

Using Bills and Budgets to Further Reduce Youth Incarceration

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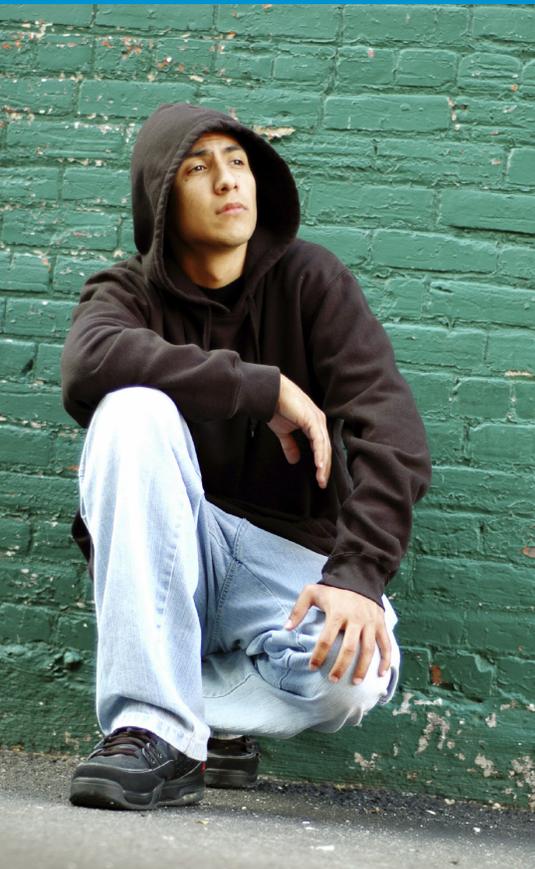


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Information

This publication is part of an eight-part series of information sheets and reports developed from a national study on deincarceration conducted by the National Council on Crime and Delinquency. The complete series, along with a ninth piece containing notes and resources, can be found here: <http://nccdglobal.org/what-we-do/our-focus-areas/juvenile-justice/deincarceration-reports>

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NCCD promotes just and equitable social systems for individuals, families, and communities through research, public policy, and practice.

Introduction



States across the country have seen huge reductions in the number of youth incarcerated in detention halls, camps, and state secure facilities. One major reason for the reductions is successful legislation developed by advocates and legislators on both sides of the aisle. The five most successful components of this legislation include provisions that:

- Move supervision responsibilities for some youth from the states to county agencies;
- Include fiscal incentives to pay for these shifts in responsibilities;
- Exclude categories of crimes such as status offenses, misdemeanors, and non-violent felonies from eligibility for incarceration in state facilities;
- Require use of the best practices identified by research; and

- Encourage stakeholders to place youth in the least-restrictive settings by naming it as a goal in reform legislation.

Despite the overall reduction of incarcerated youth, much higher percentages of youth of color remain under formal supervision and in state secure facilities.ⁱ This suggests that even the most successful states need to employ new strategies. Systems need to continue to reduce out-of-home placements in order to strengthen the links between youth and their families. They also need to identify the most effective supervision strategies. Legislation helps this agenda by guaranteeing the flow of funding to fiscally sustainable, culturally relevant community-based organizations with promising research-based practices.

Success Across the Country

The National Council on Crime and Delinquency (NCCD) spoke with 140 juvenile justice stakeholders across the country in a series of interviews, focus groups, and convenings. Analysis of the data collected from those conversations allowed NCCD to identify legislative strategies from several states. In some cases, these bills or budgets might have been the first big step in the reform process; in others they were crucial to subsequent efforts that expanded the reform and accelerated the juvenile deincarceration trend. Some examples are listed here.

RECLAIM Ohio (1993) and Targeted RECLAIM (2010)

Legislative reform in Ohio occurred in two stages. The first legislation, RECLAIM Ohio, provided nine county courts with funding to develop or purchase a range of community-based options to meet the needs of juveniles who might otherwise be sent into state custody. The funding stream was revised several times during the last two decades. The second wave of legislation targeted six counties that continued to have high rates of incarceration. Beginning in 2010, Targeted RECLAIM gave fiscal incentives to juvenile courts in those counties to further reduce the number of youth they sent to state secure facilities.

Michigan's County Juvenile Agency Act (1998)

In Michigan, the County Juvenile Agency Act of 1998 allowed local governments to assume a role in juvenile justice once held by the state. Since then, many counties have creatively leveraged the state's Child Care Fund to develop innovative community-based programs that treat youth closer to home.

Redeploy Illinois (2004)

In exchange for an agreement to reduce the number of youth a county or court sends to the state by a fixed

percentage, Redeploy Illinois gives communities a percentage of the savings at the state level in order to develop local alternatives and keep youth out of the state system.

California's SB 81 (2007)

SB 81 banned the admission of all youth to state corrections facilities except those convicted of the most serious and violent offenses and provided a portion of the funds that would have been spent on youth incarceration to county probation departments in order to serve these youth.

Texas SB 103 (2007)

Among a number of changes, SB 103 banned incarceration for misdemeanors at the state level, established inspector general and ombudsman offices, and developed a funding stream to support community-based supervision and services. Legislation that followed SB 103 formalized funding streams from the state to serve youth locally.

Alabama's Juvenile Justice Act (2008)

Alabama's 2008 law prohibited secure custody for status offenders and very young youth, encouraged more diversion, improved juvenile defender standards, and reduced the flow of youth from schools into the system.

New York State Reforms (2011 and 2012)

The 2011 New York State budget increased funding to develop alternatives to detention or residential placements. The 2012 state budget enabled New York City and New York State to collaborate to develop local placement options that keep most youth in their homes.

Five Components to Successful Legislation

Additional states, including Arkansas, Florida, Georgia, Nebraska, Mississippi, and Oregon, plus Washington, DC, have embedded similar strategies in recent legislation. The following five legislative components were most commonly found in the bills that were passed.

1) Increased Local Control of Juvenile Justice Functions and Policy

In most places, juvenile justice systems comprise a partnership between the state, counties, and local courts. As states have shifted away from more punitive approaches, they have reshaped their relationships with counties, courts, and local government in order to see more young people served in their home communities.

Legislative approaches in a number of states—California, Michigan, Texas, Ohio, Illinois, and Georgia—have empowered local juvenile justice systems to serve youth who, in the past, were incarcerated by the states. These approaches also have transferred more responsibilities to local governments to serve young people who were once state wards.



Following California’s enactment of SB 81 in 2007, AB 1628 gave juvenile parole responsibilities to California counties. Though separated by a decade, both New York’s Close to Home initiative and Michigan’s County Juvenile Agency Act allowed local governments to assume a role in juvenile justice once held by the states. Recent Texas legislation allows Travis County to create a pilot program that gives judges the opportunity to sentence youth under determinate sentencing to local juvenile facilities, rather than state facilities.ⁱⁱ In the past few years, Oregon juvenile justice directors have looked to assume control of parole from the state system.

2) Funding Streams and Incentives to Serve Youth Locally

“We’ve validated the proposal we put forward to the policymakers in 2009 that said, ‘Give local communities the resources and we will refer the youth away from the deep end of the system.’ I think there is strong evidence that shows that has worked.”—Mike Griffiths, Executive Director, Texas Department of Juvenile Justice

Nine states—Alabama, Arkansas, California, Georgia, New York, Texas, Illinois, Ohio, and Nebraska—established some kind of fiscal incentive to serve more youth outside of the state system and in their home communities. These fiscal incentives are among the few “good news” stories relating to budgets since the start of the Great Recession in 2008. The incentives created years ago in California, Michigan, Texas, and Ohio to serve youth in local juvenile justice systems survived turbulent budget times in these states. At least five states—Alabama, Georgia, Illinois, Nebraska, and New York—saw expansion of these incentives during the Great Recession.

Examples of these fiscal incentives include full appropriation to counties or courts to serve blocks of youth once sent to the state system and incentives to

serve specific categories of youth who are currently incarcerated so that they can be served elsewhere. In some cases, the incentives have evolved over decades. Some started as pilot projects, with legislative changes eventually expanding their work to deepen statewide impact. More information on some of the state efforts follows.

Texas: SB 103 authorized modest new funding to enable counties to serve youth who were once destined for the state juvenile justice department. Over time, additional legislation strengthened the initial reforms. In 2009, a Texas budget bill further enabled the juvenile justice system to live up to the 2007 legislative vision by increasing the grant funds available to counties to serve youth locally through diversion or local supervision and custody options. In 2011, when legislation merged the state-run juvenile probation and youth corrections departments, the state consolidated funding streams to support youth supervision and services at the local level.ⁱⁱⁱ

New York: The Supervision and Treatment Services for Juveniles Program, which was part of the 2011 New York State budget, incentivizes counties to serve youth in their communities outside of restrictive placement. The legislation placed a cap on the amount each county may spend on detention and still receive state funds, compelled counties to examine their practices and make decisions about how detention should be used, raised the proportion of state reimbursement to counties for alternatives to out-of-home placement and pretrial detention, required the creation of a local alternatives-to-placement plan, and mandated implementation of detention risk assessment instruments and documentation in the record of a judge's rationale for detaining low- and medium-risk youth.^{iv}

Michigan: Michigan took a significant step forward in 2013 by developing its \$1 million In-Home Community Care Grant, a competitive grant program designed to incentivize and increase community-based options for juvenile offenders in rural areas and reduce county reliance on more expensive residential facilities.^v

Georgia: In 2013, Georgia established a voluntary fiscal incentive grant program—a \$5 million fund to start in fiscal year 2014 and an additional \$1 million in federal funds—to help counties develop local options to serve youth. The grants will be awarded through a competitive process that includes performance goals seeking a reduction in commitments to the state.^{vi}

3) Barring the Admissions of Certain Categories of Youth

“What happened in 2007 is Senate Bill 81 passed, which said that lower-level offenders who hadn’t committed a certain class of offenses categorically could no longer be sent.”—Kimberly Bushard, California Board of State Community Corrections

Seven states—Alabama, California, Connecticut, Florida, Georgia, Mississippi, and Texas—recently decided to bar the admission of youth convicted of certain offenses to their state facilities or local detention centers. Categories of barred offenses include status offenses, misdemeanors, and non-violent offenses. In 2007, Texas SB 103 screened misdemeanor youth out of the system. Two states—Connecticut in 2006 and Alabama in 2008—passed legislation that barred from state facilities the admission of youth whose crimes were status offenses. In 2010, Mississippi enacted SB 2984, legislation that prohibits sending to state training schools youth who have been adjudicated for a non-violent felony or fewer than three misdemeanors.

In 2011, legislation in Florida held that courts should no longer commit youth without felony convictions to residential facilities under most circumstances.^{vii} Georgia's 2013 reforms prohibit residential commitments for all status offenders and certain misdemeanants. Only those misdemeanants whose offense histories include four prior adjudications, of which at least one was a felony, may receive out-of-home placement.

With SB 81, however, California went the furthest in limiting the types of youth who could be sent to state secure facilities. With this bill, legislators determined



that only violent, serious, and sex offenders could be sentenced to the state system. This provision barred status offenders, misdemeanants, and most felons.

4) Research-Based Approaches

Research has played a key role in juvenile justice reform. During the past decade, new research uncovered the negative impact of incarceration on young people's reoffending. It also identified promising practices for successfully transitioning youth into adulthood.

As new legislation was advanced to change systems, it included provisions that encouraged or required the use of research-driven practices to curb delinquency. Juvenile justice reform in five states—California,^{viii} Georgia,^{ix} New York,^x Texas,^{xi} and Oregon—and Washington, DC, noted that new approaches must be outcome-driven or utilize research-based tools such as risk assessment instruments. While some jurisdictions interpreted these clauses as requiring the adoption of psychological models established as evidence-based practices, the legislation was meant to highlight the importance of researching emerging interventions.

5) Naming Least-Restrictive Settings as a Goal in Legislation

Our study respondents reported that legislative clauses that set least-restrictive settings for youth as a goal helped them change placement practices in their counties and states. Five states—Arkansas, Illinois, Missouri, Pennsylvania,^{xii} and Nebraska^{xiii}—and Washington, DC, recently created legislation that presumes juvenile justice systems will place young people in the least-restrictive alternatives and as close to home as possible. System stakeholders in these sites reported facing systemic challenges and public concerns about keeping more youth in the community. However, their ability to point to these statutes allowed them to continue pressing their partners to develop practices, programs, and policies designed to keep more youth in their home communities. NCCD heard that these laws also offer stakeholders—such as public defenders, judges, and district attorneys—opportunities to challenge each other around whether the least-restrictive alternative to incarceration has been tried.

As a result of these changes, youth are better able to maintain positive relationships with their families and friends. The quality of reentry support services is also enhanced. When youth are placed in close proximity to where they will be released, they build relationships with local service providers who come into detention and congregate care facilities. These relationships continue out in the community once youth are released, providing a seamless continuum of services and relationships with positive adults.

Reform Challenges

Advocates for more effective public safety and youth development practices have real reasons to be hopeful: The five legislative strategies listed on the previous pages have been used in state after state to help reduce confined juvenile populations. At the same time, states face a number of ongoing challenges around whether appropriate funds are available to support young people in the community through the right intervention delivered by the right people.

Not Enough Federal Dollars

The National Academy of Sciences recently reported that federal funding available to support implementation of the Juvenile Justice and Delinquency Prevention Act and other improvements by state and local governments declined by 83% from 1999 to 2010.^{xiv} The appropriations caps contained in the Budget Control Act of 2011 are affecting many federally funded programs, thereby accelerating the scope of the cuts.^{xv} The National Juvenile Justice and Delinquency Prevention Coalition—a consortium of more than 100 juvenile justice system stakeholders that advocates for federal reforms—has called for a return to federal funding levels seen in 2002. The coalition is also urging the Office of Juvenile Justice and Delinquency Prevention to advocate on behalf of federal youth service dollars, measure outcomes more robustly, return to the role that it played in coordinating and establishing policy, and advocate for innovative local funding reforms that could play significant catalytic roles in states and local communities.

To build the capacity of community-based organizations at the level needed to meet the needs of young people being served in the community, legislation and budgets need to prioritize ways to raise revenue to revamp the federal and public sector role in funding these services. In addition, funds are needed to build a strong infrastructure that can serve youth when they return home.

Not Enough Reinvestment

“As (states) go through this reinvestment, what they fail to do is maintain the infrastructure to allow the local (jurisdiction) to deal with these folks locally.”—Scott Taylor, Director, Department of Community Justice, Multnomah County, Oregon

As juvenile incarceration populations have fallen, a significant number of facility closures have theoretically freed up at least some of the funds once spent on those facilities. The National Juvenile Justice Network publication, *Advances in Juvenile Justice Reform*,^{xvi} profiled juvenile facility closures in more than a dozen states, including California, Arizona, Kansas, Indiana, and Connecticut. Social justice organization Texas Appleseed documented seven facility closings between 2007 and 2011. In another accounting, the Annie E. Casey Foundation’s *No Place for Kids* showed that 18 states closed more than 50 juvenile facilities or portions of juvenile facilities in the four years prior to 2011.^{xvii} In New York State alone, 14 facilities were closed or downsized according to *No Place for Kids*.



Some of the funds once spent on these buildings have been reinvested in other parts of the formal juvenile justice system budget. When Ohio closed a facility in 2010, saving \$7 million in annual operating costs, half of those funds were reinvested in local juvenile justice programs through either the RECLAIM formula or the Behavioral Health Juvenile Justice initiative.^{xviii}

As part of the state's 2013 budget, Pennsylvania leaders reallocated some of the \$19 million in funds saved through the New Castle Youth Development Center closure to fund other juvenile justice services.^{xix}

In Oregon, as part of the 2011–13 budget, the state cut the number of “close custody” secure beds by 150 and increased the number of less-restrictive beds and slots available to serve these youth in their own communities.^{xx} When New York closed a juvenile facility in 2010 and saved \$21.8 million, the state spent an additional \$26.1 million that year to improve practices in another part of the state system.^{xxi}

Taking the savings from facility closures to reinvest in something other than the formal juvenile justice system has proved to be a challenge in most locations including Texas, which provides a good example of the reinvestment challenge within the juvenile justice system. Texas went through multi-year changes in



waves of legislation that followed SB 103 and merged its probation and corrections divisions. During these changes, the proportion of money going to probation departments in lieu of correctional placement went up, while the total Texas juvenile justice budget declined. As a result, Texas stakeholders expressed deep concerns that facility closures, reinvestment, and fiscal incentives were not substantial enough to create a sustainable service infrastructure for youth at the local level.

Not Enough Money Follows the Youth

“One of the challenges we have is being comfortable when we send a child out to the community that their needs are being met. We made the decision that we are not going to keep youth at low risk of offending in the system, we’re going to refer them to the community. And we need to make sure youth are accessing the services.”—Lynne Wilkerson, Assistant Chief Probation Officer/General Counsel, Bexar County, Texas

NCCD heard concerns regarding the availability of robust services at the level needed for youth returning to the community. The concerns were less about money within the formal juvenile justice system (though budget-strained probation and court leaders offered that as an additional challenge) and much more about meeting the service needs of youth in their communities.

When the Texas Criminal Justice Coalition surveyed local juvenile justice departments in 2012, they asked if their funding was sufficient. Not surprisingly, 75% said “no.” However, when the same group was asked where they would spend money if they had it, they did not suggest investing funds in their own system. Instead, local juvenile probation leaders responsible for supervising youth in the community offered a series of non-criminal, justice-related functions like mental health services, alternatives for incarceration, and family programs.^{xxii}



Not Enough Money Reaches Community-Based Organizations

"I've seen a lot of successes in New York, on deincarceration, and it's been my personal mission to move funding from youth prisons to community programs. I've been able to be a part this big push to get youth prisons closed, and those have been successes. The failures have been to actually get the resources back into the community, especially down to the grassroots faith and community organizations in neighborhoods most affected by incarceration."—Rubén Austria, Executive Director, Community Connections for Youth, Bronx, New York

"Even if you succeed in getting the money into the community, into community-based organizations, there's still that question of how you design funding processes to make sure that it includes homegrown organizations with people who lived that experience providing the service. We have this struggle in San Francisco, where it often winds up being the best grant writers, not necessarily the most qualified organizations, that receive the biggest grants."—Katy Weinstein Miller, Chief of Alternative Programs and Initiatives, Office of San Francisco District Attorney George Gascón

Among the 140 juvenile justice stakeholders NCCD convened in focus groups and meetings around this project were several dozen leaders of nonprofit service providers and community-based organizations whose missions are to serve young people and their families or to advocate for these services in the communities from which youth come. NCCD heard a fairly consistent message from this constituency: Not enough money is reaching "the street level."

California's experience with the funding stream set up as part of SB 81 is a good example of the challenge. As part of the 2007 California reforms in SB 81, the non-violent, non-serious, non-sex offender population within California's juvenile justice population shifted from state to local control. The \$90 million Youthful Offender Block Grant (YOBG) program funding stream was designed to help counties serve these youth in their home communities. According to an analysis of YOBG spending patterns by the Board of State and Community Corrections, only 4% was spent on community-based organizations to serve youth, with the bulk of the funds being spent within the formal systems of county probation departments. Most of the 58 California counties did not report spending any YOBG funds on community-based organizations as part of the "reinvestment."^{xxiii}

Recommendations

NCCD heard strong support for finding creative ways to capacitate community-based organizations so that they can play a role in serving youth in the community. To overcome some of the institutional and structural barriers—everything from the Request for Proposal process to the size of nonprofit organizations that can be funded—an intentional legislative focus is needed. Strategies that were offered included the following.

Expand Federal Funding

While it was eventually eliminated due to the federal budget compromise, \$20 million for new incentive grants to help states implement evidence-based strategies that reduce youth incarceration and foster better outcomes for youth was included in the Obama Administration's 2013–14 budget. The budget also includes significant increases in the Juvenile Accountability Block Grant (JABG) and Title V funding streams, moneys that have traditionally supported services for young people when they are back in their communities. Juvenile justice stakeholders from the states who have used JABG and Title V funds in the past to help build a continuum of services and programs that help keep youth out of juvenile facilities believe that an increase in the federal juvenile justice budget could help their communities offer alternatives to incarceration for youth and develop the community-based services all youth need to transition to adulthood.^{xxiv} Public opinion research has shown public support for paying more in taxes, i.e., a “willingness to pay” for rehabilitative services for young people exists, especially when compared to youth incarceration.^{xxv}

Develop Legislation That Reallocates Funds

When facilities close, the funds budgeted for these buildings can be reallocated to serve youth in the community. If barriers to making these investments exist, they should be targets for legislative or budget

reforms. As part of the 2011 budget, the New York legislature suspended the 12-month waiting period previously required when the state decided to close a facility. This change made closures easier, allowing the Office of Children and Family Services to move faster in closing empty facilities around the state and freeing up those funds for other investments in the system.^{xxvi} Ohio's HB 86 allowed savings from shorter lengths of stay in juvenile facilities to be reinvested in and used by the courts; \$106,200 in FY12 and \$561,000 in FY13 were awarded to courts to enhance existing practices or develop new interventions.^{xxvii}

Fund by ZIP Codes and Use Place-Based Approaches

Legislative approaches need an implicit focus on targeting funds to the neighborhoods in which most justice system-involved youth live. These approaches could build upon legislative efforts in New York and advocacy efforts in Louisiana and Alabama that documented the ZIP Codes and neighborhoods from which young people in the juvenile justice system come and that advocate spending more to serve youth in these communities.^{xxviii}



Support Community-Based Organizations With Innovation Funds

Legislation to support deincarceration should carve out some portion of the designated funds to support youth locally through innovation funds for community-based organizations. NCCD heard examples of this approach during our project. The Alameda County Public Health Department in California is redirecting money generated by adult prison realignment to provide start-up grants for new culturally relevant and community-based reentry programs.^{xxix} Another example was an investment by the New York State Division of Criminal Justice Services in a “Breakthrough Research-Based Strategy,” which directed grants to Community Connections for Youth,^{xxx} a community-based organization in the Bronx.

Specify Characteristics of the Organizations in Legislation

As future legislation, budgets, or contracts are developed to support juvenile deincarceration, they could enumerate and help give preference to



community-based organizations. Legislation, budgets, and individual contracts could note organization size, staff composition, population served, and program locations. For example, the Schiff-Cardenas Crime Prevention Act, a state-based funding stream that supports services for youth in California counties, requires community-based organizations to serve on the local bodies that oversee funding decisions. State statutes that authorize the membership of state advisory groups and other bodies that advise on how juvenile justice funds are spent could be amended to include community-based organizations.^{xxxi}

Use Performance Measures That Fit the Context of Community-Based Organizations

Legislation should include performance and outcome measures based on young people’s strengths and needs in a manner that small, community-based organizations can capture. As it was described to NCCD, “some basic count so you can say this is what we do and this is how often we do it and these are our outcomes. And something positive, not just how many got rearrested.” The research and evaluation center at John Jay College of Criminal Justice, City University of New York, is working to develop an evaluation system designed to address these challenges with smaller, grassroots nonprofit organizations.

Help Community-Based Organizations Access Funds

As legislation to develop or expand new funding streams is enacted, it should include technical assistance funds to help small, grassroots nonprofit providers access these funds. When the DC YouthLink initiative was developed, a \$400,000 fund was set up to help community-based providers prepare to engage with the new system and broaden the number and kind of community-based providers that could work with the system.



Include Community-Based Organizations, Families, and Youth as Legislative Agendas and Budgets Are Developed

The focus groups and final review session of findings held in Chicago, Illinois, raised concerns regarding the divide between parts of the reform constituency that work on legislative advocacy and the communities most impacted. The Boys and Young Men of Color Initiative (BMOC), a project funded by The California Endowment, offers one model. BMOC has developed a vast network of boys, young men, families of color, direct service providers, policy advocates, and legislators that aims to improve outcomes for boys and men of color. Part of the focus has been developing a legislative agenda led by legislators and communities of color. The California State Assembly Select Committee on Status of Boys and Men of Color

sponsored a series of hearings that took testimony from more than 2,000 youth, family members, and leaders. The committee then developed a legislative agenda around the needs identified by the hearings. In 2012–13, this committee introduced legislation that would seal juvenile records, limit the use of solitary confinement, require the review of sentences for youth transferred to adult court, require parental notification when youth are added to the state gang database, and prohibit the detention of youth based on their immigration status. The Missouri Division of Youth Services Advisory Board, which provides non-partisan policy recommendations to Missouri legislators and the executive branch on budgetary and policy matters in youth policy, is another model that actively recruits young people and family members impacted by the system.