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## A LEGISLATIVE GUIDE TO SAFELY REDUCING OUT-OF-HOME PLACEMENTS FOR YOUTH

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### INTRODUCTION

The incarceration rate for youth is steadily declining, and so is youth crime.<sup>1</sup> Over the past decade, the number of minors committing violent crimes and property offenses has dropped by over 50 percent.<sup>2</sup> In 2019, the number of youth arrests throughout the country was at an all-time low.<sup>3</sup> Combined, these statistics show us that it is safe for communities to keep youth in their homes and to effectively address youth behavior through community-based programs.

While these figures show significant progress, the confinement of youth in costly, out-of-home placements is still far too common. On any given day, approximately 43,580 children are confined in detention centers and secure residential

1. "The Decline in Arrests of Juveniles Continued Through 2019," Office of Juvenile Justice and Delinquency Prevention, November 2020, p. 1. [https://www.ojjdp.gov/ojstatbb/snapshots/DataSnapshot\\_UCR2019.pdf](https://www.ojjdp.gov/ojstatbb/snapshots/DataSnapshot_UCR2019.pdf).

2. Ibid.

3. Ibid.

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treatment programs across the United States.<sup>4</sup> At an average annual price tag of \$148,767 per child, the cost of this intervention to U.S. taxpayers is more than \$6 billion per year.<sup>5</sup>

While juvenile justice stakeholders around the country uniformly express an intent to use out-of-home placements as a last resort, the data shows that the vast majority of children in out-of-home placements are there for relatively minor offenses. According to the most recent numbers, 72 percent of young people in out-of-home placements have a non-violent offense as their highest charge.<sup>6</sup> Research demonstrates that in most of these cases, a costly out-of-home placement is not useful, and leads to more recidivism than community-based alternatives.<sup>7</sup>

The term "out-of-home placement" is used in this piece to refer to a situation in which a child is ordered to complete some type of residential programming outside of his or her home. Out-of-home placements can be publicly or privately run and broadly include juvenile detention centers, residential treatment facilities, long term secure facilities and other settings like diagnostic centers or boot camps.<sup>8</sup> While these interventions vary widely in shape, size and programming, most are large—housing between 20 and 200 kids—and most are locked, meaning that those housed there are not free to leave.<sup>9</sup>

This paper argues that for states to reduce their reliance on out-of-home placements, policymakers need to take more

4. M. Sickmund, et al., "Detailed Offense Profile for United States, 2017," Office of Juvenile Justice and Delinquency Prevention, 2019. [https://www.ojjdp.gov/ojstatbb/ezacirp/asp/State\\_Offense.asp](https://www.ojjdp.gov/ojstatbb/ezacirp/asp/State_Offense.asp).

5. "Sticker Shock: Calculating the Full Price Tag for Youth Incarceration," Justice Policy Institute, Dec. 9, 2014, p. 11. <http://www.justicepolicy.org/research/8477>.

6. Sickmund, et. al. [https://www.ojjdp.gov/ojstatbb/ezacirp/asp/State\\_Offense.asp](https://www.ojjdp.gov/ojstatbb/ezacirp/asp/State_Offense.asp).

7. "Reexamining Juvenile Incarceration: High Cost, Poor Outcomes Spark Shift to Alternatives," Pew Charitable Trusts, April 20, 2015. <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>.

8. Wendy Sawyer, "Youth Confinement: The Whole Pie 2019," Prison Policy Initiative, Dec. 19, 2019. <https://www.prisonpolicy.org/reports/youth2019.html>.

9. Ibid.

direct legislative action to limit the use of these costly interventions. To accomplish this goal, this study recommends three actionable solutions that will cost states less money, keep kids with families and make communities stronger and safer for everyone.

## DEMOGRAPHIC PROFILE OF CHILDREN IN OUT-OF-HOME PLACEMENTS

Before addressing the issues and potential legislative solutions for out-of-home placements, this section works to provide some background on the out-of-home method of intervention and an overview of the most recent data on youth housed in out-of-home placements across the country.

A child's pathway to an out-of-home placement varies widely, as no two states have the same system and very few states have statutory criteria that governs when this intervention should be used.<sup>10</sup> Instead, decisions that move a child into an out-of-home placement are largely left up to the juvenile court.<sup>11</sup> In general, most states give juvenile court judges broad discretion to determine when and whether an out-of-home placement is warranted. While this flexibility is sometimes helpful, the data shows that it can also lead to high rates of out-of-home placements for low-risk children and inconsistent results across jurisdictions and demographic groups.<sup>12</sup>

Given that juvenile court dispositions are one of the main pathways to out-of-home placements, it is helpful to understand how children end up in the juvenile court system. Referrals to the juvenile court system may be made by parents, victims, schools, social workers, probation officers or law enforcement.<sup>13</sup> According to the most recent numbers, police encounters are probably still one of the biggest drivers of out-of-home placements with referrals from law enforcement accounting for 82 percent of all delinquency cases referred to the juvenile court.<sup>14</sup>

A review of the most recent data on who ends up in out-of-home placements is troubling. Rather than showing that we are prioritizing this intervention for violent offenders who pose a risk to public safety, it shows that states throughout the country are doing the opposite: the vast majority of youth

in out-of-home placements are there for non-violent conduct—things like property, drug and public order offenses.<sup>15</sup> Unfortunately, the data also shows that there are significant racial and ethnic disparities in out-of-home placements. More than half of all young people in out-of-home placements originate from communities of color.<sup>16</sup>

Out-of-home placements should be used rarely and only for the small percentage of children that cannot be kept at home and safely supervised or supported in the community. But instead, the data on out-of-home placements paints a picture of an intervention that is overused for less serious offenses at great cost to taxpayers, children and families.

## ISSUES WITH OUT-OF-HOME PLACEMENTS

The basic goals of the juvenile justice system are similar to those in the adult system: to hold young people accountable for wrongdoing, rehabilitate offenders and prevent future delinquent behavior.<sup>17</sup> For a long time, juvenile justice stakeholders believed that the best way to achieve these goals was through high intervention, which is the kind of treatment offered in residential treatment facilities. But as we have learned more about youth brain development, we now know that in many cases moving a child from their family into an out-of-home placement—even for treatment purposes—can be harmful to the child and does not reduce recidivism.<sup>18</sup> Indeed, research shows that in most cases, community-based services are a far more effective way to promote public safety and rehabilitate young people than removing a child from the home.<sup>19</sup>

In most cases, out-of-home placements do not improve public safety. A growing body of research shows that low- and moderate-risk youth in out-of-home placements are no less likely to re-offend than those under community supervision and, in many cases, they are more likely to engage in future criminal activity.<sup>20</sup> For example, an Ohio study of low- and moderate-risk youth showed that those in out-of-home placements were at least twice as likely to re-offend than

10. "Case Flow Diagram," Office of Juvenile Justice and Delinquency Prevention, 2018. [https://www.ojjdp.gov/ojstatbb/structure\\_process/case.html](https://www.ojjdp.gov/ojstatbb/structure_process/case.html).

11. See, e.g., "Utah's 2017 Juvenile Justice Reform Shows Early Promise," The Pew Charitable Trusts, May 23, 2019, p. 6-7. <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/05/utahs-2017-juvenile-justice-reform-shows-early-promise>.

12. Ibid.

13. Masha Jafarian and Vidhya Ananthkrishnan, "Just Kids: When Misbehaving is a Crime," Vera Institute of Justice, August 2017. <https://www.vera.org/when-misbehaving-is-a-crime/how-status-offenses-lead-kids-into-the-justice-system>.

14. "Case Flow Diagram." [https://www.ojjdp.gov/ojstatbb/structure\\_process/case.html](https://www.ojjdp.gov/ojstatbb/structure_process/case.html).

15. Sickmund, et al., "Detailed Offense Profile for United States, 2017." [https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State\\_Offense.asp](https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State_Offense.asp).

16. Sickmund, et al., "Offense Profile by Race/Ethnicity for United States, 2017." [https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/Offense\\_Race.asp](https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/Offense_Race.asp).

17. Richard J. Bonnie, et al. eds., *Reforming Juvenile Justice: A Developmental Approach* (The National Academies Press, 2013), p. 4. <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>.

18. "Re-Examining Juvenile Incarceration," pp. 1-2. <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>.

19. "Juvenile Residential Programs Literature Review," Office of Juvenile Justice and Delinquency Prevention, March, 2019, p. 14. <https://ojjdp.ojp.gov/sites/g/files/xyck-uh176/files/media/document/residential.pdf>.

20. "Re-Examining Juvenile Incarceration," pp. 1-2. <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>.

comparable youth under supervision in their communities.<sup>21</sup> In general, multi-faceted community-based interventions are cheaper and “show greater reductions in rearrests than institutional programs.”<sup>22</sup>

In addition to making our communities less safe, out-of-home placements are the most expensive way to deal with a child’s misbehavior. According to a recent study across 46 states, the average cost of an out-of-home placement is over \$140,000 per child, per year, and the total annual cost to American taxpayers is over \$6 billion.<sup>23</sup> This figure does not include the indirect, long-term price of confining youth, which includes recidivism, loss of future earnings, and Medicaid spending. These generate an estimated additional cost of \$8 to \$21 billion per year.<sup>24</sup>

In addition to out-of-home placements being costly, and more likely to increase recidivism, research shows that for most low- and moderate-risk youth, out-of-home placements lead to other unfortunate outcomes. Scientific studies show that children’s brains are different than adults. Young people are less able to regulate their emotions and control their impulses, and while many kids get into trouble during their teenage years, most of them grow out of these behaviors by the time they become young adults.<sup>25</sup> Studies now show that when we over-respond to children’s behavior, it can make the situation worse.<sup>26</sup> By ordering an unduly harsh intervention for minor behaviors, we undermine young people’s respect for the law and legal authority, and reinforce deviance and social disaffection.<sup>27</sup> When children are separated from their families and put in out-of-home placements they are more likely to drop out of school, be exposed to other delinquent kids and become more deeply involved in the justice system.<sup>28</sup>

A recent report from the National Academy of Sciences shows that the three biggest factors that lead to healthy psychological development of children are: the presence of a parent or parent figure who cares about the child’s development, inclusion in a positive peer group that values pro-social behavior and academic success, and activities that contrib-

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21. Ibid.

22. Bonnie, et al., p. 6. <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>.

23. Justice Policy Institute. <http://www.justicepolicy.org/research/8477>.

24. Jafarian and Ananthakrishnan, “Just Kids: When Misbehaving is a Crime.” <https://www.vera.org/when-misbehaving-is-a-crime>.

25. Masha Jafarian and Vidhya Ananthakrishnan, “Understanding adolescence, acting out, and calls for help,” Vera Institute of Justice, 2021. <https://www.vera.org/when-misbehaving-is-a-crime/what-are-status-offenses>.

26. Deitch. [https://info.nicic.gov/dtg/node/9#\\_edn121](https://info.nicic.gov/dtg/node/9#_edn121).

27. Bonnie, et al., p. 5. <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>.

28. Jafarian and Ananthakrishnan, “Why Criminalization is not the answer,” 2021. <https://www.vera.org/when-misbehaving-is-a-crime/why-are-justice-responses-being-used-for-status-offenses>.

ute to autonomous decision-making and critical thinking.<sup>29</sup> These key influences are found in families, schools and neighborhoods. Rather than taking children out of these environments and placing them in secure out-of-home treatment facilities, states should take more direct action to keep young people at home and provide wrap-around services to families that will address problems in the home and help youth to succeed.

## LEGISLATIVE SOLUTIONS

This section addresses how the United States can more effectively reduce reliance on out-of-home interventions and replace them with alternative approaches that still keep communities safe and hold children accountable.

Over 90 percent of registered voters believe that out-of-home placements should be reserved for the most serious offenses and that a child’s length of stay in these placements should be as brief as possible.<sup>30</sup> In accordance with this view, many states have taken steps to reduce out-of-home placement rates, and have successfully done so without seeing an increase in youth crime.<sup>31</sup> To make a permanent dent in the number of out-of-home placements, lawmakers need to take more direct action to limit use of this intervention, and in some cases, remove the option for out-of-home placements entirely. The following three legislative solutions will help ensure that the use of out-of-home placement is rare, and that it is permitted only when there are no other safe community-based alternatives.

### Pass Laws That Exclude Certain Children from Out-Of-Home Placements

One of the most effective ways to reduce the number of low- to moderate-risk youth in out-of-home placements is to limit by statute the categories of youth who can be ordered into these types of interventions. Lawmakers should consider prohibiting out-of-home placements in the following circumstances: for most first-time offenses, for youth who commit status offenses, and for kids who commit misdemeanor offenses or non-violent crimes. As discussed below, many conservative states have already taken this approach and are seeing promising results.

According to one survey, there are “no circumstances” where it would be appropriate to place a child in secure confine-

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29. Bonnie, et al., p. 3. <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>.

30. “Re-Examining Juvenile Incarceration,” p.5. <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>.

31. Sawyer. <https://www.prisonpolicy.org/reports/youth2019.html>.

ment for a status offense.<sup>32</sup> Status offenses refer to conduct that is a violation of the law only because of a child's status as a minor.<sup>33</sup> These types of offenses include things like running away from home, truancy, violation of curfew and underage drinking.<sup>34</sup> Some status offenders enter the juvenile justice system through law enforcement, but 80 percent of those who commit status offenses enter the system in other ways.<sup>35</sup> Regardless of entry point, juvenile court involvement for status offenses is still very common. For instance, in 2018, juvenile courts handled 97,800 status offense cases.<sup>36</sup>

While not all of these cases result in out-of-home placements, many states still permit judges to use them as one possible intervention.<sup>37</sup> Thus, once children enter the juvenile court system, an out-of-home placement becomes a possibility. In fact, close to 20 percent of all children in out-of-home placements are there for status offenses or technical probation violations.<sup>38</sup> These high numbers signal that in some states, more direct legislative action is needed to limit this possibility. State and local policymakers should consider passing legislation to prohibit out-of-home placements for status offenses, and end the practice of using out-of-home placements as a way to address probation violations.<sup>39</sup>

While a growing number of states have acted to prohibit out-of-home placements for status offenses, fewer states have extended the prohibition on out-of-home placements to youth who commit misdemeanor offenses or non-violent crimes. This should also be considered.

According to a recent study, if all states were to eliminate the possibility of out-of-home placements for non-violent offenses, we could reduce the out-of-home placement rate by over 30 percent and yield national savings of close to \$2 billion dollars per year.<sup>40</sup> If states invested those savings in high-quality, evidence-based community programming their

investment would yield a much better return.<sup>41</sup> For this reason, it should not come as a surprise that several conservative states are leading the way on this issue. Many states, including Kansas, Utah, Texas and Georgia, have passed legislation to ban out-of-home placements for at least some misdemeanor offenses.<sup>42</sup> Kentucky and Kansas have extended the prohibition on out-of-home placements to non-violent felonies as well.<sup>43</sup>

Texas offers an example of the benefits of prohibiting out-of-home placements. In 2007 and 2009 Texas enacted legislation prohibiting placement in state-run facilities for misdemeanor offenses.<sup>44</sup> Between 2007 and 2012, the average daily population in state-run facilities declined by roughly 2,800 youth.<sup>45</sup> When the youth in community-based treatment and supervision programs were compared to those in out-of-home placements, the ones participating in community-based alternatives had better outcomes.<sup>46</sup> More specifically, they had lower re-arrest and re-incarceration rates than those with similar criminal histories and demographic profiles who were released from out-of-home placements.<sup>47</sup> Additional studies have shown similar results.<sup>48</sup>

### Pass Legislation to Limit Length of Stay in Out-Of-Home Placements

In addition to passing legislation to limit the types of offenses that can lead to out-of-home placements, lawmakers can also reduce reliance by passing laws that limit the length of time children spend in these environments. Studies show that in most cases, holding a juvenile in confinement for longer periods of time does not reduce recidivism and may even lead to an increased likelihood of criminal behavior during adulthood.<sup>49</sup> According to the National Academies of Science, "there is no convincing evidence that confinement of juvenile offenders beyond the minimum amount needed

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32. "Status Offenses: A National Survey," Coalition for Juvenile Justice, last accessed June 6, 2021, p. 6. <https://www.jujustice.org/sites/default/files/resource-files/Status%20Offenses%20-%20A%20National%20Survey%20WEB.pdf>.

33. Jafarian and Ananthkrishnan, "How status offenses lead kids into the justice system." <https://www.vera.org/when-misbehaving-is-a-crime/how-status-offenses-lead-kids-into-the-justice-system>.

34. "Status Offenses Literature Review," Office of Juvenile Justice and Delinquency Prevention, September 2015, p. 1. [https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/status\\_offenders.pdf](https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/status_offenders.pdf).

35. "Case Flow Diagram." [https://www.ojjdp.gov/ojstatbb/structure\\_process/case.html](https://www.ojjdp.gov/ojstatbb/structure_process/case.html).

36. "Petitioned Status Offense Cases." <https://www.ojjdp.gov/ojstatbb/court/qa06603.asp>.

37. "Status Offenses," p. 8. <https://www.jujustice.org/sites/default/files/resource-files/Status%20Offenses%20-%20A%20National%20Survey%20WEB.pdf>.

38. Sickmund, "Detailed Offense Profile for United States, 2017." [https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State\\_Offense.asp](https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State_Offense.asp).

39. "Status Offenses," p. 62. <https://www.jujustice.org/sites/default/files/resource-files/Status%20Offenses%20-%20A%20National%20Survey%20WEB.pdf>.

40. Sawyer. <https://www.prisonpolicy.org/reports/youth2019.html>.

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41. "Re-Examining Juvenile Incarceration," p. 1-2. <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>.

42. "State-Led Juvenile Justice Systems Improvement," p. 1. [https://www.urban.org/sites/default/files/publication/98321/state-led-juvenile-justice-systems-improvement\\_2.pdf](https://www.urban.org/sites/default/files/publication/98321/state-led-juvenile-justice-systems-improvement_2.pdf).

43. Ibid., p. 5.

44. Patrick McCarthy, et al., "The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model," U.S. Department of Justice, Oct. 2, 2016, p. 20. <https://www.ojp.gov/pdffiles1/nij/250142.pdf>.

45. Ibid.

46. Ibid.

47. Ibid.

48. "No Place for Kids," Annie E. Casey Foundation, Oct. 4, 2011, p. 11-12. <https://www.aecf.org/resources/no-place-for-kids-full-report>.

49. Ibid., p. 15, 33.

for rehabilitation appreciably reduces the likelihood of subsequent re-offending.”<sup>50</sup>

In accordance with this research, a growing number of states have passed laws to limit a child’s length of stay in out-of-home placements and, again, many conservative states are leading the way. For example, in 2014, Kentucky passed a law imposing limits on the amount of time children can be held in an out-of-home placement, as well as the total amount of time a youth may be under supervision.<sup>51</sup> In 2016, Utah passed a law limiting a child’s length of time in out-of-home placements to 3-6 months.<sup>52</sup> Since this law was enacted, Utah has seen a 46 percent reduction in use of out-of-home interventions.<sup>53</sup>

### Pass Laws That Require Diversion and Invest in Expansion

Passing laws that prohibit out-of-home placements and limit length of stay in residential programs will not be successful unless these interventions are replaced by other evidence-based alternatives. To ensure that young people are still held accountable, communities stay safe and youth receive the help they need to succeed, many states like Utah, Kansas and Kentucky are passing laws that require kids to be diverted from the juvenile justice system entirely into structured diversion programs instead.<sup>54</sup>

A 2014 Kentucky law provides a helpful example. SB 200 requires that youth charged with their first misdemeanor offense be offered the option of having their case handled outside of the formal court process.<sup>55</sup> If the child accepts this offer and is successful in the informal program then their case never goes to court and the outcome does not result in adjudication of delinquency.<sup>56</sup> Since implementation, 90 percent of cases were successfully handled outside of court, meaning 9 out of 10 youth avoided formal court processing. Due in large part to this law, and to Kentucky’s investment in

community-based alternatives, the state has reduced its out-of-home placement rate by 44 percent, and its misdemeanor commitments by 55 percent.<sup>57</sup>

Successful diversion requires investment in a robust network of high-quality, community-based alternatives. Several studies show that one of the reasons kids end up in out-of-home placements is because there is a lack of knowledge or access to other options.<sup>58</sup> Thus, alongside legislation requiring diversion for certain types of cases, states must also take inventory of existing services and pass laws requiring investment in the development of community-based alternatives. Research shows many promising community-based approaches around the country. A few examples are highlighted below.

Over the past two decades, several promising in-home treatment alternatives to out-of-home placements have emerged.<sup>59</sup> Three of these programs include Cognitive Behavioral Therapy (CBT), Multi-Systemic Therapy (MST) and Functional Family Therapy (FFT).<sup>60</sup> All of these programs have been rigorously tested and are proven to reduce recidivism rates by as much as 70 percent.<sup>61</sup> While each of these treatment modalities has a different focus, these treatment models are focused on helping kids change their behavior through identifying thinking errors, developing new problem solving approaches, and providing support and counseling to families. They are also much cheaper than out-of-home placements, costing between \$1,000-\$10,000 per youth, per year.<sup>62</sup>

In addition to expanding the use of in-home treatment programs, states should also invest in the creation and expansion of youth diversion programs. Over half of all young people with delinquency cases in 2018 were put on probation.<sup>63</sup> While in some cases, youth probation may be the right alternative to an out-of-home placement, in many cases, probation ends up being simply another pathway into the justice system. For example, data from South Carolina shows that technical violations of probation are the most common way a child ends up in a residential commitment.<sup>64</sup> Data on out-

50. Bonnie, et al., p. 6. <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>.

51. “Kentucky’s 2014 Juvenile Justice Reform,” The Pew Charitable Trusts, June, 2014, p. 8. <https://www.pewtrusts.org/-/media/assets/2014/07/psppkyjuvenilejusticereformbriefjuly2014.pdf>.

52. “Utah’s 2017 Juvenile Justice Reform Shows Early Promise,” p. 14. <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/05/utahs-2017-juvenile-justice-reform-shows-early-promise>.

53. “Utah Division of Juvenile Justice Services: Interim Report,” Utah Department of Human Services, January 2021. <https://le.utah.gov/interim/2021/pdf/00000555.pdf>.

54. See, e.g., “Utah’s 2017 Juvenile Justice Reform Shows Early Promise,” p. 11-14. <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/05/utahs-2017-juvenile-justice-reform-shows-early-promise>; “Kansas’ 2016 Juvenile Justice Reform,” The Pew Charitable Trusts, June 2017, p. 10. [https://www.pewtrusts.org/-/media/assets/2019/06/pspp\\_kansas\\_2016\\_juvenile\\_justice\\_reform\\_brief\\_v2.pdf](https://www.pewtrusts.org/-/media/assets/2019/06/pspp_kansas_2016_juvenile_justice_reform_brief_v2.pdf).

55. Julia Durnan, et al., “State-led Juvenile Justice System Improvement,” The Urban Institute, May 2018, p. 3. [https://www.urban.org/sites/default/files/publication/98321/state-led-juvenile-justice-systems-improvement\\_2.pdf](https://www.urban.org/sites/default/files/publication/98321/state-led-juvenile-justice-systems-improvement_2.pdf).

56. Ibid.

57. Ibid.

58. “No Place for Kids,” p. 14. <https://www.aecf.org/resources/no-place-for-kids-full-report>.

59. Ibid., p. 16.

60. Ibid., pp. 16-19.

61. Ibid.

62. Ibid.

63. “Juveniles on Probation,” Office of Juvenile Justice and Delinquency Probation, 2019. <https://www.ojjdp.gov/ojstatbb/probation/overview.html>.

64. “Transforming Juvenile Probation” A Vision for Getting it Right,” 2018, p. 15. <https://www.aecf.org/m/resourcedoc/aecf-transformingjuvenileprobation-2018.pdf>.

of-home placements in other states shows similar trends.<sup>65</sup> Indeed, a growing body of research shows that the very experience of being in court increases the likelihood that children will engage in future criminal activity, which in turn makes it more likely that they will eventually be removed from their homes.<sup>66</sup> Instead of using youth probation, many states are finding that diversion from the justice system entirely is a better option. Studies show that as many as 60 percent of cases can be safely handled informally through youth diversion programs.<sup>67</sup>

While acting out is often a sign of broader issues in the home that need attention, removing children from their homes is more detrimental than beneficial.<sup>68</sup> Instead, states should invest in evidence-based programs that keep kids with their families and provide family therapy, counseling, support and services to everyone involved. The following section sets forth when diversion can occur, and provides examples of promising diversion programs around the country.

## WHEN DIVERSION CAN OCCUR

Children can be diverted from further justice involvement prior to an arrest or after an arrest occurs.<sup>69</sup> At either of these decision points, law enforcement officers, prosecutors and juvenile courts can make the decision that arrest or formal processing can be avoided, and can have the child participate in a diversion program instead. The following examples illustrate how diversion can work at each of these levels.

### Pre-Arrest Diversion

Giving police alternatives to arrest is particularly important because over 80 percent of all juvenile court referrals come from law enforcement.<sup>70</sup> One promising alternative to arrest is the creation of youth receiving centers, diversion hubs or resource centers where police can bring youth who commit low-level offenses to avoid formal court processing.<sup>71</sup> Instead of handling these cases through the juvenile court, youth are

assessed by behavioral health professionals and connected to appropriate services in the community.<sup>72</sup>

Another example is the Philadelphia Police Department's school-based diversion program. As part of this program, students who are accused of low-level offenses are connected with Philadelphia's Department of Human Services in lieu of arrest.<sup>73</sup> After conducting a risk and needs assessment, children are then referred to appropriate service providers in the community.<sup>74</sup> In the first three years of the program, there was a 68 percent decline in school-based arrests.<sup>75</sup>

### Post-Arrest Diversion

In some circumstances, law enforcement may determine an arrest is necessary. In at least some of these cases, youth diversion can still occur after arrest via prosecutors, probation departments or juvenile court staff. After an arrest, a prosecutor may decide that it will not benefit public safety and it is not in the best interest of the child to refer the case to formal processing in juvenile court.<sup>76</sup> Instead, youth are offered a chance to participate in a post-arrest diversion program. These types of programs have been found to significantly reduce re-arrest rates.<sup>77</sup>

One example is the Post-Arrest Diversion Program (PAD) in Miami-Dade County, Florida. This prosecutor-led program aims to help youth who commit minor offenses stay out of the justice system.<sup>78</sup> Rather than handle youth cases in court, program administrators conduct an assessment of the child and the child's family.<sup>79</sup> These assessments include a review of school performance, the child's behavior, and the child's home environment to develop a specialized treatment plan for each youth.<sup>80</sup> Family involvement is required and critical to successful completion of the program.<sup>81</sup> If youth successfully complete the program, they are eligible to have their arrest record expunged.<sup>82</sup> The outcomes of this program are compelling. Since the program began in 2000, 73 percent of

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65. Sickmund, "Detailed Offense Profile for United States, 2017." [https://www.ojdp.gov/ojstatbb/ezacjrp/asp/State\\_Offense.asp](https://www.ojdp.gov/ojstatbb/ezacjrp/asp/State_Offense.asp).

66. Jafarian and Ananthakrishnan, "How status offenses lead kids into the justice system." <https://www.vera.org/when-misbehaving-is-a-crime/how-status-offenses-lead-kids-into-the-justice-system>.

67. "Transforming Juvenile Probation: A Vision for Getting it Right," Annie E. Casey Foundation, 2018, p. 25. <https://www.aecf.org/m/resourcedoc/aecf-transformingjuvenileprobation-2018.pdf>.

68. Jafarian and Ananthakrishnan, "How status offenses lead kids into the justice system." <https://www.vera.org/when-misbehaving-is-a-crime/how-status-offenses-lead-kids-into-the-justice-system>.

69. *Ibid.*, pp. 25-26.

70. "Case Flow Diagram." [https://www.ojdp.gov/ojstatbb/structure\\_process/case.html](https://www.ojdp.gov/ojstatbb/structure_process/case.html).

71. "Transforming Juvenile Probation," p. 27. <https://www.aecf.org/m/resourcedoc/aecf-transformingjuvenileprobation-2018.pdf>.

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72. *Ibid.*

73. *Ibid.*

74. *Ibid.*

75. *Ibid.*

76. *Ibid.*, p. 25-26.

77. *Ibid.*, p. 12.

78. "Post-Arrest Diversion Program," Miami Dade Juvenile Justice Services Library, last accessed June 8, 2021, p. 1. <https://www.miamidade.gov/juvenileservices/library/pad.pdf>.

79. *Ibid.*

80. *Ibid.*

81. *Ibid.*

82. *Ibid.*

PAD participants successfully completed it with a recidivism rate of only 4 percent.<sup>83</sup>

Post-arrest diversion can also occur at juvenile court intake or by probation departments. An example of this model can be found in Lucas County, Ohio where all youth referred to juvenile court for misdemeanor offenses are now diverted from court and overseen by specialized case managers.<sup>84</sup> After assessment, youth are referred and connected to appropriate resource providers in the community.<sup>85</sup> These programs provide mentoring services, positive youth development and family-based treatment services.<sup>86</sup> If appropriate, youth may also be required to pay restitution or complete community service hours.<sup>87</sup> From 2012 to 2016, this diversion program significantly reduced the youth in residential custody for technical violations.<sup>88</sup>

A 2020 study of diversion programs across the country shows that routinely offering diversion from the formal court process for first-time adolescent offenders is beneficial for the community, the taxpayers and the youth themselves.<sup>89</sup> The study tracked short and long term outcomes of 1,216 boys who were arrested in three locations across the country: Orange County, California, Jefferson Parish, Louisiana and Philadelphia, Pennsylvania.<sup>90</sup> All youth in the study were between 13 and 17 years old, and all were first time offenders who committed a moderate level offense.<sup>91</sup> Of these cases, 45 percent were formally processed through the juvenile court system and 55 percent of cases were informally processed, meaning that they were diverted from the court system entirely and supervised by either the probation department or the district attorney's office.<sup>92</sup> Rather than requiring a child to appear before a judge, an informal resolution involved things like writing an apology letter, attending classes to address behavior or completing community service hours.<sup>93</sup>

Results of the study showed that formally processing youth led to more harm than good.<sup>94</sup> Youth who were formally processed were more likely to be re-arrested, more likely to be incarcerated, more likely to engage in violence, more likely to have ties to delinquent peers and less likely to graduate from high school.<sup>95</sup> In contrast, youth diverted from formal justice system processing were less likely to re-offend in the future and had much more positive life outcomes.<sup>96</sup> Notably, there were no cases in which informal processing led to worse outcomes.

## CONCLUSION

Out-of-home placements should be reserved for the most serious offenses, and a child's length of stay in these placements should be as brief as possible. This study shows that lawmakers can accomplish this goal by limiting when and how out-of-home placements can be used. Moving forward, lawmakers should concentrate on passing laws that exclude certain kids from out-of-home placements, pass legislation to limit the length of stay in out-of-home placements, and pass laws that require diversion and that invest in expanding community-based alternatives. Informal processing and community supervision are cheaper and lead to better outcomes. By prioritizing these interventions, lawmakers can make intelligent use of taxpayer dollars to help children, strengthen families and create a safer community for everyone.

## ABOUT THE AUTHOR

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83. Ibid.

84. "Transforming Juvenile Probation," pp. 37-38. <https://www.aecf.org/m/resourced-oc/aecf-transformingjuvenileprobation-2018.pdf>.

85. Ibid.

86. Ibid.

87. Ibid., p. 37.

88. Ibid., p. 38.

89. Elizabeth Cauffman, et al., "Crossroads in Juvenile Justice: the impact of system processing 5 years after first arrest," *Development and Psychopathology* 33:2 (2020), p. 12. <https://faculty.lsu.edu/pfricklab/pdfs/juvenilejustice-pdfs/dpcauffmanetalmain-crossroadsweb.pdf>.

90. Ibid., p. 3.

91. Ibid., p. 3, 12.

92. Ibid., p. 4.

93. Ibid.

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94. Ibid., p. 11.

95. Ibid., p. 7.

96. Ibid.