

Caught Between Two Systems

Fresh Lifelines for Youth, January 2021

This brief outlines for legislators and administrators how to build on SB 823 to create a more just and effective system that is responsive to the most vulnerable individuals in our community - transition-aged youth - while improving public safety.

Executive Summary

Research overwhelmingly shows that the brain is not fully developed until at least the age of 25, which suggests that 18- to 25-year-olds, usually called transition-aged youth (TAY), are more similar to juveniles than adults when it comes to important cognitive development. In September 2016, Governor Brown approved a senate bill ([SB 1004](#)) that allowed five counties in California to pilot new programs and services for TAY ages 18 to 21 with non-violent felony offenses. This included diverting TAY from adult facilities and placing them at juvenile halls for a brief period before releasing them into the community into a diversion probation program. The pilot offered these counties an opportunity to innovate their approach to responding to the needs of a vulnerable population: TAY caught up in the adult criminal justice system.

As an organization working with youth in the San Francisco Bay Area for more than twenty years, Fresh Lifelines for Youth (FLY) strives to cultivate communities where all kids grow up valued and supported. We believe the SB 1004 pilots are implementing a cutting-edge approach to supporting youth by facilitating a responsive type of justice that has the potential to replace the pipeline to prison with meaningful opportunities for youth to live free, healthy, and productive lives that make stronger, safer, and more vibrant communities for us all.

To support the success of the pilot, FLY partnered with youth to create STAY FLY, a workshop-based program teaching social-emotional learning skills and an understanding of the law for youth participating in the SB 1004 program. From this experience, FLY culled several learnings and practices that could inform the larger body of justice work.

Justice system realignment through the recently passed [SB 823](#) lays the groundwork to reimagine care for youth and is a good first step to a more restorative justice system. In fact, we believe that the insights from SB 1004 can inform the implementation of SB 823 to create a justice system that:

- Aligns to current brain science by including youth up to the age of 25 in the juvenile justice system
- Continues the trend of reducing incarceration and providing community-centered and strength-based care to youth and their families

Context of the Problem

Scientific evidence reveals why alternatives to incarceration for young adults is a policy need. While the justice system considers 18- to 25-year-olds to be adults, neuroscience shows the parts of the brain that control decision-making and risky behaviors do not fully develop until the mid-20s.¹ Given this discrepancy, behavioral scientists and justice reform experts point to the need for a collaborative, restorative model of rehabilitation for TAY. They propose that TAY should be offered alternatives to incarceration at a time when their behavioral patterns are still forming, when they are forming social connections in their communities, and when they are reaching educational milestones.

The impact of incarceration alternatives for TAY are well documented by national and California justice system data. Nationally, TAY treated as adults are 34% more likely to recidivate than those in juvenile systems.² In the state of California, 50% of TAY incarcerated in adult facilities recidivate within three years – pointing to the insufficiency of adult systems to support TAY in staying out of the justice system.³

Our communities become stronger when we design policies that meet the needs of our most vulnerable and marginalized community members.

¹ Sarah-Jayne Blakemore, Cognitive Neuroscience at the Institute of Cognitive Neuroscience, University College London

² 2007, Center of Juvenile and Criminal Justice, <http://www.cjcj.org/news/8176>

³ Office of Juvenile Justice and Delinquency Prevention (OJJDP), <https://ojjdp.ojp.gov/>



DISPARITIES OF JUVENILE INCARCERATION

YOUTH OF COLOR

Nationwide, youth of color are more likely to be incarcerated than their white counterparts. According to a 2015 study by the Burns Institute:

- > Black youth were 5 times as likely
- > Native American youth were 3.1 times as likely
- > Latinx youth were 1.6 times as likely

2017, The W. Haywood Burns Institute, <http://data.burnsinstitute.org/about>

YOUTH WHO IDENTIFY AS LGBTQ/GNCT

In California, 20% of youth in the juvenile justice systems identify as lesbian, gay, bisexual, questioning, gender nonconforming, or transgender (LGBTQ/GNCT) - 12.1% of boys and 51.5% of girls

Irvine, Angela and Aisha Canfield. 2016. *LGBTQ/GNCT Youth in the California Justice System. [Infographic.] Impact Justice, Oakland, CA.*

YOUTH WITH DISABILITIES

According to Colorlines, youth with disabilities enter the juvenile justice system at a rate five times higher than youth who do not have disabilities. Black youth with a disability are particularly vulnerable to juvenile incarceration.

Colorlines. <https://www.colorlines.com/content/infographic-disability-criminality>. Retrieve 28, 2017.

In order to create policy that is responsive to these disparities and the unique needs of individuals involved in the juvenile justice system, we need new policies that move from criminalizing young people toward supporting them while holding the system accountable.

If policy action is not taken to align codes of incarceration and rehabilitation to current brain science, educational, and justice system data, our communities will continue to be ineffectively served and taxpayers must continue to support adult incarceration that is two times more costly than public education.⁴

Policy Alternatives

Incarceration alternatives for TAY exist in myriad configurations across the country including adult diversion, peer courts, and services collaboratively provided with local community-based organizations. From a legislative perspective, these policy precedents propose updated age jurisdiction limits, custodial requirements, and probationary guidelines for justice-involved youth. From an implementation perspective, these policies define requirements for the quality of care provided to youth, the level of involvement of community-based organizations, and the nature of collaboration between stakeholders.

To this end, a new policy approach is needed in California that addresses the scope of changes needed to achieve the outcomes the state and citizens' desire: reducing crime and violence while creating more pathways to success for all community members.

Building on recent legislative changes, this brief proposes a combination of reforms that would help shape further legislation addressing the needs of young adults in California facing undue and unproductive exposure to the adult justice systems. These reforms include the following actions:

1. *Raise the age of juvenile justice jurisdiction to the age of 25.*
2. *Mandate interagency and community collaboration for increased system accountability.*
3. *Shift to home and community-based placements instead of institutions.*
4. *Require a family-centered and strength-based case planning approach.*
5. *Fund evidence-based and promising practices that facilitate individual and community healing.*

As California considers the trade-offs of public safety and costs, a clear solution emerges:

⁴ <https://all4ed.org/press/crime-rates-linked-to-educational-attainment-new-alliance-report-finds/>

creating a more collaborative, strengths-based, and community driven approach to justice. The combination of reforms outlined here represent an approach that distributes costs and responsibilities in a coordinated, outcomes-oriented, and youth- centered model.

Policy Recommendations

Leveraging FLY's two decades of experience in working with youth who are justice-involved and participating in SB 1004, below are our recommendations:

1. Raise the age of juvenile justice jurisdiction to the age of 25.

Brain science tells us that key aspects of brain development tied to decision-making, judgment, and risk taking are not fully developed until the late 20s. Increasing juvenile justice jurisdiction to the age of 25 sets the stage for rehabilitative care that includes skill-building and connection to community resources. This allows youth to make amends, understand the impact of their behavior, and contribute as vital community members. Furthermore youth up to age 25 would have access to record sealing, eliminating added barriers associated with adult felony convictions.

2. Mandate interagency and community collaboration for increased system accountability.

We advocate for coordinated programs that design collaboration into the legislation. With this priority at the outset, public and community stakeholders can each bring their best qualities to the table for youth. Strong collaboration ensures community organizations, juvenile justice systems, families, and youth can combine efforts to support justice involved youth. There is no one person or group responsible and accountable to the wellbeing of our youth - it takes a village.

3. Require a family-centered and strength-based case planning approach.

A strength-based approach believes that youth and their families already have the strengths and resources that can help them thrive. It reframes youth and family challenges to see opportunities and solutions rather than falling into hopelessness.⁵ By applying an asset-based approach to our justice system, our communities would become safer faster because youth and their families would be getting the support that is grounded in their environment, leverages existing personal and community resources,

⁵ Hammond, Wayne. 2010. *Principles of Strength-Based Practice*. Resiliency Initiatives, Calgary, Alberta.

and cultivates their agency for sustained change - a reality that builds on existing strengths as powerful levers of change.

4. Shift to home and community-based placements instead of institutions.

Institutional placement does not rehabilitate youth who are charged with crimes, restore justice to victims, or keep our communities safe. In order to reach these goals, youth must be in the community, learning new behaviors, and connecting to resources. While institutional placement might bring structure for youth, it does not reflect the reality they will return to once their sentence is complete. Therefore, we should keep youth in their homes whenever possible, or in home-like placements within their community with caring, supportive, community-based staff who are trained in [trauma-informed](#) and [strength-based practices](#).

5. Fund evidence-based and promising practices that facilitate individual and community healing.

We must address root causes that perpetuate cycles of victimization in our communities and fund practices that include pro-social activities, civic engagement, strength-based case management, mentoring, and law-related education. When FLY collaborated with Santa Clara County Probation to provide this range of support in response to SB 1004, youth had positive experiences. An iconic example of this was when one youth shared, *“I’m trying to hear people out more. When arguments happen with my family... I try and hear them out before I immediately get angry.”* Well-documented, promising practices produce tangible outcomes when both individuals and communities are engaged through restorative and healing practices.⁶

Summary

Through policy change that enacts the recommendations outlined above, California could continue to transition from a punitive and largely ineffective juvenile justice system to a more humane and just system that seeks to make reparations with the communities that have been harmed by broken aspects of the system, while helping these communities to thrive and continuing to reduce crime. With the passing of SB 823 and the opportunity to continue to

⁶ [Rethinking Justice For Emerging Adults: Spotlight On The Great Lakes Region](#), Karen U. Lindell, Esq. & Katrina L. Goodjoint, Esq. September 2, 2020

build on it, FLY and our young people invite the opportunity to help shape further legislation that supports the needs of transition-aged youth.

Additional Resources

- [STAY FLY Case Study](#)
- [Rethinking Justice for Emerging Adults](#)
- [Transition-Age Youth \(TAY\) Pilot Program Evaluation Report](#)