

# TRANSFORMATIVE JUSTICE: A Developmental Approach to System-Involved Emerging Adults

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## DEFINITIONS

**Emerging Adulthood:** The phase of development between adolescence and adulthood, which encompasses the transition from a child who is dependent on parents or guardians for supervision and guidance, as well as emotional and financial support, into a fully mature, independent adult who engages as a productive and healthy member of society.

**Similar terminology:** “Young adults,” “Transition Age Youth”

Source: Harvard Kennedy School  
[www.hks.harvard.edu/youngadultjustice](http://www.hks.harvard.edu/youngadultjustice)

## INTRODUCTION

Emerging adults, ages 17-24, are a common, distinct and overrepresented population in the adult criminal justice system in Texas, posing challenges to appropriate service delivery for this age group. In 2012, emerging adults made up 10% of the U.S. population but comprised 29% of arrests,<sup>1</sup> and 21% of people admitted into adult prisons across the country.<sup>2</sup> Emerging adults of color are disproportionately incarcerated compared to their white counterparts; in 2012, the rate of incarceration either in state or federal prison, was more than 9 times greater for black males ages 18-19 than for white males of the same age, and nearly 3 times the rate for Hispanic men of the same age.<sup>3</sup> In the same year, black males ages 20-24 were incarcerated at a rate almost 7 times greater than for whites of the same age, and nearly 2.5 times the rate for Hispanic men of the same age.<sup>4</sup>

**Emerging adults make up only 11% of Texans, yet they account for nearly 30% of arrests.**

U.S. Department of Justice,  
Bureau of Justice Statistics (2014)

Emerging adulthood by definition is a transient period of development. Recent advances in neurobiology and psychology research demonstrate that adolescent brain development continues into the mid-twenties, making emerging adults cognitively and emotionally different than older adults in their capacity to regulate their behavior.<sup>5</sup> Studies also show emerging adults are especially susceptible to behavior change, and individualized, community-based interventions structured to address their unique needs can set them on the right path.<sup>6</sup> Without appropriate intervention, however, the unmet needs that contributed to the involvement of emerging adults in the justice system are likely to be exacerbated, resulting in a worsening of emotional and behavioral problems and potentially compromising public safety. Research has demonstrated that institutional confinement grounded in purely punitive principles has little effect on, and may even increase the likelihood of recidivism among emerging adults.<sup>7</sup> Currently, over 75% of justice-involved emerging adults recidivate, the highest short-term recidivism rate of any age group;<sup>8</sup> emerging adults sentenced to a term of probation are revoked at a rate three times higher than older adults.<sup>9</sup> The empirical evidence from the behavioral sciences and the current statistics on the outcomes of justice-involved emerging adults suggest the need for a different response from the justice system.

**Over 75% of justice-involved emerging adults recidivate, the highest short-term recidivism rate of any age group.**

U.S. Department of Justice,  
Bureau of Justice Statistics (2014)

The vast majority of emerging adults who make contact with the criminal justice system can be better served in their communities, where services are cheaper and lead to better outcomes.<sup>10</sup> For this reason, **the intervention model of choice for emerging adults is individualized treatment in the least restrictive community-based setting.**<sup>11</sup> Texas communities, however, often lack appropriately coordinated alternatives to incarceration that divert emerging adults away from the deeper ends of the criminal justice system and into intensive multi-disciplinary services and supports structured to address their unique needs and the factors that contributed to their system involvement. **Given the overrepresentation of emerging adults in the criminal justice system, what can be done in Texas to integrate the justice and health and human services systems to more adequately meet the needs of this population in their home**

**Author’s note:** This report presents the findings of an original literature review using public reports and analyses on the behavioral health and criminal justice systems written by government agencies, advocate organizations, and research institutes. **For more information, please contact:** Alycia Welch, Director of Policy & Planning, [awelch@lsja.org](mailto:awelch@lsja.org).

## communities and reduce the likelihood of their incarceration?

This report identifies the ways in which emerging adults differ from older adults and make them vulnerable justice system involvement, the intervention strategies that provide the best evidence available about what works in responding to justice-involved emerging adults, and ultimately, outlines the key elements of developmentally appropriate interventions that can meet the needs of this age group in their communities to produce positive health and public safety outcomes for all Texans.

### EMERGING ADULTS ARE DIFFERENT

Over the last 15 years, empirical evidence on adolescent development has demonstrated that emerging adults are distinctly different from older adults in three areas, making them vulnerable to criminal behavior<sup>12</sup>:

**Limited self-regulation**, or the ability to control one’s emotions and behavior in the moment in order to achieve longer-term gains.<sup>13</sup> Self-regulation skills are especially weak for adolescents when the situation requires them to suppress a response to an emotional cue<sup>14</sup>;

**Sensitivity to immediate rewards and peer influence** and less consideration of potential costs.<sup>15</sup> This age group inherently values peer approval above many other rewards, and their consequent fear of rejection influences their choices.<sup>16</sup> Simply the presence of peers can influence behavior, accounting for the high rate of emerging adults committing crimes in groups.<sup>17</sup>

**Narrow ability to make decisions requiring future orientation**, including the ability to appreciate long-term consequences, postpone immediate gratification, and resist influences like emotion and peers.<sup>18</sup>

The evidence suggests that these areas are associated with biological immaturity of the brain and with an imbalance of two developing brain systems. The brain system that influences pleasure-seeking and emotional reactivity develops more rapidly than the brain system that supports self-control, meaning emerging adults develop an accelerator long before they can steer and brake.<sup>19</sup> The ability to self-regulate, to develop a greater sense of autonomy, and to appreciate long-term consequences develops as individuals enter full adulthood, making emerging adults distinctly different from older adults.

Based upon this research, the U.S. Supreme Court held in three seminal cases that adolescents have diminished culpability and an increased likelihood of being positively rehabilitated,<sup>20</sup> underscoring the importance of making intervention decisions for this population using the best evidence available about what works in justice system responses.<sup>21</sup>

### WHAT DO JUSTICE-INVOLVED EMERGING ADULTS NEED?

Of course, not all emerging adults are involved with the criminal justice system. Differences among adolescents are characterized not only by their developmental maturation but also in the type and frequency in which they engage in risky behavior.<sup>22</sup> The likelihood of emerging adults engaging in behaviors that may lead to justice system involvement is based largely upon their environment and social influences.<sup>23</sup> Transitioning from an adolescent to an adult worker, parent, spouse, or household leader is a key to desistance from criminal activity;<sup>24</sup> however, the unmet needs of emerging adults in the criminal justice system impede their ability to make a safe and healthy transition into these prosocial roles.

**Emerging adults develop an accelerator long before they can steer and brake.**

Ronald Dahl, MD pediatrician and developmental psychologist

## Unmet health needs

In addition to their still developing brains, emerging adults' involvement with the justice system is also intricately tied to their health outcomes: the majority has at least one diagnosable mental health disorder and is more likely than other age groups to have substance use or co-occurring disorders.<sup>25</sup> Almost 60 percent of people age 24 and younger show symptoms of drug abuse or dependence when they enter prison—the highest of any age bracket.<sup>26</sup> They have also been victims of violent crime and have experienced emotional and physical trauma at a higher rate than any other population.<sup>27</sup> People aged 18-20 and 21-24 experience rates of violent victimization of 33.9 and 26.9 per 100,000 respectively, which is much higher than for the total population (14.9 per 100,000).<sup>28</sup> According to the Substance Abuse and Mental Health Services Administration (SAMHSA), without appropriate evaluation and effective treatment services, individuals with a behavioral health diagnosis are likely to deteriorate, resulting in a worsening of emotional and behavioral problems and an increased likelihood of making contact with law enforcement.

### Justice-Involved Emerging Adults Have Distinct Needs:

- Undiagnosed and untreated mental illness, trauma, and substance use or co-occurring disorders
- Chronic unemployment
- Homelessness and housing insecurity
- History of child protection and foster care system involvement
- Lack of basic academic skills
- Lack of work readiness skills

## Social determinants of health

Compounding these health and developmental factors, justice-involved emerging adults face significant challenges that further increase their risk for justice system-involvement<sup>29</sup>:

- **Chronic unemployment and limited work readiness skills**<sup>30</sup>: The general population of emerging adults has difficulty finding work because most have little or no job experience or vocational skill.<sup>31</sup> This is especially acute for justice-involved emerging adults, who often have less education and a public criminal record, limiting their earning power and their likelihood of establishing successful, conventional lifestyles.<sup>32</sup>
- **Housing instability**: Many emerging adults under justice system supervision lack the stable housing necessary to succeed in the community.<sup>33</sup> Criminal histories further bar individuals from securing safe, supportive housing needed to promote independence.
- **Involvement with the child protection and foster care systems**: Up to two-thirds of youth who are involved with the juvenile justice system are also involved with the child welfare system, and research shows that these youth tend to have higher recidivism rates than youth not involved in both of these systems.<sup>34</sup> Because the maximum age for foster care eligibility in Texas is 21, it is likely that a significant portion of individuals in the adult criminal justice system have current or prior involvement in the child welfare system.<sup>35</sup>
- **Limited basic academic skills**<sup>36</sup>: Justice-involved emerging adults tend to have low education levels (less than two-thirds have their high school diploma) and deficient literacy skills; many qualify for special education services, yet few existing educational programs structured to help individuals recover high school credits or earn a GED attract emerging adults.<sup>37</sup>

### Social Determinants of Health:

The conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life.

Source: World Health Organization  
[http://www.who.int/social\\_determinants/dh\\_definition/en/](http://www.who.int/social_determinants/dh_definition/en/)

In the public health field, these challenges are referred to as the social

determinants of health and are also known as criminogenic risk factors in the criminology field. Social determinants span several social systems, suggesting the need for an integrated approach to comprehensively and simultaneously meeting the needs of emerging adults that focuses on upstream prevention, reducing harm, restoring people to full physical, mental, and social health, and valuing life.

## EXISTING SYSTEMS ARE NOT STRUCTURED TO MEET THESE NEEDS

### Limitations of justice system

The existing punitive approach of sanctioning individuals for an incident of misbehavior has not proven to increase public safety. **Research shows that increased criminal sanctions do not reduce recidivism, especially for emerging adults.**<sup>38</sup> A large longitudinal study of emerging adults convicted of a violent offense age 14–25 found no difference in recidivism rates among comparable youth from imprisonment instead of probation, or from longer terms of imprisonment.<sup>39</sup>

There are several limitations inherent in the existing system that impede the type of integrated decision-making needed to address the multiple and varied needs among justice-involved emerging adults and to promote positive outcomes, including:

- (1) **Lawyers are responsible for behavior change:** Prosecutors are the actors primarily responsible for setting out the “punishment” a person must serve in a criminal case and, as lawyers, prosecutors generally lack substantial training and expertise in behavioral health.<sup>40</sup> As such, prosecutors are not in a good position to identify those who might in fact be good candidates for inclusion in a community-health approach to behavior change. Even when prosecutors see indications of behavioral or cognitive disorders that might suggest that a response other than incarceration is appropriate, they may lack confidence in their observations, causing them to be too conservative in endorsing alternatives.<sup>41</sup>
- (2) **Limited team-based decision making process:** Without formalized programs, prosecutors alone have the responsibility of determining the appropriate disposition of the cases that are presented to them and likewise bear the responsibility for diverting an individual from the traditional path to prison if the person ultimately engages in future criminal activities.<sup>42</sup> Because one actor holds the bulk of the discretion in the justice system decision-making process, there are few access points for integrating public health and social service experts. There are limitations to the team-based decision making process even in jurisdictions that have established formalized “specialty” programs (i.e. specialty courts, specialized probation caseloads, etc.). In the vast majority of existing programs, the staffing team that oversees participants’ progress through these programs are largely comprised of criminal justice stakeholders with the addition of one or two behavioral health experts. The majority of these programs also employ probation officers to provide case management, connecting participants to supports or services and ensuring participants access. Because probation are usually not behavioral health experts with specialized training, case management in these programs relies upon the traditional probation supervision framework of monitoring compliance, rather than incentivizing participant engagement.
- (3) **Limited resources to promote integration:** While many diversion programs have achieved positive results among participants, such programs are not uniformly available and frequently suffer from a shortage of resources.<sup>43</sup> These programs are not given the attention and status of the mission of a prosecutor’s office, which is pursuing and obtaining criminal convictions, and as a result, diversion

programs are not vested with the status of a legitimate, essential component of the criminal justice system and are not provided the resources necessary to achieve participants’ long-term treatment, support and recovery.<sup>44</sup> Without resources, programs lack the operational infrastructure needed to provide evidence-based practices with fidelity.

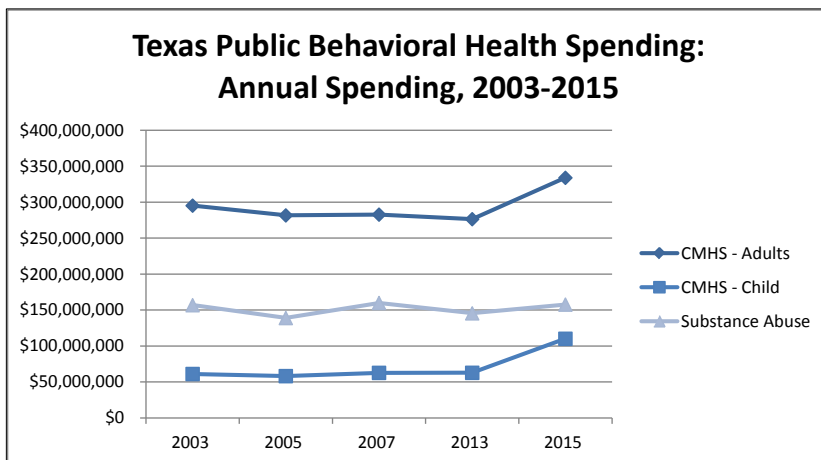
Without integrating behavior change experts into the justice system’s decision-making process, the system will continue to apply traditional punitive responses that exacerbate the factors driving emerging adults’ behavior.

### Limitations of health and social service systems

Changes in a young person’s social environment and increased access to community-based services are both strongly correlated with drops in recidivism and improved health outcomes.<sup>45</sup> However, the existing approach to health and social service delivery creates inefficiencies that impedes the delivery of holistic care required by high-need populations like justice-involved emerging adults.

#### *Siloed service delivery*

The traditional siloed approach to service delivery among health and social service systems in Texas, with their own insular missions, disparate funding streams, and well-defined eligibility criteria, limit the coordination across these service systems to ensure that emerging adults’ co-existing and intersecting needs are being met.



**Figure 1:**

Source: Kaiser Family Foundation. “State Mental Health Agency (SMHA), Per Capita Mental Health Services Expenditures.” 2012.

A visual example of siloing is revealed through the separate line items on the state budget and the differences in the rates at which these services are funded. Mental health and substance use services represent two distinct line items on the Department of State Health Services (DSHS) operating budget, the Texas Legislature has historically funded mental health and substance abuse services at different rates. **Figure 1** shows that between 2003 and 2013, the amount of funding spent on the state’s public behavioral health system remained relatively similar per year.

According to the Center for Public Policy Priorities, in 2013, the 83<sup>rd</sup> Texas Legislature appropriated an additional \$350 million for Fiscal Years 2014 and 2015 than was allotted in the previous biennium.<sup>46</sup> However, funding for adult community mental health services is budgeted to increase at a higher rate (approximately 25%) than funding for substance abuse services (approximately 10%).<sup>47</sup> The different rates at which the state



funds these two service fields is indicative of the behavior health system’s “siloe” funding and operational structure.

The problem with siloe service delivery is that agencies and organizations lose sight of the big picture and often cross-cutting goals, such as reducing recidivism, that require addressing multiple unmet needs. Another consequence of this siloe structure is that health and social service systems lack financial incentives for collaborating to treat their client populations, even for those clients that are known consumers of services in multiple service systems. In recent years, the Texas legislature established financial incentives for integrating local criminal justice systems with local health providers to reduce recidivism.<sup>48</sup> These incentives, however, are limited to two or three systems to collaborate their service delivery to address the needs of a specific subset of the population. General operations funding continues to support a siloe service delivery structure.

### Low utilization rates

Despite the high prevalence of unmet needs, few emerging adults access the care or services required to improve their outcomes. The low utilization rates are a result of systematic barriers to access services, such as the amount of resources appropriated for service delivery.

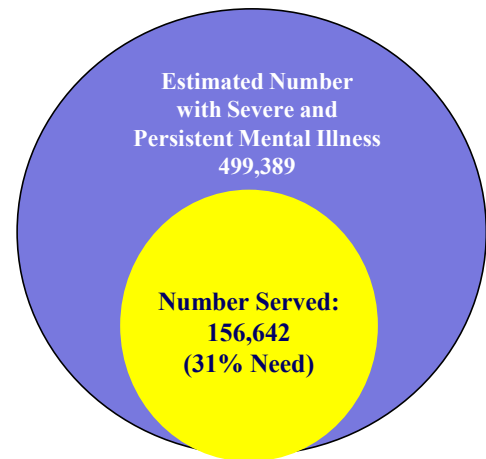
For example, the flat funding level of community behavioral health services between 2003 and 2013, as depicted in **Figure 1**, and an increase in the number of adults needing access to public mental health services over the same period resulted in a reduction in the per capita utilization rate of community behavioral health services.<sup>49</sup> As shown in **Figure 2**, the vast majority of Texans with mental health needs are not receiving community-based treatment.

**According to the state’s Department of State Health Services, in 2015, only 31% of people with a mental health diagnosis who qualified for public mental health services received treatment from the public behavior health system.**<sup>50</sup> Research shows emerging adults are less likely than their younger counterparts to access and use mental health services. Of the total number of individuals receiving outpatient mental health services, 13% were teens, aged 12-17, and 10% were emerging adults.<sup>51</sup> Among those receiving inpatient or residential care, the gap was even greater: 38% of individuals accessing these services were teens and 18% were emerging adults.<sup>52</sup>

Research has shown that stigma and negative beliefs about what it means to access these services, especially mental health care, also contributes to low utilization rates of community services.<sup>53</sup> Emerging adults immature brain development amplifies the effects of stigma due to their limited ability to make reasoned, long-term decisions and the favorability of peer influence over the decisions emerging adults make for themselves.

Other reasons for emerging adults’ low utilization rates include eligibility barriers. For example, many public systems (e.g. education, health care, Medicaid coverage and child welfare) terminate or change conditions of care as youth transition to adulthood, limiting their access to services and networks needed to address their unmet needs.<sup>54</sup> Additionally, a lack of coordination across service systems can

**Figure 2** Source: Texas DSHS (2014) “Presentation to Senate Health and Human Services Committee: Overview Mental Health and Substance Use Services”



**Texas Adult Population (age 18+): 19,207,256**

result in duplication or gaps in services.<sup>55</sup>

Without access to developmentally appropriate services, emerging adults unmet needs are exacerbated, resulting in a worsening of behavioral and emotional conditions and an increased likelihood of justice system involvement.

## Limited social and economic opportunities

Across all measurements of social and economic opportunities for health, Texas ranks worse than the national average, suggesting communities lack opportunities for individuals to achieve positive health outcomes:

- **22% of children live in poverty compared to 20% children across the country.**<sup>56</sup> Poverty limits opportunities for quality housing, safe neighborhoods, healthy food, living wage jobs, and quality education. As poverty and related stress increases, health worsens.
- **19% of residents are uninsured, compared to the national average of 11% of residents.**<sup>57</sup> Health insurance helps individuals and families access primary care, specialists, and emergency care. Individuals without insurance are often diagnosed at later, less treatable stages of disease and at higher costs.
- **The teen birth rate in Texas is almost twice the national rate, 41 and 27 births per 1,000 females, ages 15-19, respectively.**<sup>58</sup> Teenage motherhood is more likely to occur in communities with fewer opportunities for education or jobs. Teen mothers are less likely to complete high school and face challenges to upward economic mobility and their children often have fewer social and economic supports and worse health outcomes.

Limited social and economic opportunities increase the risk of adverse health outcomes and the risk of justice system involvement.

## INNOVATIVE INTERVENTION MODELS

Recognizing the differences between emerging adults and their older adult counterparts, some jurisdictions across the country have attempted to address the developmental needs of justice-involved emerging adults. According to Pew Charitable Trust’s evidence-based policymaking framework, governments should conduct a three-step process to assess existing programs to help determine the most effective method of appropriating resources in support of community health and safety:

- 1) **Program inventories** provide detailed lists of existing interventions provided by all or select government agencies in order to help officials/stakeholders better align resources with needs, avoid duplication, and ensure that services reach the right clients.
- 2) **Program evaluations** reveal that some programs are much more likely than others to achieve desired outcomes. An evidence review categorizes programs by evidence of their effectiveness and enables government leaders to make more informed funding decisions and guide program monitoring and evaluation.
- 3) **Cost-benefit analyses** help policy makers identify, fund, and advocate for interventions likely to generate the highest returns on taxpayer investment.

The challenge for local and state governments in determining the most effective method of promoting

***There is no study reaching conclusions about [existing programs’] results or cost-effectiveness.***

Source:  
Council for State Government



## Existing Intervention

### Methods:

- Young Adult Courts
- Probation and Parole Programs
- District Attorney-led Programs
- Community-based partnerships

emerging adult justice is that existing interventions are either very new or have operated on a small scale, so there is no study reaching conclusions about their results or cost-effectiveness.<sup>59</sup> Most of the existing programs were developed based upon personal interactions with emerging adults and observations and knowledge of the population.<sup>60</sup>

At this early stage in the creation of developmentally appropriate interventions for justice-involved emerging adults, the first stage of Pew’s framework, “program inventories,” could provide the most robust analysis of best practices. Preliminary data tracking the outcomes of existing interventions for this age group demonstrate that the justice system can improve public safety by addressing their unique needs using the following intervention methods:

**Young adult courts:** Modeled on existing drug courts, young adult courts create a collaboration among probation, district attorneys, and defense counsel to provide intensive services and frequent contact through court hearings to monitor participant progress. Some programs provide reduced charges and/or expunge the records of participants that successfully complete the program.

- **Young Adult Court (YAC), San Francisco, California** is structured to improve justice outcomes for young adults charged with a felony offense through the use of community-based services provided through a structure of service phases, a system of sanctions and incentives, intensive case management support, and monitoring participant progress.
- **Project Engage, Austin, Texas**, is a docket created especially for individuals aged 17-19 and charged with a misdemeanor offense. The docket aims to reduce the number of revocations, convictions and jail sentences by providing participants the additional support and structure of regular judicial oversight within a probation terms with maximum supervision and an emphases on school and/or work.
- **Second Chance Community Improvement Program (SCCIP), Dallas, Texas** is a diversion program for young people age 18–25 convicted of non-violent felony offenses. Program participants are required to complete GED, parenting and life skills classes over 6–12 months, and are eligible to have their offense expunged upon completion.
- **Denver Juvenile and District Drug Court, Denver, Colorado** has a special focus on emerging adults involved with the adult criminal justice system. Case managers are trained in adolescent-based development and treatment strategies rooted in the belief that emerging adults cognitively function like adolescents and the court emphasizes non-jail sanctions.<sup>61</sup>
- **Young Adult Drug Court Collaborative, Pasco and Pinellas, Florida** is an interagency effort to tailor a treatment model to the distinct needs of young people age 18-26.<sup>62</sup>
- **Young Adult Court, Bonneville and Jefferson, Idaho** is a specialty court for people aged 18-24. At sentencing, a judge may place a young person on probation while he or she completes the emerging adult court’s program, which lasts for two years and can accommodate 50 people.<sup>63</sup>
- **St. Mary’s Parish Drug Court, Young Adult Program, St. Mary’s, Louisiana** is a drug court for young people age 18-25. The program is designed to employ best-practice strategies to reduce crime and substance abuse among high-risk, high-need emerging adults using evidence-based interventions.<sup>64</sup>
- **Young Persons Track, St. Louis Adult Felony Drug Court, St. Louis, Missouri**, is aimed at young people aged 17-22. The main components of the program’s holistic needs-based approach are alcohol and drug education, counseling and therapy, parenting classes, and employment training

and placement.<sup>65</sup>

- **Young Adult Court, Douglas, Nebraska** is for young people under age 25 charged with a felony. The two-year program involves three phases, during which an array of life-skills classes, counseling, employment assistance, and other supports are available as needed. As participants progress through the program, the sentence is reduced to a misdemeanor. The program supports about 30 participants at a time.<sup>66</sup>
- **Brooklyn Justice Initiatives, Kings, New York**, is a diversion program for emerging adult misdemeanants age 16-22 within the Kings County court system. The program creates an alternative to incarceration involving service-oriented community supervision, including mental health and drug treatment, education, employment and job training.<sup>67</sup>
- **King County Drug Diversion Court, King, Washington**, is a designated emerging adult program for people age 18-25. After 60 days in jail, participants are released to the community, where they must comply with a multi-phase program requiring attainment of long- and short-term goals.<sup>68</sup>

**Probation and parole programs:** Overlapping with young adult specialty courts, probation and parole departments serve as the lead agency, providing case management and referring participants to individualized services. In addition to charges reduced and/or their records expunged, successful completion often results in a decrease in the length of participants' probation supervision terms. Officers serve in a more supportive role, such as surrogate parents, life coaches, teachers or counselors.

- **Intensive Supervision Service (ISS), Columbia, South Carolina** is available for emerging adults with no previous convictions. The program is structured to reduce recidivism, improve family and individual functioning, and ensure community safety. The model employs Intensive Supervision Officers to carry out a community supervision service for participants and an intensive aftercare programs for those who successfully complete the program. Officers identify community resources and services to address individual needs. After two years, only 13.5% of participants return to prison, including for new crimes and technical violations of parole.<sup>69</sup>
- **Young Adult Diversion Program, Kalamazoo, Michigan** is for defendants age 17-20 charged with certain misdemeanors and without prior convictions. Defendants are placed on probation for 6-24 months, and avoid a criminal conviction if they successfully complete the program.<sup>70</sup>

**District Attorney-led programs:** District attorneys are responsible for case management and supervision of participants, offering activities similar to those in emerging adult courts and probation-based programs.

- **Brooklyn Young Adult Initiative** Through the initiative, the King County District Attorney's Office created a dedicated prosecution unit in conjunction with the Brooklyn Young Adult Court. The DA offers participants alternative-sentencing options, including onsite services and referrals to community-based programs offering mental health counseling, drug treatment, education, employment assistance and job training.

**Community-based partnerships:** Community-based partnerships are programs that are managed and operated by community organizations rather than justice system stakeholders. These community organizations offer services to address the needs of participants without the monitoring or supervision of the justice system.

- **Roca, Inc.**, is a nonprofit organization in Massachusetts that works with high-risk young adults age 17-24. Roca developed an intervention model that involves two years of intensive street outreach, educational programming, pre-vocational training, cognitive-behavioral and life skills training, and employment support.<sup>71</sup> The program involves another two years of less intensive, supportive

follow-up.<sup>72</sup> In FY15, Roca served over 650 high-risk young men; 93 percent were not rearrested in that year, and 92 percent had been employed for at least 90 days.<sup>73</sup>

- **UTEC**, also in Massachusetts, employs a similar approach and developed several in-house social enterprises (e.g., a mattress recycling service, food services, woodworking). UTEC established contracts with local hotels and colleges to create employment opportunities for participants in a supportive setting. The social enterprises incentivize positive behavior. Participants that do not comply with program requirements are placed on temporary restrictions from the social enterprise opportunities. In FY17, UTEC served 136 emerging adults ages 17-25; 90 percent of young adults served were not arrested during the year.<sup>74</sup>
- **Avenues for Justice (AFJ)**, is a non-profit, community-based program focused on youth and young adults 21-years-old and younger from the Lower East Side and East Harlem neighborhoods of New York City. AFJ’s intensive crime prevention and court advocacy program is designed to prevent further involvement with the criminal justice system by providing counseling, training, education, and employment assistance to participants. AFJ also refers participants to other community-based employment, education, mental health, and substance use services that could meet their needs. During calendar year 2017, AFJ served 639 youth and young adults. A 2017 program evaluation revealed that among participants enrolled in AFJ during 2013, 79% of all AFJ clients were not arrested in New York State within three years after enrollment and 91% were not incarcerated over the same time period.<sup>75</sup>
- **Common Justice** is a non-profit that operates an alternative-to-incarceration and victim-service program in Brooklyn and the Bronx neighborhoods in New York that is focused on violent felonies in the adult courts. Common Justice’s approach is based in restorative justice principles, and if the survivors of those crimes consent, Common Justice diverts the cases into a process designed to recognize the harm done, honor the needs and interests of those harmed, and develop appropriate responses to hold the responsible party accountable.<sup>76</sup> Survivors and individuals responsible for the violence receive wraparound services structured to meet their individual needs, and individuals responsible for violence are accountable for making things right with survivors by completing mutually agreed upon tasks and activities. They are also responsible for completing a 12 to 15-month intensive violence intervention program.

Importantly, despite health-related needs driving emerging adults’ justice system involvement, none of the existing programs aim to provide a health-based alternative to incarceration for this age group and few have been evaluated by third-parties.

## BEST PRACTICE PRINCIPLES OF INTERVENTION

While comprehensive outcome measures and cost-effectiveness studies on the programs above are unavailable, there are common elements among existing interventions that can provide an understanding of key principles for intervening with emerging adults when they make contact with the adult criminal justice system. These elements align with evidence-based methods for reducing recidivism in community settings<sup>77</sup>:

**Intensive, individualized case management:** individualized services include education or vocational training, mental health and/or substance use recovery services, and assistance with housing and employment. Intensive refers to the level of oversight provided by the lead case manager. Most existing programs required frequent check-ins with program participants to ensure they achieve program goals.<sup>78</sup>

**Importantly, the individual or entity providing case management is a critical variable toward promoting sustainable behavior change.** Research shows that behavior change that is attached to one’s own values and reasons to change will last longer than change that is externally imposed.<sup>79</sup> Interpersonal interactions with service providers trained in specialized cognitive behavior techniques, such as motivational interviewing, play a major role in implementing this principle. Consequently, programs that employ probation or community supervision departments, trained to emphasize compliance monitoring, to serve as case managers may impede participants’ ability to achieve behavior change.<sup>80</sup>

**Risk-Needs-Responsivity structure:** The programs most effective at reducing recidivism conform to the principles of risk, needs and responsivity, informed by the use of validated risk-needs assessment tools that are developmentally tailored to emerging adults.<sup>81</sup> Programs employing the risk principle conduct validated risk assessments and apply service provision and supervision in direct proportion to an individual’s criminogenic risk level, with lower-risk individuals receiving less-intensive interventions and higher-risk individuals receiving interventions of higher intensity.<sup>82</sup> Programs that employ the need principle administer treatment and programming according to individuals’ assessed needs, such as time spent with antisocial peers and truancy.<sup>83</sup> Programs that employ the responsivity principle tailor interventions to an individual’s learning style, level of motivation, abilities, and strengths so that services are delivered in a manner in which youth will be most receptive.<sup>84</sup>

By contrast, the vast majority of existing programs structure their eligibility criteria to include individuals charged with misdemeanor, non-violent offenses and exclude high-risk, high-need individuals, who are often perceived as not “ready” or “motivated” to change their behavior. However, because low-risk individuals often engage positively in the community and demonstrate progress under their own power, programs should instead align with RNR principles by allocating programming, resources and treatment to those at higher risk and likely to reoffend without intervention.<sup>85</sup> Moreover, some individuals living with mental illness or other unmet cognitive needs may not exhibit typical indicators of remorse or may not at the time of arrest appear to be motivated to change.<sup>86</sup>

**Specialized skill training with directed practice:** This evidence-based principle suggests that cognitive-behavioral techniques (CBT) and “social learning” should become a central part of programming.<sup>87</sup> Stakeholders involved in participants’ criminal cases should receive specialized training in areas such as trauma, brain development, moral decision-making, and impulsivity among emerging adults. Training should include methods for employing these techniques beyond the boundaries of treatment to the everyday interaction between case managers, program administrators and participants, allowing staff to identify criminal thinking and antisocial behavior, redirect it, and promote prosocial behavior.<sup>88</sup> All stakeholders should be provided with training in racial justice. “[A]dvancing racial equity is in itself a violence reduction strategy, as it has been widely documented that it is not simple poverty or lack of opportunity but inequity that drives crime and violence.”<sup>89</sup>

**Engage ongoing support in natural communities through restorative justice:** Research shows connecting individuals with prosocial activities in their own community promotes positive behavior,<sup>90</sup> especially for emerging adults, who develop a moral compass calibrated to their environment, witnessing and internalizing the behavior of those around them.<sup>91</sup> In jail, emerging adults are exposed to a social context characterized by isolation, violence, and shame.<sup>92</sup> By contrast, restorative justice and harm reduction initiatives include support networks (i.e. family, friends, loved ones with a stake in the outcome) that bring emerging adults into moral community through accountability to bear the weight of their actions.<sup>93</sup> These initiatives require participants to perform some type of reconciliation with individual victims or with the community. These initiatives should respond to emerging adults’ developmental capacity while holding

them accountable for their behavior.<sup>94</sup> Programs should draw on local services and resources to respond to the needs of participants, promoting a local jurisdiction’s ability to sustain the program over time.

***Incentive-based behavior response system:*** Positive reinforcement coupled with a set of clear boundaries are effective in supporting sustainable behavior change and developing consequential thinking.<sup>95</sup> Existing programs may offer reduced sentencing or probation, expunging criminal records, or a reduction in charges as an incentive for achieving successful program completion. Programs, however, also need to employ a rewards response system throughout program participation in order to incentivize participants to achieve their goals and promote prosocial interactions.<sup>96</sup> In addition to providing emerging adults rewards for positive behavior, intervention programs need to apply consequences for non-compliance that are immediate, causal, proportionate, consistent, and contextualized in community.<sup>97</sup>

***Measure processes and practices and provide outcome feedback:*** Only those interventions that are consistently tracked and evaluated can truly be proven successful, emphasizing the need of programs to collect data on an ongoing basis, conduct rigorous analysis of procedures and outcomes, and regularly manage performance by providing feedback according to evaluation outcomes. Existing programs share the common goal of reducing the likelihood of future justice system involvement among program participants and accordingly rely on recidivism rates as the primary method of measuring the success of the intervention, requiring internal data tracking systems. Programs, however, should track additional measures that evaluate the multitude of factors that lead to justice system involvement, including health outcomes and the social determinants of health.<sup>98</sup>

## RECOMMENDATION: COMMUNITY HEALTH ALTERNATIVE TO INCARCERATION FOR EMERGING ADULTS

Positive community safety and health outcomes for justice-involved emerging adults are associated with integrated program models.<sup>99</sup> These outcomes include reduced criminal activity, fewer emerging adults at all points in the justice system, and improved integration of the justice system and community-based health and human services that promotes the efficient use of public resources.<sup>100</sup>

To achieve these outcomes, local criminal justice systems could consider ***establishing a formal pre-trial diversionary option to the criminal justice system for emerging adults, aged 17-24, charged with a felony offense*** that, in lieu of incarceration, provides participants community-based services through a localized, integrated program structured to support positive life outcomes, improving participants’ health outcomes while simultaneously reducing their criminogenic risk and the likelihood of their continued justice system involvement.

This program should incorporate the best practice principles of intervention reviewed above but also address innovations tailored to a Texas criminal justice system. Key elements to include in this Texas model are:

- ***Panel of experts to inform decision-making:*** Many of the efforts that are necessary to achieve the outcomes of crime, recidivism, victimization and expenditure reduction includes a variety of agencies, organizations, and institutions involved with public health.<sup>101</sup> They encompass treatment for mental health, substance use, and unmet cognitive, intellectual, and physical health needs, as well as federal agencies and organizations, like Medicare and Medicaid, Veterans Affairs, Housing and Urban Development, and many more state and local organizations.<sup>102</sup> Therefore, a formal diversionary option for emerging adults should integrate the expertise of a variety of professionals to identify individuals appropriate for diversion and to develop and implement services structured



to prevent involvement in the deeper ends of the criminal justice system. In place of the current system of prosecutors using their discretion to make diversion decisions according to imprecise criteria and evaluation, the proposed “panel of experts” would be a separate, quasi-independent entity designed and staffed by behavioral health experts and experts from social services (i.e. social workers, psychiatrists, psychologists, and other mental health, addiction, and neurocognitive professionals) that encompass the multitude of social determinants of health.<sup>103</sup> The panel’s recommendations would be advisory, allowing prosecutors to retain discretion over the panel’s recommendations.<sup>104</sup>

- ***Risk-Needs-Responsivity principles and predictive tools:*** Programs should employ risk and needs assessment tools tailored to the unique developmental factors contributing to participants’ behavior to determine program eligibility and the supports and service interventions required of participants. Because risk assessment tools are designed to inform pre-trial release decisions for criminal justice stakeholders, a pretrial services officer or community service provider contracting with local jurisdictions could conduct the assessment and provide the results to justice system stakeholders. These officers or community providers should be specially trained in the unique developmental needs and appropriate intervention techniques for working with emerging adults. Jurisdictions whose juvenile justice departments have already aligned with developmentally appropriate procedures and practices could consider assigning a juvenile probation officer to conduct risk assessments.

Case managers affiliated with a local non-profit community development corporation should conduct a needs assessment tool, ideally pre-indictment to reduce the likelihood of a participant to be compelled to take time served in jail over a more effective community-based intervention.<sup>105</sup> Risk and needs assessments should be the most reliable diagnostic and predictive tool available to stakeholders.<sup>106</sup> The panel of experts would analyze the assessment results and communicate their recommendation for diversion to the criminal justice stakeholders (i.e. prosecutor, judge, etc.). The panelists then use the results to develop an individual care plan, structured with the supports and services needed to achieve the identified goals of behavioral health recovery, the development of prosocial roles and responsibilities, and a reduction in criminogenic risk.

- ***Community-based interventions:*** Because treatment and services are most effective when they are provided in the least-restrictive environment, namely, communities and neighborhoods not jails or prisons, diversion and alternatives to incarceration for emerging adults should be structured through a public health lens that promotes community-based services.<sup>107</sup> Not only are community-based treatment and services for mental illness and substance use preferable from the perspective of behavioral health experts, but it has also been found to be more effective than treatment in an incarceration setting.<sup>108</sup> The panel of experts would be responsible for identifying a set of services and treatments that could meet the needs of participants and recommending those to the justice system stakeholders. The experts would also oversee participants’ progress toward achieving the goals identified in their care plan and recommending adjustments as needed to promote participants’ success in the program. Community-based services to which participants are diverted would also be interdisciplinary and separately funded from prosecuting authorities to ensure that minimizing recidivism remains at the core of their mission.<sup>109</sup> Fully funded programs run by experts in the field using evidence-based programs and practices have the prospect of substantially lowering recidivism rates and improving health outcomes.<sup>110</sup>



- **Prioritize diversion to reduce collateral consequences:** Recognizing that incarceration is an inadequate and often counterproductive tool to transform individuals involved with the criminal justice system or protect those who have been harmed by criminal activity,<sup>111</sup> programs should prioritize diversion for as many participants as possible, offering to expunge the records of those individuals that successfully achieve the desired outcomes and complete the program.<sup>112</sup>
- **Outcome-driven accountability:** Participants should receive incentives that reward them for the milestones achieved and apply consequences through a restorative framework that holds them responsible for their actions and promotes consequential thinking. Incentives and consequences should be consistently applied, following as closely as possible on the heels of an action. They should respond proportionately to participants' actions, teaching causality of participants' actions, and should be contextualized in participants' community in a respectful manner that promotes self-worth.<sup>113</sup> This approach to accountability shifts the focus of the criminal justice response from punishment to addressing the factors that contributed to participants' criminal justice involvement, which may be more effective at reducing future system involvement.<sup>114</sup>
- **Ongoing evaluation:** This process would be coupled with an ongoing program evaluation conducted by a third-party research institute. While recidivism is the primary method of measuring the success of any intervention affiliated with the criminal justice system, it is also important to track the outcomes of factors that moderate criminal behavior, including health outcomes and the impact of social determinants of health such as social bonds, education attainment, and employment.<sup>115</sup> The anticipated outcomes will inform a new definition of public safety, one that is based upon positive life outcomes of justice-involved emerging adults, such as achieving behavioral health goals and obtaining a job, rather than their failures (e.g. rates of arrest, reincarceration, and confinement).

Jurisdictions that employ these research-informed practices may be able to reduce the recidivism rates of justice-involved emerging adults while simultaneously promoting community health and safety.

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<sup>80</sup> Kelly, W.R., et al. *From Retribution to Public Safety*, *supra* note 54 at 146-147.

<sup>81</sup> National Institute of Corrections. “Implementing Evidence-Based Policy and Practice in Community Corrections,” *supra* note 75 at 12-13; *see also*: *see also*: D. A. Andrews and James Bonta, “Rehabilitating Criminal Justice Policy and Practice,” *Psychology, Public Policy, and Law* 16, no. 1 (2010): 39; *see also*: Council for State Governments, “Dos and Don’ts for Reducing Recidivism Among Young Adults in the Justice System.” (Sept. 2017): 1, <https://csgjusticecenter.org/wp-content/uploads/2017/09/Dos-and-Donts-for-Reducing-Recidivism-among-Young-Adults-in-the-Justice-System.pdf>.

[https://www.utcourts.gov/courts/juv/ebp/docs/Rehabilitating\\_criminal\\_justice\\_policy\\_and\\_practice.pdf](https://www.utcourts.gov/courts/juv/ebp/docs/Rehabilitating_criminal_justice_policy_and_practice.pdf), showing that programs that adhere to the Risk-Need-Responsivity (RNR) model have been shown to reduce recidivism by up to 35% among justice system-involved adults.

<sup>82</sup> National Institute of Corrections. “Implementing Evidence-Based Policy and Practice in Community Corrections,” *supra* note 75 at 12-13.

<sup>83</sup> *Ibid*, 13.

<sup>84</sup> *Ibid*, 13.

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<sup>86</sup> Kelly, W.R., et al. *From Retribution to Public Safety*, *supra* note 54 at 134.

<sup>87</sup> *Ibid*, 15.

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<sup>89</sup> Sered, Danielle. “Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration.” New York: Vera Institute of Justice (2017): 28,

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<sup>91</sup> Sered, Danielle. “Fostering Accountability Among Young Adults: Restorative Justice as a Developmentally Targeted Intervention.” Harvard Kennedy School Malcolm Wiener Center for Social Policy (2018),

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<sup>92</sup> *Ibid*.

<sup>93</sup> *Ibid*.

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<sup>100</sup> *Ibid*, 7.

<sup>101</sup> Kelly, W.R., et al. *From Retribution to Public Safety*, *supra* note 54 at 137.

<sup>102</sup> *Ibid*, 137.

<sup>103</sup> *Ibid*, 139.

<sup>104</sup> *Ibid*, 140.

<sup>105</sup> *Ibid*, 141.

<sup>106</sup> *Ibid*, 138-139.

<sup>107</sup> *Ibid*, 138, citing Sedere and Sharfstein, “Fixing the Troubled Mental Health System.” *Huffington Post* (Dec. 6, 2017), [https://www.huffingtonpost.com/lloyd-i-sederer-md/fixing-the-broken-mental-\\_b\\_5973106.html](https://www.huffingtonpost.com/lloyd-i-sederer-md/fixing-the-broken-mental-_b_5973106.html).

<sup>108</sup> *Ibid*, 138, citing Andrews, D.A. and Bonta, J. *The Psychology of Criminal Conduct*. 5 Routledge: New York, NY (2015).

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<https://d3n8a8pro7vnm.cloudfront.net/commonjustice/pages/82/attachments/original/1506608259/accounting-for-violence.pdf?1506608259>.

<sup>112</sup> Kelly, W.R., et al. *From Retribution to Public Safety*, *supra* note 54 at 136-137.

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<sup>114</sup> *Ibid*, 136-137.

<sup>115</sup> *Ibid*, 137; see also: Council for State Governments, "Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems." *Supra* note 24 at 7.

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