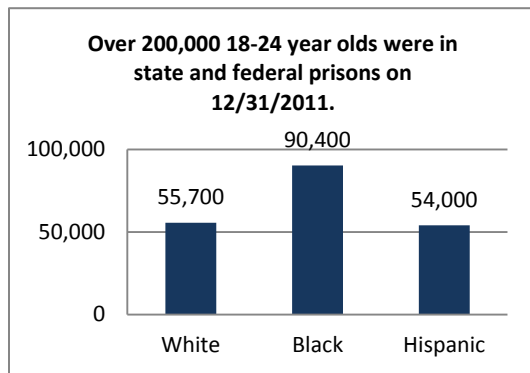


## Young Adult Justice: A new frontier worth exploring

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Young adulthood - defined for this paper as 18-24 years old - can be a time of growth and opportunity. Many young adults go to college: about 45 percent of 18-21 year olds and 30 percent of 22-24 year olds were in degree-granting institutions in Fall 2010.<sup>1</sup> That year, almost seven million 20-24 year olds and about 790,000 18-20 year olds were employed full time.<sup>2</sup> And another 626,000 18 - 25 year olds were on active duty military service.<sup>3</sup>

However, for some young adults, criminal justice involvement casts a shadow over their future. Over 1.7 million 18-21 year olds and 1 million 22-24 year olds were arrested in 2011<sup>4</sup>. And over 200,000 18-24 year olds were serving sentences of a year or more in state and federal prisons on December 31, 2011,<sup>5</sup>



“Prisoners in 2011,” U.S. Bureau of Justice Statistics

with another 100,000 or more likely incarcerated in local jails.<sup>6</sup>

Young adults are overrepresented in many categories of justice involvement. Although they make up about ten percent of the total population, this age group accounts for over 29 percent of arrests.<sup>7</sup> And people aged 18-24 were sent to prison for violent and property crimes more often than any other age group. These justice figures show a profound failure in ensuring that youth successfully transition to adulthood, one which is experienced more keenly for some: African American young adults are fifteen times more likely to be in prison than those who are White, while young adults who were in foster care are

over ten times more likely to report having been arrested at age 18-19 than young people in the general population.<sup>8</sup>

The cost of this failure is high. Young adults are also disproportionately represented as victims of crime. People aged 18-20 and 21-24 experience rates of violent victimization of 33.9 and 26.9 per 100,000 respectively,<sup>9</sup> which is much higher than for the total population (14.9 per 100,000). The highest rate of victimization of any age group is 18-20 year olds, and in this age group victimization spikes dramatically for Black young adults.

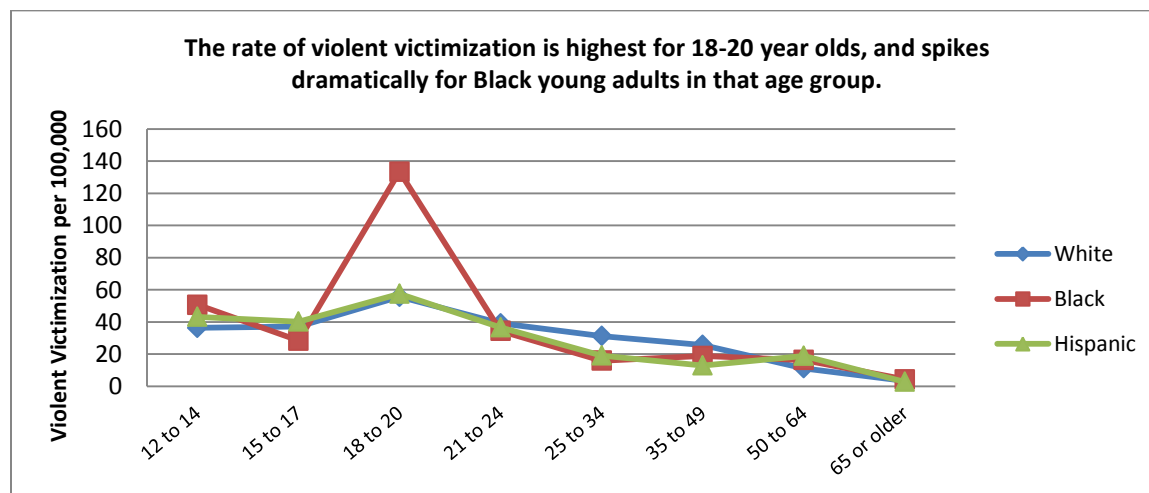
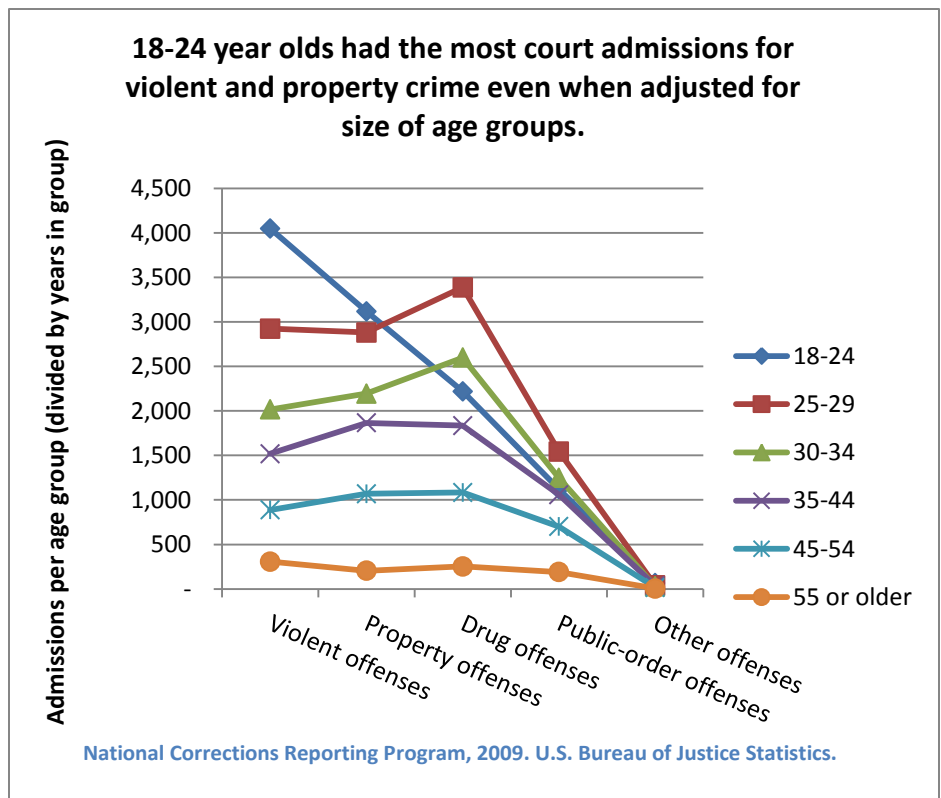
There are significant other costs of this justice involvement to both young adults and society. Young adults who are in degree-granting institutions can expect to earn on average \$1.7 million with an associate’s degree or \$2.3 million with a bachelor’s degree over their lifetime; if justice involvement prevents a young adult from completing their education, their average lifetime earnings fall to just \$973,000 without a high school diploma, or \$1.3 million for high school graduates.<sup>10</sup> There is strong evidence that people who served time in prison will earn 10 – 30 percent less than those who haven’t, and will have a reduction in wage growth of around 30 percent.<sup>11</sup> As a result they, their families and their communities will have fewer resources over a period of decades. Some of these young adults are also parents, and their incarceration impacts their ability to provide financial and emotional support to their children and can result in negative outcomes for the children, including behavioral health problems and involvement in the child welfare system.

And these are all on top of the costs of the criminal justice system itself. The Vera Institute of Justice recently estimated that the total per person in prison averages \$31,286 per year;<sup>12</sup> at over 200,000 young adults in prison, the annual cost of their incarceration is over \$6.25 billion.<sup>13</sup>

The costs at other points in the system are also significant. In 2006 the Washington Institute for Public Policy estimated the costs to police and sheriff's offices for arrests for various offenses.<sup>14</sup> Obviously different localities will have costs that are higher or lower; but based on Washington State's 2006 figures, combined with the FBI figures for arrests in 2011<sup>15</sup>, the cost to local police and sheriff's offices for arrests of 18-24 years olds exceeds \$5.6 billion per year. This does not include costs for prosecution or local jails. And the financial costs of victimization are significant as well.<sup>16</sup>

And finally, there is the issue of recidivism. Going to prison is itself "criminogenic," that is, it acts to increase criminal behavior. This is due a mix of factors, including the prison environment itself; socialization and identification with others who have engaged in criminal behavior; limited institutional access to education, job training and effective treatment for substance abuse and mental health disorders; and the many barriers those reentering the community from prison face, such as access to employment and housing and weakened positive social bonds.<sup>17</sup>

A 2002 study by the Bureau of Justice statistics showed that of all adults who had been in state prison, those in the 18-24 year old age bracket had the highest rates of re-arrest (75.4%), reconviction (52%) and return to prison with a new sentence (30.2%) within three years of release.<sup>18</sup>



Reducing the number of young adults who become involved in the justice system and improving the outcomes for those who do would have tremendous economic and social benefits. If the number of young adults arrested and in prison could be reduced by even ten percent, the annual cost savings just in prisons and arrests would be over one billion dollars.

Achieving such a goal would require a concerted effort to address the needs of older adolescents and young adults and a paradigm shift in how we address their law-breaking behavior. To the first point, much more needs to be done to accelerate juvenile justice reforms, improve education and child welfare outcomes, address complex mental health and addiction problems of young people, and provide a path out of poverty for all youth. Many of these issues have been discussed elsewhere at length, and to even summarize them here in a meaningful way would take many pages and is beyond the scope of this paper.

On the other hand, there has been scant attention in the U.S. to how we deal with young adults who come in contact with the justice system. There is sufficient rationale and evidence to suggest the creation of a “third system” of justice for young adults. Already there are pieces of such a system in place in various states. Through building off those policies for young adults that have been shown to be effective, both here in the U.S. and in other countries, and incorporating growing research and evidence on young adult development, a “young adult justice” framework could be developed that still holds young people accountable but improves rather than diminishes their life outcomes, and reduces both costs and the harm caused by young adults to individuals and their communities.

### **What rationale is there for treating young adults differently?**

When juvenile courts were established at the turn of the 20<sup>th</sup> century, they were grounded in philosophical and pragmatic arguments: first, that children are inherently different than adults, and are therefore less culpable; and second, that better outcomes could be achieved for the youth and society through rehabilitation rather than punishment. As an American Bar Association publication notes,

“The object of juvenile proceedings was the ‘correction of a condition’ ... juvenile courts functioned as public social agencies striving to find the right solution to the problem of juvenile delinquency. The object of criminal courts, in contrast, was conviction and punishment of those who commit wrongful acts.”<sup>19</sup>

While over the past few decades there has been some blurring of the lines between the adult and juvenile systems, such as the erosion of confidentiality and the transfer of youth to the adult system, recent court decisions around the death penalty and life without parole for children have reinforced the distinction between children and adults:

“Juveniles’ susceptibility to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’ *Thompson v. Oklahoma*, 487 U. S. 815, 835. Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. See *Stanford*, supra, at 395. The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. The *Thompson* plurality recognized the import of these characteristics with respect to juveniles under 16. 487 U. S., at 833–838. The same reasoning applies to all juvenile offenders under 18.” – *Supreme Court decision in Roper v. Simmons*, 2005.

These same two general principles of uniqueness and efficacy used to create the juvenile justice system, as well as the rationale of the Supreme Court in their recent decisions, provide the rationale for a young adult justice system as well:

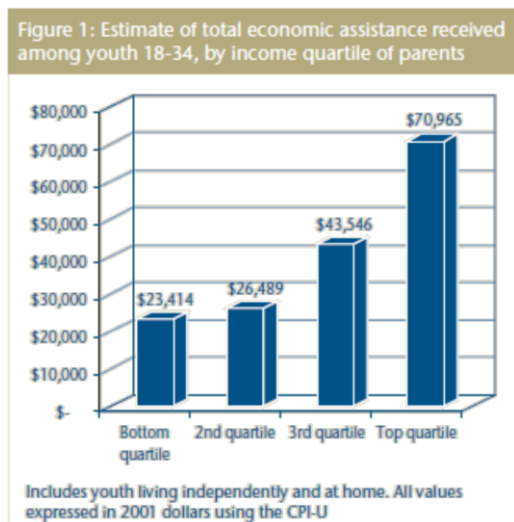
**Young adults are not fully mature.** The demarcation of 18 as the end of childhood and beginning of adulthood is an artificial one, as there is no one moment or age at which all people can be said to have reached full maturity. Research has shown that people’s brains don’t fully mature until their mid-20’s.<sup>20</sup> In particular, risk-taking, as evidenced by such activities as driving while drunk (or riding with an intoxicated driver) and using illicit drugs is greater among 18-25 year olds than among older adults.<sup>21</sup> In a study that created a composite measure of “psychosocial maturity” that included measures of impulsivity and sensation-seeking, 18-21 year olds showed significantly less maturity than 22-25 year olds, with increasing maturity in those ages 26-30.<sup>22 23</sup>

Some current and proposed laws already recognize this difference. Buying or consuming alcohol is illegal for 18-20 year olds, and in most states you must be 21 to enter a casino. New York City currently is considering raising the age at which tobacco can be bought to 21.<sup>24</sup> Like juveniles, many young adults are, due to their immaturity, susceptible to irresponsible behavior, allowing impulsivity to govern decisions about engaging in illegal activities. To the extent that punishment has a deterrent effect, this effect is blunted among young adults. And sentences designed with incapacitation in mind may be unnecessarily long, as maturity generally will bring a decreased risk of re-offending.

**It can be difficult for young adults to escape negative influences in their whole environment.** Upon turning 18, a young person that was an “at-risk youth” doesn’t overnight become a mature adult able to overcome the very barriers he faced a day earlier. Lack of positive role models, ineffectual education and child welfare systems, limited employment opportunities and a lack of experience in a more positive way of life all mean that it is almost impossible for some young adults to “pull themselves up by their bootstraps” and escape negative environments. Gardnel Carter, a coordinator for *Safe Streets* (a violence intervention project) in Baltimore city, put it this way: “These young men and women, they can’t imagine a life other than the life of the street. This is the way of life they grew up with, many of them have never been outside of Baltimore, ever. They don’t see a reason to finish school, since there aren’t any jobs.” In the absence of real opportunities for these young people to find a path to successful and law-abiding lives, it is ineffective at best to attempt to address law-breaking with punitive policies.

The disparity in resources available to young adults likely plays a large role in why some youth are not successfully transitioning to adulthood. A University of Michigan study showed that while on average parents spend \$38,000 on each adult child by age 35 (with the greatest amounts per year between the ages of 18 and 26), this varies greatly depending on the parents’ income. Young adults whose parents are in the top quartile of income received about three times as much as those whose parents were in the bottom half of income (\$71,000 for top parental earners versus \$23,400 and \$26,500 for 3<sup>rd</sup> and 4<sup>th</sup> quartile parental earners).<sup>25</sup> For a youth ages 18-20 leaving foster care, or with parents who are not able to provide financial support, it could mean the difference between being able to buy a car to get to work, having enough for a security deposit for an apartment, making a tuition payment, or covering unexpected expenses like medical bills.

While lack of financial resources and negative



“Family Support During Transition to Adulthood,” University of Michigan, Policy Brief #3, Aug. 2004.

environmental influences alone don't cause crime or excuse illegal behavior, a justice system that understands and takes into account the challenges faced by some young adults could create sanctions and programs that result in lower recidivism and better outcomes for young people and their communities.

**Young adults can change, and most become law-abiding citizens.**

As the Supreme Court wrote in its opinion, one cannot conclude that even a “heinous crime committed by a juvenile is evidence of irretrievably depraved character.” The same holds true of young adults: most will desist from criminal behavior as they get older. This certainly is reflected in the figures showing a 26% drop in arrests between age 19 and 24.<sup>26</sup> Research also confirms that with age, both participation and frequency of offending peaks in early adulthood and declines thereafter.<sup>27</sup> Naturally there is variation among individuals; some do go on to persistently offend, while others desist entirely after a certain point.

In creating a system of young adult justice, whether there are certain factors that impact when or whether people age out of crime has an impact on what policies should be created. If it is mostly a “waiting game,” then a focus on limiting collateral consequences that can impede re-entry is clearly appropriate. So, too, would be sanctions that hold young adults accountable but don't unnecessarily restrict access to pro-social activities like education and employment.

A new study, though, has shown a relationship between a number of variables and aging out of crime. Based on the “Pathways to Desistance” longitudinal data on young people from age 16 onward, researchers found that changes in exposure to antisocial peers and antisocial peer pressure were related to drops in crime in 15-24 year olds. Life events that cause significant strain, like homelessness, victimization and witnessing victimization, also had an impact on an individual's ability to “age out” of crime, as did psychosocial factors like impulse control and control of aggression.<sup>28</sup>

While the authors of the study acknowledge that all possible explanations for aging out of crime were not examined, they note that “For intervention efforts, this is potentially a story of hope. There are many possible mechanisms for flattening the crime peak in adolescence or accelerating the decline in crime in adulthood.”<sup>29</sup>

In other words, a third system of justice that, along with accountability for harms caused, also helps young adults overcome trauma, learn to control aggression and impulses, and engage in activities like work and school that increase time spent with pro-social peers could reduce both crime and victimization while improving outcomes for young adults. The connection with victimization and crime also suggests a “virtuous cycle” might be achieved, whereby decreased crime by young adults has a multiplier effect by reducing victims who might have then become more likely themselves to engage in crime.

Altogether, the evidence points to the efficacy of a justice system that treats young adults differently. This system would recognize the psychological and social differences of young adults, and create responses that increase long-term community safety and well-being while addressing the risks and needs of the individual. This system could save taxpayer dollars both through increased current justice costs, as well as reduced costs for justice and social systems in the future. And that some pieces of such a system currently exist, both here in the U.S. and elsewhere, shows that with political will, this new system can become a reality.

## **Young adult justice in practice**

Probably not since the Magna Carta have U.S. policymakers taken their cues from other country's legal systems. But for those seeking models for young adult justice, several European nations can provide examples. And a British organization, the Transition to Adulthood Alliance (T2A), has been working since 2008 to specifically look at the way the criminal justice system addresses law-breaking behavior among 18 to 24 year olds. In their recent publication, “Young Adults and Criminal Justice: International

Norms and Practices,”<sup>30</sup> T2A points to Germany for having a constructive approach to young adult justice. Since the 1950’s young German adults ages 18-21 have been transferred to the jurisdiction of the juvenile court. Depending on the circumstances, the courts can retain the young adult in the juvenile system or transfer them to the adult system.

Interestingly, “it is more serious cases that are dealt within the juvenile jurisdiction and minor, particularly traffic offences, that are dealt with in the adult system,”<sup>31</sup> exactly opposite of how transfers to adult court are determined here in the U.S.

Other countries that T2A points to as having criminal justice policies unique to young adults include Sweden, where young adults can be treated like juveniles until age 25; the Netherlands, Scandinavian countries and the countries of the former Yugoslavia, which have special provisions for young adults in their law that mitigate adult sentences; and Sweden, where mandatory minimum sentences are set aside for those under 21, and sentences and other sanctions are reduced proportional to the age of the person being sentenced.

Here in the United States, some states have passed laws recognizing 18-21 year olds as a special category, often called “youthful offenders” (although in some states this term refers to older juveniles). While not exhaustive, below are some efforts that have been in place, some for decades:

- Since 1978, Florida has a youthful offender law<sup>32</sup> that allows the courts to use alternative processing for 18-21 year olds found guilty (or who plead nolo contendere) of all but offenses that carry a capital or life sentence. According to statute, “successful participation in the youthful offender program ... may result in a recommendation to the court, by the department, for a modification or early termination of probation, community control, or the sentence at any time prior to the scheduled expiration of such term.” Participants in the youthful offender program can still be sentenced to adult jails for up to a year.
- New York has a “Youthful Offender & Sealing” statute for 16-18 year olds (16 and 17 year olds are automatically adjudicated in adult court) that allows for their records to be sealed, although the records remain available to law enforcement and schools.
- Colorado allowed “young adult offenders” – those whose offense occurred when they were 18-20 and who are still under 21 – to be included in the state’s Youthful Offender program, which is a separate facility that focuses on positive development, education and skill building; the statute allowing young adults to participate in the program was repealed in 2012, and efforts to reinstate it are currently underway.<sup>33</sup> A recent evaluation of the program showed that, despite crowded conditions, youth and staff felt the environment and programming was having a positive impact.<sup>34</sup>
- Michigan’s “Holmes Youthful Trainee Act” allows a judge to place a youth between 17 and 20 who has pleaded guilty to certain crimes to be placed in prison or on probation without a conviction to avoid a criminal record. If the youth successfully completes the program, there is no criminal record. Imprisonment or probation cannot exceed three years.<sup>35</sup> Bills currently under consideration in the Michigan legislature would extend the eligibility age to 25.<sup>36</sup>
- Colloquially known as the “baby DUI law,” Montana statute allows for the courts to sentence people under 21 driving with a blood alcohol content of .02 or more under a separate statute. If sentenced under this law, the young adult would face lesser sanctions (including avoiding mandatory jail time that is part of the more general DUI law), and the offense would not count as a prior conviction.<sup>37</sup>
- Most states allow young adults who entered the juvenile justice system as minors to remain in that system past age 18, with 32 allowing juvenile correctional custody up to age 21 and another 5 states allowing young adults to remain in the juvenile justice system even longer.<sup>38</sup> This broad recognition that many young adults benefit by remaining in the juvenile justice system, as it has

a more rehabilitative focus and allows them to mature and develop skills that will reduce their chances of recidivating.

## Recommendations for a model young adult justice system

The U.S. criminal justice system is decentralized, to the point that its existence as a real system is open for discussion. For that reason, “national” reform really is a matter of localities and states pioneering the way for others to follow. Below are suggestions on possible young adult justice policies and practices that could be adopted by jurisdictions that could be used as models for others:

- **Give courts discretion to process young adults in the juvenile justice system**, which is more rehabilitative and carries fewer collateral consequences than the adult justice system. As mentioned above, most states allow youth who have been adjudicated delinquent as minors to *stay* in the juvenile system until age 21; as those states already supervise 18 - 21 year olds, this change would primarily involve a shift of resources to ramp up the young adult programs already in place.
- **Create separate sentencing within the adult system for young adults** that holds them accountable but also focuses on rehabilitation and reducing recidivism. There may be older young adults, or those who for other reasons the courts may not want to transfer to the juvenile system; for these individuals, a separate sentencing scheme could be more effective in reducing recidivism and improving life outcomes. This might mean shorter (or no) periods of incarceration, mandatory programming, and increased access to education and employment training. Young adults could remain under the supervision/custody of the courts after meeting all the requirements of their sentence, which could allow them to “reach back” if an individual continues to engage in illegal behaviors.
- **Make addressing underlying risks and needs the top priority for justice-involved young adults.** After ruling out normative “risky” adolescent-type behavior, upon arrest assess all young adults for trauma and other mental health issues and substance abuse, and ensure young adults can access appropriate treatment. The 2010 “Fostering Connections” legislation and the Affordable Care Act have given policymakers additional resources and flexibility to address the needs to young adults who are aging out of foster care or are under correctional supervision. Given the strong association between young adult criminal behavior and anti-social peers, expanding the opportunities young adults have to participate in positive alternatives such as work and school would be beneficial. A model young adult mentoring program could also be developed that recognizes the challenges that are unique to this life stage.
- **Increase non-traditional processing for young adults.** These hold the promise of improving outcomes for young adults through reducing the collateral consequences of a conviction and negative impacts of incarceration, and in the case of restorative/participatory justice, can also be more beneficial to victims. One pilot program, “Common Justice,” offers an alternative to the traditional court process for youth and young adults ages 16 - 24 charged with felonies such as assault, robbery, and burglary. Common Justice brings together “people immediately affected by a crime to acknowledge the harm done, address the needs of the harmed party, and agree on sanctions other than incarceration to hold the responsible party accountable. The project, based in Brooklyn, New York, seeks to repair harm, break cycles of violence, and decrease the system’s heavy reliance on incarceration.”<sup>39</sup> While there are a number and variety of restorative and participatory justice programs around the country, developing a protocol for when and how they should be utilized for a young adult population that is based on outcomes data would encourage more jurisdictions to adopt them. The use of other forms of pretrial and pre-arrest diversion, particularly for young adults with mental health and substance abuse disorders, should also be expanded.

- Expand expungement and record sealing for offenses committed by young adults. Given what we know about aging out of crime, as well as the correlation between joblessness and recidivism, it is counterproductive for people who have a conviction record from their late teens or early twenties to continue to face collateral consequences long after they have desisted from crime. Knowing a conviction would be sealed if there were no re-offending would also be an incentive to young adults who may be subjected to extreme economic stress or peer pressure.

Creating a young adult system of justice will be challenging. This is especially true for those young adults who have caused serious harm to individuals and the community. However, given our increased understanding of human development and what may be more effective in reducing crime, and the high human and financial costs of continuing our current policies, the time is right to try something different. We have already begun to reap the benefits of improved juvenile justice systems; let's ensure when young people turn 18, our justice system treats them as the human "works in progress" that they still are.

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- <sup>1</sup> <http://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf> [http://nces.ed.gov/programs/digest/d11/tables/dt11\\_200.asp](http://nces.ed.gov/programs/digest/d11/tables/dt11_200.asp)
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- <sup>4</sup> <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-38>
- <sup>5</sup> “Prisoners in 2011,” Bureau of Justice Statistics, U.S. Department of Justice.
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- <sup>12</sup> [http://www.vera.org/sites/default/files/resources/downloads/Price\\_of\\_Prisons\\_updated\\_version\\_072512.pdf](http://www.vera.org/sites/default/files/resources/downloads/Price_of_Prisons_updated_version_072512.pdf)
- <sup>13</sup> While cost savings are generally only accrued at this amount when a prison or wing of a prison can be completely closed, significant reductions in young adult incarceration could well have that effect.
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- <sup>24</sup> [http://www.nytimes.com/2013/04/23/nyregion/new-york-proposes-raising-minimum-age-for-cigarette-purchases.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/04/23/nyregion/new-york-proposes-raising-minimum-age-for-cigarette-purchases.html?pagewanted=all&_r=0)
- <sup>25</sup> [http://www.npc.umich.edu/publications/policy\\_briefs/brief3/brief3.pdf](http://www.npc.umich.edu/publications/policy_briefs/brief3/brief3.pdf)
- <sup>26</sup> FBI, *ibid*.
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- <sup>32</sup> [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0900-0999/0958/Sections/0958.04.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0958/Sections/0958.04.html)
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- <sup>36</sup> <http://www.legislature.mi.gov/documents/2013-2014/billintroduced/Senate/hm/2013-SIB-0170.htm>; <http://www.legislature.mi.gov/documents/2013-2014/billintroduced/House/hm/2013-HIB-4206.htm>
- <sup>37</sup> <http://data.opi.mt.gov/bills/mca/61/8/61-8-410.htm>
- <sup>38</sup> <http://dyrs.dc.gov/sites/default/files/dc/sites/dyrs/publication/attachments/Effective%20Strategies%20-%20Maximum%20JJ%20Custodial%20Age.pdf>
- <sup>39</sup> <http://www.vera.org/project/common-justice>