly Understated* 4-11 (2022), <https://www.sentencingproject.org/app/uploads/2022/10/too-many-locked-doors.pdf>.
4. See, e.g., JUVS. FOR JUST., YOUTH FOSTERING CHANGE & JUV. L. CTR., *Operation: Education* (2019), <https://jlc.org/sites/default/files/attachments/2019-06/Operation-Education-FINAL-DIGITAL-FULL.pdf>; Jessica Feierman et al., JUV. L. CTR., *Unlocking Youth: Legal Strategies to End Solitary Confinement in Juvenile Facilities* (2017), [https://jlc.org/sites/default/files/publication\\_pdfs/JLC\\_Solitary\\_Report-FINAL.pdf](https://jlc.org/sites/default/files/publication_pdfs/JLC_Solitary_Report-FINAL.pdf); JUVS. FOR JUST. & JUV. L. CTR., *BROKEN BRIDGES: HOW JUVENILE PLACEMENTS CUT OFF YOUTH FROM COMMUNITIES AND SUCCESSFUL FUTURES* (2018) [hereinafter *BROKEN BRIDGES*], [https://jlc.org/sites/default/files/attachments/2018-12/2018Broken-Bridges-FINAL-WEB\\_0.pdf](https://jlc.org/sites/default/files/attachments/2018-12/2018Broken-Bridges-FINAL-WEB_0.pdf); Christina Sorenson, JUV. L. CTR., *Screaming into the Void: Youth Voice in Institutional Placements* (2023), <https://jlc.org/sites/default/files/attachments/2023-02/Screaming%20Into%20the%20Void%20Full%20Report.pdf>; Jessica Feierman et al., JUV. L. CTR., *Debtors’ Prison for Kids?: The High Cost of Fines and Fees in the Juvenile Justice System* (2016), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>.
5. See, e.g., ELLA BAKER CTR. FOR HUM. RTS., *REIMAGINING YOUTH JUSTICE: A BLUEPRINT FOR ALAMEDA COUNTY* 7-13 (2020), <https://ella-bakercenter.org/wp-content/uploads/2020/10/Reimagining-Youth-Justice.pdf>.
6. *Roper v. Simmons*, 543 U.S. 551, 578 (2005); *Graham v. Florida*, 560 U.S. 48, 82 (2010); *Miller v. Alabama*, 567 U.S. 460, 465 (2012); *Montgomery v. Louisiana*, 577 U.S. 190, 194, 212-13 (2016).
7. *J.D.B. v. North Carolina*, 564 U.S. 261, 264-65 (2011).
8. *In re Gault*, 387 U.S. 1, 12-58 (1967).
9. Feierman et al., *Unlocking Youth*, *supra* note 4, at 17, 23-24.
10. *History, the Supreme Court, and Dobbs v. Jackson: Joint Statement from the AHA and the OAH*, AM. HIST. ASS’N (2022), <https://www.historians.org/news/history-the-supreme-court-and-dobbs-v-jackson-joint-statement-from-the-aha-and-the-oah/>.
11. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 300 (2022).
12. See, e.g., *No Kids in Prison*, <https://www.nokidsinprison.org/> (last visited Sept. 17, 2024); *Johnny Perez: The Case for Ending Solitary Confinement*, E. STATE PENITENTIARY (2019), <https://www.easternstate.org/visit/events/johnny-perez-case-ending-solitary-confinement>; *Jeannette Bocanegra-Simon*, JUST. FOR FAMS., <https://www.justice4families.org/jeannette-bocanegra/> (last visited Sept. 17, 2024); *Latinx Celebration: John Jay Alumnus Hernán Carvente-Martínez ‘15 Wins 2021 Reebok Human Rights Award for \$100,000*, JOHN JAY COLLEGE OF CRIM. JUST. (Oct. 21, 2021), <https://www.jjay.cuny.edu/news-events/news/latinx-celebration-john-jay-alumnus-hernan-carvente-martinez-15-wins-2021-reebok-human-rights-award-100%2C000>.
13. See, e.g., ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* (2003); DERECKA PURNELL, *BECOMING ABOLITIONISTS: POLICE, PROTESTS AND THE PURSUIT OF FREEDOM* (2021); RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* (2007); MARIAMA KABA, *WE DO THIS ‘TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE* (2021).
14. See, e.g., Lawrence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCH. 1009 (2003); *Youth on Trial: A Developmental Perspective on Juvenile Justice* (Thomas Grisso & Robert G. Schwartz eds., 2000); *Understanding Adolescent Development, Reforming Juvenile Justice*, MACARTHUR FOUND. (Oct. 2, 2018), <https://www.macfound.org/press/40-years-40-stories/research-network-adolescent-development-and-juvenile-justice>.
15. Amir Whitaker, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).
16. CLINT SMITH, *HOW THE WORD IS PASSED: A RECKONING WITH THE HISTORY OF SLAVERY ACROSS AMERICA* 289 (2021).
17. *Id.* at 101, 289.
18. See, e.g., Marsha Levick & Jessica Feierman, *Children in the Justice System: The Legal Framework*, in APA HANDBOOK OF PSYCHOLOGY AND JUVENILE JUSTICE 23, 23-42 (Kirk Heilbrun et al. eds., 2016) (reviewing legal developments in juvenile justice with no reference to the role of race or ethnicity); NAT’L RSCH. COUNCIL, *REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH*, 31-47 (Richard J. Bonnie et al. eds., 2013) (reviewing these eras of juvenile justice evolution with no reference to race or ethnicity, even in the context of a larger publication explicitly addressing disparities). Geoff Ward noticed the same trend in the social science literature. See GEOFF K. WARD, *THE BLACK CHILD SAVERS: RACIAL DEMOCRACY & JUVENILE JUSTICE* 2 (2012) (“Most empirical studies read as though American juvenile justice was suddenly overcome with race problems in the final quarter of the twentieth century.”).
19. See Smith, *supra* note 16, at 86 (noting that non-unanimous juries in Louisiana, for example, were designed to “funnel Black people into convict leasing, replacing in part the labor force lost as a result of emancipation. The policy also had the effect of suffocating the political and judicial power of Black people in Louisiana.”).
20. Dorothy E. Roberts, *Abolition Constitutionalism*, 133 HARV. L. REV. 1, 20 (2019).
21. Charles Puzzanchera et al., *Easy Access to the Census of Juveniles in Residential Placement 1997-2021*, OFFICE OF JUV. JUST. & DELINQ. PREVENTION (2023), [https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/national\\_graphs.asp](https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/national_graphs.asp).
22. NAT’L JUV. DEF. CTR., *Issue Brief: Ending the Indiscriminate Shackling of Youth* 1 (2014), <https://njdc.info/wp-content/up->



[loads/2014/10/Shackling-HR-10.9.14.pdf](#).

23. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 170-71 (2010) (“They were rounded up by the millions, packed away in prisons, and when released, they were stigmatized for life, denied the right to vote . . . [l]egally barred from employment, housing, and welfare benefits . . . To deny the individual agency of those caught up in the system – their capacity to overcome seemingly impossible odds – would be to deny an essential element of their humanity.”).

24. JUVS. FOR JUST., YOUTH FOSTERING CHANGE & JUV. L. CTR., *supra* note 4, at 7 (“We have personal experience in the child welfare and juvenile justice systems and have faced many challenges while completing our education. Being in one or both systems can greatly impact young people’s ability to complete school and successfully graduate on time.”).

25. Feerman et al., *Debtors’ Prison for Kids?*, *supra* note 4, at 3; *see also* Smith, *supra* note 16, at 192-93 (Freed slaves were deprived of resources that would have allowed them to begin to “build economic and social mobility.” “Today, despite being 13 percent of the population, Black people own less than 4 percent of the nation’s wealth. Despite the role Black Americans played in generating this country’s wealth, they don’t have access to the vast majority of it.”).

26. *See generally* KRISTIN HENNING, THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH (2020) (examining the systemic biases and injustices that contribute to the overcriminalization of Black youth in the United States, including the ways in which the juvenile justice system has historically failed to provide equal protection and due process to Black youth); VICTOR M. RIOS, PUNISHED: POLICING THE LIVES OF BLACK AND LATINO BOYS (2011) (examining the experiences of young men of color in the criminal legal system and arguing that the criminalization of youth is a result of systemic racism and social inequality).

27. Roberts, *supra* note 20, at 16.

28. Rovner, *supra* note 3, at 2-11; Am. C.L. Union, THE WAR ON MARIJUANA IN BLACK AND WHITE 51 (2013), <https://assets.aclu.org/live/uploads/publications/1114413-mj-report-rfs-rel1.pdf>; NAT’L JUV. DEF. CTR., THE ROLE OF DEFENSE COUNSEL IN ENSURING A FAIR JUVENILE DELINQUENCY SYSTEM 2-3 (2015) (discussing how juvenile defendants are often not provided with adequate legal representation and are subjected to harsh punishment, including detention, for minor offenses).

29. *See, e.g.*, James Bell, W. HAYWOOD BURNS INST., ADORATION OF THE QUESTION: REFLECTIONS ON THE FAILURE TO REDUCE RACIAL & ETHNIC DISPARITIES IN THE JUVENILE JUSTICE SYSTEM (2008), [https://www.modelsforchange.net/publications/199/Adoration\\_of\\_the\\_Question\\_Reflections\\_on\\_the\\_Failure\\_to\\_Reduce\\_Racial\\_Ethnic\\_Disparities.pdf](https://www.modelsforchange.net/publications/199/Adoration_of_the_Question_Reflections_on_the_Failure_to_Reduce_Racial_Ethnic_Disparities.pdf); Bell, *Repairing the Breach*, *supra* note 2; WARD, *supra* note 18.

30. The section also focuses primarily on what the system has done to children, not on how children, their families, and their communities have shaped their own lives or influenced the system, despite the deep value of those stories to the larger project of transforming youth justice. For further information on youth and families transforming legal systems, follow Advocates Transforming Youth Justice, Progeny, Alianza for Opportunity, and many other organizations at the forefront of youth-led advocacy.

31. Hernan Carvente, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

32. *See* Roberts, *supra* note 20, at 7, 20 (discussing the connections between slavery, racism, and the modern criminal legal system, including the ways in which the system has been used to maintain and perpetuate racial inequality). Frederick Douglass was prescient, noting that “slavery has been fruitful in giving itself names. . . . [A]nd you and I and all of us had better wait and see what new form this old monster will assume, in what new skin this old snake will come forth next.” Frederick Douglass, In What New Skin Will the Old Snake Come Forth?, Address in New York, New York (May 10, 1865) (discussing the ongoing legacy of slavery in the United States and its continued impact on Black people, and warning of the dangers of complacency in the face of racial injustice).

33. *The Origins of Modern-Day Policing*, NAT’L ASS’N FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP), <https://naacp.org/find-re-sources/history-explained/origins-modern-day-policing> (last visited Sept. 23, 2024) (providing an overview of the historical roots of modern policing in the United States, including the role of slave patrols, the development of municipal police departments, and the ongoing impact of systemic racism on police practices).

34. *Slave Patrols: An Early Form of American Policing*, NAT’L L. ENF’T MEM’L FUND, <https://nleomf.org/slave-patrols-an-early-form-of-american-policing/> (last visited Sept. 23, 2024) (providing a historical overview of the origins of modern American policing, including the development of slave patrols in the 18th and 19th centuries and their influence on later police practices and policies).

35. Roberts, *supra* note 20, at 23.

36. Kenneth B. Nunn, *The Child as Other: Race and Differential Treatment in the Juvenile Justice System*, 51 DEPAUL L. REV. 679, 680 (2002).

37. U.S. CONST. amend. XIII.

38. Roberts, *supra* note 20, at 20.

39. The term “convict” is language used within the criminal legal system to describe an individual guilty of a criminal offense. However, the traditional language of the criminal legal system is often dehumanizing and fosters stigma, stereotypes, and fear. *See* Nguyen Toan Tran et al., *Words Matter: A Call for Humanizing and Respectful Language to Describe People Who Experience Incarceration*, 18 BMC INT’L HEALTH & HUM. RTS. 1, 2 (2018).

40. *Convict Leasing*, EQUAL JUST. INITIATIVE (Nov. 1, 2013), <https://eji.org/news/history-racial-injustice-convict-leasing>.

41. E. Carson Eckhard, *Ragged Battalions, Plotting Liberty: Convict Leasing and the Construction of Carceral Capitalism in Florida, 1875-1925* 20 (2021) (B.A. thesis, University of Pennsylvania), [https://amc.sas.upenn.edu/sites/default/files/uploads/Eckhard\\_Paper.pdf](https://amc.sas.upenn.edu/sites/default/files/uploads/Eckhard_Paper.pdf); Ward, *supra* note 18, at 67-68.

42. Nunn, *supra* note 36, at 680.

43. Elizabeth Hinton & DeAnza Cook, *The Mass Criminalization of Black Americans: A Historical Overview*, 4 ANN. REV. 261, 268 (2021), <https://www.annualreviews.org/doi/full/10.1146/annurev-criminol-060520-033306> (“[U]nder the brutal convict-lease system

. . . most laborers did not live long enough to serve a 10-year sentence.”).

44. Marcus Jarvis, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

45. *Children of Tenements 1900*, BROOKLYN DAILY EAGLE (July 22, 1900), <https://web.viu.ca/davies/H321GildedAge/Children.Tenements.1900.htm> (last visited Sept. 23, 2023) (noting that children who lived in tenements would use the street as their playground, spending much of their day playing in the city).

46. Michael Schuman, *History of Child Labor in the United States—Part 1: Little Children Working*, U.S. BUREAU OF LABOR STATISTICS: MONTHLY LABOR REVIEW (Jan. 2017), <https://www.bls.gov/opub/mlr/2017/article/history-of-child-labor-in-the-united-states-part-1.htm>.

47. *See* Samantha Riley, *Jewish Immigrant Assimilation and Labor in the Early Twentieth Century*, UNTOLD IND. (Mar. 22, 2023), <https://blog.history.in.gov/jewish-immigrant-assimilation-and-labor-in-the-early-twentieth-century/> (“[B]etween the years of 1881 and 1924, roughly 2.5 million eastern European Jews emigrated to the country.”); *A City of Villages*, LIBR. OF CONG., <https://www.loc.gov/classroom-materials/immigration/italian/a-city-of-villages/> (last visited Sept. 24, 2024) (speaking about the effect of Italian immigration on New York at the turn of the twentieth century).

48. For a much more comprehensive analysis of this era, *see Eduardo Ferrer, Razing and Rebuilding Delinquency Courts: Demolishing the Flawed Philosophical Foundation of Parens Patriae*, 54 LOY. U. CHI. L.J. 885 (2023).

49. Randall G. Shelden, CTR. ON JUV. & CRIM. JUST., *From Houses of Refuge to ‘Youth Corrections’: Same Story, Different Day* 1 (2005) (alteration in original) (quoting *Ex Parte Crouse*, 4 Whart. 9, 11 (Pa. 1839)), <https://files.eric.ed.gov/fulltext/ED495133.pdf>.

50. *Juvenile Justice History*, CTR. ON JUV. & CRIM. JUST., <https://www.cjcj.org/history-education/juvenile-justice-history> (last visited Sept. 24, 2024).

51. *Id.*

52. *World’s First Juvenile Justice System, Word Record in Chicago, Illinois*, WORD REC. ACAD. (Jan. 17, 2024) <https://www.worldrecordacademy.org/2024/1/worlds-first-juvenile-justice-system-world-record-in-chicago-illinois-424128>.

53. Bell, *Repairing the Breach*, *supra* note 2, at 10 (quoting M.E. Spring, *Extended Jurisdiction Juvenile Prosecution: A New Approach to the Problem of Juvenile Delinquency in Illinois*, 31 J. MARSHALL L. REV. 1351 (1998)); *see generally* ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY (2nd ed. 1977) (providing a historical analysis of the origins and development of the juvenile justice system in the United States, including the role of child-saving reformers and their efforts to create a separate system of justice for children).

54. *Id.*

55. Illinois Juvenile Court Act, Ill. Laws 131 (1899) (establishing the first juvenile court in the United States and outlining a system of justice for children that was separate from the adult criminal legal system).

56. *Id.*

57. DAVID S. TANENHAUS, THE CONSTITUTIONAL RIGHTS OF CHILDREN: *IN RE GAULT* AND JUVENILE JUSTICE (2011).

58. Nunn, *supra* note 36, at 680, 706-07.

59. Ward, *supra* note 18, at 62.

60. *Id.* at 100-01.

61. *Id.* at 44, 58.

62. *See* Lisa Pasko, *Damaged Daughters: The History of Girls’ Sexuality and the Juvenile Justice System*, 100 NW. J.L. & CRIMINOLOGY 1099, 1100 (2010) (“Ultimately, many of the activities of the early child savers and juvenile courts revolved around monitoring the behavior of young girls, particularly immigrant girls and girls of color, to prevent their straying from the path of sexual purity.”).

63. *See generally* EQUAL JUST. INITIATIVE, LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR (3rd ed. 2017), <https://eji.org/wp-content/uploads/2005/11/lynching-in-america-3d-ed-110121.pdf> (providing a comprehensive overview of the history of lynching in the United States and its impact on Black communities, including specific examples of the ways in which lynching was used as a form of state-sanctioned violence).

64. *See* Rachel Thampapillai, *The Colourful Truth: The Reality of Indigenous Overrepresentation in Juvenile Detention in Australia and the United States*, 7 AM. INDIAN L.J. 230, 234 (2018) (“Native American communities in the United States experienced forced eviction from their homelands, mass killings, exposure to European diseases, the forced cultural alienation of Native children in boarding schools . . . .”); *see generally* BRENDA J. CHILD, BOARDING SCHOOL SEASONS: AMERICAN INDIAN FAMILIES, 1900-1940 (1998); THE INDIAN SCHOOL ON MAGNOLIA AVENUE: VOICES AND IMAGES FROM SHERMAN INSTITUTE (Loren Sisquoc et al. eds., 2012); WARD CHURCHILL, KILL THE INDIAN, SAVE THE MAN: THE GENOCIDAL IMPACT OF AMERICAN INDIAN RESIDENTIAL SCHOOLS (2004).

65. *See* Erin Blakemore, *The Long History of Anti-Latino Discrimination in America*, HIST. (Aug. 4, 2023), <https://www.history.com/news/the-brutal-history-of-anti-latino-discrimination-in-america> (speaking about the lynchings, mass deportations, and mob violence faced by Spanish-speaking U.S. citizens).

66. Ward, *supra* note 18, at 53-58, 84-85; *see also* BELL, ADORATION OF THE QUESTION, *supra* note 29, at 6.

67. Ward, *supra* note 18, at 56, 74-76, 101.

68. *Id.* at 72, 79, 90, 97; *see generally* POLICING THE BLACK MAN: ARREST, PROSECUTION, AND IMPRISONMENT (Angela J. Davis ed., 2017) (discussing the historical and contemporary experiences of Black people in the criminal legal system, including the reasons for their distrust and skepticism, as well as the systemic biases and injustices that contribute to their disproportionate representation in the system).

69. Ward, *supra* note 18, at 97.

70. Ward, *supra* note 18, at 72; Josie Duffy Rice, *Episode 3: Cornelia’s Dream*, UNREFORMED (Feb. 1, 2023), <https://podcasts.apple>.



[com/us/podcast/unreformed-the-story-of-the-alabama-industrial/id1663696375](#) (describing the development of the Meigs Reform School in Alabama); *see generally* BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT (1999) (discussing the historical development of the juvenile court system in the United States, including the creation of Houses of Refuge as an alternative to adult punishment for youth, and the ways in which race and racism have influenced the treatment of Black youth in the system).

71. Duffy Rice, *supra* note 70.

72. Amir Whitaker, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

73. *Gault*, 387 U.S. at 13, 28, 31-57 (holding that juveniles have the right to notice of charges, the right to counsel, the right to confront witnesses, and the right against self-incrimination in delinquency proceedings).

74. *Id.* at 15-21.

75. *See generally id.*

76. *The Children’s Crusade*, NAT’L MUSEUM OF AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/explore/stories/childrens-crusade> (last visited Oct. 7, 2024).

77. *Id.*

78. *McKeiver v. Pennsylvania*, 403 U.S. 528, 551 (1971) (holding that juveniles do not have a constitutional right to a trial by jury in delinquency proceedings).

79. *In re Terry*, 265 A.2d 350, 351 nn.1-2 (Pa. 1970).

80. *McKeiver*, 403 U.S. at 536-37; *In re Burrus*, 169 S.E.2d 879, 880-81 (N.C. 1969).

81. Amir Whitaker, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022). Amir, who was arrested in 2000 at age 15, is now an educator, author, human rights lawyer, and artist. *See Amir Whitaker*, ACLU S. CAL., <https://www.aclusocal.org/en/biographies/amir-whitaker> (last visited Oct. 7, 2024).

82. Goldwater’s 1964 Acceptance Speech, WASH. POST (1998), <http://www.washingtonpost.com/wp-srv/politics/daily/may98/gold-water-speech.htm>.

83. Lyndon B. Johnson, *Statement by the President on Establishing the President’s Commission on Law Enforcement and Administration of Justice*, THE AM. PRESIDENCY PROJECT (July 26, 1965), <https://www.presidency.ucsb.edu/documents/statement-the-president-establishing-the-presidents-commission-law-enforcement-and-administration-of-justice>.

84. Richard Nixon, *Remarks in New York City: “Toward Freedom From Fear,”* THE AM. PRESIDENCY PROJECT (May 8, 1968), <https://www.presidency.ucsb.edu/documents/remarks-new-york-city-toward-freedom-from-fear>.

85. ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA* 309-10 (2016).

86. EQUAL JUST. INITIATIVE, *The Superpredator Myth, 25 Years Later* (Apr. 7, 2014), <https://ejl.org/news/superpredator-myth-20-years-later/>.

87. *Id.*

88. *Hillary Clinton Campaign Speech*, C-SPAN (Jan. 25, 1996), <https://www.c-span.org/video/?69606-1/hillary-clinton-campaign-speech>.

89. CATHERIN Y. KIM ET AL., THE SCHOOL TO PRISON PIPELINE: STRUCTURING LEGAL REFORM 79, 112 (2010).

90. *Schall v. Martin*, 467 U.S. 253, 264 (1984).

91. ASHLEY NELLIS, A RETURN TO JUSTICE: RETHINKING OUR APPROACH TO JUVENILES IN THE SYSTEM 51-56 (2015).

92. NAT’L RSCH. COUNCIL & INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE 155 (Joan McCord et al. eds., 2001), <https://nap.nation-alacademies.org/read/9747/chapter/7>.

93. Sarah Hockenberry, Charles Puzzanchera & Melissa Sickmund, *2021 Juvenile Court Statistics*, NAT’L CTR. FOR JUV. JUST. (Dec. 2022), <https://ncjfcj.org/wp-content/uploads/2023/01/2022-national-report.pdf>.

94. *Id.*

95. Elizabeth Becker, *As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets*, N.Y. TIMES (Feb. 9, 2001), <https://www.ny-times.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html>.

96. Joshua Rovner, *Youth Justice by the Numbers*, SENT’G PROJECT (Aug. 14, 2024). For more on this era, see TODD R. CLEAR, IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE 51-59 (2007) (discussing the tough on crime era of the 1980s, which had racial overtones and led to a significant increase in the number of people incarcerated).

97. *See* Charles Bell, *The Hidden Side of Zero Tolerance Policies: The African American Perspective*, 9 SOCIO. COMPASS 14, 18 (2015). For more on the criminalization of Black girls, see Jamilia J. Blake & Rebecca Epstein, GEO. L. CTR. ON POVERTY AND INEQ., *Listening to Black Women and Girls: Lived Experiences of Adulthood Bias* (2019), <https://assets.aecf.org/m/resourcedoc/georgetown-listening-to-women-and-girls-2019.pdf>.

98. Kim Taylor-Thompson, *Why America is Still Living with the Damage Done by the ‘Superpredator’ Lie*, L.A. TIMES (Nov. 27, 2020), <https://www.latimes.com/opinion/story/2020-11-27/racism-criminal-justice-superpredators>. For more on the extensive use of the superpredator myth, see Carroll Bogert & Lynell Hancock, *Superpredator: The Media Myth That Demonized a Generation of Black Youth*, MARSHALL PROJECT (Nov. 20, 2020), <https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth>.

99. Jeannette Bocanegra, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

100. *Roper*, 543 U.S. at 569-70.

101. *Graham*, 560 U.S. at 68.

102. *J.D.B.*, 564 U.S. 261, 274 (2011).

103. *Miller*, 567 U.S. at 477.

104. Brief of Jeffrey Fagan et al. as Amici Curiae in Support of Petitioner at 8, *Miller*, 567 U.S. 460 (No. 10-9647), <https://ejl.org/files/miller-amicus-jeffrey-fagan.pdf>.

105. *See, e.g., Report: New York’s Close to Home Initiative Offers a New Model for Juvenile Justice*, ANNIE E. CASEY FOUND. BLOG (Mar. 23, 2018), <https://www.aecf.org/blog/report-new-yorks-close-to-home-initiative-offers-a-new-model-for-juvenile> (describing how the Close to Home Initiative succeeded in reducing reliance on youth confinement).

106. ANNIE E. CASEY FOUND., TRANSFORMING JUVENILE PROBATION: A VISION FOR GETTING IT RIGHT 21 (2018), <https://assets.aecf.org/m/resourcedoc/aecf-transformingjuvenileprobation-2018.pdf> (arguing for the need to limit formal probation to youth who pose significant risks to public safety).

107. *Juvenile Justice*, MACARTHUR FOUND., [https://www.macfound.org/programs/pastwork/juvenile\\_justice/](https://www.macfound.org/programs/pastwork/juvenile_justice/) (last visited Oct. 7, 2024) (describing how the MacArthur Foundation supported widespread reforms grounded in a “growing body of behavioral and neuroscience research on youth development.”).

108. *See* Joshua Rovner, *Black Disparities in Youth Incarceration*, SENT’G PROJECT (Dec. 12, 2023), <https://www.sentencingproject.org/fact-sheet/black-disparities-in-youth-incarceration/>.

109. *See, e.g., Dobbs*, 597 U.S. 215 (2022) (overturning the right to abortion).

110. Email from Jeanette Bocanegra to Jessica Feierman (Sept. 11, 2024) (on file with author).

111. Johnny Perez, *Invest in Education Instead of Incarceration: Voices*, USA TODAY (Mar. 29, 2017), <https://www.usatoday.com/story/opinion/policing/spotlight/2017/03/29/invest-education-instead-incarceration-voices/99709902/>.

112. BROKEN BRIDGES, *supra* note 4.

113. ADVOCS. FOR YOUTH JUST., ADVOCS. TRANSFORMING YOUTH SYS. & JUV. L. CTR., BROKEN PROMISES: FUTURES DENIED (2024). While the justice system is shaped in part by the practices of police, this publication does not focus on policing, but instead addresses what happens once young people touch the court system.

114. *See* Tamar R. Birkhead, *Toward a Theory of Procedural Justice for Juveniles*, 57 BUFF. L. REV. 1447, 1478 (2009) (“Not surprisingly, procedural justice also plays a significant role in the process of legal socialization, as social scientists have demonstrated that perceptions of fair treatment enhance children’s evaluations of the law, while unfair treatment triggers negative reactions, anger, and defiance of the law’s norms.”); *see also* Victoria Weisz, et al., *Children and Procedural Justice*, 44 CT. REV. 36, 38 (2007), [https://www.proceduralfairness.org/\\_data/assets/pdf\\_file/0019/5770/weisz.pdf](https://www.proceduralfairness.org/_data/assets/pdf_file/0019/5770/weisz.pdf) (“The researchers found that children’s interactions with legal actors shaped their views about the legitimacy of the law and its institutions. Further, more positive perceptions about the legitimacy of the legal system were associated with lower rates of self-reported delinquency behaviors.”).

115. Phelan Wyrick & Kadee Atkinson, *Examining the Relationship Between Childhood Trauma and Involvement in the Justice System*, 283 NAT’L INST. JUST. J. 1 (2021), <https://www.ojp.gov/pdffiles1/nij/255645.pdf>; William E. Copeland et al., *Adult Criminal Outcomes of Juvenile Justice Involvement*, 53 PSYCH. MED. 3711 (2022) (finding that encounter with the juvenile legal system resulted in increased funneling into the criminal legal system later in life); Micah C. Owen et al., *Advocacy and Collaborative Health Care for Justice-Involved Youth*, 146 PEDIATRICS 1 (2020); Elizabeth S. Barnert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?*, 139 PEDIATRICS (2017).

116. ADVOCS. FOR YOUTH JUST., ADVOCS. TRANSFORMING YOUTH SYS. & JUV. L. CTR., BROKEN PROMISES: FUTURES DENIED, *supra* note 113.

117. Cathy Moffa et al., JUVS. FOR JUST. & JUV. L. CTR., *Road Map to Reform: Achieving Individualized Supports for Youth in the Juvenile Justice System* 4 (2020), <https://jlc.org/sites/default/files/attachments/2020-10/J4J%20Full%2010.23.pdf>.

118. Steve Volk, *A powerful new City Hall position to combat child welfare scandals is up for debate*, BILLYPENN AT WHYY (Apr. 7, 2021), <https://billypenn.com/2021/04/07/philadelphia-youth-child-welfare-ombudsperson-foster-juvenile-helen-gym/>.

119. Vivek Sankaran, *In Court, Children are Unseen and Unheard*, THE IMPRINT (Feb. 14, 2019), <https://imprintnews.org/opinion/in-court-children-are-too-often-unseen-and-unheard/33819>.

120. *Id.*

121. *Gault*, 387 U.S. at 31.

122. *Issues: Access to Counsel*, GAULT CTR., <https://www.defendyouthrights.org/issues/access-to-counsel/> (last visited Oct. 9, 2024); *see also* Kristina Kersey, *Tales from the Gault: 10 of the Scariest Things About the Juvenile Legal System*, THE GAULT CTR. (Oct. 28, 2021), <https://www.defendyouthrights.org/10-of-the-scariest-things-about-the-juvenile-legal-system/> (observing that certain states fail to ensure youth are adequately represented in court).

123. Victoria Mckenzie, *Many States Still Deny Juveniles Access to Counsel, 50 Years After Gault Ruling, Report Finds*, JUV. JUST. INFO. EXCH. (May 18, 2017), <https://jjie.org/2017/05/18/many-states-still-deny-juveniles-access-to-counsel-50-years-after-gault-ruling-report-finds/>.

124. Kristin Henning, *Denial of the Child’s Right to Counsel, Voice, and Participation in Juvenile Delinquency Proceedings*, 89 CHILD WELFARE 121, 122-29 (2010), *see also* *Juvenile Justice: Young People and Restorative Justice*, NAT’L CONF. OF STATE LEGISLATURES (Oct. 12, 2022), <https://www.ncsl.org/civil-and-criminal-justice/juvenile-justice-young-people-and-restorative-justice> (“Restorative justice models give people who have been harmed the opportunity to be heard, ask questions, and seek restoration and closure.”).

125. *See generally* Jordan Bechtold Beardslee, *Under the Radar or Under Arrest: How Does Contact with the Juvenile Justice System Affect Delinquency and Academic Outcomes?* (2014) (Ph.D. dissertation, University of California Irvine), <https://escholarship.org/uc/item/9mg05819> (comparing the outcomes of adolescents who had committed the same crimes but who are different in terms of whether they were “caught” for their crimes, such as those who are arrested and formally processed or diverted from the system).



126. Sujatha Baliga et al., IMPACT JUST., *Restorative Community Conferencing: A Study of Community Works West’s Restorative Justice Youth Diversion Program in Alameda County* (2017), [https://impactjustice.org/wp-content/uploads/CWW\\_RJreport.pdf](https://impactjustice.org/wp-content/uploads/CWW_RJreport.pdf).

127. Lisa Gartner, *Beaten, then Silenced*, PHILADELPHIA INQUIRER (Feb. 20, 2019), <https://www.inquirer.com/crime/a/glen-mills-schools-pa-abuse-juvenile-investigation-20190220.html>.

128. *Id.*

129. Christina K. Sorenson, *Screaming into the Void: Youth Voice in Institutional Placements*, JUV. L. CTR. (Feb. 3, 2023), <https://jlc.org/resources/screaming-void-youth-voice-institutional-placements>.

130. The Prison Litigation Reform Act of 1995 (PLRA), 42 U.S.C. § 1997e(a) (“No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted”).

131. *See, e.g., A day in the life in Juvy*, WORLD’S CHILD’S PRIZE, <https://worldschildrensprize.org/adayinthelifelockedup>; *A Day in the Life of Detention*, CLALLAM COUNTY WASH., <https://www.clallamcountywa.gov/375/A-Day-in-the-Life-of-Detention>.

132. *See generally* David E. Arredondo, M.D., *Child Development, Children’s Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14 STAN. L. & POL’Y REV., 13, 13 (2003) (arguing that there is a real risk that juvenile detention impairs children during a time where they are developing and forming their identity).

133. Jeannette Bocanegra, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

134. Johnny Perez ’18; *Prisons Program at the National Religious Campaign Against Torture*, ST. FRANCIS COLL., <https://www.sfc.edu/stories/johnny-perez-18-director-of-u.s.-prisons-program> (last visited Oct. 9, 2024).

135. *Good News for Youth: At Least 9 in 10 Have Supportive Adults in Their Lives*, ANNIE E. CASEY FOUND. (Sept. 20, 2021), <https://www.aecf.org/blog/youth-with-supportive-adults>.

136. *See, e.g.,* Lisa Pilnik et al., JUV. L. CTR., *Transforming Justice: Bringing Pennsylvania’s Young People Safely Home from Juvenile Justice Placements* 1, 3 (2019), [https://jlc.org/sites/default/files/attachments/2019-10/Transforming\\_Justice\\_final.pdf](https://jlc.org/sites/default/files/attachments/2019-10/Transforming_Justice_final.pdf).

137. Bitu Amani et al., *Families and the Juvenile Justice System: Considerations for Family-based Interventions*, 41 FAM & CMTY. HEALTH 55 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5726419/>.

138. JUS. FOR FAMS., *FAMILIES UNLOCKING FUTURES: SOLUTIONS TO THE CRISIS IN JUVENILE JUSTICE*, 29 (2012), [https://www.justice4families.org/media/Families\\_Unlocking\\_FuturesFULLNOEMBARGO.pdf](https://www.justice4families.org/media/Families_Unlocking_FuturesFULLNOEMBARGO.pdf).

139. BROKEN BRIDGES, *supra* note 4, at 10.

140. JUS. FOR FAMS. *supra* note 138, at 29-30.

141. JUS. FOR FAMS., *supra* note 138, at 15.

142. *Id.*

143. Jeannette Bocanegra, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

144. Amir Whitaker, Statement made at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

145. *See, e.g.,* BROKEN BRIDGES, *supra* note 4, at 12 (“They made us do squats in front of a female guard. . . . They would shake out our bras and touch around our waist and make us take our shoes off.”).

146. *See id.* (“Then, when I was sent to a placement facility, they did a strip search after every visit with my family, and they would pat us down every time we would go off grounds and come back.”); *see also id.* at 11-12 (providing testimonials by children who were strip searched).

147. Steven F. Shatz et al., *The Strip Search of Children and the Fourth Amendment*, 26 U.S.F. L. REV. 1, 12 (1991) (“the strip search—being compelled to expose one’s private parts to an adult stranger who is obviously not a medical practitioner—is offensive to the child’s natural instincts and training.”).

148. JUV. L. CTR., ADDRESSING TRAUMA - ELIMINATING STRIP SEARCHES, 1, 2 (2017), <https://jlc.org/sites/default/files/attachments/2020-04/AddressingTrauma-EliminatingStripSearch%20March%202020.pdf>.

149. BROKEN BRIDGES, *supra* note 4, at 12 (citing transformative leader Anahi).

150. *Id.* (citing transformative leader Jihid).

151. JUV. L. CTR. *supra* note 148, at 2; *see also* N.G. v. Connecticut, 382 F.3d 225 (2d Cir. 2004); Smook v. Minnehaha, 340 F.Supp.2d 1037 (8th Cir. 2004); J.B. ex rel. Benjamin v. Fassnacht, 801 F.3d 336 (3d Cir. 2015).

152. BROKEN BRIDGES, *supra* note 4, at 14 (quoting transformative leader Jihid).

153. *See, e.g.,* Class Action Complaint for Declaratory & Injunctive Relief at 14, J.J. v. Litscher, No. 3:17-cv-00047-jdp (W.D. Wis. Apr. 17, 2017), ECF No. 13 (defendants shackled plaintiffs to tables); *Blackmon v. Sutton*, 734 F.3d 1237, 1242 (10th Cir. 2013) (defendants shackled 11-year-old in detention).

154. *See e.g.,* Class Action Complaint for Declaratory & Injunctive Relief at 14, J.J. v. Litscher, No. 3:17-cv-00047-jdp (W.D. Wis. Apr. 17, 2017), ECF No. 13.

155. BROKEN BRIDGES, *supra* note 4, at 14 (citing statement of transformative leader Anahi).

156. *Id.* at 14 (citing statement of transformative leader Jihid).

157. *Shackling fact sheet*, CAMPAIGN AGAINST INDISCRIMINATE JUVENILE SCHACKLING, <https://njdc.info/wp-content/uploads/2014/09/CAIJS-Fact-Sheet-2014-8-18-15.pdf> (last visited Apr. 8, 2023).

158. W. J. Brown, A. J. Nedelman, W. G. Phillips, J. S. Stankus, L. E. Amoscatto, & E. Schwartz, *Traumatic stress symptoms predict restraint incidents in children and adolescents in psychiatric residential treatment*, 35 J. TRAUMATIC STRESS 694 (2022).

159. *Id.*

160. *See generally* Affidavit of Dr. Marty Beyer, ¶¶ 10-12 (Aug. 23, 2006), <https://www.courts.wa.gov/subsite/mjc/docs/shackling.pdf>

(detailing the lasting effects that can occur in youth from the humiliation of restraints).

161. *See* James Dean, *Child restraints are high-risk interventions that can be fatal*, CORNELL CHRON. (Sept. 27, 2021), <https://news.cornell.edu/stories/2021/09/child-restraints-are-high-risk-interventions-can-be-fatal>; Michael A. Nunno, et. al., *A 26-Year Study of Restraint Fatalities Among Children and Adolescents in the United States: A Failure of Organizational Structures and Processes*, 51 CHILD YOUTH CARE F. 661 (2022), <https://link.springer.com/article/10.1007/s10566-021-09646-w>; *see also* Steve Helling, *Special Needs Teen’s Asphyxiation Death at Philadelphia Treatment Center Ruled a Homicide*, PEOPLE (Feb. 14, 2017), <https://people.com/crime/david-hess-special-needs-teen-death-philadelphia-treatment-center-homicide/>.

162. Johnny Perez, *As we work to make Black Lives Matter, let’s remember that incarcerated lives matter, too*, USA TODAY (Aug. 30, 2020), <https://www.usatoday.com/in-depth/opinion/policing/2020/08/30/we-work-make-black-lives-matter-remember-prison-lives-matter-too/3313709001/>.

163. Michal Gilad & Abraham Gutman, *The Tragedy of Wasted Funds and Broken Dreams: An Economic Analysis of Childhood Exposure to Crime and Violence*, 38 U. ILL. L. REV. 37, 37 (2021).

164. *See id.* at 41 (“Exposure to crime and violence during childhood causes heightened stress levels and overstimulation of specific brain structures, which can lead to chemical imbalances in the child’s brain and abnormal neurological development.”).

165. *See id.* at 43.

166. *See id.* at 44.

167. *Maltreatment of Youth in U.S. Juvenile Corrections Facilities - An Update*, ANNIE E. CASEY FOUND. 2 (2015), <https://assets.aecf.org/m/resourcedoc/aecf-maltreatmentyouthuscorrections-2015.pdf>.

168. *Id.* at 20 (including 14 states since 2011 with conclusive evidence and an additional seven states with some evidence of systemic maltreatment).

169. *See* Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, SENT’G PROJECT 5 (Mar. 1, 2023), <https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf> (“Since 2015, the stream of abuse revelations in youth incarceration facilities has continued, with alarming revelations of pervasive abuse Florida, New Hampshire, and Texas, among other states.”).

170. CTR. FOR AM. PROGRESS, MOVEMENT ADVANCEMENT PROJECT & YOUTH FIRST, UNJUST: LGBTQ YOUTH INCARCERATED IN THE JUVENILE JUSTICE SYSTEM 5-6 (Jun. 2017), <https://www.lgbtmap.org/file/lgbtq-incarcerated-youth.pdf>.

171. *Supra* note 4 BROKEN BRIDGES at 16; Avi Wolfman-Arent, *Education and conditions in juvenile detention remain poor, advocates say*, WHY? (May 17, 2018), <https://why.org/articles/education-and-conditions-in-juvenile-detention-remain-poor-advocates-say/> (quoting transformative leader Jihid).

172. *See generally* Heather T. Pane Seifert et. al., *Polyvictimization and Psychosocial Outcomes among Trauma-Exposed, Clinic-Referred Youth in the Juvenile Justice System*, IND. UNIV. SCH. OF MED. (2021), <https://scholarworks.iupui.edu/bitstream/handle/1805/30721/Seifert2022Polyvictimization-AAM.pdf?sequence=1> (providing a study aimed at identifying polyvictimization trends and patterns among youth who are trauma-exposed, clinic-referred, and justice-involved).

173. *See generally* Jessica Feierman, Karen U. Lindell, & Natane Eaddy, *Unlocking Youth - Legal Strategies to End Solitary Confinement in Juvenile Facilities*, JUV. L. CTR. (2017), [https://jlc.org/sites/default/files/publication\\_pdfs/JLC\\_Solitary\\_Report-FINAL.pdf](https://jlc.org/sites/default/files/publication_pdfs/JLC_Solitary_Report-FINAL.pdf) (examining the solitary confinement of youth in facilities across the country).

174. *Id.* at 17.

175. Katyaon Majd, Jody Marksamer, & Carolyn Reyes, *Hidden Injustice - Lesbian, Gay, Bisexual and Transgender Youth in Juvenile Courts*, EQUITY PROJECT 5 (2009), [https://www.nclrights.org/wp-content/uploads/2014/06/hidden\\_injustice.pdf](https://www.nclrights.org/wp-content/uploads/2014/06/hidden_injustice.pdf) (“Some facilities automatically segregate LGBT youth or place them in solitary confinement. Whether these practices are implemented to protect youth or based on the unfounded fear that LGBT youth will sexually prey on others, isolating LGBT youth solely on the basis of their sexual orientation . . . compromises their emotional well-being.”).

176. *See* Tamar R. Birkhead, *Children in Isolation: The Solitary Confinement of Youth*, 50 WAKE FOREST L. REV. 1, 14-16 (2015); Feierman et al., *Unlocking Youth*, *supra* note 4, at 8.

177. Adriana Belmonte, *Both of your hands can touch both walls: Former prisoner describes the psychological toll of solitary confinement*, YAHOO! FINANCE (September, 30, 2020), [https://www.yahoo.com/entertainment/solitary-confinement-former-prisoner-182318541.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LnVnbS8&guce\\_referrer\\_sig=AQAAAIJ99IxEtVPrf3s3rlxLiQOy2Mfz08KKeOMxAoCzUhA1rhS2I5S6s0oXfz0zek2MWLw70uBGDoqiOdHAqkseE13LYtVSbqTqRS78t9VWk-WNU16gm-dlofEAztjJlV4-hsXiVjs9jRWcCq0YwSrvC9YLthimC7Nrty9cpn8u4Qeq](https://www.yahoo.com/entertainment/solitary-confinement-former-prisoner-182318541.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LnVnbS8&guce_referrer_sig=AQAAAIJ99IxEtVPrf3s3rlxLiQOy2Mfz08KKeOMxAoCzUhA1rhS2I5S6s0oXfz0zek2MWLw70uBGDoqiOdHAqkseE13LYtVSbqTqRS78t9VWk-WNU16gm-dlofEAztjJlV4-hsXiVjs9jRWcCq0YwSrvC9YLthimC7Nrty9cpn8u4Qeq) (quoting Johnny Perez).

178. *See* Feierman et al., *Unlocking Youth*, *supra* note 4, at 12-13.

179. *Id.*

180. Amir Whitaker, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

181. Tamar R. Birkhead, *Delinquent by Reason of Poverty*, 38 WASH. U. ST. LOUIS J. L. & POL’Y 53, 70-95 (2012).

182. *See Operation: Education - An Action Kit to Achieve Positive Educational Outcomes for Youth in the Child Welfare and Juvenile Justice Systems*, JUV. L. CTR. 7 (2019), <https://jlc.org/sites/default/files/attachments/2019-06/Operation-Education-FINAL-DIGI-TAL-FULL.pdf>; *see also* *Blueprint for Change: Education Success for Youth in the Juvenile Justice System*, BLUEPRINT FOR CHANGE, <https://www.jjeducationblueprint.org/> (last visited May 2, 2023).

183. Anahi Figueroa-Martinez, *I Feel Like Pennsylvania’s Juvenile Justice System Failed Me*, JUV. L. CTR. (Oct. 17, 2022), <https://jlc.org/news/i-feel-pennsylvanias-juvenile-justice-system-failed-me-opinion>.

184. *See* REDUCING STRUCTURAL BARRIERS TO SCHOOL AND WORK FOR PEOPLE WITH JUVENILE RECORDS, JUST. CTR. - THE COUNCIL OF STATE-



Gov’ts 3 (2021) (“Like adults, people with juvenile adjudications can experience an array of restrictions to their continued education, credentialing, and employment.”).

185. Cara Bayles, *Youth Seeking a Second Chance Face ‘Justice By Geography’*, LAW360 (Apr. 8, 2022), <https://www.law360.com/articles/1482133> (quoting transformative leader Jihid).

186. See REDUCING STRUCTURAL BARRIERS TO SCHOOL AND WORK FOR PEOPLE WITH JUVENILE RECORDS, *supra* note 184 (“These restrictions especially affect people of color due to persistent racial and ethnic disparities in rates of juvenile justice involvement.”); see also *Wealth accumulation and incarceration by race & ethnicity*, PRISON POL’Y INITIATIVE (2016), [https://www.prisonpolicy.org/graphs/wealth\\_accumulation\\_race.html](https://www.prisonpolicy.org/graphs/wealth_accumulation_race.html).

187. *Debtors’ Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, *supra* note 4, at 4.

188. Lindsey E. Smith et al., *Debtors’ Prison for Kids - Fees Established by State Law*, JUV. L. CTR., <https://debtorsprison.jlc.org/#!/map> (last visited May 2, 2023).

189. See *Debtors’ Prison for Kids?*, *supra* note 4, at 17 (“Court costs and fees range from a designated amount . . . to an obligation to cover a broad range of costs for service. . . which could create a financial burden of thousands of dollars.”).

190. *Id.* at 25.

191. *Id.* at 6.

192. Leslie Paik, *Impact of Juvenile Justice Fines and Fees on Family Life: Case Study in Dane County, WI*, JUV. L. CTR. 10 (2019) <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-dane-county.pdf>.

193. See Eric Markowitz, *The Long-Term Costs of Fining Juvenile Offenders*, NEW YORKER (Dec. 24, 2016), <https://www.newyorker.com/business/currency/the-long-term-costs-of-fining-juvenile-offenders> (noting that an increase in fines against children also increased the rate of recidivism).

194. See *Debtors’ Prison for Kids?*, *supra* note 4, at 7.

195. Markowitz, *supra* note 193 (citing transformative leader Amir Whitaker).

196. Johnny Perez, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

197. Jihid, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

198. Amir Whitaker, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

199. *In re Gault*, 387 U.S. 1 (1967).

200. *In re Winship*, 397 U.S. 358, 368 (1970).

201. *Breed v. Jones*, 421 U.S. 519, 541 (1975).

202. Marcus Jarvis, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

203. Amir Whitaker, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. Jeannette Bocanegra, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

209. Johnny Perez, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

210. Jeannette Bocanegra, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

211. *Id.*

212. Hernan Carvente, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

213. Jeannette Bocanegra, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

214. *Id.*

215. Hernan Carvente, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

216. Jeannette Bocanegra, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

217. *Id.*

218. Amir Whitaker, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

219. Hernan Carvente, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

220. NAT’L ACADS. OF SCIS., ENG’G, AND MED., *THE PROMISE OF ADOLESCENCE: REALIZING OPPORTUNITY FOR ALL YOUTH* 267-68 (Richard J. Bonnie & Emily P. Backes eds., 2019).

221. Amir Whitaker, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

222. *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (citing *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968)).

223. *Id.* at 104 (“We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the “unnecessary and wanton infliction of pain,” proscribed by the Eighth Amendment.”) (internal citation omitted).

224. *Brown v. Plata*, 563 U.S. 493 (2011).

225. *Hudson v. McMillian*, 503 U.S. 1 (1992).

226. See, e.g., Gary H. v. Hegstrom, 831 F.2d 1430, 1432 (9th Cir. 1987) (applying a Fourteenth Amendment rather than an Eighth Amendment standard in recognition that the juvenile system is not criminal or penal in nature).

227. See, e.g., Transcript of Second Day of Motion Hearing at 6, J.J. v. Litscher, (June 23, 2017), [https://jlc.org/sites/default/files/case\\_files/2017.6.23%20Official%20Transcript%20of%20PI%20Hearing%20-%20Day%202.pdf](https://jlc.org/sites/default/files/case_files/2017.6.23%20Official%20Transcript%20of%20PI%20Hearing%20-%20Day%202.pdf); V.W. by & through Williams v. Conway, 236 F. Supp. 3d 554, 583 (N.D.N.Y. 2017); T.D. v. Mickens, 806 F.Supp.2d 758 (D.N.J. 2011).

228. See, e.g., *Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974); Transcript of Second Day of Motion Hearing at 6, J.J. v. Litscher, (oral

ruling, June 23, 2017), [https://jlc.org/sites/default/files/case\\_files/2017.6.23%20Official%20Transcript%20of%20PI%20Hearing%20-%20Day%202.pdf](https://jlc.org/sites/default/files/case_files/2017.6.23%20Official%20Transcript%20of%20PI%20Hearing%20-%20Day%202.pdf).

229. Jeannette Bocanegra, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

230. Johnny Perez, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

231. Jihid, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

232. Anahi Figueroa, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

233. Hernan Carvente, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

234. Johnny Perez, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

235. Amir Whitaker, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

236. Terrell Carter, Rachel López & Kempis Songster, *Redeeming Justice*, 116 Nw. U. L. REV. 315, 318 (2021). They further note that “It is our conviction that all humans have the inner capacity to forgive and be forgiven, to transform and be transformed, and that the law should reflect these innate qualities – that all human beings have a right to redemption.”

237. Anahi Figueroa, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

238. Jeannette Bocanegra, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

239. Hernan Carvante, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

240. Marcus Jarvis, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

241. Jeannette Bocanegra, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

242. Amir Whitaker, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

243. *Id.*

244. Jeannette Bocanegra, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

245. *Id.*

246. Johnny Perez, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).

247. Joseph Phelan, *Purvi & Chuck: Community Lawyering*, CONVERGENCE (June 1, 2010), <https://convergencemag.com/articles/purvi-amp-chuck-community-lawyering/>.

248. *Id.*

249. *Id.*; Jules Lobel, *Participatory Litigation*, 74 STAN. L. REV. 88 (2022) (“Participatory litigation . . . allows for collaborative, collective, and consensus-building interactions between the representative and those she represents. In this model, the representative and the client teach and learn from one another.”).

250. See Feierman et al., *supra* note 3, at 21-23 (discussing litigation strategies that can be used in pursuit of reform).

251. See, e.g., *Jensen v. Thornell*, ACLU (April 7, 2020), <https://www.aclu.org/cases/jensen-v-thornell#:~:text=Summary,Jensen%20v,Shinn%20and%20Parsons%20v> (detailing an injunction which requires correctional and health care staff to remedy a “grossly inadequate” health care system in Arizona state prisons).

252. J.J. v. Litscher, JUV. L. CTR. (Jan. 23, 2017), <https://jlc.org/cases/jj-v-litscher>.

253. *Hunt v. Washington Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977).

254. Second Amended Class Action Complaint at 1, *Campbell v. Chicago*, No. 17cv4467 (N.D. Ill. Sept. 5, 2017) (including Black Lives Matter Chicago, Blocks Together, Brighton Park Neighborhood Council, Chicago Urban League, Justice for Families – Black Lives Matter Chicago, the NAACP, Network 49, Women’s All Points Bulletin, and 411 Movement for Pierre Loury).

255. Lobel, *supra* note 249, at 107-08.

256. Consent Decree at 151, *State v. City of Chicago*, 912 F.3d 979 (7th Cir. 2019) (No. 17-cv-6260).

257. *Id.* at 203.

258. *Id.*

259. *Id.* at 212.

260. Cara McClellan & Jamelia N. Morgan, *Toward Abolitionist Remedies: Police (Non)reform Litigation After the 2020 Uprisings*, 51 FORDHAM URB. L.J. 636, 662-63 (2024).

261. *Id.* at 669-72 (describing the Chicago and Philadelphia community programs).

262. Lobel, *supra* note 249, at 138 (listing the ways in which the plaintiffs would play a direct role in the monitoring).

263. See e.g., Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645, 1658 (2017) (“By using law as a tool to build capacity to engage in collective action, movement lawyering aspires to broad and deep reform that moves beyond ‘law on the books’ to embed change in social practice and culture.”).

264. See e.g., Sharlen Moore & Jessica Feierman, *‘They Treat Us Like Dogs’: Can Wisconsin Lead the Way in Creating a New Vision of Youth Justice*, THE ROOT (Sept. 25, 2018), <https://www.theroot.com/they-treat-us-like-dogs-can-wisconsin-lead-the-way-i-1829303479> (“[T]he state of Wisconsin agreed to shut down two large youth prisons and reform its treatment of incarcerated youth. This is the perfect moment to ask—what should real justice for youth look like, and how do we get there?”).

265. Act 185, 2017 Assemb. B. 953 (Wis. 2017).

266. Mario Koran et al., *One Child, \$463,000 Per Year: Ballooning Costs of Troubled Lincoln Hills Youth Prison*, WISCONSIN WATCH (Dec. 5, 2024), <https://wisconsinwatch.org/2024/12/wisconsin-lincoln-hills-youth-prison-costs-copper-lake-corrections/#:~:text=Mean-while%2C%20the%20facility%27s%20population%20is,for%20more%20than%20500%20youth> (noting a decrease in the population of incarcerated juveniles in Wisconsin facilities).

267. Act 185, Wisconsin Department of Corrections, <https://doc.wi.gov/Pages/AboutDOC/Act185.aspx> (detailing plans for new facilities in Milwaukee, Dane County, and Northern Wisconsin).



268. For more on communications and policy work in collaboration with system-impacted young people, see *Youth Advocacy Toolkit*, JUV. L. CTR., <https://jlc.org/toolkits/youth-advocacy-toolkit> (last visited Dec. 15, 2024).

269. *Washington v. Davis*, 426 U.S. 229, 239 (1976) (“[O]ur cases have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional solely because it has racially disproportionate impact.”).

270. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

271. *See, e.g., McCleskey v. Kemp*, 481 U.S. 279 (1987) (requiring proof of discriminatory purpose in a case challenging disproportionality in capital sentencing); *United States v. Armstrong*, 517 U.S. 456 (1996) (finding defendants did not demonstrate an equal protection violation when their evidence of racial disparities in prosecution of crack cocaine did not include an element of invidious intent).

272. *See generally* Yvonne Elosiebo, *Implicit Bias and Equal Protection: A Paradigm Shift*, 42 N.Y.U. REV. L. & SOC. CHANGE 451 (2018) (describing the process of developing implicit biases and the implications of this phenomenon).

273. *See generally* Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSCH. 526 (2014).

274. *Batson v. Kentucky*, 476 U.S. 79, 106 (1986), *overruled in part*, *Powers v. Ohio*, 499 U.S. 400 (1991).

275. *Commonwealth v. Long*, 152 N.E.3d 725, 731 (Mass. 2020).

276. *Id.* at 734.

277. *Id.* at 747.

278. *Commonwealth v. Evelyn*, 152 N.E.3d 108, 120 (Mass. 2020).

279. *State v. Andujar*, 254 A.3d 606, 623 (N.J. 2021).

280. *State v. Scott*, 288 A.3d 842, 848 (N.J. 2023).

281. *State v. Wellknown*, 510 P.3d 84, 97 (Mont. 2022) (Baker, J., concurring).

282. MONT. CONST. art. II, § 4.

283. *State v. Warren*, 955 N.W.2d 848, 874 (Iowa 2021) (Appel, J., dissenting).

284. Cal. Leg. 2542, 2019-2020 Reg. Sess. (Cal. 2020).

285. PA CONST. art. I, § 29.

286. The provision has come before the federal courts in two unreported cases; these courts are not, however, positioned to resolve issues of Pennsylvania Constitutional interpretation. *Sargent v. Sch. Dist. of Phila.*, No. 22-CV-1509, 2022 WL 3155408, at \*3 (E.D. Pa. Aug. 8, 2022), *appeal dismissed*, No. 22-2493, 2023 WL 5289372 (3d Cir. May 12, 2023); *Memphis St. Acad. Charter Sch. at J.P. Jones v. Sch. Dist. of Phila.*, No. CV 22-02760, 2023 WL 4032660, at \*8 (E.D. Pa. June 15, 2023), *appeal dismissed*, No. 23-2251, 2024 WL 3385178 (3d Cir. June 11, 2024).

287. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005) .

288. *City of Grants Pass v. Johnson*, 144 S. Ct. 2202 (2024) (holding a state ordinance targeting homeless communities by restricting public camping did not violate the Eighth Amendment’s limit on cruel and unusual punishment).

289. Robert Dinerstein, *Using the ADA’s ‘Integration Mandate’ to Disrupt Mass Incarceration*, 96 DENV. L. REV. 917, 924 (2019). *See also* Margo Schlanger, *Anti-Incarcerative Remedies for Illegal Conditions of Confinement*, 6 U. MIA. RACE & SOC. JUST. L. REV. 1, 3 (2016) (noting how plaintiffs facing illegal conditions of confinement “should seek, and courts should grant . . . remedies diverting prisoners away from incarceration”).

290. Americans with Disabilities Act, 42 U. S. C. §§ 12101(a)(2).

291. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 601 (1999).

292. *Id.* at 607.

293. *M.G. v. N.Y. State Off. of Mental Health*, 572 F. Supp. 3d 1, 6-7 (S.D.N.Y. 2021).

294. *Id.* at 14-15.

295. Jamelia N. Morgan, *The Paradox of Inclusion: Applying Olmstead’s Integration Mandate in Prisons*, 27 GEO. J. ON POVERTY L. & POL’Y 305, 311-12 (2020).

296. U.S. DEP’T OF JUST., C.R. DIV., EXAMPLES AND RESOURCES TO SUPPORT CRIMINAL JUSTICE ENTITIES IN COMPLIANCE WITH TITLE II OF THE AMERICANS WITH DISABILITIES ACT (2017).

297. Hani Morgan, *Misunderstood and Mistreated: Students of Color in Special Education*, 3 VOICES OF REFORM 71, 72 (2020) (“Low-income students are more often identified in subjective disability categories . . . [T]hese pupils tend to be placed in classrooms where academic outcomes are worse, expectations for success are lower, and the stigma associated with special education is higher.”).

298. Application For Extraordinary Relief Under The Court’s King’s Bench Jurisdiction at 37-38, *In re C.Z.*, No. 24 EM 2020 (Pa. Apr. 1, 2020).

299. *In re C.Z.*, 658 Pa. 469, 470 (Pa. 2020).

300. *See* PA JUV. CT. JUDGES’ COMM’N., 2021 JUVENILE COURT ANNUAL REPORT 71 (2021) (“[T]otal placement dispositions in the pandemic months of 2021 were lower than the pandemic months of 2019 and 2020 (50.0% and 7.6% respectively).”).

301. Ann E. Marimow, *Maryland’s Chief Judge Orders Release of Young Offenders to Reduce Covid-19 Risk*, WASHINGTON POST (Apr. 14, 2020), [https://www.washingtonpost.com/local/legal-issues/marylands-chief-judge-orders-release-of-young-offenders-to-reduce-covid-19-risk/2020/04/14/a16a0cce-7e54-11ea-9040-68981f488eed\\_story.html](https://www.washingtonpost.com/local/legal-issues/marylands-chief-judge-orders-release-of-young-offenders-to-reduce-covid-19-risk/2020/04/14/a16a0cce-7e54-11ea-9040-68981f488eed_story.html).

302. *See, e.g., Martinez-Brooks v. Easter*, 459 F. Supp. 3d 411, 429 (D. Conn. 2020) (“Where inmates from across the country have managed to bring COVID-19 related motions for compassionate release on their own behalf, they have enjoyed significant success before courts in this District.”).

303. 563 U.S. 493, 530 (2011).

304. *Id.* at 539.

305. *Id.* at 535-37.

306. *See* Marsha Levick et al, *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment through the Lens of Childhood and Adolescence*, 15 U. PA. J.L. & SOC. CHANGE 285 (2012) (“[I]n many legal contexts, adolescents are recognized as a vulnerable population.”).

307. *Brown v. Plata*, 563 U.S. 493, 500 (2011).

308. Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555,1635-36 n.272 (2003) (describing the push for and enactment of state PLRA equivalents).

309. 18 U.S.C. § 3626(a)(3)(E).

310. *In re Khalid B.*, 233 Cal. App. 4th 1285, 1288 (Cal. Ct. App. 2015).

311. COLO. REV. STAT. § 19-1-102 (2020).

312. NEB. REV. STAT. §§ 43-246, -402 (2019).

313. *See, e.g., State v. B.O.J.*, 449 P.3d 1006, 1014 (Wash. 2019) (applying a Washington statute to find a standard range disposition sufficed).

314. *See, e.g., People v. Hackman*, 275 N.E.2d 488, 489-90 (Ill. 1971); *B.O.J.*, 449 P.3d 1006, 1014 (Wash. 2019).

315. *Supra* note 236.

316. *Id.* at 322.

317. William C. Berry III, *Cruel State Punishments*, 98 N.C.L. REV. 1201, 1239 (2020).

318. MONT. CONST. art. II, § 4.

319. *Walker v. State*, 68 P.3d 872, 884 (2003).

320. *Matter of Williams*, 198 Wash.2d 342, 354 (2021).

321. *Id.* at 366.

322. *Id.* at 368.

323. *People v. Parks*, 987 N.W.2d 161, 169 (Mich. 2022).

324. *Sterling v. Cupp*, 625 P.2d 123, 129 (Or. 1981).

325. *Id.* at 136.

326. ALA. CODE § 12-15-101 (2023).

327. ARK. CODE ANN. §9-27-302 (2023).

328. MINN. STAT. ANN. § 260B.001 (2024).

329. MONT. CODE ANN. § 41-5-102 (2023).

330. *See generally In re J.F.*, 787 P.2d 364 (Mont. 1990) (holding the trial court erred in not placing the young person in a less restrictive setting more appropriate for his needs).

331. Amir Whitaker, Statement at Juvenile Law Center Weaving Life and Law Convening (June 6, 2022).