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Note

Young Adults Are Different, Too: Why and How We Can Create a Better Justice System for Young People Age 18 to 25

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The new wave of juvenile justice reform has been premised on the notion that “kids are different.”¹ That is, because juveniles are less culpable and more susceptible to rehabilitation than adult offenders, the justice system should treat them differently.²

In most states, however, the notion that “kids are different” stops at age 18, when juvenile jurisdiction ends.³ Meanwhile, the brain development that sets adolescents apart from adults continues into a person’s mid-twenties, meaning that young adults aged 18 to 25⁴ “have

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1. See, e.g., Andrew Cohen, *Kids Are Different: The Sweet Spot in Criminal Justice Reform*, THE MARSHALL PROJECT (Dec. 13, 2014), <https://www.themarshallproject.org/2014/12/12/kids-are-different#.xm1roMKSsw> [<https://perma.cc/G7S7-LKHN>] (citing several examples of reforms consistent with the “kids are different” movement).

2. See NAT’L RESEARCH COUNCIL, NAT’L ACADS., REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 41–45 (2013) (providing an overview of the reasons for the modern trends in juvenile justice reform).

3. See SARAH ALICE BROWN, NAT’L CONFERENCE OF STATE LEGISLATURES, TRENDS IN JUVENILE JUSTICE STATE LEGISLATION 2011-2015, at 5 (2015) (“Forty-one states set the maximum age [of juvenile court jurisdiction] at 17,” and the remainder set it lower, at either 16 or 15).

4. There is no standard definition of “young adult;” this note uses “young adult” to refer to people aged 18 to 25.

more psychosocial similarities to children than to older adults.”⁵ Both young adults and adolescent juveniles are more impulsive than older adults, take more risks, and are less likely to consider the long-term consequences of their actions.⁶ Both have age-associated developmental needs that can be addressed through targeted interventions.⁷ And both are overwhelmingly likely to “age out” of crime as they become more mature.⁸

Despite the similarities between adolescent juveniles and young adults, the latter receive a much different treatment in the adult justice system—a system that is failing young adults, who have the highest recidivism rates of any age group.⁹ Meanwhile, the juvenile justice system has produced better public safety outcomes than the adult system with respect to adolescents. A meta-analysis by the Centers for Disease Control found that trying youth as adults resulted in higher recidivism rates compared with comparable youth who remained in juvenile court.¹⁰

There is a chance to take the lessons of the juvenile system—lots of treatment and programming, age-limited facilities, shorter sentences, and sealed records—and apply them to the developmentally similar young adult population.

States already acknowledge the blurred line between being a juvenile and a young adult. Thirty-six states allow juvenile courts to continue exercising jurisdiction over adjudicated youth until they reach age 21, six states set the limit between age 22 and 25, and three states set no age limit at all.¹¹ Meanwhile, at least 25 states have already established special criminal justice policies within the adult criminal justice system for young adults, such as reduced sentencing options, young adult courts, separate prison facilities, or expunction provisions.¹²

But at most, states’ current approaches to young adult justice are only piecemeal. The next step is to create a more coherent framework for punishing and treating young adult offenders more effectively. This Note

5. Karol V. Mason, *Foreword* to Vincent Schiraldi et. al., *Community-Based Responses to Justice-Involved Young Adults*, NEW THINKING IN COMMUNITY CORRECTIONS, Sept. 2015, at 1, 1.

6. *See infra* Part I.

7. *See infra* Part II.

8. *See infra* Part I.

9. A study by the Bureau of Justice Statistics found that 76 percent of people under age 25 when released were rearrested within three years. *See* MATTHEW R. DUROSE ET AL., BUREAU OF JUSTICE STATISTICS, *RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010*, at 12 tbl.14 (2014).

10. ROBERT HAHN ET AL., *CTRS. FOR DISEASE CONTROL & PREVENTION, EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT JUSTICE SYSTEM* (2007), <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm> [<https://perma.cc/55YA-JNH4>].

11. *Jurisdictional Boundaries*, JUVENILE JUSTICE GEOGRAPHY, POLICY, PRACTICE & STATISTICS, <http://www.jjgps.org/jurisdictional-boundaries> [<https://perma.cc/Y66M-Q6HT>].

12. *See infra* Part III, tbl.1–4.

lays out the case for taking that next step. Parts I and II of this Note review in general terms the scientific bases for young adult justice reform: Part I describes how young adults are developmentally different from older adults, and Part II discusses the distinct set of young adult needs that age-tailored programming can address. Parts III and IV then review the many ways in which states are already poised for broader young adult justice reform: Part III identifies policies that states and counties have already developed for young adults, and Part IV considers possibilities within the juvenile justice system. Finally, Part V provides recommendations for creating a young adult justice system.

I. Developmentally, Young Adults Are More Similar to Adolescent Juveniles Than They Are to Older Adults

Over the last twenty years, research about the development of the adolescent brain has changed the way we treat young people who commit crime.¹³ Put simply, research has confirmed what parents have always known: adolescents have less self-control, are more sensitive to peer pressure and immediate incentives, and have difficulty appreciating the long-term consequences of their behavior.¹⁴ Meanwhile, the adolescent brain is also highly malleable because it is still undergoing massive and profound change.¹⁵

Young people's impulsiveness, risk-seeking, and limited ability to consider consequences reduce their culpability.¹⁶ At the same time, a young person's still-developing brain makes it likely that he will grow out of antisocial behavior patterns and renders him susceptible to rehabilitation.¹⁷ This combination of traits has led courts and policymakers to change the way we treat juvenile offenders.¹⁸

There is no magic birthday at which the adolescent brain reaches maturity; research suggests that adolescent brain development extends into

13. See ASHLEY NELLIS, *A RETURN TO JUSTICE* 78–83 (2016) (discussing how adolescent brain research “chang[ed] the narrative about youth”).

14. NAT'L RESEARCH COUNCIL, *supra* note 2, at 90–100.

15. Psychologist Laurence Steinberg dubbed adolescence an “age of opportunity” because of the adolescent brain's high degree of plasticity. See LAURENCE STEINBERG, *AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE* 21–26 (2014).

16. *E.g.*, *Miller v. Alabama*, 132 S. Ct. 2455, 2464–65 (2012) (reasoning that juveniles' “transient rashness, proclivity for risk, and inability to assess consequences . . . lessened a child's ‘moral culpability’”).

17. *E.g.*, *id.* at 2465 (“[A]s the years go by and neurological development occurs, [it is likely that the juvenile's] ‘deficiencies will be reformed.’” (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010))).

18. *E.g.*, *id.* at 2469 (prohibiting mandatory life without parole for juvenile offenders); see also NELLIS, *supra* note 13, at 83–92 (describing state reforms spurred by new adolescent brain research).

the mid-twenties.¹⁹ As the Massachusetts Institute of Technology's Young Adult Development Project puts it:

‘the rental car companies have it right.’ The brain isn't fully mature at 16, when we are allowed to drive, or at 18, when we are allowed to vote, or at 21, when we are allowed to drink, but closer to 25, when we are allowed to rent a car.²⁰

Crime statistics line up with the brain-development curve. Arrest rates peak in the late teens and early twenties, declining steadily thereafter for all types of crime.²¹ The “age-crime curve” illustrates two things: first, it is common for teens and young adults to break the law; second, it is just as common for teens and young adults to *stop* breaking the law as they reach their late twenties and beyond.²² Only a very small proportion of young offenders—five percent by many estimates—will continue committing crimes into adulthood.²³ According to the National Academy of Sciences, “it is not possible to predict enduring antisocial traits on the basis of risky behavior during adolescence.”²⁴

Meanwhile, research tends to find that increased criminal sanctions do not reduce recidivism.²⁵ This is especially true for young people. A large longitudinal study of serious young offenders aged 14 to 25 found no difference in recidivism rates (among comparable youth) from imprisonment instead of probation, or from longer terms of imprisonment.²⁶ On the other hand, changes in a young person's social environment²⁷ and

19. See, e.g., *Brain Changes*, MASS. INST. OF TECH. YOUNG ADULT DEV. PROJECT, <http://hrweb.mit.edu/worklife/youngadult/brain.html#adolescence> [https://perma.cc/QV6U-C9DC] (summarizing and citing research). But see Laurence Steinberg et al., *Don't Treat Young Adults as Teenagers*, N.Y. TIMES (Apr. 29, 2016), http://www.nytimes.com/2016/05/01/opinion/sunday/dont-treat-young-adults-as-teenagers.html?emc=edit_tnt_20160429&nliid=58688223&intemail0=y&_r=1 [https://perma.cc/ER3H-NXDS] (“[R]esearch on the maturity of young adults (i.e., those between 18 and 21) is at an early stage.”).

20. *Brain Changes*, *supra* note 19.

21. See generally HOWARD N. SNYDER, BUREAU OF JUSTICE STATISTICS, ARRESTS IN THE UNITED STATES, 1990-2010 (2012) (providing arrest-rate data by age for all index crimes).

22. See ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 53 (2008) (“From age seventeen onward, the age-crime curve declines sharply. This steep drop-off in criminal activity reflects the reality that *most* adolescents desist in late adolescence or early adulthood.”).

23. *Id.*; see also NAT'L RESEARCH COUNCIL, *supra* note 2, at 90 (“Only a small percentage of youth who engage in risky experimentation persist in their problem behavior into adulthood.”).

24. NAT'L RESEARCH COUNCIL, *supra* note 2, at 90.

25. See, e.g., David Huizinga & Kimberly L. Henry, *The Effect of Arrest and Justice System Sanctions on Subsequent Behavior: Findings from Longitudinal and Other Studies*, in THE LONG VIEW OF CRIME: A SYNTHESIS OF LONGITUDINAL RESEARCH 220, 250 (Akiva M. Liberman ed., 2008) (in a meta-study of longitudinal deterrence research, making “the observation that increased sanctions also have little effect or result in increased subsequent delinquency”).

26. THOMAS LOUGHRAN ET AL., OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, STUDYING DETERRENCE AMONG HIGH-RISK ADOLESCENTS 6 (2015).

27. Sweeten et al., *Age and the Explanation of Crime, Revisited*, 42 J. OF YOUTH &

community-based services following release²⁸ both strongly correlate with drops in recidivism.

Taken together, this new wave of developmental and criminological research indicates that our justice system should take advantage of the age-crime curve and young adults' susceptibility to rehabilitation. Because most young adults naturally age out of crime, our young adult justice system should minimize the criminogenic effects of incarceration and the lasting stigma of a public criminal record. Moreover, because young adults are especially susceptible to change, our young adult justice system should provide individualized, age-tailored interventions to set them on the right path. Part II reviews the needs that young adult interventions should address.

II. Addressing Young Adults' Distinct Needs Through Age-Tailored Programming

Transitioning from an adolescent to an adult worker, parent, spouse, or household leader is a key to desistance from criminal activity, and it is happening later in life for today's young adults.²⁹ Today's young adults are far more likely than their counterparts fifty years ago to be unmarried and out of work or school.³⁰ In the words of Vincent Schiraldi, formerly the Commissioner of the New York City Probation Department and Director of the D.C. Department of Youth Rehabilitation Services, "it is no exaggeration to say that 22 is the new 16."³¹

The instability that marks modern young adulthood is particularly acute for justice-involved youth. Molly Baldwin, founder of the young adult intervention program Roca, Inc., sums up the position of many of her clients: "[T]hey have aged out of school and most youth services, they are susceptible to pressure by their peers, they are rarely fully engaged in the job market, and usually have not established a family of their own yet."³² These markers of instability correspond with distinct needs that contribute

ADOLESCENTS 921, 931 (2013).

28. CAROL A. SCHUBERT & EDWARD P. MULVEY, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, BEHAVIORAL HEALTH PROBLEMS, TREATMENT, AND OUTCOMES IN SERIOUS YOUTHFUL OFFENDERS 10 (2014).

29. Vincent Schiraldi et al., *Community-Based Responses to Justice-Involved Young Adults*, NEW THINKING IN COMMUNITY CORRECTIONS, Sept. 2015, at 1, 4. ("Life-course criminologists see the transition to the adult roles of worker and householder as key stages on the path to criminal desistance. Steady employment, in the context of a stable family, builds routines in everyday life and develops a stake in conformity that ultimately diverts youth from crime. However, this transition to adulthood has changed in recent decades. Youth in their late teens and early 20s are more detached from the socializing institutions of work and family than in the past.")

30. *Id.* at 4–6.

31. *Id.* at 8.

32. YOTAM ZEIRA & MOLLY BALDWIN, PIONEERS IN YOUNG ADULT JUSTICE: 10 INITIATIVES AND PROGRAMS IMPROVING CRIMINAL JUSTICE FOR YOUNG ADULTS 2 (2016).

to young adults' high recidivism rates.

Education.—Justice-involved young adults tend to have low education levels and deficient literacy skills; many qualify for special education services.³³ Although educational attainment has been shown to reduce recidivism and an array of educational programs exist to help young adults recover high school credits or earn a GED, young adults are difficult to attract to such programs.³⁴

Aging out of youth-service networks.—Although half of young adults live at home and two-thirds receive financial help from parents, foster youth in most states lose all support from the child welfare system when they age out at 18.³⁵ As a result, as many as one-third of emancipated foster youth report becoming homeless after aging out.³⁶ A recent study from the University of Chicago found that by age 24, eighty percent of foster youth had been arrested.³⁷ Meanwhile, emancipated youth lose access to counseling and other support services provided by the child welfare system, and stricter Medicaid rules apply at age 19 that render many young adults ineligible for coverage.³⁸

Employment.—Young adults in general have difficulty finding work because most have little or no job experience or vocational skills.³⁹ For justice-involved young adults, who often have less education and a public criminal record, the challenge is even greater.

Decision making.—According to the Council for State Governments (CSG), “young adults’ immaturity and susceptibility to peer influences makes them [] more prone to engage in [delinquent] behavior.”⁴⁰ Accordingly, CSG recommends cognitive behavioral therapy interventions such as Thinking For A Change, which has been shown to reduce recidivism in adults.⁴¹

33. THE COUNCIL FOR STATE GOV'TS JUSTICE CTR., REDUCING RECIDIVISM AND IMPROVING OTHER OUTCOMES FOR YOUNG ADULTS IN THE JUVENILE AND ADULT CRIMINAL JUSTICE SYSTEMS 4 (2015).

34. *Id.*

35. LAREN EYSTER & SARAH LOONEY OLDMIXON, NAT'L GOVERNORS ASS'N CTR. FOR BEST PRACTICES, ISSUE BRIEF: STATE POLICIES TO HELP YOUTH TRANSITION OUT OF FOSTER CARE 2 (2007).

36. *Id.* at 12.

37. Pam Fessler, *Report: Foster Kids Face Tough Times After Age 18*, NPR (Apr. 7, 2010), <http://www.npr.org/templates/story/story.php?storyId=125594259> [<https://perma.cc/4HTD-33DG>].

38. THE COUNCIL FOR STATE GOV'TS JUSTICE CTR., *supra* note 33, at 5.

39. *See, e.g.*, BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *Labor Force Statistics from the Current Population Survey* (Jan. 6, 2017), <http://www.bls.gov/web/empst/cpseea10.htm> [<https://perma.cc/L4FE-J9MS>] (showing unemployment rates for young adults far exceeding those of older age groups).

40. THE COUNCIL FOR STATE GOV'TS JUSTICE CTR., *supra* note 33, at 3.

41. *Id.*

Transition to Independence.—Additionally, CSG observes that many justice-involved people “lack the stable housing, life skills, and connections to positive peers or adults necessary to succeed in the community,” and that this problem poses a challenge to young adults transitioning to independence.⁴² Accordingly, it is “critical that juvenile and adult criminal justice systems provide services and supports to help young adults prepare for independence and successfully transition to adulthood.”⁴³

Social environment.—Researchers studying the Pathways to Desistance data, which was collected from over 1,300 youth convicted of serious offenses for seven years, found that variables relating to a young person’s social environment explained much of the age-crime curve.⁴⁴ One young person describes the challenge of social pressure this way: “I broke away from all my old friends about the last six or seven months [ago]. Just too much trouble, just had to be done. . . . Just can’t be around them, that’s it ‘cause I’d just pick up drugs again.”⁴⁵

Mental health and substance use.—Justice-involved young adults are likely to suffer from one or more mental health disorder, substance use disorder, or both. Sixty-five to seventy percent of incarcerated juveniles suffer from at least one diagnosable mental health disorder, and 60 percent from three or more.⁴⁶ Almost 60 percent of people aged 24 and younger show symptoms of drug abuse or dependence when they enter prison—the highest rate of any age bracket.⁴⁷

The adult system is not currently equipped to meet these needs effectively. Most young adult offenders are simply warehoused with older adults in prisons or placed on community supervision without the types of age-tailored programming available in the juvenile system. The failure of the adult system to meet young adults’ needs is evident in the sky-high recidivism rates for young adults, whose three-year rearrest rates routinely exceed 75 percent, worse than any other age cohort.⁴⁸

Meanwhile, innovative interventions for young adults have much better public safety records. For example, Roca, Inc. is a nonprofit

42. *Id.* at 5.

43. *Id.*

44. See Sweeten et al., *supra* note 27, at 931 (finding that “49.2% of the crime drop from age 15 to 25 is explained by changes in social learning variables” such as gang membership and association with antisocial peers).

45. MAIRÉAD SEYMOUR, *YOUTH JUSTICE IN CONTEXT: COMMUNITY, COMPLIANCE AND YOUNG PEOPLE* 154 (2013).

46. NAT’L RESEARCH COUNCIL, *supra* note 2, at 84.

47. CHRISTOPHER J. MUMOLA & JENNIFER C. KARBERG, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS: SPECIAL REPORT: DRUG USE AND DEPENDENCE, STATE AND FEDERAL PRISONERS, 2004, at 7 (2006).

48. MATTHEW R. DUROSE ET AL., *supra* note 9, at 12.

organization that has spent two decades working with high-risk young adults aged 17 to 25.⁴⁹ Roca's intervention model involves two years of intensive street outreach, educational programming, pre-vocational training, cognitive-behavioral and life skills training, and employment support.⁵⁰ The program then involves another two years of less intensive, supportive follow-up.⁵¹ In FY15, Roca served over 650 high-risk young men in Massachusetts; 93 percent weren't rearrested in that year, and 92 percent had been employed for at least 90 days.⁵²

Roca and similar programs demonstrate that the justice system can improve public safety by tailoring its response to young adult offenders by treating their particular needs. Part III discusses a number of U.S. states and counties that serve as models for developing age-tailored young adult justice policies within the existing adult criminal justice system.

III. Young Adult Policies in Practice

Treating young adults differently in the justice system is not a new idea in the U.S. or elsewhere. Germany has placed young adults aged 18 to 21 under juvenile jurisdiction since 1953.⁵³ Switzerland allows young adults to be sentenced as juveniles until age 25.⁵⁴ Alabama and Florida have authorized judges to issue more lenient sentences for "youthful offenders" under age 21 since the early 1970s.⁵⁵

In fact, states and counties across the U.S. are already embracing young adult justice with remarkable breadth. Tables 1 through 4 below list examples of the wide range of young adult justice policies already in place, many of which are now decades old.

Although current young adult justice practices take a variety of forms, this Note will focus on the following rough categories: (A) special sentencing options for young adults; (B) young adult courts; (C) separate prison facilities that house only young adults and provide specialized programming and treatment; and (D) expunction and record-sealing laws. As the tables note, these young adult policies tend to apply to young people aged 18 to 21, though some apply as broadly as to people aged 17 to 25.

49. See ZEIRA & BALDWIN, *supra* note 32, at 12 (describing Roca, Inc.'s approach and its results).

50. *Id.*

51. *Our Intervention Model*, ROCA (2016), <http://rocainc.org/what-we-do/roca-works/rocas-intervention-model-for-high-risk-young-people/> [<https://perma.cc/RGF9-PRKU>].

52. ZEIRA & BALDWIN, *supra* note 32, at 12.

53. TRANSITION TO ADULTHOOD, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES 3 (2010).

54. *Id.*

55. *Id.*; ALA. CODE §§ 15-19-1 to -7 (2016); FLA. STAT. §§ 958.011-.15 (2016).

A. *Special Sentencing Options*

At least twelve states (see Table 1 below) have set up a special sentencing option for young adults. Often called a “youthful offender act,” these sentencing statutes typically authorize a judge to suspend a young adult’s sentence and place the youth person either on community supervision or in a rehabilitation-oriented program operated by the department of corrections at a facility designated for young adults.⁵⁶ Upon successful completion of the program, the young adult is eligible to have his sentence reduced, dismissed, or expunged.⁵⁷

Special sentencing options like these allow judges to divert appropriate cases away from the criminogenic influence of adult prison. These policies also allow correctional departments to focus age-tailored rehabilitative resources in a single facility. And finally, these policies allow young adults to earn a chance to avoid the stigma of a conviction.

From an implementation standpoint, these policies are attractive because they do not require much new infrastructure. There are no specialty courts to set up, nor any major adjustments to the capacity or administration of the juvenile system. Most of the work is done by the legislature, which enacts the statute, and the department of corrections, which trains staff on the age-tailored programming and designates facilities for young adults.⁵⁸

In the American Law Institute’s tentative drafts of the updated *Model Penal Code: Sentencing*, the ALI recommends creating a special sentencing provision for young adults aged 16 to 22 that provides for a reduced term in an age-limited facility, and for vacating the conviction after release or discharge.⁵⁹

One particularly promising model is Colorado’s Youthful Offender System (YOS). Colorado established the YOS in 1994 to provide separate facilities and distinctive programming for juveniles aged 14 to 17 sentenced as adults.⁶⁰ In 2009, the YOS was expanded to include young adults aged 18 or 19 at the time of the offense, and younger than 21 at sentencing.⁶¹ To be eligible for the program, teens and young adults must be convicted of a serious or violent felony.⁶²

The YOS is a statutory program. The YOS statute requires that the

56. See, e.g., FLA. STAT. § 958.06.

57. See, e.g., FLA. STAT. §§ 958.11–14.

58. See, e.g., SECURITY AND INSTITUTIONAL MANAGEMENT, *Youthful Offenders Quick Facts*, FLA. DEP’T OF CORR. (1995–1996), <http://www.dc.state.fl.us/pub/annual/9596/youth.html> [<https://perma.cc/BBL4-CLGY>].

59. See MODEL PENAL CODE: SENTENCING, § 6.05 (AM. LAW INST., Tentative Draft No. 2, 2011).

60. MICHELLE LIVENGOOD, COLO. DEP’T OF CORR., *YOUTHFUL OFFENDER SYSTEM FISCAL YEAR 2013*, at 5 (2014).

61. *Id.*

62. COLO. REV. STAT. § 18-1.3-407.5.

young people in the program be housed apart from the rest of the adult population, and sets forth principles such as: “[T]he system should use staff models and mentors to promote within an offender the development of socially accepted attitudes and behaviors.”⁶³ The statute also sets up a multi-phase process that requires distinct periods of reentry preparation and post-release supervision.⁶⁴

Every young person in the YOS works with a progress team to develop an individualized plan based on the person’s needs and goals. Then, during the core YOS phase, the program provides the young person with an array of programming, such as cognitive behavioral therapy, educational services, and therapeutic interventions.⁶⁵

The program’s results for young adults have been promising. First, almost every YOS participant is released with a high school degree, a GED, or at least one professional certification.⁶⁶ Moreover, recidivism rates for YOS participants are low despite the fact that YOS offenders are a high-risk population. Over 75 percent are not charged with a felony within two years following release, and over 80 percent do not return to state prison within three years of release.⁶⁷

It costs Colorado about twice as much to house someone in a YOS unit than in any other state adult prison facility.⁶⁸ The state attributes the higher cost to “the high staff-to-offender ratio and intensive education and treatment services, which results in successful outcomes and a low recidivism rate.”⁶⁹

Table 1 lists thirteen examples in twelve states—including Colorado’s YOS—of special sentencing options within the adult system for young adults.

| <i>Table 1. Special Sentencing Options for Young Adult Offenders</i> | | | |
|--|----------------|--------------------|------------------|
| State | Statute | Description | Enactment |
| | | | |

63. COLO. REV. STAT. § 18-1.3-407(3)(c).

64. COLO. REV. STAT. § 18-1.3-407(3.3).

65. MICHELLE LIVENGOOD, *supra* note 60, at 8–18.

66. *Id.* at 15.

67. *Recidivism*, COLO. DIV. OF CRIMINAL JUSTICE DEP’T OF PUB. SAFETY (2016), <https://www.colorado.gov/pacific/dcj-ors/recidivism> [<https://perma.cc/BB9P-NJ2W>] (three-year return-to-prison rates); GERMAINE MIERA ET AL., EVALUATION OF THE YOUTHFUL OFFENDER SYSTEM (YOS) IN COLORADO: A REPORT OF FINDINGS PER 18-1.3-407, C.R.S. 43 (Dec. 2014) (two-year felony reconviction rates).

68. *Colorado Department of Corrections: Cost Per Offender by Facility: FY 2013-2014*, <http://www2.cde.state.co.us/artemis/crserials/cr132internet/cr13220132014internet.pdf> [<https://perma.cc/67E4-36QE>].

69. MICHELLE LIVENGOOD, *supra* note 60, at 31.

| | | | |
|----|--|--|------|
| AL | ALA. CODE § 15-19-1 through 15-19-7 | <p>“Youthful Offenders.” Applies to persons younger than 21⁷⁰ charged with crimes of moral turpitude or subject to more than one year of imprisonment.</p> <p>A court may direct that the defendant be arraigned as a “youthful offender.” The defendant must agree to being tried in a separate proceeding before a judge. If the court adjudicates the defendant for a felony, it shall suspend his sentence and place him on probation for up to three years, and may impose a fine.</p> <p>The adjudication shall not be treated as a criminal conviction—though it can be considered in subsequent criminal proceedings—and cannot disqualify the young person for public employment or licensing. The records of the adjudication are sealed.</p> | 1971 |
| CO | COLO. REV. STAT. § 18-1.3-407 through 18-1.3-407.5 | <p>“Youthful Offender System” (YOS). Applies to young people convicted of a crime of violence⁷¹ before age 21.</p> <p>A court may sentence the young person to the YOS for a two-to-seven-year term that includes a mandatory community supervision component at the term’s end. The YOS facility is a separate complex in which the state deploys a range of core programming, treatment services, and educational and prevocational programs. There is no</p> | 2009 |

70. ALA. CODE § 15-19-1 limits eligibility to “[a] person charged with a crime which was committed in his or her minority,” and the Alabama Supreme Court later held that “minority” meant persons younger than 21. *See Raines v. State*, 317 So.2d 559, 561 (1975) (“The Youthful Offender Act is intended to extricate persons below twenty-one years of age from the harshness of criminal prosecution and conviction.”).

71. Certain eligibility restrictions apply; for example, young people convicted of certain high-grade felonies or sex offenses are ineligible. COLO. REV. STAT. § 18-1.3-407.5(2)(a).

| | | | |
|----|--------------------------------------|--|------|
| | | special expunction or sealing provision. | |
| FL | FLA. STAT. § 958.01 1 through 958.15 | <p>“Florida Youthful Offender Act.” Applies to young people convicted of a non-capital, non-life felony before age 21.</p> <p>A court may withhold adjudication of guilt and sentence the young person as a “youthful offender” to up to six years of probation or imprisonment in a secure facility, or a split sentence. The department of corrections (DOC) can classify a prisoner younger than 25 as a youthful offender.</p> <p>Youthful offenders are housed in separate facilities, where they are provided educational, vocational, and rehabilitative programming. Some youthful offenders are enrolled in a boot-camp program. There is no special expunction or sealing provision.</p> | 1978 |
| GA | GA. CODE § 42-7-1 through 42-7-9 | <p>“Georgia Youthful Offender Act of 1972.” Applies to young people aged 17 to 25.</p> <p>A court may recommend in its sentence that the young person be sentenced to one of several designated facilities oriented toward the treatment and rehabilitation of young people. The DOC determines whether to accept the court’s recommendation. Georgia provides for expunction of misdemeanors under a different provision (see below).</p> | 1972 |
| HI | HAW. REV. STAT. § 706- | “Young Adult Defendants.” Applies to young people who committed their offense before age 22. | 1972 |

| | | | |
|----|--|---|--------------------|
| | 667 | A court may commit a young person sentenced to more than 30-days' imprisonment to the department of social services and housing for special correctional and rehabilitative treatment designed to meet the needs of young adults. The maximum term shall be eight years for a class A felony, five years for a class B felony, and four years for a class C felony. The minimum term shall be set by the parole authority. There is no special expunction or sealing provision. | |
| IN | IND. CODE § 11-14-1-1 through 11-14-4-4 | <p>“Boot Camp for Youthful Offenders.” Applies to young people under age 21 who received a maximum sentence of less than eight years.</p> <p>Creates a boot camp to accommodate 100–120 young people. A court may sentence a young person to the program, which lasts for up to 120 days. Upon successful completion of the boot camp program, the court shall suspend the sentence and place the young person on probation. There is no special expunction or sealing provision.</p> | 1990 |
| MI | MICH. COMP. LAWS § 762.11 through 726.15 | <p>“Holmes Youthful Trainee Act” (HYTA). Applies to young people aged 17 to 23.</p> <p>A court may assign a defendant to HYTA status if the defendant pleads guilty to an eligible offense (ineligible offenses include certain sex, drug, and other serious offenses). If the defendant is 21 or older, the prosecutor</p> | 1993 ⁷² |

72. See Pub. Act 31, 98th Leg., Reg. Sess. (Mich. 2015) (codified at MICH. COMP. LAWS ANN. § 762.11 (West 2016)) (amending the HYTA statute in 2015 to increase the upper age limit from 20 to 23).

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| | | <p>must agree. The court may order the young person to maintain employment or enroll in school.</p> <p>The court does not enter a judgment, and the record is sealed. Depending on the offense, the young person may be incarcerated for up to two years or placed on probation for up to three years. If the young person successfully completes his HYTA sentence, the charges will be dismissed. Once dismissed, the record can be set aside (expunged).</p> | |
| NJ | N.J. STAT. ANN. § 2C:43-5 | <p>“Young Adult Offenders.” Applies to young people under age 26 at sentencing. Certain offenses subject to mandatory minimum sentences are ineligible, as are defendants with certain prior convictions.</p> <p>A court may sentence a young adult to an indeterminate sentence in an age-limited facility not to exceed five years (absent a good-cause showing in favor of a longer sentence). There is no special expunction or sealing provision.</p> | 1978 |
| OK | OKLA. STAT. tit. 22, § 996 through 996.3 | <p>“Delayed Sentencing Program for Young Adults” (DSPYA). Applies to young people convicted of a nonviolent felony aged 18 to 21 at sentencing. Defendants with certain prior convictions are ineligible.</p> <p>For eligible defendants, the court shall delay sentencing for 180 days to one year upon a conviction or plea. During that time, the defendant is under the custody of the DOC, either in confinement or on probation. The DSPYA program is designed to</p> | 1987 |

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| | | <p>“provide a structured environment of intense confinement, supervision, treatment, discipline, and vocational or educational components designed specifically for the offender.” After completion of the program, the court may suspend or dismiss the case. Once dismissed, the record can be expunged.</p> | |
| SC | <p>S.C. CODE ANN. § 24-19-10 through 24-19-160</p> | <p>“Youthful Offender Act.” Applies to young people aged 17 to 25 at the time of conviction for a nonviolent offense Class D felony or below, and punishable by no more than 15 years’ imprisonment.</p> <p>A court may suspend an eligible young person’s sentence and place him on probation, or give the young person an indeterminate sentence not to exceed six years. Young people sentenced under the act must “undergo treatment” in minimum-security facilities and be separated from other inmates. The DOC has discretion to release the young person early. Five years after completing a Youthful Offender sentence, the young person can petition to have his record expunged.</p> | 1962 |
| SC | <p>S.C. CODE ANN. § 24-13-1310 through 24-13-30</p> | <p>“Shock Incarceration Program.” Applies to young people aged 17 to 29 who have not been previously incarcerated or convicted of a violent crime.</p> <p>A court may sentence an eligible young person to the Shock Incarceration Program, a 90-day sentence of incarceration, during which the DOC “provides rigorous physical activity, intensive regimentation, and discipline and</p> | 1990 |

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| | | rehabilitation therapy and programming.” Upon completion, the young person must be paroled. There is no special expunction or sealing provision. | |
| VA | VA. CODE ANN. § 19.2- 311 through 19.2.316 | <p>“Youthful Offender Program” or “Indeterminate Commitment.” Applies to young people under age 21 at the time of offense, who have no prior convictions, and are not convicted of murder.</p> <p>A judge may suspend an eligible young person’s sentence and commit him to an indeterminate sentence of up to four years in a facility designated for youthful offenders. The DOC may release the young person before four years upon completion of the program and upon certification that his release is “compatible with the interests of society.” Upon release, the young person is subject to at least one and a half years of parole.</p> | 1975 |
| WV | W. VA. CODE § 25-4-1 through 25-4-12 | <p>“Centers for Housing of Young Adult Offenders.” Applies to young adults aged 18 to 25.</p> <p>The court may suspend the young person’s sentence and commit him to a designated facility for young adults for six months to two years. Upon successful completion of the facility’s training program, the young person is released and sentenced to probation. Some young adult offenders are eligible for expunction under a separate provision.</p> | 1955 |

B. *Young Adult Courts*

At least thirteen counties in eleven different states (see Table 2 below) have set up young adult courts, which are special accountability courts for young adult offenders akin to drug or mental-health courts.

Creating a specialty court for young adults would allow court staff to develop expertise in identifying young adult offenders' risks and needs. It would also provide judges with more tools for crafting an individualized sentence. Like drug courts, young adult courts set up diversion programs that pair supervision with an array of community-based services such as education, vocational training, cognitive behavioral therapy, substance-use treatment, and more.

Where specialty courts have been created, they have tended to be collaborations between the county court system, the district attorney's office, the probation department, the local mental-health agency, and community-based service providers.⁷³

Because young adult courts are either very new or have operated on a small scale, there is no study reaching conclusions about their results or cost-effectiveness.⁷⁴ Nonetheless, experts recommend young adult courts as a means of effectively responding to young adult offending. In 2014, the National Institute for Justice Study Group on the Transition from Juvenile Delinquency to Adult Crime published several reports and recommendations by criminologists, psychologists, and other scholars. Among the study group's recommendations for addressing young adult offending was to establish specialty courts for young people aged 18 to 24, with the expectation "that these special courts would decrease recidivism and decrease incarceration, and consequently save taxpayer money."⁷⁵

The potential for young adult courts is encouraged by the promising results of other specialty problem-solving courts. In 2011, the Urban Institute published a national study of 29 drug courts in eight states, using results from more than 1,700 offenders. The study concluded that drug courts reduced crime, reduced relapse, improved other outcomes like employment, and saved \$2 for every \$1 invested.⁷⁶ In 2013, West Virginia's

73. See *infra* Table 2 and accompanying notes 81, 89.

74. For example, the Douglas County, Nebraska young adult court has been operating since 2004, and one study attempted to undertake a close analysis of its effectiveness in 2012. However, because the sample size of its participants from 2007–11 was so small (only 31 subjects at the most general level of analysis), the study could not draw many conclusions. See generally UNIV. OF NEB. PUB. POLICY CTR., EVALUATION OF NEBRASKA'S PROBLEM-SOLVING COURTS (Mar. 2012), <https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/reports/courts/drug-court-report-final-report.pdf> [<https://perma.cc/Z39G-R5LE>].

75. ROLF LOEBER ET AL., BULLETIN 1: FROM JUVENILE DELINQUENCY TO YOUNG ADULT OFFENDING (STUDY GROUP ON THE TRANSITIONS BETWEEN JUVENILE DELINQUENCY AND ADULT CRIME) 21 (July 2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/242931.pdf> [<https://perma.cc/U2KE-BPRM>].

76. SHELLI B. ROSSMAN ET AL., THE MULTI-SITE ADULT DRUG COURT EVALUATION:

drug courts saved the state \$20 million by diverting offenders away from prison at the cost of only \$3 million.⁷⁷

Because the young adult court is a collaborative effort, counties are encouraged to plan for implantation through an interagency working group. Before San Francisco opened its young adult court in August 2015, it had been planning its implementation for a full year through a working group.⁷⁸ The working group involved a number of the stakeholders that are now collaborators for the young adult court: the Superior Court; District Attorney; Public Defender; Department of Public Health; Adult Probation Department; Department of Children, Youth and their Families; Police Department; and Family Service Agency.⁷⁹

One particularly promising model is the Brooklyn Justice Initiatives (BJI). The BJI includes a diversion program operating out of the Kings County Criminal Court for misdemeanor defendants aged 16 to 24.⁸⁰ The BJI provides alternative sentencing options such as referrals to community-based services including mental health and substance use treatment, education, and employment and housing support.⁸¹ The BJI is staffed by social workers and case managers, and represents a collaboration between the county court, the mayor's office, and several nonprofits.⁸² The program served more than 800 people in its first year.⁸³

Table 2 lists thirteen examples in eleven states—including the BJI—of young adult courts.

EXECUTIVE SUMMARY 5, 8 (2011),
http://www.courtinnovation.org/sites/default/files/documents/MADCE_ES.pdf
[\[https://perma.cc/85ZR-XXCZ\]](https://perma.cc/85ZR-XXCZ).

77. Linda Harris, *Drug Courts Help Offenders and Create State Savings*, ST. J. (June 1, 2014), <http://www.statejournal.com/story/25415579/drug-courts-help-offenders-and-create-state-savings> [<https://perma.cc/23AJ-5EBF>].

78. See S.F. Sentencing Comm'n, *Agenda & Minutes: Meeting of December 18, 2014*, CITY & COUNTY OF S.F. DISTRICT ATT'Y 4 (Dec. 2014), http://sfdistrictattorney.org/sites/default/files/FileCenter/Documents/231-Full%20Sentencing%20Commission%20Agenda%20%26%20Materials%202_25_15.pdf [<https://perma.cc/XJ47-P5D9>].

79. *Young Adult Court*, SUPERIOR CT. OF CAL., COUNTY OF S.F. (2016), <http://www.sfsuperiorcourt.org/divisions/collaborative/yac> [<https://perma.cc/9W6P-Y6X4>].

80. CTR. FOR COURT INNOVATION, *BROOKLYN JUSTICE INITIATIVES 1* (2015), http://www.courtinnovation.org/sites/default/files/documents/BJI.May_.2015.pdf [<https://perma.cc/A2H6-NRX5>].

81. *Id.*

82. *Id.*

83. *Brooklyn Justice Initiatives*, CTR. FOR COURT INNOVATION, <http://www.courtinnovation.org/project/brooklyn-justice-initiatives> [<https://perma.cc/RQ2G-H554>].

| <i>Table 2. Young Adult Court and Diversion Programs</i> | | | |
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| County | State | Description | Year Begun |
| San Francisco | CA | Young adult court for people aged 18 to 25. Pilot program serving 60–80 defendants per year. Collaboration between the court system, the district attorney’s office, the public defender, the adult probation department, youth services, public health services, and the police. Eligible offenses include both misdemeanors and felonies. Funded by a Justice Assistance Program grant. Successful completion of the Young Adult Court can result in a dismissal or reduced sentencing. ⁸⁴ | 2015 |
| Denver | CO | The Denver Juvenile and District Drug Court gives a special focus to young adult offenders. Case managers “are trained in adolescent-based development and treatment strategies rooted in the belief that young adults cognitively function like adolescents,” and the court emphasizes non-jail sanctions. ⁸⁵ | 1998 |
| Pasco and Pinellas | FL | The Young Adult Drug Court Collaborative is an interagency effort to tailor a treatment model to the distinct needs of young people aged 18 to 26. ⁸⁶ | 2013 |

84. *Young Adult Court*, *supra* note 79.

85. DENNIS REILLY & COREY CALABRESE, CTR. FOR COURT INNOVATION, YOUNG PARTICIPANTS IN ADULT DRUG COURTS: PRACTITIONER PERSPECTIVES 6–7 (2009), http://www.courtinnovation.org/sites/default/files/documents/Young%20Participants%20in%20Adult%20Drug%20Courts_final.pdf [<https://perma.cc/5CKC-MRAW>].

86. *Pasco County Young Adult Drug Court Collaborative*, PASCO CNTY. FLA., http://egov.pascocountyfl.net/Content/ECM/ConsolidatedAgendas/BCC_LPA_03-16-2010/OMB10-10119_4_OMB10-10119_Att_3_Collaborative_Narrative.pdf [<https://perma.cc/3FPL-5J3G>].

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| Bonneville and Jefferson | ID | Young adult court for people aged 18 to 24. At sentencing, a judge may place a young person on probation while he or she completes the young adult court's program, which lasts for two years and can accommodate 50 people. ⁸⁷ | 2012 |
| St. Mary's | LA | Young adult program within the St. Mary's Parish Drug Court for young people aged 18 to 25. The program is designed to "employ best-practice strategies to reduce crime and substance abuse among high-risk, high-need [y]oung [a]dult offenders using evidence-based interventions." ⁸⁸ | 2011 |
| Kalamazoo | MI | Young adult diversion program for defendants aged 17 to 20 charged with certain misdemeanors and without prior convictions. Defendants are placed on probation for 6 to 24 months, and avoid a criminal conviction if they successfully complete the program. ⁸⁹ | 2014 |
| St. Louis | MO | "Young Persons Track" within the St. Louis Adult Felony Drug Court aimed at young people aged 16 to 22. The main components of the programs holistic needs-based | 2000 |

87. Ruth Brown, *Young Adult Court Helps Offenders Change Habits*, WASH. TIMES (Feb. 8, 2014), <http://www.washingtontimes.com/news/2014/feb/8/young-adult-court-helps-offenders-change-habits/?page=all> [<https://perma.cc/UG4X-LGHD>].

88. ST. MARY PARISH YOUNG ADULT DRUG COURT OUTPATIENT CLINIC, POLICY & PROCEDURE MANUAL 5-6 (Aug. 1, 2012), http://jpo.wrlc.org/bitstream/handle/11204/1231/Policies%20and%20Procedures%20Manual_St%20Mary%20Parish%20Young%20Adult%20Drug%20Court%20Louisiana.pdf?sequence=3 [<https://perma.cc/592W-9FFX>].

89. Lynn Turner, *Kalamazoo County Starting Specialty Court to Give Young Adults Chance to Keep Convictions Off Their Records*, MICH. LIVE (Aug. 17, 2012), http://www.mlive.com/news/kalamazoo/index.ssf/2012/07/kalamazoo_county_to_start_spec.html [<https://perma.cc/3NW4-W7LH>]; *Young Adult Diversion Court*, <http://yadckalamazoo.weebly.com/about-yadc.html> [<https://perma.cc/6PTV-YWQP>].

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| | | approach are alcohol and drug education, counseling and therapy, parenting classes, and employment training and placement. ⁹⁰ | |
| Douglas | NE | Young Adult Court for young people aged 16 to 22 charged with a felony. The two-year program involves three phases, during which an array of like-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. ⁹¹ | 2004 |
| Kings | NY | Brooklyn Justice Initiatives, a diversion program for young adult misdemeanants aged 16 to 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. The program served 800 young people in 2014. ⁹² | 2013 |
| Dallas | TX | Diversion program for young people aged 18 to 25 convicted of lower-level offenses. Program participants are required to complete GED, parenting and life skills classes over | 2016 |

90. BUREAU OF JUSTICE ASSISTANCE (BJA) DRUG COURT CLEARINGHOUSE, AMERICAN UNIV., FREQUENTLY ASKED QUESTIONS FACT SHEET SERIES: STRATEGIES AND SERVICES EFFECTIVE IN ENGAGING AND RETAINING YOUNG ADULTS 3–5 (Dec. 26, 2006), http://www.ndcrc.org/sites/default/files/young_adult.pdf [<https://perma.cc/5QXM-VDAJ>].

91. Paul Hammel, *Young Adult Court Offers Path To 'An Honest Life' Over A Jail Cell*, OMAHA WORLD-HERALD (Dec. 1, 2013), http://www.omaha.com/news/young-adult-court-offers-path-to-an-honest-life-over/article_2379ff46-f2f4-5e85-a78a-36cec2d9ee8b.html [<https://perma.cc/T73A-SGPA>].

92. *Brooklyn Justice Initiatives*, CTR. FOR COURT INNOVATION, <http://www.courtinnovation.org/project/brooklyn-justice-initiatives> [<https://perma.cc/RQ2G-H554>].

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| | | 6 to 12 months, and are eligible to have their offense expunged upon completion. The program is initially expected to serve 50 people in 2016. ⁹³ | |
| King | WA | Designated young adult program within the King County Drug Diversion Court for young people aged 18 to 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. ⁹⁴ | 2010 |

C. *Young Adult Prison Facilities*

At least eleven states (see Table 3 below) designate separate facilities or units for young adults. These facilities or units are set aside specifically for inmates within a certain age range, such as 18 to 25 or 15 to 24. Often, these facilities house young adults committed under the “youthful offender” statutes described above.

Designating separate facilities for young adults serves several important functions. First, young adults are vulnerable in adult prisons—inmates under the age of 24 comprise a disproportionate number (42 percent) of sexual assault victims in adult prisons.⁹⁵ Separating young adults removes them into a safer environment.

Second, pooling young adult inmates in particular facilities allows a state to focus its age-tailored resources in a few facilities. Instead of trying to implement young-adult-specific behavioral programs in every facility, grouping young adults together allows the department to efficiently allocate its resources in a handful of facilities.

Third, culture among the inmates and staff in young adult facilities and

93. Sarah Mervosh, *Dallas DA Heralds Program for Mentally Ill, Young Offenders as ‘The Future of Criminal Justice,’* DALLAS MORNING-NEWS (Nov. 23, 2015), <http://crimeblog.dallasnews.com/2015/11/dallas-da-heralds-program-for-mentally-ill-young-offenders-as-the-future-of-criminal-justice.html> [https://perma.cc/34AK-E8C2].

94. DENNIS REILLY & COREY CALABRESE, *supra* note 85, at 8–10.

95. ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2005, at 6 (July 2006), <http://www.state.gov/documents/organization/150083.pdf> [https://perma.cc/YM2C-MD8G].

units tends to be more rehabilitative. Officers at Colorado's YOS facility describe the cultural difference from a typical adult prison this way:

When I came to YOS, I was confused because of the way things are done here. It was new for me to think about the philosophy of changing my way of thinking and acting toward offenders. I had to learn how to do things to make a difference. Now I feel that I am more of a professional. Not only do we teach these guys to utilize better language and communication skills but it then changes how we act as well. . . . It took time to get used to actually talking with offenders rather than to them.⁹⁶

Young adult facilities often cost more than a traditional adult facility, though not necessarily so. The average daily cost per inmate at West Virginia's Anthony Correctional Center, which houses young adults aged 18 to 25, is below average for the state's adult facilities.⁹⁷

One particularly promising model is Maine's Mountain Youth Development Center (MYDC). The MYDC is a 187-bed facility originally designated for juveniles sentenced as adults, expanded in 2014 to include young adults aged 18 to 25.⁹⁸ Young adults at MYDC are given an individualized case plan to address their risks and needs.⁹⁹ Every young adult is required to earn a high school degree or GED, and is offered programs such as Thinking For A Change, family violence programming, parenting skills, vocational training, and independent living skills.¹⁰⁰

Table 3 lists eleven examples—including the MYDC—of state prisons that have set up separate facilities to exclusively house and treat young adult offenders. Table 3 does not, however, list the many special programs existing for young adults or younger inmates within adult facilities—for example, Rhode Island's Youthful Offender Program for inmates under age 25 in its maximum-security facility—and focuses instead on states that have designated entire facilities or units to house and treat young adults separate from the rest of the adult population.

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| <p><i>Table 3. Separate Young Adult Prison Facilities</i></p> |
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96. GERMAINE MIERA ET AL., *supra* note 67, at 44.

97. W. VA. DEP'T OF CORRECTIONS, ANNUAL REPORT: 2014, at 59 (Dec. 2014), http://www.legis.state.wv.us/legisdocs/reports/agency/C02_FY_2014_2726.pdf [<https://perma.cc/4HNE-8HTS>].

98. *Mountain View Youth Development Center*, ST. OF ME. DEP'T OF CORRECTIONS, <http://maine.gov/corrections/juvenile/Facilities/MVYDC/index.htm> [<https://perma.cc/RRB9-JVS8>].

99. *Id.*

100. *Id.*

| State | Facilities |
|-------|---|
| CO | The Youthful Offender System is a medium-security facility opened in 1994 to house juveniles convicted as adults. In 2009, the Colorado Assembly expanded eligibility for the facility to young adults sentenced prior to age 21. The facility houses about 250 young people. ¹⁰¹ |
| CT | Connecticut recently announced plans to open a prison to house young adults aged 18 to 25 in 2017. ¹⁰² |
| FL | The Brevard Correctional Institution is a 1,000-bed facility designated largely for youthful offenders aged 19 to 24. The facility provides at least twelve hours of age-tailored programming, such as work assignments, education and vocational training, counseling, behavior modification, and military-style drills. ¹⁰³ |
| ME | Mountain View Youth Development Center is a 187-bed facility opened in 1998 that for much of its history housed male offenders aged 11 to 21. In 2014, the facility expanded its services to include “young adult male offenders” aged 18 to 25. Young adults are given a case plan tailored to their risks and needs; programming emphasizes job training, behavioral therapy, and education. ¹⁰⁴ |
| MT | The Montana DOC recently designated a 20-bed unit in the Pine Hills Youth Correctional Facility for low- and medium-risk young adults aged 18 to 25. Premised on the notion that “[r]esearch has shown that the brains of young adults are not fully developed until age 25,” the young adult unit will offer a variety of life-skills, behavioral, educational, and vocational programming. ¹⁰⁵ |

101. LIVENGOOD, *supra* note 60, at 4–9, 43.

102. Pat Eaton-Robb, *APNewsBreak: Connecticut to Open Prison For 18-25 Year Olds*, ASSOCIATED PRESS, Dec. 17, 2015, <http://www.bigstory.ap.org/article/9466d93053264d64be2bfc45b4b2cc5d/apnewsbreak-connecticut-open-prison-18-25-year-olds> [<https://perma.cc/JDN6-SSMZ>].

103. *Brevard Correctional Institution*, FLA. DEP’T OF CORRECTIONS, <http://www.dc.state.fl.us/Facilities/region3/310.html> [<https://perma.cc/5SE5-ZH69>].

104. *Mountain View Youth Development Center*, ME. DEP’T OF CORRECTIONS <http://maine.gov/corrections/juvenile/Facilities/MVYDC/index.htm> [<https://perma.cc/Q24B-KKN7>].

105. *Pine Hills Expands Programming for Young Adult, Male Offenders*, MONT. DEP’T OF

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| NY | In late 2015, New York City officials announced a plan to house all young adult inmates aged 18 to 21 in a separate facility within the Rikers Island Jail, in which they will be required to take classes and receive counseling, and will not be subject to solitary confinement. ¹⁰⁶ |
| NC | North Carolina houses inmates younger than 25 separately in its adult facilities. In the units designated for “youthful offenders” under age 25, the DOC offers special age-tailored programming. ¹⁰⁷ |
| PA | Pennsylvania opened SCI Pine Grove in 2001 with the goal of designating part of the facility for young adults. The facility’s “young adult offender program” serves young people aged 15 to 21, who are housed separately. ¹⁰⁸ |
| SC | Turbeville Correctional Institution is a facility with 928 designated beds for young people aged 17 to 25 at the time of conviction under the Youthful Offender Act. Young people are provided age-tailored services through a program called Youthful Offender Institutional Services. ¹⁰⁹ |
| WV | The Anthony Correctional Center houses young adults aged 18 to 25 serving a term between six months and two years under a suspended felony sentence. The facility houses approximately 175 young people, and provides a range of programming aimed at life skills and educational and vocational training. ¹¹⁰ |

CORRECTIONS (Feb. 9, 2016), <http://cor.mt.gov/Publications/Media/ArtMID/29974/ArticleID/3112/Pine-Hills-expands-programming-for-young-adult-male-offenders> [https://perma.cc/9CD5-GUK5].

106. Associated Press, *‘Young Adult’ Jail at Rikers to House All Inmates Ages 18 to 21*, N.Y. POST, Sept. 4, 2015, <http://nypost.com/2015/09/04/young-adult-jail-at-rikers-to-house-all-inmates-ages-18-to-21/> [https://perma.cc/9MUR-CDAU].

107. N.C. SENTENCING & POLICY ADVISORY COMMITTEE, REPORT ON STUDY OF YOUTHFUL OFFENDERS PURSUANT TO SESSION LAW 2006-248, SECTIONS 34.1 AND 34.2, at 6–7 (2007), http://www.njcn.org/uploads/digital-library/resource_1094.pdf [https://perma.cc/NXC4-7G72].

108. EDWARD LATESSA ET AL., EVALUATION OF SELECTED INSTITUTIONAL OFFENDER TREATMENT PROGRAMS FOR THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS 262 (Nov. 2009), https://www.uc.edu/content/dam/uc/ccjr/docs/reports/project_reports/PA_Institutions_Final_Report.pdf [https://perma.cc/LV4Z-V6GR].

109. *Turbeville Correctional Institution*, S.C. DEP’T OF CORRECTIONS, <http://www.doc.sc.gov/pubweb/institutions/Turbeville.jsp> [https://perma.cc/Q8J8-E2LU].

110. *Anthony Correctional Center*, W. VA. DIV. OF CORRECTIONS, <http://www.wvdoc.com/wvdoc/prisonsandfacilities/anthonycorrectionalcenter/tabid/44/default.aspx> [https://perma.cc/XGN2-YNSD].

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| WI | The Racine Youth Offender Correctional Facility is a medium-security facility designated for young men aged 15 to 24. The facility has capacity for up to 250 inmates. ¹¹¹ |
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D. Expunction and Sealing

At least eight states (see Table 4 below) have special expunction and sealing laws for young adults. Most states do not allow records of criminal convictions to be expunged,¹¹² these eight states have carved out narrow exceptions for young adults convicted of minor offenses.

A conviction can limit a young person's access to employment, occupational licensing, housing, and welfare.¹¹³ It can limit a young person's access to higher education, bar him from voting, or prevent him from adopting a child.¹¹⁴

The lifelong effects of a criminal conviction are especially damaging for young adults. According to a recent New York Times/CBS News/Kaiser Family Foundation poll, men with criminal records account for about 34 percent of all unemployed men aged 25 to 54.¹¹⁵ Studies based on the National Longitudinal Survey of Youth, which followed 13,000 people aged 14 to 22 through their lives, consistently find that incarceration reduces the time a person is employed each year by roughly 10 to 20 percent.¹¹⁶ Research also consistently demonstrates that maintaining employment promotes desistance from crime.¹¹⁷

Because expunction and record-sealing laws raise a young person's lifetime earning potential, they have enormous cost-benefit potential. A

111. *Racine Youthful Offender Correctional Facility*, WIS. DEP'T OF CORRECTIONS, <http://doc.wi.gov/families-visitors/find-facility/racine-youthful-offender-correctional-facility> [https://perma.cc/FGC7-RJYE].

112. See Debbie A. Mukamal & Paul N. Samuels, *Statutory Limitations on Civil Rights for People with Criminal Records*, 30 *FORDHAM URB. L.J.* 1501, 1510 (2002) (noting that only sixteen states allow any kind of criminal conviction to be expunged).

113. *Id.* at 1503–08.

114. *Id.* at 1508–14.

115. Binyamin Appelbaum, *Out of Trouble, But Criminal Records Keep Out of Work*, *N.Y. TIMES* (Feb. 28, 2015), <http://www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html> [https://perma.cc/W5PS-Q5VP].

116. JOHN SCHMITT & KRIS WARNER, *CTR FOR ECON. & POL'Y RES., EX-OFFENDERS AND THE LABOR MARKET* 8–9 (2010), <http://cepr.net/documents/publications/ex-offenders-2010-11.pdf> [https://perma.cc/DL3U-G8PD].

117. *E.g.*, LINDSEY DEVERS, *BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, RESEARCH SUMMARY: DESISTANCE AND DEVELOPMENTAL LIFE COURSE THEORIES* 9 (Nov. 2011), <https://www.bja.gov/Publications/DesistanceResearchSummary.pdf> [https://perma.cc/X9E4-VMWM].

recent study from Stanford University found that the benefits of clearing a person's record outweighed the costs by over \$5,000 in the first year alone.¹¹⁸

Most states' young adult expunction laws apply very narrowly. States that allow young adults to expunge the records of their conviction typically limit the provision to first-time offenders under age 20 or 21 who are convicted only of a low-level nonviolent or drug offense. One particularly promising example, however, is Wisconsin's young adult expunction statute, which applies to young adults under 25 convicted of an offense carrying a maximum term of fewer than six years and places no limitations on prior convictions. Table 4 lists eight examples of states that have created expunction or record-sealing provisions for offenses committed by young adults.

| <i>Table 4. Expunction and Record-Sealing for Young Adults</i> | | | |
|--|----------------------------|---|--------------------|
| State | Statute | Description | Year Passed |
| GA | GA. CODE § 35-3-37(j)(4) | Applies to young people convicted of a misdemeanor before age 21. Following a petition by the young person, a court may restrict (seal) the record of the person's misdemeanor conviction from public access. | 2013 |
| HI | HAW. REV. STAT. § 712-1256 | Applies to young people under age 20 at the time of offense who received a conditional discharge of a first-time drug offense. If the young person successfully completes probation, the discharged charges are dismissed, and the young person can petition to have the record expunged. | 1972 |
| NJ | N.J. STAT. ANN. § 2C:52-5 | Applies to young people under age 21 at the time of offense, convicted of drug possession or use, who have no prior convictions. The young person may apply for expunction one year after the termination of his sentence. | 1979 |

118. MELYI CHAPIN ET AL., A COST-BENEFIT ANALYSIS OF CRIMINAL RECORD EXPUNGEMENT IN SANTA CLARA COUNTY 4 (2014).

| | | | |
|----|-----------------------------------|---|------|
| | | | |
| NC | N.C. Gen. Stat. § 15A-145.2 | Applies to young people under age 21 at the time of offense who received a deferred sentence for a first-time drug offense. If the young person successfully completed probation, he may petition the court to expunge the records associated with his drug offense. | 2009 |
| SC | S.C. CODE ANN. § 22-5-920 | Applies to young people aged 17 to 25 at the time of conviction under the Youthful Offender Act (see above). If the young person has no other convictions five years after completing his sentence, he may petition the court to expunge the records associated with his conviction. | 2003 |
| VT | VT. STAT. ANN. tit. 13, § 7602(d) | Applies to young people under age 25 at the time of offense, convicted of a misdemeanor or a limited list of other crimes. If the young person has no other convictions in the five years following termination of his sentence, and meets other conditions, he may petition to have the records associated with his conviction expunged. | 2011 |
| WV | W. VA. CODE § 61-11-26 | Applies to young people aged 18 to 26 at the time of offense, convicted of a misdemeanor, and who have no prior convictions. The young person may petition to have the records associated with that conviction expunged. | 2008 |
| WI | WIS. STAT. § 973.015 | Applies to young people under age 25 at the time of offense, convicted of an offense carrying a maximum penalty of six years' imprisonment. The young person may petition to have the records associated with that conviction expunged. | 2009 |

IV. Expanding the Juvenile Justice System

The young adult policies described above bear features of the juvenile justice system: reduced sentencing, access to age-tailored programming, age-limited facilities, and records that can be expunged or sealed. Instead of pursuing these benefits through a piecemeal approach within the adult system, it may be more efficient and effective to simply handle young adults through the juvenile-justice system.

Placing young adults under juvenile jurisdiction could have several advantages. First, juvenile-justice officials have experience with older adolescents whose risks and needs are similar to young adults', and the juvenile system already provides age-tailored programming for older adolescents with similar developmental needs.

Second, the juvenile system may produce better public-safety returns for young adults. Sixteen- and seventeen-year-olds handled in the juvenile system instead of transferred to the adult system recidivate at lower rates;¹¹⁹ it is reasonable to expect that the same may be true for young adults aged 18 to 21, as well. Third, young adults are especially vulnerable to physical and sexual abuse in adult prisons and jails, and would be victimized less often in juvenile facilities.¹²⁰ And finally, juvenile records would not leave young adults with the stigma of an adult conviction.

There are several options for folding young adults into the juvenile justice system. One is simply to raise the age of juvenile jurisdiction so that young adults age 21 or younger are sentenced as juveniles by default.¹²¹ Another is creating a sort of "reverse waiver" law that would allow adult courts to waive jurisdiction over a young adult's case and send the case to juvenile court. A third is to raise the "extended age"—the oldest age at which juvenile courts retain jurisdiction over a young person sentenced as a juvenile.¹²² Sections 1 through 3 consider each of these possibilities.

119. ROBERT HAHN ET AL., *supra* note 10.

120. As noted earlier, inmates aged 18 to 24 comprise 41 percent of sexual-assault victims in adult prisons. BECK & HARRISON, *supra* note 95, at 4.

121. Almost every state allows juveniles to be tried as adults under certain conditions—for example, many states allow juvenile judges to waive jurisdiction (thereby transferring jurisdiction to the adult criminal court) if the youth's offense is particularly serious. See *Jurisdictional Boundaries*, JUV. JUST. GEOGRAPHY, POL'Y, PRACTICE, & STATS., <http://www.jjgps.org/jurisdictional-boundaries> [<https://perma.cc/94LM-HTTG>] (summarizing states' varied approaches to juvenile transfer laws in the table entitled "Compare Transfer Policies"). Were the highest age of juvenile jurisdiction raised to 21 (or older), these transfer laws would presumably remain in place as either a feature (providing a safety valve for sentencing serious young adult cases in the adult criminal-justice system) or a bug (undermining the extent to which young adults are actually sentenced as juveniles), depending on one's perspective.

122. The limitation being, of course, that raising the extended age would only apply to young adults already serving juvenile sentences. For example, raising the extended age to 25 would mean that a young person who commits a crime at age 17 would remain in the juvenile system until he

A. *Raise the Age to 21*

Germany has placed young adults aged 18 to 21 under juvenile jurisdiction for 60 years.¹²³ In 2016, Vermont raised the age of juvenile jurisdiction to 21.¹²⁴ In 2015, Connecticut Governor Dannel Malloy proposed raising the age of juvenile jurisdiction to 20,¹²⁵ and Connecticut considered a bill to implement that proposal in the 2016 session.¹²⁶ Illinois State Representative Laura Fine sponsored a bill in 2016 to raise the age of juvenile jurisdiction to 21 for misdemeanants.¹²⁷

There are both consequentialist and non-consequentialist arguments in favor of raising the age to 21. On the non-consequentialist side, proponents of raising the age can point to the growing body of adolescent brain research finding that young adults are developmentally similar to adolescent juveniles.¹²⁸ On the consequentialist side, proponents of raising the age can point to the economic and social benefits of limiting the criminogenic effects of adult imprisonment and an adult criminal record.¹²⁹ In the words of Connecticut Gov. Dannel Malloy:

You can commit a non-violent offense at 17 without a criminal record, but if you're 18 and you commit the same crime, it lasts a

turns 25 instead of being transferred to adult prison or probation at age 20 or 21. Raising the extended age without adjusting the upper age boundary of juvenile jurisdiction would have no effect on the jurisdiction over a case of someone who commits a new criminal offense at age 23 or 24.

123. TRANSITION TO ADULTHOOD, *supra* note 53, at 3.

124. H.95, 2015–2016 Gen. Assemb., Reg. Sess. (Vt. 2016).

125. Press Release, Conn. Gov. Dannel P. Malloy, Gov. Malloy's Prepared Remarks Today on Criminal Justice Reform (Nov. 6, 2015), <http://portal.ct.gov/en/Office-of-the-Governor/Press-Room/Press-Releases/2015/11-2015/Gov-Malloys-Prepared-Remarks-Today-on-Criminal-Justice-Reform> [<https://perma.cc/JS7K-WFHJ>].

126. S.B. 18, 2016 Gen. Assemb., Legis. Sess. (Conn. 2016).

127. H.B. 6308, 99th Gen. Assemb., Reg. Sess. (Ill. 2016).

128. *See supra* Part I and accompanying notes; *see also* Press Release, Vt. Gov. Peter Shumlin, Gov. Shumlin Signs Law Creating More Rational Juvenile Justice Policies in Vermont (June 1, 2016), <http://vtdigger.org/2016/06/02/gov-shumlin-signs-law-creating-more-rational-juvenile-justice-policies-in-vermont/> [<https://perma.cc/8Y7N-KLN6>] (quoting Department of Children and Families Commissioner Ken Schatz: "Vermont will now have a juvenile justice system that reflects the latest in brain development science."); ROBERT HAHN ET AL., *supra* note 10 (finding lower recidivism rates for young people sentenced as juveniles instead of as adults).

129. *See* Press Release, Vt. Gov. Peter Shumlin, *supra* note 128 (quoting Gov. Shumlin: "Ultimately, the goal is to . . . mitigate major collateral consequences for youth charged in adult court, including a public record, exclusion from the military, and ineligibility for college loans. These are things that seriously hamper a young person's chances for success later in life."). Any cost-benefit analysis of raising the age of juvenile jurisdiction is highly context-specific. *See, e.g.*, Michele Deitch et al., *Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas*, 40 AM. J. CRIM. L. 1 (2012) (conducting an extensive cost-benefit analysis of raising the age of juvenile jurisdiction in Texas to 18). Since Vermont is the first state to begin experimenting with sentencing young adults as old as 20 as juveniles, there is no data on either the costs or benefits of raising the age of juvenile jurisdiction as high as 21, and this Note is not designed to attempt to conduct such an analysis with projections and estimates.

lifetime. If we are to acknowledge that we know a one-size-fits-all approach to criminal justice hasn't worked, that permanent punishment hasn't worked, then let's think about changing the artificial barriers we've imposed to get it right.¹³⁰

On the other hand, raising the age of juvenile jurisdiction to 21 (or higher) would present financial and logistical challenges. It tends to cost more to arrest, try, and punish young people in the juvenile system than in the adult system.¹³¹ States and counties should avoid housing 21-year-olds with kids as young as 14 or 15.¹³² Juvenile systems facing a large influx of young adults will need up-front investments to expand capacity.¹³³ And states must account for the impact on related agencies, such as child welfare.¹³⁴

Nonetheless, corrections experts are beginning to endorse extending juvenile jurisdiction to young adults because they believe the public safety benefits outweigh the costs. Vincent Schiraldi recommends raising juvenile jurisdiction to age 21.¹³⁵ A National Institute of Justice study group made the same recommendation.¹³⁶ These experts also recommend staggering implementation, such that the age gets raised by only one year at a time, so as to mitigate some of the challenges posed by increasing and changing the demands placed on the juvenile system.¹³⁷

130. Press Release, Gov. Dannel P. Malloy, *supra* note 125.

131. *See, e.g.*, Michele Deitch et al., *supra* note 129, at 56 (summarizing the greater costs associated with handling 17-year-olds as juveniles rather than as adults—and also noting the long-term savings to taxpayers from reduced recidivism).

132. *See* Steinberg et al., *supra* note 19 (cautioning against raising the age of juvenile jurisdiction to 21 in part because of concerns about the difficulty of housing 21-year-olds alongside juveniles as young as 14). However, forty-four states continue to exercise jurisdiction over adjudicated juveniles until at least age 21, and states can draw on their experience with housing young adults in juvenile facilities. *See* Anne-Lise Vray & Jessica Sandoval, *Raising The Age Of Criminal Jurisdiction Beyond 18*, CAMPAIGN FOR YOUTH JUST. (Aug. 11, 2016), <http://www.campaignforyouthjustice.org/news/blog/item/raising-the-age-of-criminal-jurisdiction-beyond-18> [<https://perma.cc/EN9G-4G36>] (quoting an interviewed juvenile justice administrator: “There are 15 year olds housed with 24 year olds. . . . Instances of victimization are very rare because of the big brother mentality that develops between older youth and younger kids.”).

133. Because young adults comprise a large and disproportionate share of criminal defendants, volume may present a real problem for capacity. *See, e.g.*, BRIAN A. REAVES, BUREAU OF JUSTICE STATISTICS, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2009 - STATISTICAL TABLES 6 (2010) (reporting that defendants aged 24 or younger accounted for 43 percent of felony defendants arrested in the 75 largest U.S. counties).

134. *See* Steinberg et al., *supra* note 19 (raising the concern about the impact on related agencies).

135. Schiraldi et al., *supra* note 29, at 8–9.

136. LOEBER ET AL., *supra* note 75, at 20.

137. Testimony of Vincent Schiraldi before the Vermont Senate Committee on Judiciary 8 (Mar. 24, 2016).

B. *Reverse Waiver*

If a state wanted to sentence some of its young adults through the juvenile system but did not want to make juvenile jurisdiction the default rule for all young adults, it could allow adult courts to transfer jurisdiction over a case to juvenile court in a modified version of the “reverse waiver” statute that 24 states already use for juveniles.¹³⁸

Twenty-nine states have statutes that exclude a class of offenses from juvenile jurisdiction (known as “statutory exclusion laws”).¹³⁹ Under statutory exclusion laws, adult jurisdiction is the default, even though the defendant is a juvenile, due to the nature of the crime. Many of these states have a reverse waiver law allows the adult court to waive jurisdiction over the juvenile and transfer the case to juvenile court. That is, the law gives adult courts discretion to waive their default jurisdiction in appropriate cases.

States could set up a similar statutory scheme for young adults. The scheme would have three parts. First is a provision that allows juvenile courts to take jurisdiction over a criminal case for young adults aged 18 to 21. Second is a provision that operates like the statutory exclusion rule and gives default jurisdiction over all young adults’ cases to adult court. Third is the reverse waiver statute, which allows the adult court to waive its default jurisdiction over a young adult’s case and transfer the case to juvenile court.

States could place a number of restrictions on adult courts’ discretion to use the reverse waiver provision.¹⁴⁰ Like some current reverse waiver laws, the statute could exclude certain offenses or defendants with serious criminal histories—that is, if a young adult commits a particularly serious crime, an adult court would be required to keep jurisdiction over the case.¹⁴¹

C. *Raise the “Extended Age” to 25*

Although no state currently sets the upper boundary of original juvenile jurisdiction over age 17, almost every state allows the juvenile system to retain jurisdiction of a young person sentenced as a juvenile after age 18. Known as the “extended age” boundary, this limit represents the oldest age at which a young person can remain in the juvenile justice

138. *Jurisdictional Boundaries*, JUV. JUST. GEOGRAPHY, POL’Y, PRACTICE, & STATS., <http://www.jjgps.org/jurisdictional-boundaries> [<https://perma.cc/94LM-HTTG>].

139. *Id.*

140. *See, e.g.*, WIS. STAT. § 970.032(2)(a) (2016) (stating that an adult criminal court with original jurisdiction over a juvenile case can only waive jurisdiction if the juvenile proves, among other things, that “if convicted, the juvenile could not receive adequate treatment in the criminal justice system”).

141. *See, e.g.*, MD. CODE CRIM. PROC. § 4-202(c)(1) (2016) (stating that adult courts cannot transfer jurisdiction over a juvenile’s case to juvenile court if the defendant has been previously convicted of an offense listed in Md. Code Cts. & Jud. Proc. § 3-8A-03, which includes kidnapping and second degree murder).

system. The extended age in 36 states is 20; in six states, it falls between age 21 and 24, and three states set no age limit.¹⁴²

If the extended age is only 18, then a juvenile who commits an offense when he is 17 years and 11 months old will serve his time in the adult system. A juvenile who begins serving his sentence after age 17 will have his rehabilitative programming cut short in a matter of weeks or months when he turns 18 and is transferred to an adult facility.

Raising the extended age to 25 would allow young adults adjudicated as juveniles to continue receiving treatment and programming in juvenile facilities or under juvenile probation through young adulthood,¹⁴³ and keep them out of adult facilities where they are vulnerable to victimization. In particular, it is an important component to sentencing young adults under age 21 as juveniles, so that they are able to receive age-tailored programming in the juvenile system for up to several years, rather than being transferred swiftly to an adult facility with fewer age-tailored resources and a less rehabilitative culture.

V. Recommendations

It is already common for states and counties to try to address young adults' distinct needs and account for their reduced culpability by setting up special sentencing options and accountability courts; housing young adults in separate prison facilities; and expanding expungement and record-sealing provisions for young adults. But these measures are only piecemeal; they approximate the advantages of the juvenile system on a limited scale.

Accordingly, the central recommendation of this Note is that states raise the age of juvenile jurisdiction to at least 21, and raises the extended age during which juvenile courts can retain jurisdiction to 25.¹⁴⁴ States should proceed cautiously and incrementally: establish a working group to explore the feasibility of raising the age to 21, consult stakeholders from related agencies, and plan to stagger implementation by raising the age incrementally over for several years. As a more conservative alternative, states should consider giving default jurisdiction over young adults to adult courts but allowing judges to "reverse waive" appropriate cases to juvenile court.

142. *Id.*

143. *See Vray & Sandoval, supra* note 132 (stating that juvenile justice administrators agreed that "older youth [aged 21 to 25] were better served in the juvenile justice system, where they can—unlike in the adult system—receive educational programs, appropriate treatments, and actually be rehabilitated").

144. This recommendation mirrors the central recommendation of Vincent Schiraldi, Bruce Western, and Kendra Bradner. *See Schiraldi et al., supra* note 29, at 8–9 ("Our central recommendation is that the age of juvenile court jurisdiction be raised to at least 21 years old with additional, gradually diminishing protections for young adults up to age 24 or 25. This reform would extend much of the flexibility of the juvenile court to a stage of the life cycle that now faces many of the same challenges as adolescence.").

In the alternative, this Note recommends that states and counties at least adopt the partial reforms within the adult criminal justice system that are already common:

Establish special sentencing options for young adults.—States should enact a statute giving judges the discretion to suspend a young adult’s sentence and place him either on community supervision or in a designated facility for young adults on a reduced sentence. Probation departments and departments of correction should provide individualized case plans involving an array of age-tailored programming. Convictions under the statute should be expungable or sealable upon successful completion.

Establish young adult courts.—Counties should set up a working group to explore the feasibility of establishing a young adult court. The working group should involve collaboration between the court, the district attorney, the public defender, the adult probation department, child- and family-services agencies, the state health agency, and local service providers.

Designate adult facilities for young adults.—The department of corrections should house young adults aged 18 to 25 separately from older adults to the greatest extent possible, with the goal of providing young adults with special treatment and services and a higher staffing ratio.

Allow young adults to expunge or seal records of their criminal convictions.—Young adults should be allowed to expunge or seal records of convictions for offenses committed before age 25. States can place reasonable limitations on the privilege, but should not draw the statute so as to exclude the majority of young adult offenders.