Keep Children with Mental Health Challenges out of the Youth Legal System

NATIONAL
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NETWORK

NATIONAL JUVENILE JUSTICE NETWORK

2021 NJJN POLICY PLATFORM

Keep Children with Mental Health Challenges out of the Youth Legal System

FORWARD

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TO SAY THE LAST TWO YEARS have been challenging for most (if not all) of us would be an understatement. We endured a global pandemic that continues, even now, and lost countless friends, family, and loved ones along the way. Our fragile democracy was put to the test in ways we've never seen before, including an attack on the U.S. Capitol. And for a moment, there felt like an opportunity for true reforms to policing as millions rallied in the streets globally demanding accountability. On top of the real-world issues, we've also begun to understand the harm caused by social media at a time when more people than ever have relied on it to stay connected while locked down. All of this is just the tip of the iceberg of our collective trauma since 2020, but we can all understand the impact these challenges have had on our mental health.

As we continue to navigate this ever-evolving world and all the uncertainty, we must consider how children have been forced to respond and adapt to all that they have seen and experienced recently and what more they'll have to face moving forward. How much more can they endure? As resilient as they may be, we can't escape the fact that our children have been through some of the most challenging times in recent history, and it has taken its toll on their mental health—it has taken a toll on all of our mental health.

While adults can exercise a degree of autonomy to take care of themselves, children don't have that luxury. Instead, they rely on family, school counselors, teachers, and other adults to help identify when a child presents with mental health challenges. But, because we've failed to invest in community-based support, affordable health care, appropriate school resources, or address long-standing structural racial inequality in our country, children aren't left with many options.

No child should ever have to enter the youth legal or child welfare system to receive the psychological treatment they need to be at their best. Unfortunately, in this country, the harsh reality is that this is precisely what happens repeatedly, particularly for Black and Brown children, with devastating consequences. Roughly two-thirds of children incarcerated in youth detention or correctional facilities have at least one diagnosable mental health condition. One can only imagine what those children could have achieved if they received adequate mental health support on the front end. Instead, our society only exacerbates mental health issues when we thrust these children into the courtroom rather than investing in many of the solutions we're advocating for in this policy platform.

We must demand better for our children, and we must lead with compassion, science, evidence-based, human-centered approaches to mental health challenges for all children, so they can grow up to be healthy adults. We can make these changes with the proper political will and necessary resources. I hope you take valuable insights from our policy platform and find strength and hope in recommendations we know are effective across the country.

Thank you for continuing on in this fight with us here at NJJN.

K. Ricky Watson, Jr., Esq
Executive Director
National Juvenile Justice Network
November 2021

"Our children have been through some of the most challenging times in recent history."

**K. Ricky Watson, Jr.
Executive Director,
NJJN**

INTRODUCTION

MANY YOUNG PEOPLE NEED A helping hand at some point in their lives. But this hand should not come equipped with handcuffs or a ticket into the youth legal system. Yet this is often what happens in the United States. For far too long, youth legal systems in this country have been the dumping grounds for youth that have mental health challenges.[1] Hundreds of thousands of children are arrested each year in the United States (728,280 in 2018) and thousands are locked up (43,580 held in residential placement on a given night in 2017).[2] It is estimated that two-thirds of these youth in youth detention or correctional facilities have at least one diagnosable mental health issue.[3] Additionally, a New Jersey Parents' Caucus study found that approximately 70 percent of youth committed to adult prisons in New Jersey had a mental health disability prior to incarceration and almost 40 percent of youth had two or more mental health diagnoses.[4]

Why is this happening? In many instances, our mental health and school systems have failed children with too few accessible resources available in the community or schools to help children — particularly children of color.[5] Many parents and caregivers are not aware of the services that exist in their communities as states consistently struggle with improving access to care, particularly in marginalized communities. Additionally, in many states critical mental health care and treatment services for children far outweigh the state's capacity.

Additionally, structural racism has caused a plethora of problems impacting mental health — race-related mental and emotional trauma, generational poverty, violence, and school failure, as well as the segregation of housing and deep inequities in jobs, healthcare, and other resources — all of which promote the criminalization of youth of color.[6] Instead of support, many youth of color with mental health issues are treated as disciplinary problems and suspended from school and/or are shunted into the youth legal system.[7] Entry into the youth legal system often exacerbates a young person's mental health problems as it is a significant source of trauma and stress and adequate diagnosis and treatment is often lacking.[8] Furthermore, once involved in the youth legal system, this increases the likelihood of recidivism, which further harms children's' mental health.[9] Using the youth legal system to solve mental health problems harms youth unnecessarily, often impeding rather than furthering their ability to progress in school and in the workforce. We must do better.

RECOMMENDATION

■ **Children should not be funneled into the youth legal system as a result of mental health challenges. Jurisdictions must adequately resource communities and schools to support children's positive mental health and provide children in need of mental health care with culturally and linguistically responsive, community-based and school-based, trauma-informed, voluntary services rather than criminalizing them.**

> "[The] system is racist and super classist. Money [is] going to policing and not mental health, [so] kids with lower income can't get those resources. [Instead, kids are] funneled into criminal systems."
>
> **A.G., age 17, Justice Education Project**

BACKGROUND

IN DEVELOPING THIS PLATFORM, NJJN helped to convene two focus groups of multicultural young people aged 14 to 18-years-old from different areas of the country to amplify their voices and provide a space for them to speak openly about the mental health system.[10] We have included quotes from them throughout the publication and indicated their ages where available.

I   Lack of Accessible Mental Health Care for Children

We are at an inflection point in this country with the number of children experiencing mental health challenges large and growing.[11] According to the Centers for Disease Control and Prevention (CDC), approximately one in five children (aged three to seventeen) suffer from a mental, emotional, or behavioral challenge in a given year with recent research indicating serious depression worsening in teens.[12] And we know that the pandemic has only worsened mental health for many, with data showing that depression and anxiety has more than tripled since the beginning of the pandemic, disproportionately impacting people of color.[13]

Yet many children and youth are unable to access needed services. Approximately 75 to 80 percent of all children and youth that need mental health services are not receiving them.[14] Black[15] and Hispanic[16] youth are even less likely to receive services. While approximately 31 percent of White children and youth receive mental health services, only 13 percent of children from diverse racial and ethnic backgrounds are estimated to receive mental health services.[17] Research on adolescents with severe mental health challenges found that half of the adolescents never received mental health treatment for their symptoms and that treatment access varied by race and ethnicity; Hispanic and non-Hispanic Black adolescents were less likely to receive services for mood and anxiety issues than White adolescents, even when severely impaired.[18]

The lack of adequate treatment has taken a tremendous toll on youth of color. From 1980 to 1995, the suicide rates for Black children aged 10 to 14 increased 233 percentage points compared to 120 percentage points for non-Hispanic White children.[19] In 2019, the rate of suicide attempts for Black girls in the 9th to 12th grades was 60 percent higher than non-Hispanic White girls in the same age group;[20] Hispanic girls' suicide attempt rate was 30 percent higher than non-Hispanic White girls in the same age group;[21] and Asian American boys' suicide attempt rate was 30 percent higher than non-Hispanic White boys in the same age group.[22] For Indigenous youth, the suicide rate for youth aged 15-19 in 2019 was three times higher than for non-Hispanic White youth in that age range.[23]

Below are some detailed reasons why many youth, and particularly youth of color, are not getting adequate mental health care.

"Having a social worker [to talk to] would really benefit people of color because they have been terrorized by police. [They] would feel a comfort level, safe."

I.R. age 16, Justice Education Project

A. Racism, bias, and cultural competency

The mental health system in the U.S. is "weighted heavily towards non-minority values and culture norms" with many diagnostic screenings designed for White people.[24] For example, many depression screening tests were developed based on studies of middle-class White women so it reflects language relevant to their cultural experiences.[25] Additionally, the vast majority of mental health professionals are non-Hispanic Whites;[26] only 6.2 percent of psychologists, 5.6 percent of advanced-practice psychiatric nurses, 12.6 percent of social workers, and 21.3 percent of psychiatrists are members of minority groups.[27] Thus, it is often hard for youth of color to find psychiatrists and therapists that share their culture or background. Interestingly enough, the DSM-V indicates that care should be given to ensure that the examiner is familiar with aspects of the child or youth's ethnic or cultural background.[28]

When the patient is from a completely different cultural background than the doctor, there is a significant chance that they will miss important symptoms and it impacts the way that they view those symptoms.[29] White therapists may also not understand the trauma related to racism and micro-aggressions that youth of color are experiencing and its impact on their mental health. In fact, research has found that when Black individuals are seen in emergency rooms or in primary care for mental health issues, they are diagnosed less accurately than Whites.[30] Black individuals are also less likely to receive the best available treatments for depression and anxiety than are Whites.[31] In addition, researchers have found even more overt bias against Black people as well as people of limited means. One study's findings suggested that middle-class Whites were more likely to be offered appointments by psychotherapists than were middle class Blacks or working-class people of any race, even when all had insurance that the therapists accepted.[32]

Language barriers can also be a problem for immigrant youth with one study finding that Mexican American and other immigrants had low rates of mental health treatment due to language barriers.[33] In addition, fear of deportation or families being deported is another barrier that may prevent immigrant youth from speaking out about mental health struggles.

B. Shortage of mental health providers

There was already a shortage of psychiatrists and other mental health professionals prior to the pandemic and that is now projected to rise.[34] Two-thirds of all primary care providers in the U.S. report that they are having trouble finding mental health care providers for patients and of the 3,000 counties in the country 60 percent do not have any psychiatrists.[35] A 2016 report projected the supply of workers in selected behavioral health professions to be approximately 250,000 workers short of the demand projections by 2025.[36] Rural areas in particular experience chronic shortages of mental health professionals.[37] And there is a particularly critical shortage of mental health professionals for young people.[38] In an example from North Carolina, 90 out of 100 counties face a severe shortage of child psychiatrists with 64 counties having no child psychiatrists at all.[39]

"[If a young child acts out in school] she needs someone to talk to about her feelings. [A] counselor in school should talk to her."

D., Careers & Sports High School, South Bronx

C.   Lack of affordable care

Affordable mental health care is out of reach for many Americans for a number of reasons. Psychiatrists are much less likely than other types of medical providers to accept any insurance.[40] This makes it difficult for all but the wealthy to afford their high out-of-pocket rates.[41] For example, an average cost for a patient battling severe depression can be over $10,000 a year.[42] In terms of Medicare and private insurance, only a little more than half of psychiatrists accept it, as compared with over 86 percent of other types of medical providers.[43] Only 43 percent of psychiatrists accept Medicaid, compared to 73 percent of other medical providers.[44] This impacts Black and Hispanic youth disproportionately due to the long-standing wealth gap between White families and Black and Hispanic families.[45]

While some therapists do take insurance, research has found persistently lower insurance coverage rates for Black and Hispanic Americans of all ages, hindering their ability to get affordable mental health care.[46] As of 2018, 11.5 percent of Black Americans were uninsured compared to 7.5 percent of White Americans.[47] Additionally Hispanic, Indigenous, and Alaska Natives are 2 ½ times more likely than Whites to be uninsured.[48]

Finally, even with insurance, therapy may still not be covered until a family pays thousands in deductibles first.[49] It also can be difficult to find an in-network provider for mental health services and many plans do not offer out-of-network coverage.[50] In an example from North Carolina, the rate of out-of-network usage of behavioral health office visit services in 2017 was 7.6 times higher than the corresponding rate for medical/surgical services; for outpatient facility services it was 6.9 times higher; and for inpatient facility services it was 9.2 times higher.[51] Once again, putting mental health care out of reach for many young people.

D.   Lack of community-based mental health services

It is estimated that nearly 80 percent of youth in need of mental health services do not receive services in their communities because the existing services are inadequate.[52] Several key elements that could support a strong community-based public mental health delivery system are lacking nationally — there is insufficient use of information technology to support efficiency and quality improvements; weak financing for children's mental health; and a family advocacy network that is largely unstable because they face inadequate and uncertain sources of revenue.[53] Of the small percentage of youth receiving mental health treatment, it is estimated that only 7 percent are receiving a continuum of home mental health services and supports provided in the least-restrictive environment (at home and in the community).[54] Finally, even for those receiving care, research has indicated serious concerns about the ineffectiveness of many of the services provided to children in out-patient mental health settings in the U.S.[55]

"It's not free to get care."

I.R., age 16, Justice Education Project

"It's a taboo topic in my culture— stigmatized. Makes it difficult to ask for help."

F.S., age 18, Justice Education Project

E. Stigma

There continues to be a social stigma attached to mental health which is another factor creating a barrier to mental health treatment for young people. Approximately one-third of Americans report concern over others judging them for seeking mental health services, particularly younger Americans, and over one-fifth have lied to others about seeking mental health care.[56] For many youth of color in particular, there is a stigma around mental illness making it taboo to discuss openly as well as manifesting in the failure of Black and other youth of color to "see mental illness as a physical or physiological health problem."[57] In research on this issue, many Black people interviewed indicated that they would not find discussions about mental illness appropriate even with family members as mild depression or anxiety would be viewed as "crazy" in their social circles.[58] This stigma around mental health can be a significant deterrent to seeking care.[59]

II   Criminalization of Youth of Color

Not all children with mental health challenges are funneled into the youth legal system — it is predominantly youth of color that are treated this way. Mental illness among youth of color often goes undiagnosed or misdiagnosed; when these youth act out, they are perceived as threatening instead of potentially having undiagnosed or untreated symptoms of mental illness.[60] Youth of color are often viewed "as societal threats in need of control, as opposed to ailing children in need of treatment and intervention," leading them to be "funnel[ed]" into the youth legal system.[61] In essence, a two-tiered system has been created where White children often receive private mental health services that keep them from the legal system while youth of color are "treated" in the legal system.[62]

For many youth of color, criminalization occurs at school. There has been an explosion in the use of school-based police officers in schools across the country since the Columbine tragedy in 1999. From 1999 to 2015, the percentage of students who reported security guards or assigned police officers to their schools increased from 54 percent to 70 percent, according to the National Center for Education Statistics (NCES). Six months after the Parkland school shooting, more than $1 billion was added to school security budgets by state legislatures, with funding for SROs being one of the largest items. However, a growing body of research has **not** found evidence that schools with school-based officers are safer.[63] In fact, a recent study found that the rate of deaths in school shootings was actually 2.83 times greater in schools with armed guards present.[64]

Policing in schools has increased the criminalization of children by making it more likely that students will be arrested and referred to the criminal legal system and that students of color will be arrested for low-level offenses.[65] Students with disabilities and students of color are the most frequently arrested; students with disabilities were arrested nationally at 2.9 times the

rate of students without disabilities and Black and Hispanic boys with disabilities accounted for 3 percent of all students but comprised 12 percent of school arrests.[66] Research shows that these disparities in arrests are not a result of differences in student behavior.[67] Rather, it reflects both the biases that lead to the overcriminalization of youth of color and the consequences of a lack of behavioral resources available in schools, leading teachers to request help from police.

The use of school-based police officers, together with zero tolerance policies, which mandate pre-determined and often severe consequences for specific types of student behavior regardless of the consequences or rationale, is driving the "school-to-prison-to-deportation pipeline." This pipeline refers to the situation in which Black, Brown, Indigenous, immigrant, LGBTQIA+ students, and students with disabilities are shunted into the youth legal system by schools.[68] Instead of criminalizing children, we need to focus on providing them with supportive learning environments and school-based mental health resources and supports.

A. Lack of mental health services in schools

While focused on funding for school-based policing, many schools have neglected to provide mental health resources and supports for students. Across the country, there are over 1.5 million students that are attending schools that have a school resource officer (SRO) but **no** school counselor.[69] It is recommended by the American School Counselor Association that schools have at minimum a ratio of 250 students per counselor. Yet the vast majority of students — over 90 percent — attend schools with insufficient counselor to student ratios; the average national student-to-counselor ratio is 444:1.[70]

It would be more effective to focus on mental health responders in schools rather than SROs as behavioral issues in schools are often a symptom of mental health issues.[71] When provided, students are 21 times more likely to seek mental health care at school-based health centers than at community mental health centers. This is especially true in low-income areas with limited resources. Research has found that schools that use school-based mental health providers (SBMH providers) — which includes school counselors, nurses, social workers, and psychologists, have improved their school climate and school safety.[72] It has led to other positive outcomes for students including improved attendance rates, lower rates of suspension and other disciplinary incidents, lower rates of expulsion, improved academic achievement and career preparation, and improved graduation rates.[73]

In a survey of 630 young people by community-based organizations in different parts of the country, most ranked investments in teachers and mental health supports as the highest priorities (33 and 44 percent respectively ranked it as number one); more than three-quarters of students ranked police as the lowest priority (77 percent); and when asked what they would like to see more or better quality of at school, 78 percent selected mental health supports.[74] School resources should be devoted to providing students with the social, emotional, and behavioral support they need.

"Have counselors come into classes and do activities with kids, relax them."

H.B., Justice Education Project

III   The Youth Legal System is Used as the Default Provider for Youth with Mental Health Challenges

When the more appropriate systems for helping children struggling with mental health challenges fail, the police and legal system become the default mental health provider in many communities.[75] Sent into the legal system by schools, officers on the street, and even through 911 calls by parents for help when there are no other available mental health resources, it has become clear to many that "[youth] jails and detention centers are becoming the mental hospitals for the mentally ill adolescent who has committed a delinquent or criminal offense."[76] Some youth are warehoused in the youth legal system even though there are no charges against them because they are waiting in vain for community mental health services that are not available.[77] Once detained, youth with mental health challenges are often locked up for twice as long as other children because of lack of placements for them.[78]

Finally, parents may not realize or be told that their child may be eligible for an in-home behavioral aide or eligible for a home or community-based mental health service through Medicaid. Instead, they may believe and be told that the only way they can receive services is to relinquish custody.[79] In an effort to obtain expensive mental health treatment for children, desperate parents often lacking health insurance have been persuaded to give up custody of their children to the child welfare or youth legal systems.[80]

Criminalizing youth with mental health challenges helps no one — least of all the child. Instead, it creates more trauma and can have lifelong negative effects.

A.   Incarceration is harmful to youth, especially those with mental health challenges

Young people are subjected to dangerous conditions when incarcerated and those dangers have only intensified with the onset of the pandemic. Youth have suffered systemic and recurring maltreatment in juvenile corrections facilities across the country from at least the 1970s to the present.[81] This maltreatment includes widespread physical and sexual abuse, excessive use of force by facility staff, excessive reliance on isolation and restraint, unchecked youth-on-youth violence, and other types of unconstitutional conditions such as the failure to provide required services — including education, health care, and mental health treatment.[82] In addition to the lack of treatment and services, young people with mental health challenges are also negatively impacted by overcrowded conditions, separation from families and other support systems, and the use of solitary confinement in many institutions.[83] Severing children with mental health challenges from their families is particularly devastating as one of the most significant factors for developing a mental illness is the loss of a close relationship.[84] Furthermore, entering the youth legal system is not benign. Whether incarcerated or not, youth can suffer collateral consequences from their legal system involvement that include challenges to re-enrolling in school, difficulty getting into college, barriers to employment, and loss of public housing and other benefits.[85]

"All the kids have cops in their school, not therapists."

Youth from Careers & Sports High School, South Bronx

B. Criminalizing youth exacerbates mental health challenges

Given the harmful conditions incarcerated youth face, it is not surprising that entry into the youth legal system may exacerbate a young person's mental health challenges and increase the likelihood of further criminal legal system involvement.[86] Added to the generally dangerous conditions, there is inconsistency across the different points of the youth legal system in screening, assessing, and treating young people with mental health challenges.[87] The U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP) reported that of youth involved in the youth legal system, only a small percentage of those in need of mental health services are able to access them.[88] Instead, youth detention centers often function as warehouses for children with mental health challenges doing little to treat them.[89] Youth also often receive inadequate services that can further aggravate their condition.[90] Incarcerated youth face over-medication by staff in these facilities who are not equipped to deal with their mental health needs.[91] They also face overly harsh discipline, such as the use of restraints and isolation for long periods of time, as well as being beaten by guards in attempts to control their behavior.[92] As University of Maryland School of Law Professor Susan P. Leviton described, "Horror stories abound, including reports of children shot with stun guns in efforts to control behavior, and even punished for involuntary noises that were symptoms of Tourette's Syndrome."[93]

The inadequate and dangerous treatment in youth facilities can result in devastating consequences. In California, of the youth detention facilities reporting on this issue, 70 percent reported suicide attempts were made by youth being held for mental health issues and 85 percent reported suicide attempts or aggressive behavior by youth waiting for mental health services.[94]

Rather than criminalizing youth with mental health challenges, we need to provide them with treatment outside of the youth legal system and in their communities. As youth mental health policy experts Kathleen R. Skowyra and Joseph J. Cocozza stated, "Family and community-based treatment have been found to be the most effective form of intervention for successfully treating youth with mental health disorders and reducing recidivism, and every attempt should be made to keep youth in their home and community environments while providing a comprehensive array of services that respond to their mental health and related problems."[95]
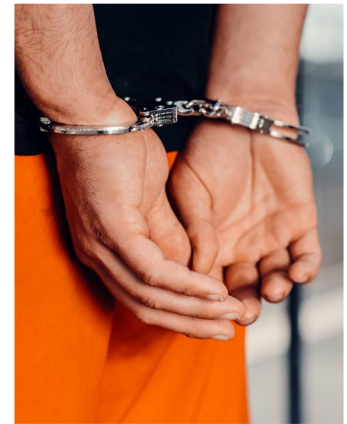
"Harsh penalties have no effect."

F.S., age 18, Justice Education Project

NATIONAL JUVENILE JUSTICE NETWORK

2021 NJJN POLICY PLATFORM
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RECOMMENDATIONS

NJJN's central recommendation is to take a public health lens in addressing the issue of children with mental health challenges rather than focusing on ways to suppress children's behavior through criminalization. This requires a multi-pronged approach that includes the following detailed recommendations:

» FOCUS ON PREVENTION

"People are demonized for mental health issues. A kid will act out and they just get punished and no one looks for the real cause — why the behavior occurred."
A.G., age 17, Justice Education Project

There are a number of ways to work on preventing mental health crises including addressing family needs, early intervention, raising public awareness, and reducing stigma.

Address root causes.

- Invest in addressing the root causes of many youth and family mental health challenges, such as housing insecurity, food insecurity, and employment.

Expand and improve screening and early intervention and treatment.[96]

- Addressing prevention can help to identify Adverse Childhood Experiences (ACEs), or traumatic events that happened in childhood, and provide early treatment to reduce some of the negative effects.

- Consider school-wide screenings or identification processes to address the mental health needs of youth while ensuring resources to meet those needs.[97]

Improve public mental health literacy.

- This can raise public awareness and help to reduce stigma which can further early detection.

PROMISING PROGRAMS AND LEGISLATION

- **In Colorado,** State Rep. Dafna Michaelson Jenet is planning on introducing legislation that would provide every K-12 child with an optional mental health evaluation before they start school.[98]

- **Free Your Feels** is a mental health awareness campaign launched by Georgia's Department of Behavioral Health and Developmental Disabilities and Voices for Georgia's Children along with other partners that encourages young people to stay mentally healthy by exploring and sharing their real feelings. The website provides free educational resources, instant access to mental health professionals, and support for kids and families.

- **Fishers, Indiana** launched a community-wide campaign to raise awareness of mental health challenges in the community and reduce mental health stigma.[99]

- **Black and Brown Minds M.A.T.T.E.R. PYD Group**
Created by Psyches of Color, Inc., founder Dr. Tierra T. Ellis, this is a trauma-informed and culturally relevant positive youth development (PYD) group that works with young people to decrease mental health stigma. It teaches youth how to identify mental health symptoms and ways to cope through group activities, while introducing them to advocacy and self-empowerment. It also incorporates hip-hop culture, Black culture as well as Black and Brown culture.[100]

- **The American Rescue Plan Act of 2021** provides approximately $4 billion in funding for programs supporting the prevention and treatment of mental health and substance use issues.[101] A significant portion of these dollars will be available to states through block grants.

» INVEST IN ACCESSIBLE MENTAL HEALTH SUPPORTS

Jurisdictions must make greater investments in mental health supports that are culturally and linguistically responsive, community-based, trauma-informed, and voluntary. It should address a full continuum of children's mental health needs. Here are some ways to move towards this goal:

Invest in workforce development.

- Build a larger workforce of mental health professionals and peer support through ideas such as the following:[102]

  > Expand financial incentives that include training stipends, tuition assistance, and loan forgiveness.

  > Ensure wages and benefits are commensurate with education, experience, and levels of responsibility to retain the workforce.

  > Launch a comprehensive public relations campaign promoting careers in the mental health field.

- Grow the number and diversity of adolescent mental health care providers, particularly those serving underserved areas and vulnerable groups, such as youth in foster care and detention, through ideas such as the following:[103]

  > Support reimbursement for peer support advisors with lived experience.[104]

  > Implement "grow-your-own" strategies at the state and local level to recruit and develop a diverse workforce, with a priority focus on residents of rural areas, culturally and linguistically diverse populations, persons in recovery, youth, and family members.[105]

Ensure accessibility.

- Ensure community supports are accessible, particularly for those in low-income communities, through addressing issues such as transportation barriers, hours of operation, and technology barriers.[106]

- Fund police-free mobile health response services that are trauma-informed, healing centered, culturally responsive, and developmentally appropriate.[107]

Center impacted communities in developing mental health crisis models and structures for being accountable to them.[108]

Improve insurance coverage.

- Provide universal health coverage and ensure that the Mental Health Parity and Addiction Equity Act (MHPAEA) is fully enforced so that insurers provide full coverage for mental health services at parity with physical health coverage.[109]

Improve data collection.

- Localities and schools should engage in comprehensive data collection disaggregated by race and ethnicity, including ethnic subgroups, to determine gaps in mental health services and to monitor mental health.[110]

» PROMISING PROGRAMS AND LEGISLATION

- Connecticut, Oklahoma, and Oregon all have promising youth mobile health response programs that may be able to serve as models for supporting young people in crisis in other areas of the country.[111]

- To expand access to healthcare, several states have passed telehealth and mental health parity legislation requiring insurers to reimburse for telehealth visits at the same rate as in-person visits. Utah is one of the states to recently pass a law requiring payment parity for telehealth mental health visits.[112]

- Illinois passed the Community Emergency Services and Support Act (C.E.S.S.A. - HB 278482 and SB 2117.83) in August of 2021 to develop a system for responding to individuals requiring mental health services in an equivalent manner to the response already provided to individuals requiring emergency physical health care. It creates an emergency response alternative for mental health crises utilizing Illinois' EMS Regions and limits the use of law enforcement.

- In California, the Community Response Initiative to Strengthen Emergency Systems (C.R.I.S.E.S.) Act (A.B. 118), which was signed into law October 8, 2021, provides funds to create and strengthen community-based alternatives to law enforcement to lessen the reliance on law enforcement as first responders for mental health crises. The

community-based alternatives can include, but are not limited to, mobile crisis response teams or community para-medicine programs. The legislation prioritizes grantees that will serve historically marginalized populations and communities with a demonstrated need for community-based alternatives to law enforcement.

FEDERAL LEGISLATIVE RESPONSES

- The [American Rescue Plan Act of 2021](#), a $1.9 trillion dollar economic stimulus bill, supports the development of mental health mobile crisis support teams by in essence providing a "down payment" for states to set up CAHOOTS-like programs.[113] The new legislation provides a federal matching payment to state Medicaid programs equal to 85% of the cost for community-based mobile crisis intervention services.[114]

  > The Act does not bar coordination with police and does not directly fund the police.[115]

- Through the [American Rescue Plan Act of 2021](#), the federal government appropriated $100 million for behavioral health workforce education and training; $80 million for pediatric mental health care access; and $420 million for expansion of certified community behavioral health clinics.

- The [National Suicide Hotline Designation Act (P.L. 116-172)](#) designates 9-8-8 as the universal telephone number for the purpose of the national suicide and mental health crisis hotline system. It was signed into law in 2020 but the implementation deadline is July 16, 2022. States can use this national hotline to dispatch mobile response and stabilization services as has been done effectively in Oklahoma.[116]

  > Some concerns with this legislation are that it allows states to impose a user fee on callers and the question of what entities will be qualified to serve as legitimate mental health crisis service assistance remains unclear.[117]

  > Legislation to implement 9-8-8 was introduced in 17 states as of May 1, 2021.[118]

- The federal [CAHOOTS Act (S. 764/H.R. 1914)](#) would allow state Medicaid programs to cover certain community-based mobile crisis intervention services for individuals experiencing a mental health or substance-use disorder crisis outside of a facility setting.

» INVEST IN COUNSELING, NOT CRIMINALIZATION IN SCHOOLS

"Schools should provide counselors for kids to talk to about their problems and encourage them to use this resource." A.G., age 17, Justice Education Project

It was clear to the young people in NJJN's focus groups, that when a child acts up in school, a counselor should be available to talk to them and help the child manage their feelings. Yet they commented that most young people have law enforcement in their schools, not counselors or therapists. Our investment in schools needs to be flipped so that we focus on prioritizing investments in our students' mental health and well-being rather than on policing them.

Invest in trauma-informed, culturally responsive schools.

- In a trauma-informed school, there is a culture of respect and support built on a foundation in which (1) the adults in the school community (e.g., administrators, teachers, staff, and parents) know how to recognize and respond to those who have been impacted by traumatic stress and have tools to cope with extreme situations, and (2) the students are provided with clear expectations and communication strategies for managing stressful situations.[119]

- Schools should also explicitly integrate social and emotional learning (SEL) with culturally responsive practices into the core curriculum.[120]

- Ensure all school policies are inclusive, non-punitive, and trauma-informed.[121]

Fund schools to expand mental health providers and supports.

- Adequately resource schools to provide the expert recommended ratio of a minimum of 250 students per school counselor[122] as well as sufficient numbers of other school based mental health providers such as nurses, social workers, and psychologists.

- Hire diverse school-based mental health providers, including counselors, social workers, psychologists, and community mentors.

- Invest in non-traditional health care providers and peer support models.[123]

- Ensure students are actively and authentically engaged in the design and implementation of mental health supports.[124]

- Provide funding for schools to implement restorative justice programs.

> Restorative justice shifts the framework from a focus on punishment towards one of addressing victims' needs and youth accountability for the harm they caused, while also addressing underlying reasons for their behavior.[125]

- Identify and provide supports to youth at higher risk for significant stress or trauma since the onset of the COVID-19 pandemic.[126]
- Establish school-based health centers or community partnerships with health and mental health providers.[127]
- Promote and support parental and family engagement with school mental health programs.[128]
- Provide resources to support student mental health, including stress and anxiety management.[129]
- Provide direct resources for the mental health needs of educators and staff as well.[130]

Remove police from schools and end zero tolerance policies.

- End all federal funding for police in schools.[131]
- Retrain school staff to de-escalate situations and handle disciplinary issues.

- Young people in NJJN's focus groups recommended the following programs from their schools that helped to destigmatize and educate students about mental health:

> A school-based Mental Health Day Fair which included therapy dogs, counselors available to talk to students, stress ball stations, and other activities. It was very popular and helped students to feel that they were in a safe learning environment. [Anna, Justice Education Project]

> A Health Information Project to educate students on mental health, suicide hotline, and sexual harassment. The school also did surveys of the students regarding mental health and how students were feeling. However, the school only has one therapeutic counselor for a 4,000-student school. [Isabella, Justice Education Project]

- Arizona passed SB 1376 in 2021 which will require that all health education instruction in K-12 schools include mental health education and the relationship of physical and mental health.
- Georgia's Apex Program uses a collaborative model between community mental health providers and

schools in order to provide school-based mental health services for children in Pre-Kindergarten through 12th grade throughout the state. It includes training for school staff. The program is funded by the Georgia Department of Behavioral Health and Developmental Disabilities (DBHDD).

- Many jurisdictions — including, recently, Arlington and Charlottesville in Virginia; Denver, Colorado; Madison and Milwaukee in Wisconsin; Minneapolis and St. Paul in Minnesota; Oakland, California; and Portland Maine, have removed police from schools and momentum is growing on this issue.[132]

- Counseling Not Criminalization in Schools Act, S. 2125

> This bill would prohibit using federal funds for school-based law enforcement officers and would establish a grant program to replace officers in schools with staff and services to support mental health and trauma-informed services.

- The American Rescue Plan Act of 2021 allows for a portion of the funding provided to reopen elementary and secondary schools to be used for mental health services and supports.
- Title I, Part A (Title I) of the Elementary and Secondary Education Act, as amended by Every Student Succeeds Act (ESEA), provides financial assistance to schools in which high numbers or percentages of children from low-income families attend.[133] Boosting this funding can help these schools to finance more staff and resources for students' mental health.

» UTILIZE FEDERAL AND STATE LAWS THAT PROTECT CHILDREN WITH DISABILITIES

Several federal and state laws protect children with disabilities, including those with mental health challenges. Some of these laws provide funding to states for implementation and others protect children against discrimination. Fully funding laws such as the Individuals with Disabilities Education Act (IDEA) can help secure assistance for the most vulnerable students.[134]

- The Individuals with Disabilities Education Act =(IDEA) is a federal law that provides a "free appropriate public education" (FAPE) must be made available to children with disabilities and ensures that

special education and related services are provided to those children.[135] IDEA is a grant statute and each state educational agency is responsible for administering and distributing the IDEA funds within the state for special education programs.[136]

- Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), protects youth with physical or mental health disabilities that are in programs or activities receiving federal aid from the U.S. Department of Education.[137] This law also requires school districts to provide a "free appropriate public education" (FAPE) to students within their district that have a qualified disability. Section 504 is an anti-discrimination law so it does not provide funding to states. The Education Department's Office of Civil Rights (OCR) has the administrative authority to enforce Section 504 and individuals can also file private lawsuits against school districts.[138]

- The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability by requiring nondiscriminatory treatment and reasonable accommodations for individuals with disabilities, whether they are physical or mental impairments.[139] Title I of the ADA protects individuals with disabilities from discrimination in the workplace.[140] Title II of the ADA protects individuals from discrimination in state and local government services and programs, including public schools and within the youth legal and adult criminal systems, regardless of whether they receive Federal financial aid.[141] The ADA is an anti-discrimination law so it does not provide funding to states.

  > States and localities may have their own laws to prohibit discrimination. The ADA will override state and local laws if they are weaker than the ADA. However, entities must comply with stronger state and local laws and with all applicable provisions of each law.[142]

- Train police officers on interacting with people with mental health disabilities to facilitate ADA compliance as in the examples below.[143]

  > As a result of settlement agreements with the U.S. Department of Justice, police departments in Seattle, WA and Portland, OR now receive basic training on interacting with people with mental health disabilities.

> The police departments in New Orleans, LA and Portland, OR developed Crisis Intervention Team (CIT) policies encouraging de-escalation, diversion, and coordination with the local mental health agency.

> Portland, OR developed a Behavioral Health Unit of co-responder teams comprised of trained police officers and mental health professionals to divert individuals with mental health needs that frequently call the police.

> Tennessee entered into a settlement agreement with the U.S. Department of Justice that led to the statewide training of police officers on how to interact with people with intellectual and developmental disabilities.

- Develop processes for law enforcement to divert individuals with mental health disabilities from the youth legal system as in the examples below.[144]

  > Due to a settlement agreement with the U.S. Department of Justice, Portland developed a crisis center for law enforcement encountering individuals with mental health disabilities to divert them into the community mental health system. Portland and New Orleans also implemented policies to transport people for mental health treatment using ambulances or other civilian services instead of police cars.

  > In order to meet their responsibilities under the ADA, Delaware entered into a settlement agreement with the U.S. Department of Justice allowing police departments to now refer people with mental health challenges to community-based crisis intervention services.

  > Hinds County, MS entered into a settlement agreement with the U.S. Department of Justice regarding its jail, agreeing to take steps to reduce its jail population, particularly for individuals with mental health disabilities. They enhanced their coordination between the criminal legal system and mental health agencies to try to reduce arrests and detention and connect individuals to mental health services.

- Develop policies that avoid placing incarcerated individuals with mental health disabilities in restrictive housing (solitary confinement) as in the examples below.[145]

  > In response to a settlement with the U.S. Department of Justice, Ohio agreed to reduce the use of isolation for youth with mental health challenges in youth prisons. Initially, they limited the bases for placing youth in isolation and reduced the

time period of isolation. Eventually, they ended the use of disciplinary isolation in their youth facilities.

> Pennsylvania, in response to findings by the U.S. Department of Justice, revised their policies so that individuals with serious mental health or developmental disabilities would be sent to treatment units instead of solitary confinement.

» EDUCATE AND INVOLVE FAMILIES

"It's so important to let teenagers know it's okay to have mental health issues—acknowledge it, tell them it's okay and normal." S.F., age 15, Justice Education Project

There are many barriers that parents face in attaining mental health services and treatment for their children. Identifying a potential mental health challenge can be difficult as it may manifest in challenging behavior that is not immediately recognizable as a mental health issue.[146] Once identified, many parents are unaware of services available to them and it can be difficult for parents to navigate the bureaucratic systems necessary to get the help they need. They also may have insufficient resources to access care and its attendant costs such as transportation costs and loss of work. Parents may also be reluctant due to cultural stigma attached to mental health challenges and past negative experiences as families are often blamed for their child's illness.[147]

Education and training programs for parents can substantially improve parents' abilities to navigate bureaucratic systems and access appropriate care and treatment for their children. The National Juvenile Justice Evaluation Center (NJJEC) highlighted a parent training program of the New Jersey Parents' Caucus for demonstrating decreased involvement of children and youth in the youth legal system, improvements in the utilization of mental health, special education, and developmental disability services, and demonstrated reductions of family involvement in the child welfare system.[148] NJPC's program has been provided to over 3,222 parents of over 5,000 children and youth and represents more than 20,000 parent training hours.[149]

PROMISING PROGRAMS

- The Professional Parent Advocacy Program, developed and delivered by the New Jersey Parents' Caucus' Parents Empowerment Academy, provides parents and caregivers of children with emotional, behavioral, mental health and substance use challenges with education and training on how

to advocate for their children to remain safely at home and community, and receive the services they need.[150]

- Georgia's Free Your Feels campaign is a mental health awareness campaign that provides resources for youth, parents and caregivers, and educators.
- There are promising interventions to improve youth and family engagement with therapeutic services such as training staff to address parents' expectations and concerns and using professional peer family advisors (called family partners) that help to support and train families and to reduce stigma.[151]

» USE TOOLS TO REDUCE CRIMINALIZATION OF CHILDREN

"Kids shouldn't be treated more harshly because of mental health." E., Careers & Sports High School, South Bronx

Revising laws that currently cast a wide net and criminalize children inappropriately can help to prevent children with mental health challenges from being funneled into the youth legal system.

- Remove laws that allow for easy criminalization of normal adolescent behavior such as disorderly conduct, willful defiance, and vulgarity.[152]
- Raise the minimum age of juvenile court jurisdiction

  > Currently, over half the states in the country have **no** minimum age of juvenile court jurisdiction, meaning that children of any age can be prosecuted in juvenile court. By establishing a reasonable minimum age for juvenile court jurisdiction (NJJN recommends age 14, the most common age internationally), this will greatly reduce the number of all young children involved in the youth legal system, thereby reducing the overall number of children with mental health and substance use issues that are prosecuted.

PROMISING LEGISLATION

- In 2018, Massachusetts passed comprehensive legislation (S. 2371) that raised the lower age of juvenile court jurisdiction from age 7 to 12-years-old and decriminalized public order offenses by students in schools.
- California and Utah both passed legislation raising the age of juvenile court jurisdiction to 12 years old though they have some exceptions that are carved out in the statutes.[153]

- South Carolina passed legislation repealing the crime of "disturbing school" for students in the state.[154]

- [Childhood Offenders Rehabilitation and Safety Act of 2021 (H.R. 2908)](#) (Rep. Karen Bass, D-CA) would make a number of improvements to the treatment of youth in the federal youth legal system including raising the age for prosecuting children in the federal system to 12 years old. It would also create a block grant program to encourage collaborative support services for dual-status youth in the child welfare and youth legal systems.

- [Protecting Miranda Rights for Kids Act (H.R. 2834)](#) (Rep. Tony Cárdenas, D-CA) would help to protect young children in the federal youth legal system from criminalization by requiring parents to be notified when a child is arrested and requiring that the child consult with legal counsel before they can waive their Constitutional Rights and be subject to a custodial interrogation.

- [Sara's Law and the Preventing Unfair Sentencing Act of 2021 (H.R. 2858)](#) (Rep. Bruce Westerman, R-AR) would offer mercy and redemption for children given extreme sentences by retroactively ending life without parole sentences for children and protecting child sex crime victims from harsh sentencing when they commit acts of violence against their abusers.

» REMOVE CHILDREN WITH MENTAL HEALTH CHALLENGES FROM THE YOUTH LEGAL SYSTEM

"Should we respond to mental health problems with the police? No — makes it worse."
E, Careers & Sports High School, South Bronx

When children with mental health challenges come into contact with law enforcement or are arrested and/or processed in the youth legal system, early assessment and evaluation can help to identify their needs. Programs and processes should be put in place to divert, or redirect them, out of initial or continued processing in the legal system. As recommended by the Mental Health and Juvenile Justice Collaborative for Change, "[W]henever safe and appropriate, youth with mental health needs should be prevented from entering the juvenile justice system in the first place. For youth who do enter the system, a first option should be to refer them to effective treatment within the community."[155]

- Diverting youth at the earliest possible point (their initial contact with law enforcement) is best as it can help to prevent deeper involvement in the justice system, redirect them to a more appropriate system to better address their underlying needs if necessary, and reduce justice system costs.[156]

- Youth entering the legal system should be promptly screened and where necessary assessed for mental health challenges and diverted out as soon as possible to receive appropriate community-based services.

  > Screening is a way to identify youth with potential mental health challenges and those that may require an immediate response. It can be used with all youth entering the legal system or a facility.[157]

  > Assessment is a more thorough and extensive review of a child to identify specific mental health needs, a possible diagnosis, and to make recommendations for interventions. It is done after the screening process indicates that a fuller investigation of the child is needed.[158]

- In order to improve mental health screening practices, staff doing the screening should be professionally credentialed, use culturally appropriate questions and explanations regarding mental health, receive specific training on mental health interviewing and reasons why youth who are delinquent may be reticent to report mental health concerns, and should be supervised by other licensed professionals.[159]

- The screening and assessment should also include time for staff to discuss and explain the results with the young person, provide information about the diagnosis and any need for treatment, and answer questions.[160]

- Pre-charge restorative justice diversion programs, such as those developed by the non-profit, [Impact Justice](#), allow the person harmed, the responsible youth, family, and community members to come together and discuss what happened and to develop a plan for the young person to make things right by the person harmed, family, community, and themselves.

- Pre-booking diversion, such as the program developed by the [Los Angeles County Office of Youth Diversion and Development (YDD)](#), which connects youth to a comprehensive array of supportive

services based on a public health and youth development framework.[161]

- Provide a community center where police can take youth for mental health services and supports as an alternative to arresting and detaining youth.[162]

- All youth in Pennsylvania detention centers are screened for mental health issues using the Massachusetts Youth Screening Instrument, Version 2 (MAYSI-2).[163]

- To encourage more effective screening, Pennsylvania, Illinois, and Texas have passed laws strengthening a young person's rights against self-incrimination by restricting the use of statements obtained during mental health and substance use screenings.[164]

- Nevada law requires screening for mental health and substance use challenges for youth who are taken into custody and held for a detention hearing.[165]

›› ABOUT NATIONAL JUVENILE JUSTICE NETWORK

The National Juvenile Justice Network leads a membership community of 60 state-based organizations, nearly 80 individuals, and nearly 100 alumni of our Youth Justice Leadership Institute (YJLI) program across 42 states and D.C. We all seek to shrink our youth legal systems and transform the remainder into systems that treat youth and families with dignity and humanity. Our work is premised on the fundamental understanding that our youth legal systems are inextricably bound with the systemic and structural racism that defines our society; as such we seek to change policy and practice through an anti-racist lens by building power with those who are most negatively affected by our youth legal systems, including young people, their families and all people of color. We also recognize that other vulnerable populations — including LGBTQIA+, those with disabilities and mental illness, girls and immigrants — are disparately and negatively impacted by our youth legal systems, and thus we also seek to center their concerns in our policy change work.

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» ENDNOTES

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