

REDEFINING JUSTICE FOR EMERGING ADULTS: EMERGING ADULT COURTS PROMISE A COST-EFFECTIVE MEANS TO REHABILITATE OFFENDERS WHO COMMIT CRIMES PRIOR TO THEIR 25TH BIRTHDAYS

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Leroy Smith is a young Black man with a bushy beard and the type of infectious smile that promises to make good on his claim that he's the "class clown."¹ Manager of a Starbucks just a few blocks from Wall Street in New York City, Leroy is also a clothing aficionado.² He just formed an LLC to sell clothes, with the idea that the business may later include garments designed and sewn by one of his two younger brothers.³ He wants to marry and have kids—in that order.⁴ In the meantime, he acts as a role model for kids in his community.⁵ He has the confidence of a man whose dreams are within reach.

By all accounts, however, Leroy should be preparing for release from federal prison as a convicted felon for his part in a get-rich-quick-scheme cooked up by his childhood friends.⁶ Instead, after being charged with federal crimes, he was accepted into the Young Adult Opportunity Program in the Southern District of New York ("SDNY"),⁷ which provides selected young adults (ages eighteen to twenty-five) with "structure and access to employment, counseling, and treatment resources."⁸

"I got arrested at twenty-four years old, and I let my family down," Leroy said, explaining how he cashed in on fake money orders along with his childhood friends in Brownsville, Brooklyn.⁹ This neighborhood, south of the gentrifying neighborhoods of Bushwick and Bed-Stuy, is one of the toughest in New York City.¹⁰ According to Leroy, this is a community where kids start posturing and forming alliances in middle school, looking to the biggest "homie" to lead the

* Judge, Indiana Court of Appeals. Special thanks to Casey Farrington.

1. Zoom Interview with Leroy Smith, (Feb. 23, 2021); All personal interviews on file with the *Indiana Law Review* and Judge Weissmann's chambers [hereinafter Personal Interview]. Some quotes have been edited for clarity.

2. Zoom Interview with Leroy Smith, *supra* note 1.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Young Adult Opportunity Program*, S.D.N.Y. (May 24, 2018), <https://www.nysd.uscourts.gov/programs/young-adult-opportunity-program> [perma.cc/X9N8-NBB5].

9. Zoom Interview with Leroy Smith, *supra* note 1.

10. Wenhui Li et al., *Summary of Vital Statistics 2017: City of New York*, NEW YORK CITY DEP'T OF HEALTH AND MENTAL HYGIENE 10, 12, 20, 23, 28, 34 (July 2019), <https://www1.nyc.gov/assets/doh/downloads/pdf/vs/2017sum.pdf> [https://perma.cc/D5W5-UZM9]; Feifei Sun, *Brownsville: Inside One of Brooklyn's Most Dangerous Neighborhoods*, TIME (Jan. 31, 2012), <https://time.com/3785609/brownsville-brooklyn/> [perma.cc/M95Q-87DJ] ("There's a saying in Brownsville that says if you're 25, you're either dead, or in jail, or you're done with the gang life.").

way.¹¹ Leroy still lives in Brownsville, helping his father with dialysis.¹² But he admits the pressures put on the young people in his hometown often lead to incarceration.¹³

“Sometimes the environment gets the best of the youth, especially over here,” Leroy said.¹⁴ “I wasn’t a bad kid, I just got caught up in a bad situation . . . I knew better than to even get caught up in that situation. I was just young, and I had to learn the hard way.”¹⁵ When Leroy’s friends suggested forging money orders, he agreed to help but soon found himself in jail, charged with three felonies.¹⁶

When the prosecutor offered three years in federal prison and a felony conviction, all Leroy could think about was his family, especially his father, who relies on his help.¹⁷ That is when he applied to and was accepted into a specialized court tailored to his unique needs as an emerging adult¹⁸—defined for purposes of this Article as offenders aged eighteen to twenty-five. The SDNY program is one of about a dozen emerging adult courts—also called young adult courts and transitional-aged youth courts—that began springing up nationwide a few years ago.¹⁹

The concept of an “emerging adult” derives from the idea that an eighteen-year-old who relies on his parents for support does not become a fully-fledged adult by virtue of reaching the age of majority.²⁰ Think of a caterpillar, which must spend time as a pupa before it can morph into a butterfly. In much the same way, an emerging adult whose brain is still developing must transition from childhood to a productive and healthy adult.²¹ But our current justice system expects emerging adults to take flight before they emerge from their cocoons.

Emerging adult courts operate with an understanding that young people tend to learn and grow from their mistakes.²² These specialized courts, like the one Leroy attended, embrace the idea that proper intervention guides an emerging adult from the instability of youth to a lawful life of independence.²³ In Leroy’s case, he received services in lieu of jail time.²⁴ Group therapy taught him to control his impulses, question inappropriate peer relationships, and make

11. Zoom Interview with Leroy Smith, *supra* note 1.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*; *Young Adult Opportunity Program*, *supra* note 8.

20. See Karen U. Lindell & Katrina L. Goodjoint, *Rethinking Justice for Emerging Adults: Spotlight on the Great Lakes Region*, JUV. LAW CTR. 3-6 (2020), <https://jlc.org/sites/default/files/attachments/2020-09/JLC-Emerging-Adults-9-2.pdf> [<https://perma.cc/BWK9-Z3RH>].

21. *Id.*; see also Alexandra O. Cohen et al., *When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 PSYCH. SCI. 549, 555 (2016).

22. Personal Interview, *supra* note 1; Lindell & Goodjoint, *supra* note 20, at 8.

23. Personal Interview, *supra* note 1; Lindell & Goodjoint, *supra* note 20, at 8.

24. Zoom Interview with Leroy Smith, *supra* note 1.

thoughtful choices.²⁵ His court counselor offered educational options, job training, and critiques of his resume.²⁶ Instead of leaving the system as a convicted felon, Leroy got a second chance.

When it comes to eighteen- to twenty-five-year-olds, our justice system has uttered the same incantation for decades: more incarceration, more punishment, and more stigmatization.²⁷ But these strategies do not work.²⁸ They do not make our communities safer, and they do not address the underlying causes of criminality.²⁹

This Article examines the inception, development, and success of emerging adult courts across the United States, concluding that emerging adult courts offer better outcomes than our current system for both justice-involved young people and their communities. Part I argues that our criminal justice system should treat people between eighteen and twenty-five differently than older adults. Part II surveys criminal justice reforms within the United States intended to accommodate emerging adults' still-developing brains. Part III examines the development and function of the emerging adult courts currently operating in the U.S. Part IV highlights how justice reform for emerging adults is a racial justice issue. Part V analyzes data on the effectiveness of emerging adult courts, which indicate promising results. Part VI addresses criticism of this type of court-based reform. Part VII shares lessons on how to best establish these courts. Part VIII emphasizes the necessity of cross-governmental reform efforts. And last, Part IX identifies success stories from emerging courts, showing how these courts not only offer hope and a new life to individuals, but also create ripples of hope throughout communities.

I. EMERGING ADULTS ARE NOT ADULTS

Emerging adults are overrepresented in the criminal justice system, accounting for twenty-three percent of all arrests but representing only nine and a half percent of the U.S. population.³⁰ Most people age out of crime by the age of twenty-five.³¹

25. *Id.*

26. *Id.*

27. Lindell & Goodjoint, *supra* note 20, at 10-11.

28. *Id.*

29. *Id.*

30. NATIONAL CONFERENCE OF STATE LEGISLATURES, THE LEGISLATIVE PRIMER SERIES FOR FRONT-END JUSTICE: YOUNG ADULTS IN THE JUSTICE SYSTEM 1 (2019), https://www.ncsl.org/Portals/1/Documents/cj/front_end_young-adults_v04_web.pdf [perma.cc/V99D-CLU8] [hereinafter "YOUNG ADULTS IN THE JUSTICE SYSTEM"].

31. Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. REV. 113, 122 (2018), available at <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/> [perma.cc/FEL4-BK2J]; see also JUST. LAB AT COLUMBIA UNIV., A ROADMAP TO REFORM: KEY ELEMENTS OF SPECIALIZED COURTS FOR EMERGING ADULTS 2 (2021), <https://justicelab.columbia.edu/sites/default/files/content/Key%20Elements%20of%20Specialized%20Courts%20for%20Emerging%20Adults.pdf> [perma.cc/7JQS-

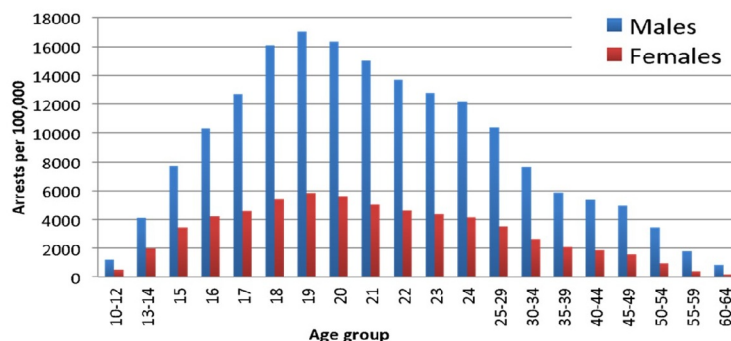


Figure 1. “Age-crime curve.”³²

Though the criminal system has generally categorized all offenders over eighteen years old as “adults,” such strict sorting no longer matches what neuroscientists know about brain development.³³ As explained by Elizabeth Cauffman, a professor of psychology at University of California, Irvine (“UC Irvine”), whose research was integral to American Psychological Association amici filings in *Roper v. Simmons*,³⁴ *Graham v. Florida*,³⁵ and *Miller v. Alabama*:³⁶ “We’re not done [with brain development] at eighteen. The law decides we are, but developmentally we’re not.”³⁷

Emerging adulthood is a time for new, sometimes overwhelming responsibilities, like signing a lease, starting a career, and becoming a parent. “You’re dealing with people who have one foot in adulthood and one foot in being a minor. They’re in between independence and dependence,” said

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32. *Justice for Emerging Adults: Session 2—Emerging Adults: Why are They Different?*, *RACE TO EQUITY*, PowerPoint Presentation, slide 9, table 1, <http://racetoequity.net/justice-for-emerging-adults-webinar-series/> (last visited Mar. 22, 2022) [<https://perma.cc/NQK9-ZW2S>].

33. See Brief for the Am. Psych. Ass’n, & the Mo. Psych. Ass’n as Amici Curiae Supporting Respondent at 4, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633); Brief for the Am. Psych. Ass’n, Am. Psychiatric Ass’n, Nat’l Ass’n of Soc. Workers, and Mental Health Am. as Amici Curiae Supporting Petitioners at 4-5, *Graham v. Florida*, 560 U.S. 48 (2010) (No. 08-7412); Brief for the Am. Psych. Ass’n, Am. Psychiatric Ass’n, Nat’l Ass’n of Soc. Workers as Amici Curiae Supporting Petitioners at 9-10, *Miller v. Alabama*, 567 U.S. 460 (2012) (Nos. 10-9646, 10-9647).

34. Brief for the Am. Psych. Ass’n & Mo. Psych. Ass’n as Amici Curiae Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633).

35. Brief for the Am. Psych. Ass’n, Am. Psychiatric Ass’n, Nat’l Ass’n of Soc. Workers, and Mental Health Am. as Amici Curiae Supporting Petitioners, *Graham v. Florida*, 560 U.S. 48 (2010) (No. 08-7412).

36. Brief for the Am. Psych. Ass’n, Am. Psychiatric Ass’n, Nat’l Ass’n of Soc. Workers as Amici Curiae Supporting Petitioners, *Miller v. Alabama*, 567 U.S. 460 (2012) (Nos. 10-9646, 10-9647).

37. Zoom Interview with Elizabeth Cauffman, Professor of Psychol. at Univ. of Cal., Irvine, (May 4, 2021).

psychiatrist and addiction specialist Dr. David Mee-Lee.³⁸ This period between dependence and independence has been dubbed by psychologists as the “maturity gap” because emerging adults cognitively understand the consequences of their behavior but lack the impulse control to act on that knowledge.³⁹

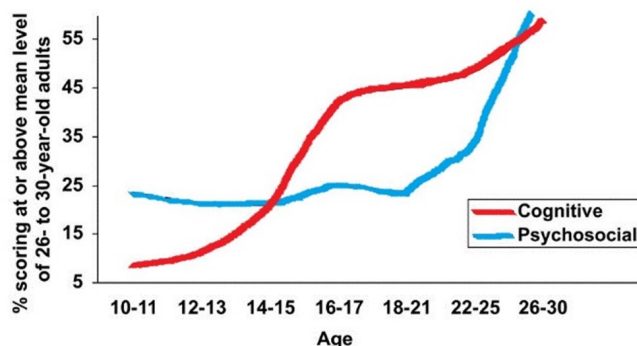


Figure 2. “Proportion of Individuals in Each Age Group Scoring at or Above the Mean for 26- to 30-Year-Olds on Indices of Cognitive Capacity and Psychosocial Maturity.”⁴⁰

“The thing is, they’re going to grow up regardless,” said Lael Chester, Director of the Emerging Adult Justice Project at Columbia University’s Justice Lab, which spent the last three years studying alternatives to incarceration for emerging adults.⁴¹ “By twenty-five they’re pretty much all going to get there . . . The question is, how are they going to get there?”⁴²

Privileged kids get to figure out who they are in college, where their mistakes—even legal ones—carry less weight.⁴³ Less privileged kids are disproportionately forced to do this in prison, with a paper trail of formal court documents attesting that they are broken and dangerous.⁴⁴ The impact from

38. Zoom Interview with David Mee-Lee, M.D., DML Training & Consulting, (Mar. 3, 2021).

39. Laura Rico, *Studying Teens’ Emotional Maturity Gap*, UCI NEWS (Oct. 12, 2009), <https://news.uci.edu/2009/10/12/studying-teens-emotional-maturity-gap/> [perma.cc/3933-D5DX]; Grace Icenogle et al., *Adolescents’ Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a “Maturity Gap” in a Multinational Cross-Sectional Sample*, 43 AM. PSYCH. ASS’N LAW & HUM. BEHAV. 69 (2019).

40. Laurence Steinberg et al., *Are Adolescents Less Mature Than Adults?*, 64.7 AM. PSYCH. 583, 591, fig. 3 (2009).

41. Zoom Interview with Lael Chester, Dir. of the Emerging Adult Justice Project, Justice Lab at Columbia Univ., (Apr. 15, 2021).

42. *Id.*

43. Personal Interview, *supra* note 1; Lindell & Goodjoint, *supra* note 20, at 6-7.

44. Lindell & Goodjoint, *supra* note 20, at 7-8; Valerie Schneider, *The Prison to Homelessness Pipeline: Criminal Record Checks, Race, and Disparate Impact*, 93 IND. L.J. 421, 428 (2018) (People with criminal records “may be ineligible for many federally funded health and welfare benefits, food stamps, and federal education assistance. They may be denied the right to

mistakes made in early adulthood can stalk a person for years, altering the entire trajectory of their lives.

Emerging adults do not fare well at any point in the criminal justice system. The same unfinished brain that contributes to the maturity gap and higher crime rates also makes it more likely the person will fall prey to a false confession.⁴⁵ Moreover, emerging adults may lack the wisdom and confidence to know and assert their constitutional rights.

But it is not all bad news. Emerging adult brains possess “a lot of plasticity up until age twenty-five, where you can really teach things and instill changes in them,” said Dr. Allyson Dir, an assistant professor of psychiatry at Indiana University, whose research focuses on emerging adults with co-occurring mental health problems.⁴⁶ Although modifying behavior strikes at the core of criminal rehabilitation, the field of criminal justice has only recently started applying advances in neuroscience to emerging adults.⁴⁷ As shown in Figure 3, the reality of emerging adults’ lives is that their paths to maturity often intersect with the world of both juveniles and adults.

vote, to enlist in the military, or to obtain security clearances needed for jobs. And . . . they may be denied both public and private housing.”); Bente Bouthier, *Rising Rent, Pandemic Making it Hard for People with Criminal Records to Find Housing*, WFYI (Feb. 15, 2022), <https://www.wfyi.org/news/articles/rising-rent-pandemic-making-it-hard-for-people-with-criminal-records-to-find-housing> (“[I]n Indiana, it is legal for landlords to reject housing applicants based on a criminal record.”); *Atwood v. State*, 905 N.E.3d 479, 488 (Ind. Ct. App. 2009) (“Even a limited criminal history can be considered an aggravating factor [at sentencing].”).

45. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C.L. REV. 891, 945 (2004) (“More than half of the false confessors in our sample were under the age of twenty-five (71/113 or 63%).”).

46. Zoom Interview with Allyson Dir, PhD., Assistant Professor, Dep’t of Psychiatry at Ind. Univ. Sch. of Med., faculty member, Adolescent Behavioral Health Research Program, (Apr. 16, 2021).

47. See Brief for the Am. Psych. Ass’n, Am. Psychiatric Ass’n, Nat’l Ass’n of Soc. Workers as Amici Curiae Supporting Petitioners, *supra* note 37.

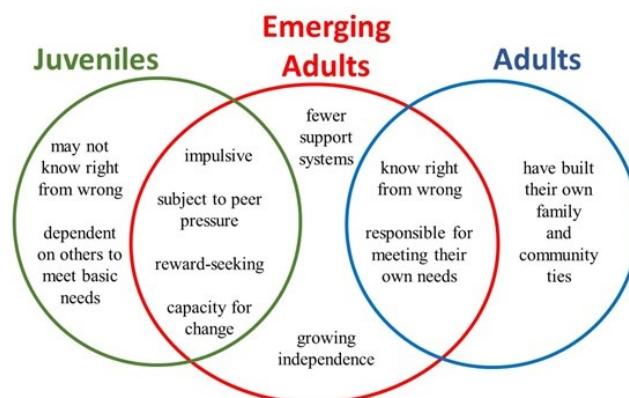


Figure 3. Emerging adult path to maturity (by Author).

The judicial system has a unique opportunity to offer life-changing intervention. This is so for three compelling reasons:

(1) Emerging adults' brains continue developing until about age twenty-five. Proper intervention at this stage often results in rehabilitation and lawful living.⁴⁸

(2) Around the time the brain is in its final stages of maturation, young people are also at greater risk of experiencing symptoms of mental illness, with seventy-five percent of mental illness presenting by the mid-twenties.⁴⁹ Addressing mental illness early yields better long-term results.⁵⁰

(3) Emerging adults are susceptible to addiction.⁵¹ Early intervention strategies can reduce the impact of substance use.⁵²

48. Alexandra O. Cohen et al., *supra* note 21, at 560.

49. Ronald Kessler et al., *Age of Onset of Mental Disorders: A Review of Recent Literature*, 20(4) NAT'L LIBR. MED. 359, 359-64 (July 2007) (stating the median age of onset for non-affective psychosis is in the range of late teens to early twenties).

50. Marco Colizzi, Antonio Lasalvia & Mirella Ruggeri, *Prevention and Early Intervention in Youth Mental Health: Is it Time for a Multidisciplinary and Trans-Diagnostic Model for Care?*, 14 INT. J. MENT. HEALTH SYS. 23 (2020), available at <https://ijmhs.biomedcentral.com/articles/10.1186/s13033-020-00356-9> [perma.cc/Y366-FJDK].

51. SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., KEY SUBSTANCE USE AND MENTAL HEALTH INDICATORS IN THE UNITED STATES: RESULTS FROM THE 2017 NATIONAL SURVEY ON DRUG USE AND HEALTH, 35 (Sept. 2018), available at <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHFFR2017/NSDUHFFR2017.pdf> [perma.cc/5YQ3-2TJ2] (Results from a nationwide survey in 2017 revealed that of young adults between eighteen and twenty-five, about 5.1 million—or fifteen percent—battled a substance use disorder in 2017).

52. *Prevention of Substance Use and Mental Disorders*, SAMHSA, <https://www.samhsa.gov/find-help/prevention> (last updated Aug. 11, 2021) [https://perma.cc/9BGC-GSY3].

II. EMERGING ADULT COURTS ARE A RECENT ADDITION TO THE JUDICIAL LANDSCAPE

Beginning in 2005, courts began recognizing that cognitive development spans into the mid-twenties.⁵³ Put simply, caterpillars don't become butterflies overnight. Stakeholders, in turn, began to question whether the criminal justice system should add a third category—emerging adults—to bridge the period between childhood and adulthood.⁵⁴ A few stakeholders started working on solutions to address this specialized population, but no nationwide consensus followed.⁵⁵ States' approaches to emerging adult crime fall into three general categories:⁵⁶

53. See *Roper v. Simmons*, 534 U.S. 551, 569 (2005); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Miller v. Alabama*, 567 U.S. 460, 471 (2012); *In re Monschke*, 482 P.3d 276, 288 (Wash. 2021) (remanding cases of emerging adults to consider whether youthful characteristics should mitigate their sentences); see also Icenogle et al., *supra* note 39, at 80.

54. Personal Interview, *supra* note 1.

55. *Id.*

56. More specific examples of disparate approaches include: (1) drug courts like those in Nevada and Idaho, which include content within the existing program to address the specific needs of young people; *Treatment Courts Available in Idaho*, STATE OF IDAHO JUD. BRANCH, <https://isc.idaho.gov/solve-court/types> [<https://perma.cc/H6TH-S3AJ>]; Zoom Interview with David Mee-Lee, *supra* note 38; Briana Erickson, *New Day Dawns for Graduates of Las Vegas Youth Court Program*, LAS VEGAS REV.-J. (July 20, 2017), <https://www.reviewjournal.com/crime/courts/new-day-dawns-for-graduates-of-las-vegas-youth-court-program/> [<https://perma.cc/NU83-64XD>]; (2) a presentence program for offenders eighteen to twenty-five facing felony marijuana charges in a county near Philadelphia; *Youth Offender Program*, OFF. OF THE DIST. ATT'Y, CNTY. OF DELAWARE, PA., <https://delcoda.com/young-offender-program/> [<https://perma.cc/5UQG-WKRH>]; (3) diversion programs, for juveniles, like those in Houston and Georgetown, Texas; *My Brother's Keeper Houston and Harris County Precinct 1 Commissioner Rodney Ellis Launch Country's First Law Enforcement Assisted Diversion Program for Youth*, CITY OF HOUS. (Sept. 27, 2018), <https://www.houstontx.gov/health/NewsReleases/mbk-harris-county-launch-diversion-program.html> [<https://perma.cc/5UF7-SXQV>]; New Diversion Program for Houston and Harris County Young Offenders, THE L. OFF. OF NED BARNETT (Dec. 3, 2018), <https://www.nedbarnett.com/new-diversion-program-for-houston-and-harris-county-young-offenders/> [<https://perma.cc/9H7P-P8BQ>]; Connie Odom, *WilCo Awards Contract and Secures Funding for Alternative to Incarceration Program for Emerging Adults*, WILLIAMSON CNTY., TX. (Jan. 22, 2019), <https://www.wilco.org/Departments/Public-Affairs/wilco-awards-contract-and-secures-funding-for-alternative-to-incarceration-program-for-emerging-adults> [<https://perma.cc/WCQ6-PF59>]; and (4) programs like the Young Men Emerging program in Washington, D.C., which provides education, growth and mentorship during incarceration. Joel Castón et al., *DC's Young Men Emerging Unit: A Story of Reform and Lessons Learned from the Front Lines*, JUST. POL'Y INST. (2020), https://justicepolicy.org/wp-content/uploads/2021/06/Young_Men_Emerging_Unit_2020.pdf [<https://perma.cc/7JGP-G42P>]. These interesting approaches demand further inquiry, but the focus of this Article is on emerging adult courts.

- (1) Legislative initiatives: Raising the age of juvenile jurisdiction (see Table 1);⁵⁷ creating broader opportunities for expungement of youthful offenses (see Table 2); implementing special early release options (see Table 3); and adopting hybrid criminal laws which treat eighteen- to twenty-five-year-olds differently than older offenders (see Table 4).
- (2) Judicial action: Problem-solving courts springing up organically in urban areas (see Table 5 and Table 6).
- (3) No verifiable action.

Although legislative approaches demand deeper inquiry, this Article focuses on how emerging adult courts can change the criminal justice landscape.

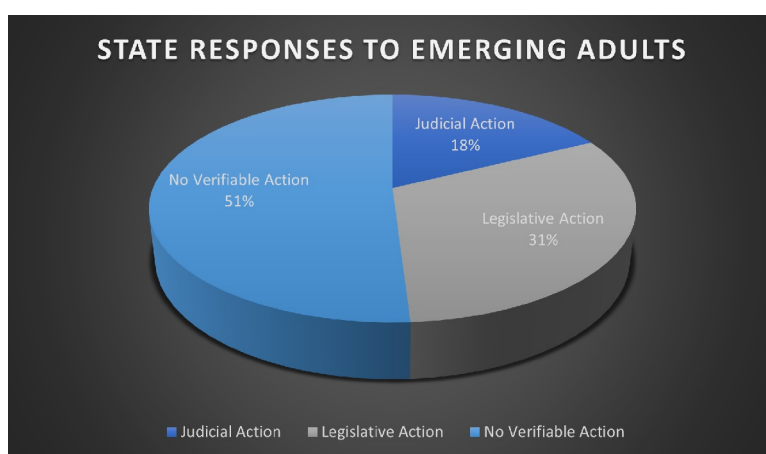


Figure 4. State responses to emerging adults (by Author) (last updated 7/1/21).

57. Three states—Georgia, Texas, and Wisconsin—end juvenile jurisdiction after 16. Anne Teigen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NAT'L CONF. OF STATE LEGS. (2021), <https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx> [<https://perma.cc/DJV9-PWKZ>].

States that have proposed or enacted legislation to raise the juvenile jurisdiction age beyond eighteen		
State	Date	Summary
Colorado	<i>Proposed in 2019</i>	C.R.S. § 16-11.3-103(2)(h)(III)(2.9)(a) required the Colorado Commission on Criminal and Juvenile Justice to study and make recommendations on “age of delinquency issues for young adults” aged eighteen to twenty-four. The Commission ultimately did not comment on raising the age legislation for juvenile courts. ⁵⁸
Connecticut	<i>Failed in 2017 and 2018</i>	Proposed raising the age of juvenile jurisdiction from seventeen to twenty years of age. H.B. 7045 CONN. GEN. ASSEMB. (2017); H.B. 5040, CONN. GEN. ASSEMB. (2018).
Illinois	<i>Proposed in 2021</i>	HB 111 proposes to raise the age of juvenile jurisdiction to nineteen for felonies. The law would also require the Illinois Juvenile Justice Commission to include in its annual submission to the Governor and the General Assembly “recommendations regarding the inclusion of emerging adults into a developmentally appropriate justice system, reducing recidivism, and preventing deeper criminal involvement;” HB 133 proposes to raise the age to twenty-one for misdemeanors. H.B. 111, ILL. GEN. ASSEMB. (2021); H.B. 133, ILL. GEN. ASSEMB. (2021).
Massachusetts	<i>Proposed in 2021</i>	2021 HD1432/SD 697 proposes to include nineteen and twenty-year-olds in juvenile courts. ⁵⁹
Nebraska	<i>Proposed in 2021</i>	LB 330 would raise the age of juvenile jurisdiction to twenty-one. ⁶⁰
Washington	<i>Proposed in 2021</i>	SB 5122 seeks to raise the age of juvenile jurisdiction from seventeen to nineteen-years-old. S.B. 5122 Wash. State Leg. (2021).
Vermont	<i>Enacted in 2018</i>	Juvenile jurisdiction includes nineteen-year-olds with jurisdiction raising to age twenty as of July 1, 2022. VT. STAT. ANN. tit. 33 § 5206 (West).

Table 1. States that have proposed legislation or enacted laws to raise the juvenile jurisdiction age beyond eighteen (by Author) (last updated 7/1/21).

58. DEPT. OF PUBLIC SAFETY, COLORADO: COMMISSION ON CRIMINAL AND JUVENILE JUSTICE (Aug. 17, 2021), https://cdpsdocs.state.co.us/ccjj/resources/report/2020-08-17_CCJJ-ADRpt_HB19-1149.pdf [<https://perma.cc/4ZHY-K763>].

59. NASW-MA Legislative Agenda 2020-2021, NAT’L. ASS’N. OF SOCIAL WORKERS, <https://cqrcengage.com/socialworkersma/LegAgenda> (last visited Apr. 28, 2021) [<https://perma.cc/SHM2-CPNZ>].

60. *Proposed Bill Would Raise Age Limit for Juvenile Court*, NTV (Jan. 28, 2021), <https://nebraska.tv/news/local/proposed-bill-would-raise-age-limit-for-juvenile-court> [<https://perma.cc/8WBR-6LC3>].

Examples of states creating broader opportunities for expungement of youthful offenses		
State	Date	Summary
Massachusetts	Enacted in 2018	Youthful expungement law allows adults to have offenses expunged that were committed prior to their twenty-first birthdays. MASS. GEN. LAWS ANN. ch. 276 § 100F (West).
Texas	Established in 2016	A pretrial diversion program in Dallas to expunge crimes of first-time offenders, ages seventeen to twenty-four years old who complete GED and parenting and life skills classes over six months to a year. Successful completion of the program results in expungement of the participant's case. ⁶¹

Table 2. Examples of states creating broader opportunities for expungement of youthful offenses (by Author) (last updated 7/1/21).

Examples of states and districts which have proposed or implemented special release options		
State	Date	Summary
California	Enacted in 2013 and expanded in 2015 and 2017	Youthful offender parole laws allow persons who commit crimes prior to their twenty-sixth birthdays to apply for early parole. CAL. PENAL CODE § 3051 (West). ⁶²
Colorado	Failed in 2020	S.B. 20-076 would allow early parole for emerging adult offenders. 72 nd Gen. Assemb. 2 nd Reg. Sess. Colo. 2020. ⁶³
Florida	Failed in 2020	H.B. 1131 would allow sentence reductions for adults who commit crimes prior to their twenty-fifth birthdays. "The Second Look Act," H.B. 1131, 2020 Leg., Reg. Sess. (Fla. 2020); <i>see also</i> Behr, <i>supra</i> note 60 at 8. ⁶⁴
Illinois	Enacted in 2018	Youthful offender parole laws allow persons who commit crimes prior to their twenty-first birthdays to apply for early parole. 730 ILL. COMP. STAT. ANN. 5/5-4.5-115. ⁶⁵ <i>see also</i> Behr, <i>supra</i> note 60 at 4.
District of Columbia	Proposed in 2019	Bill 23-0127 would allow sentence reductions for adults who commit crimes prior to their twenty-fifth birthdays. "Second Look Amendment Act of 2019," Bill 23-0127, Council of the District of Columbia (2019). ⁶⁶

Table 3. Examples of states and district which have proposed or implemented special release options (by Author) (last updated 7/1/21).

61. *A DA Driven Pre-Trial Diversion Program for Young Offenders*, AIM CT. DALLAS CNTY., <https://www.dallascounty.org/government/district-attorney/aim.php> [<https://perma.cc/FX53-NWXF>].

62. *See also* Natalie Behr, *Specialized Parole and Resentencing Laws Focused on Emerging Adults*, EMERGING ADULT J. PROJECT 2 (Sept. 2020), https://justicelab.columbia.edu/sites/default/files/content/EAJP_Specialized%20Parole%20and%20Resentencing%20Laws%20Focused%20on%20EAs.pdf [<https://perma.cc/69M9-TX5T>].

63. *See id.* at 6.

64. *See id.* at 8.

65. *See id.* at 4.

66. *See id.* at 7.

States and districts adopting hybrid criminal laws		
State	Statute	Summary
Alabama	Ala. Code § 15-19-1 <i>et seq.</i>	Applies to youth charged with a crime before age twenty-one, limits use of youth's statements during prosecution and public access to fingerprints and other records, and caps incarceration at three years.
District of Columbia	D.C. CODE §§ 24-901 <i>et seq.</i> (West 2018)	Offers sentencing alternatives to certain youth under twenty-four at time of offense including probation, early unconditional discharges, and vacated convictions.
Michigan	MICH. COMP. LAWS ANN. §§ 762.11 <i>et seq.</i> (West 2015)	Entitles youth between seventeen and twenty-four years old who have plead guilty to criminal offense to a two-year sentence cap and no conviction under certain circumstances, with records unavailable to public, and prosecutor's consent necessary if offense committed while aged 21 to 23.
	MICH. COMP. LAWS ANN. §§ 762.11 <i>et seq.</i>	Michigan's hybrid law, the Youthful Trainee Act, has been in effect for decades and provides sentencing alternatives to seventeen to twenty-four-year-olds.
	17. MICH. COMP. LAWS ANN. § 712.A2 (effective Oct. 1, 2021).	Michigan also recently enacted legislation increasing the maximum age for juvenile jurisdiction to seventeen.
New York	N.Y. CRIM. PROC. LAW §§ 720.10, <i>et seq.</i>	Generally allows youthful offender status for youth sixteen to eighteen at time of offense who have not been convicted of a felony or tried previously as youthful offender, with offense treated as a non-crime and the records largely sealed.
Vermont	33 VT. STAT. ANN. §§ 5280, 5281, 5287 (West)	Allows for probation for any crime committed by a youth under the age of twenty-one with no prior conviction and for expungement after five years if youth complies with probation and has no convictions for crimes carrying prison sentence exceeding six months.

Table 4. States and districts adopting hybrid criminal laws (by Author) (last updated 7/1/21).

Examples of States Addressing Emerging Adult Needs within Existing Structures	
State	Summary
Idaho	Have carved out special sections for emerging adults within existing drug courts. ⁶⁷
Nevada	
Pennsylvania (Delaware County)	Offenders eighteen to twenty-five facing felony marijuana charges can engage in a presentence program. ⁶⁸

Table 5. Examples of problem solving courts (by Author) (last updated 7/1/21).

Emerging Adult Courts Within the United States	
States	California, Illinois, Nebraska, New Mexico, New York, Massachusetts, and Texas. ⁶⁹
Federal System	One in S.D.N.Y. in New York City (2015) and one in E.D.N.Y. in Brooklyn (2013). ⁷⁰

Table 6. Emerging adult courts within the United States (by Author) (last updated 7/1/21).

III. THE HANDFUL OF EMERGING ADULT COURTS ARE AS UNIQUE AS THEIR PARTICIPANTS

Emerging adult courts are still rare. In addition to the SDNY program that helped Leroy, the federal system runs an emerging adult court in only one other jurisdiction, just three miles away in the Eastern District of New York (“EDNY”).⁷¹ Only seven states—California, Illinois, Massachusetts, Nebraska, New Mexico, New York, and Texas—operate their own emerging adult courts.⁷² And without exception, they are limited experiments, serving only one or two cities in any given state.

The basic structures of these courts are the same.⁷³ They employ dedicated staff, who generally undergo intensive training to gain a shared understanding of the cognitive science related to emerging adults.⁷⁴ Their collective mission is to help young offenders gain independence, instead of simply locking them up and hoping they learn their lesson.⁷⁵ To that end, emerging adults, typically called “participants” rather than “defendants,” work with the courts to develop

67. Briana Erickson, *supra* note 56; *Reports and Data*, STATE OF IDAHO JUD. BRANCH TREATMENT CTS., <https://isc.idaho.gov/solve-court/rd> [<https://perma.cc/PH2U-6D9J>].

68. *Young Offenders Specialty Court*, DEL. CNTY. CT. COMMON PLEAS, <https://www.delcopa.gov/courts/specialtycourts/youngoffendercourt.html> [<https://perma.cc/RE25-KGZ8>].

69. *Young Adult Opportunity Program*, *supra* note 8.

70. *Special Operations Services*, U.S. PRETRIAL SERVS. AGENCY, E.D.N.Y., <https://www.nyep.uscourts.gov/special-options-services> [<https://perma.cc/AQ54-XQPG>].

71. *See Special Operations Services*, *supra* note 70.

72. *See Young Adult Opportunity Program*, *supra* note 8.

73. Personal Interview, *supra* note 1.

74. *Id.*

75. *Id.*

individualized treatment plans.⁷⁶ Such plans often focus on access to therapy, addiction treatment, educational opportunities, job training, and housing.⁷⁷ Courts then encourage participants to follow their respective treatment plans by providing short-term incentives tailored to each participant's needs and interests.⁷⁸ Examples include carpentry tools for a participant in an apprenticeship, children's books for new parents, or work boots to celebrate a new job.⁷⁹ Ideally, upon completing the courts' mandates, participants leave with a clean record and the tools they need to avoid offending again.⁸⁰

Despite this common, basic structure, emerging adult courts can vary tremendously in their operation, often depending on whether the court requires a finding of guilt prior to entry.

A. Pre-Conviction Courts

A pre-conviction model is preferred by academics because labeling emerging adults as "criminals" can impact their identities for life.⁸¹ "Even if [the court says] two years later, 'guess what, we're going to get rid of your conviction,' for *two years* that's been your defining moment," said Chester, from the Emerging Adult Justice Lab.⁸² Members of the defense bar also favor pre-conviction models based on due process concerns.⁸³ Tirza Mullin, a public defender in Allegheny County, Pennsylvania, and an author on emerging adult justice, worries that post-conviction courts encourage clients to take a guilty plea where they might otherwise fight the charge.⁸⁴ If the client fails to complete the often incredibly demanding requirements of the program, that guilty plea sticks.⁸⁵

The following emerging adult courts operate predominantly⁸⁶ using a pre-conviction model:

76. *Id.*

77. *Id.*; see also Yotam Zeira and Molly Baldwin, PIONEERS IN YOUNG ADULT JUSTICE, ROCA, 4 (Feb. 2016), <https://rocainc.org/wp-content/uploads/2017/01/Pioneers-in-Young-Adult-Justice-Roca.pdf> [<https://perma.cc/D4QV-3MKC>].

78. Personal Interview, *supra* note 1.

79. *Id.*

80. *Id.*

81. *Id.*

82. Zoom Interview with Lael Chester, *supra* note 41.

83. Zoom Interview with Tirza Mullin, Att'y, Allegheny Cnty. Pub. Def's Office, (Apr. 19, 2021); Tirza A. Mullin, Eighteen Is Not a Magic Number: Why the Eighth Amendment Requires Protection for Youth Aged Eighteen to Twenty-Five, 53 U. MICH. J. L. REFORM 807 (2020).

84. *Id.*

85. Personal Interview, *supra* note 1.

86. Both Albuquerque and San Francisco accept defendants into the program after sentencing, but this is rare. Participants in the S.D.N.Y. program can be required to plead guilty to their charges during court participation, but this is also the exception to the rule.

San Francisco, California Est. 2015	Brooklyn, New York Est. 2016	Dallas, Texas Est. 2016	Albuquerque, New Mexico Est. 2017	Chicago, Illinois Est. 2017
Ages 18-24	Ages 18-24	Ages 17-24	Ages 18-25	Ages 18-26
Misdemeanors and felonies (no weapons charges)	Misdemeanors	First adult felony offense subject to exceptions (e.g. no aggravated felonies)	Felonies (except murder and sex crimes)	Non-violent felony and misdemeanor offenses
Participant creates <i>Wellness Care Plan</i>	Evidence-based social service interventions	Pulls from drug court model	Individualized Focus	Restorative Justice Model
About 18 mos. to complete	Average 10-18 mos. to complete	Average 12-14 mos. to complete	18-24 mos. to complete	Unknown
130 graduates 27% rearrested	Unknown	156 graduates Recidivism rate unknown	11 graduates 1 rearrested	63 graduates 0 new arrests

Figure 5. Emerging adult courts that use a pre-conviction model (by Author).

1. *San Francisco, CA.*—San Francisco started one of the first courts in 2015 as an expanded version of a former District Attorney-led program called *Back on Track*.⁸⁷ It operates in collaboration with the court system, the DA's office, public defenders, the probation office, youth services, public health services, and the police.⁸⁸ Stakeholders created a court tailored to the needs of the emerging adults in their community.⁸⁹ This means that, unlike some of the other programs, San Francisco will admit participants who commit serious crimes like assault and robbery.⁹⁰ "Every jurisdiction is going to have a different tolerance for what kind of risk they're willing to take on," Judge Bruce Chan said to explain his jurisdiction's decision to handle some of the harder cases.⁹¹ "Like all the drug courts and veteran's courts will tell you, you don't want to create a program for people who are going to succeed anyway."⁹²

The San Francisco court stresses input by the participant, requiring them to create a personalized wellness plan, which can include job readiness, housing concerns, educational support, and parenting plans.⁹³ San Francisco tries to limit extreme judicial involvement.⁹⁴ "Some of the research shows that if you intervene with people too much, it just actually guarantees they'll be system-involved," said

87. Telephone Interview with the Hon. Bruce E. Chan, Superior Ct. of S. F. (Apr. 10, 2021); see also Zeira & Baldwin, *supra* note 77.

88. Telephone Interview with the Hon. Bruce E. Chan, *supra* note 87.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

Judge Chan.⁹⁵ To balance these research findings with calls for accountability, he does not think of himself as a judge, exactly.⁹⁶ “I’m like your basketball coach,” he said.⁹⁷

San Francisco’s program has since become the blueprint for many other jurisdictions.⁹⁸ UC Irvine is collecting data from the program to evaluate the efficacy of the court interventions.⁹⁹

2. *Brooklyn, NY.*—The District Attorney and the Center for Court Innovation were integral to the establishment of an emerging adult court in Brooklyn, New York, which launched in 2016 using a Smart Prosecution grant through the District Attorney’s office.¹⁰⁰ “Defense attorneys and prosecutors are still negotiating traditional legal leverage but with a different currency. They’re looking at hours of service or numbers of sessions,” said Jonathan Monsalve.¹⁰¹ He is a former director of Brooklyn Justice Initiatives at the Center for Court Innovation, which is the service provider for the court.¹⁰²

The Brooklyn court only handles misdemeanor charges, and it relies heavily on local service providers.¹⁰³ Specialized social workers assess participants to determine the unique challenges facing each emerging adult and the appropriate interventions to help them avoid future entanglement with the justice system.¹⁰⁴ The court mandates participants to a range of evidence-based social service interventions—including substance abuse treatment, mental health treatment, anger management, GED classes, vocational and internship programs—instead of incarceration.¹⁰⁵

When participants are admitted into the program, a staff member walks them directly from the courtroom to the program offices.¹⁰⁶ There, they undergo a brief

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. BUREAU OF JUSTICE STATISTICS, BJA FY 21 SMART PROSECUTION – INNOVATIVE PROSECUTION SOLUTIONS (Jan. 12, 2021), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/O-BJA-2021-55002.pdf> [<https://perma.cc/7ZNL-S5RX>].

101. Zoom Interview with Jonathan Monsalve, former Dir., Brooklyn Just. Initiatives at the Ctr. for Ct. Innovation, (Apr. 12, 2021).

102. *Id.*

103. *Id.*; see also Tia Pooler and Kimberly Davis, *The Brooklyn Young Adult Initiative: Perspectives and Impacts of a New Approach to Young Adult Justice*, CTR. FOR CT. INNOVATION, 3 (Sept. 2019), https://www.courtinnovation.org/sites/default/files/media/documents/2019-10/brooklyn_young_adult_initiative_report_2019.pdf [<https://perma.cc/C6MA-RXVN>].

104. Zoom Interview with Jonathan Monsalve, *supra* note 101; see also *Young Adult Bureau*, BROOKLYN DIST. ATT’Y’S OFF., <http://www.brooklynnda.org/young-adult-bureau/> [<https://perma.cc/JBK8-JL28>].

105. Zoom Interview with Jonathan Monsalve, *supra* note 101; see also Pooler & Davis, *supra* note 103, at 3.

106. Zoom Interview with Jonathan Monsalve, *supra* note 101.

intake to assess their needs.¹⁰⁷ These conversations with mandatory reporters are not privileged, but the social work staff is trained to focus on participants' needs, not their cases.¹⁰⁸ "We have become very skilled at avoiding [self-incrimination issues]," said Monsalve.¹⁰⁹ "We will stop you if you start to talk about your current case or any other activity."¹¹⁰ When Brooklyn Justice Initiatives notices a mismatch between what a participant needs and what the court mandates, the organization creates its own programming to bridge the gap.¹¹¹

3. *Dallas, TX.*—Judge Brandon Birmingham worked with District Attorney Susan Hawk and Restorative Justice Division Chief Julie Turnbull starting in 2015 to develop Dallas's AIM Court.¹¹² Court creators drew heavily from Texas's drug court model, then tailored programming to youths between the ages of seventeen and twenty-four.¹¹³ The pre-conviction, post-indictment program makes AIM a condition of participants' bond.¹¹⁴ Participants must not have a previous conviction and cannot be charged with a violent offense.¹¹⁵ Candidates are usually referred to AIM by their defense attorneys, although sometimes they are flagged by prosecutors.¹¹⁶ So far, more than 150 people have graduated from the program,¹¹⁷ which takes up to eighteen months.¹¹⁸

When AIM participants do well, they get verbal praise or a chance to spin the "incentive wheel"—think Wheel of Fortune, with each wheel segment representing a small prize, like a \$5 Uber gift card.¹¹⁹ Participants who stop complying with program obligations face graduated sanctions, which start small with a judicial reprimand but can result in incarceration, house arrest, or removal from the program.¹²⁰ But even when a participant is kicked back to the traditional justice system, AIM prosecutor Audrey Garnett emphasized that their time in AIM should not be used against them.¹²¹ "AIM is *for* them. It should work in their

107. Zoom Interview with Jonathan Monsalve, *supra* note 101; *see also* Pooler & Davis, *supra* note 103, at 6.

108. Zoom Interview with Jonathan Monsalve, *supra* note 101.

109. *Id.*

110. *Id.*

111. *Id.*; *see also* Pooler & Davis, *supra* note 103, at 3.

112. AIM Court, DALLAS CNTY., <https://www.dallascounty.org/government/district-attorney/aim.php> [<https://perma.cc/DG5P-US84>].

113. *Id.*

114. *Id.*

115. *Id.*

116. Zoom Interview with the Hon. Brandon Birmingham, Presiding, 292nd Judicial Dist. Ct. (V), Dall. Cnty., and Audrey Garnett, Att'y, Deputy Chief, Restorative Justice Div. at Dall. Cnty. Dist. Att'y's Office, (June 9, 2021) [hereinafter Zoom Interview with the Hon. Brandon Birmingham and Audrey Garnett].

117. *Id.*

118. AIM Court, *supra* note 112.

119. Personal Interview, *supra* note 1.

120. *Id.*

121. Zoom Interview with the Hon. Brandon Birmingham and Audrey Garnett, *supra* note 116.

favor.”¹²²

To ensure the program itself is responsive to stakeholder needs and tapped into community resources, an advisory board helps oversee court operations.¹²³ Representatives from the District Attorney’s office, the public defender’s office, the city council, law enforcement, community leaders, along with an AIM graduate, all have a seat at the table of AIM’s “think tank.”¹²⁴ Judge Birmingham credits the board with the continued success of the program, by both ensuring stakeholder buy-in and connecting participants with locally available services.¹²⁵ Of the network the board has helped him build, he said, “I think of them as arrows in a quiver: I can shoot when I need them.”¹²⁶

4. *Albuquerque, NM.*—The Albuquerque Young Adult Court (YAC) grew from concerns by a specialty courts supervisor’s realization that adults were not functioning well in regular courts.¹²⁷ “They didn’t have the skills or the development to really function within that adult world,” said Tanya Tijerina, YAC Program Manager for New Mexico’s Second Judicial District.¹²⁸ The court’s original vision was to take in young people with all types of charges, except murder and sex crimes, and give them the opportunity to walk away with a clean record.¹²⁹ Although they have not quite reached that goal—adults accused of dangerous crimes can be a hard sell for the District Attorney—the program has graduated one participant with a violent felony.¹³⁰ Given the nature of the court’s computer system, ensuring that participants’ records remain completely unsearchable has been a difficult task as well, but it is one the court is addressing.¹³¹

Albuquerque looked to San Francisco’s example, then tailored the court to its population’s specific needs.¹³² Their emerging adults are more likely to face immigration issues, have a history of gang involvement, or need interpreters to overcome language barriers in the courtroom.¹³³ Realizing that many participants are still working through past trauma, the court takes a trauma-informed approach to its programming, which usually includes mental health and addiction treatment.¹³⁴ Clinicians are on staff and provide input on every decision the court makes. Punitive strategies come last, if at all.¹³⁵

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. Zoom Interview with Tanya Tijerina, YAC Program Manager, N.M.’s Second Judicial Dist. (Apr. 19, 2021).

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

YAC participants receive a wide variety of assistance with things like food, housing, parenting, and employment.¹³⁶ Law enforcement also takes part in administering help, for example, by delivering food to participants in need.¹³⁷ “We look at every barrier that someone this age deals with, and we figure out how to address that,” said Tijerina.¹³⁸

The court’s commitment to education is manifest in its partnership with the local community college.¹³⁹ A designated staff member at the college who was justice-involved himself gives court participants tours and walks them through their FAFSA forms.¹⁴⁰ A lot of the court’s community partners have staff like this, devoted to working with the youth referred to them by the court.¹⁴¹

YAC also has a longer engagement period with participants than some other programs. Eighteen to twenty-four months is the *minimum*.¹⁴² One reason for this is that the program works primarily with people charged with felonies, who they want to ensure are being held accountable.¹⁴³ Longer participation also affords participants immediate access to support when they make mistakes.¹⁴⁴ “When they reach bumps in the road . . . we really do want it to happen while they are in our program, so that we are able to use that as a teachable moment and to provide clinical intervention or whatever it is to get them through that hurdle,” Tijerina said.¹⁴⁵

5. *Chicago, IL.*—Illinois’s first emerging adult court was established in North Lawndale—a predominantly Black westside neighborhood in Chicago—partially in response to community outrage at police violence against Black men and boys.¹⁴⁶ The seed was planted in 2007, when now-retired Judge Colleen Sheehan visited a high school where most of the students had some contact with gangs.¹⁴⁷ “They didn’t want to talk about anything like how to get through school. They wanted to talk to me about how the police got away with what they got away with,” Judge Sheehan said.¹⁴⁸

When one of the students grilled Judge Sheehan about what she was going to do to stop police violence, she turned the question around on the student: Would he be willing to sit down with a police officer to have a discussion aimed

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. Matthew Hector, *Coming Soon: The Cook County Community Court*, 104 ILL. B.J. 16 (June 2016).

147. Zoom Interview with the Hon. Colleen Sheehan, former judge, Cook Cnty. Cir. Ct., Juvenile Justice Div. and First Mun. Div., Chi. (Apr. 5, 2021).

148. *Id.*

at healing?¹⁴⁹ He, along with several classmates, said yes.¹⁵⁰ Those conversations—conducted in peace circles, a restorative justice tool borrowed from tribal practices¹⁵¹—were so well received that Judge Sheehan began to implement them in the courtroom.¹⁵²

Three courts in Chicago now follow this model, which has three main components: (1) apology and acknowledgement of harm; (2) a “repair of harm” agreement; and (3) action to repair harm and prevent reoccurrence.¹⁵³ Following completion of the program, the prosecution ends without conviction, and the participant’s arrest is expunged.¹⁵⁴

B. Post-Plea/Post-Conviction Courts

While academics tout the pre-plea model as the better alternative due to the collateral consequences of being adjudicated a criminal, some stakeholders believe the process works best if the emerging adult has already acknowledged guilt and is compelled by a potential jail sentence to complete the program.¹⁵⁵ Funding concerns may also play a role. Many state courts are funded through grants, which may be difficult to obtain before a court can show a pattern of successful outcomes.¹⁵⁶ Some courts launch using funds already allocated to their probation departments, meaning participants must enter a plea to access those services.¹⁵⁷

The following courts operate after a finding of guilt (see Figure 6):

149. *Id.*

150. *Id.*

151. William Bradford, *Beyond Reparations: An American Indian Theory of Justice*, 66 OHIO ST. L.J. 1, 79 (2005); Emily Knox, *Restorative Justice in Illinois: A Holistic Approach to Reformation and Juveniles in Conflict with the Law*, 24 PUB. INT. L. REP. 23, 26-27 (2018).

152. Interview with the Hon. Colleen Sheehan, *supra* note 147.

153. *Id.*

154. *Id.*

155. Personal interview, *supra* note 1.

156. *Id.*

157. *Id.*

Omaha, Nebraska Est. 2004	Orange County, California Est. 2018	Springfield, Massachusetts Est. 2020
Ages 18-25	Ages 18-23	Ages 18-24
Non-violent felony offenses	Felonies Males only	Felonies
Victim/offender mediation	Randomized experiment monitored by UC-Irvine	2-year intensely supervised probation
12-18 mos. to complete	Generally, 18-24 mos. to complete	18-24 mos. to complete
Approx. 20-25 graduates annually. Recidivism not available	6 graduates, Recidivism not available	No graduates yet

Figure 6. Emerging adult courts that operate after a finding of guilt (by Author).

1. *Omaha, NE.*—Omaha’s court started in 2004 in now-retired Judge Patricia Lamberty’s chambers.¹⁵⁸ Judge Lamberty independently started the program using her probation resources to impose different interventions for emerging adults.¹⁵⁹ Since then, the program has become a fully-fledged specialty court that will soon expand to two judges’ dockets.¹⁶⁰ Serving about thirty emerging adults at a time, the program lasts one and a half to two years with the goal of stabilizing emerging adults’ lives by providing tools for success.¹⁶¹ Before graduation, participants must attend two sessions of victim/offender mediation, which requires participants to face the harm they caused and listen to the impact they had on their victims’ lives.¹⁶² If victims choose not to attend, a surrogate plays the role.¹⁶³ Successful graduates have their convictions vacated and their records sealed so that the arrest remains confidential.¹⁶⁴

158. Zoom Interview with the Hon. Shelly R. Stratman, Judge of the Dist. Ct., 4th Judicial Dist., Douglas Cnty., Nebraska, (Apr. 27, 2021).

159. *Id.*

160. *Id.*

161. *Id.*; see also *Problem-Solving Courts*, NEB. JUD. BRANCH, <https://supremecourt.nebraska.gov/courts/problem-solving-courts> [<https://perma.cc/LJ2N-JJ5B>].

162. Zoom Interview with the Hon. Shelly R. Stratman, *supra* note 158.

163. *Id.*

164. *Id.*

Omaha's court stands as an example for how to build a program out of nothing. The program sprang from the vision of a singular judge who saw a need to better address emerging adults accused of felonies. All the stakeholders subsequently embraced the program. "The county attorney and public defender are very hands on," said Judge Shelly Stratman, who now oversees the program.¹⁶⁵ The county attorney screens the cases and recommends which participants should be accepted into the program.¹⁶⁶ Participants plead guilty, but have sentencing stayed until graduation or, if unsuccessful, until the emerging adult returns to be sentenced.¹⁶⁷ The court collaborated with the University of Nebraska to develop protocols to share with stakeholders statewide and to encourage the adoption of similar courts in other Nebraska cities.¹⁶⁸

2. *Orange County, CA.*—The court in Orange County, California, formed in August 2018 with help from its San Francisco counterpart.¹⁶⁹ Judge Maria D. Hernandez pushed for the court after realizing how similar emerging adults' behavior and attitudes were to the juveniles she had worked with previously.¹⁷⁰ In addition to requiring a guilty plea, Orange County differs from the San Francisco court by limiting its services to a randomized pool of male felons.¹⁷¹ Participants must plead into the court by age twenty-five, though the program has recently expanded to be able to provide services until a participant is twenty-seven or twenty-eight.¹⁷² While working through the program's four phases, the court stays execution of a participant's sentence, leaving a powerful incentive to complete the program.¹⁷³ Graduation usually removes any jail time and means the conviction will be vacated or reduced to a misdemeanor.¹⁷⁴

Like most other programs, Judge Hernandez prizes individualized case plans:

Our average IQ is really low, it's 85 in this court And then I do have the kid that's got the 120 IQ. I'm going to treat those two very differently in how we respond to them, how we talk to them, what their case worker is doing with them That's what I really like about this, is taking each one of these kids individually and going, we can make them a successful adult, but they're going to get there in different ways.¹⁷⁵

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. Mimi Ko Cruz, *Compassionately Judging*, UCI SCH. OF SOC. ECOLOGY (May 29, 2019), <https://socialecology.uci.edu/news/compassionately-judging>.

170. Zoom Interview with the Hon. Maria D. Hernandez, Superior Ct. of Orange Cnty., Cal., (Apr. 26, 2021).

171. *Grant to Evaluate the Orange County Young Adult Court*, UCI SCH. OF SOC. ECOLOGY (Jan. 8, 2019), <https://socialecology.uci.edu/news/grant-evaluate-orange-county-young-adult-court> [<https://perma.cc/PCH2-ZJQY>].

172. Interview with the Hon. Maria D. Hernandez, *supra* note 170.

173. *Id.*

174. *Id.*

175. *Id.*

What stands out about this program is that it is an experiment monitored by researchers Elizabeth Cauffman and numerous students including Grace Icenogle from UC Irvine.¹⁷⁶ Many of the program's characteristics—like randomized participant selection and an all-male participant population—are in service of sound research methodology.¹⁷⁷ Researchers hope that they will be able to directly compare court participants with defendants in the traditional justice system, shedding light on the best path forward for emerging adults.¹⁷⁸ This experiment-based model can be a tough pill to swallow for some stakeholders, especially potential participants who might not be selected following their pleas, but court staff and researchers believe it is necessary to develop the kind of data that should guide decision-making in criminal justice.¹⁷⁹

3. *Springfield, MA.*—Hampden County District Attorney Anthony Gullini spearheaded the country's newest emerging adult court in Springfield, Massachusetts, called the Emerging Adult Court of Hope (EACH).¹⁸⁰ According to Massachusetts Court of Appeals Associate Justice Maureen Walsh, formerly of the EACH program, Gullini did so after recognizing the “churn” of young adults in and out of prison in their community “doing a life sentence on the installment plan.”¹⁸¹ The eighteen-month-minimum program is geared towards eighteen- to twenty-four-year-olds facing prison time who are deemed high risk based on their criminal histories or current charges.¹⁸² The program has six current participants,¹⁸³ five of whom have pled guilty to gun charges.¹⁸⁴

The EACH program is unusual because Gullini ultimately decides who will participate, although emerging adults charged with certain offenses (such as sex crimes) are excluded automatically.¹⁸⁵ Once selected, participants plead guilty and are sentenced to two and a half years imprisonment, suspended to two-years' probation conditioned on their completion of the program.¹⁸⁶ They then receive intensive supervision by the EACH Team, which includes a judge, the District

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. The Republican Editorials, *New Court Offers Solid Path for Change*, MASS LIVE (Jan. 2, 2021), <https://www.masslive.com/opinion/2021/01/new-court-offers-solid-path-for-change-editorial.html> [<https://perma.cc/3H4H-N4CW>].

181. Zoom Interview with the Hon. Maureen Walsh, Associate Justice, Mass. Appeals Ct., (May 4, 2021).

182. *Id.*

183. Douglas Hook, *Facing Criminal Charges, These Young Adults Were Given a Second Chance to Spend Christmas with Family*, MASS LIVE (Dec. 25, 2020), <https://www.masslive.com/springfield/2020/12/facing-criminal-charges-these-young-adults-were-given-a-second-chance-to-spend-christmas-with-family.html> [<https://perma.cc/W4P9-B4AD>]; *New Court Offers Solid Path for Change*, MASS. LIVE (Jan. 2, 2021), <https://www.masslive.com/opinion/2021/01/new-court-offers-solid-path-for-change-editorial.html> [<https://perma.cc/3H4H-N4CW>].

184. Zoom Interview with the Hon. Maureen Walsh, *supra* note 181.

185. *Id.*

186. *Id.*

Attorney, an Assistant District Attorney, assigned probation officers, two mental health providers, a volunteer employer mentor, and representatives of ROCA, Inc. (a not-for-profit contractor providing a broad range of intensive services to the emerging adults).¹⁸⁷

The EACH Team collaborates with the emerging adult to develop an individual service plan aimed at addressing their specific needs in a culturally competent way.¹⁸⁸ According to Judge Walsh, participants commonly struggle with mental health issues, housing insecurity, and addiction.¹⁸⁹ During the four-phase program, participants attend daily ROCA programming and appear in court every Thursday.¹⁹⁰ In addition to providing services, the court hopes to help participants build positive community connections that outlast their time in the program.¹⁹¹ Judge Walsh highlighted one participant's insistence that he had no role model, no best friend: "He literally had no one. The more support they get, the better the outcome."¹⁹² Community members have been more than happy to help.¹⁹³ The University of Massachusetts donated Christmas meals to the participants and "Bob the Bike Guy," a strong community supporter, helped organize a bike-a-thon that court staff and participants do together.¹⁹⁴

Participants who successfully complete the program with a career-oriented job or community college enrollment are entitled to either dismissal or sealing/expungement of their criminal record.¹⁹⁵ "What good is it if we get them on track . . . but they won't be hired because they have this felony conviction?" Judge Walsh said.¹⁹⁶ EACH has not been operating long enough for any participants to graduate, but its six current participants are all fully compliant.¹⁹⁷ The post-pandemic plan is to include up to twenty-five emerging adults in the program.¹⁹⁸ "This is the most meaningful work I've probably ever done in my thirteen years as a judge," said Judge Walsh.¹⁹⁹

C. Federal Courts

The federal system currently runs emerging adult courts only in two districts: the Eastern District of New York and the Southern District of New York.²⁰⁰

187. *Id.*

188. The Republican Editorials, *supra* note 163.

189. Zoom Interview with the Hon. Maureen Walsh, *supra* note 181.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*; *see also* Hook, *supra* note 183.

198. Zoom Interview with the Hon. Maureen Walsh, *supra* note 181.

199. *Id.*

200. Robert Cordeiro & Arthur Penny, *Alternatives to Incarceration in New York Eastern and Southern Districts*, MALCOLM WIENER CT'R FOR SOC. POL'Y (May 10, 2016), <https://www.hks>.

Southern District of New York Est. 2015	Eastern District of New York Est. 2013
Ages 18-25	Ages 18-24
Felonies (drug or financial crimes)	Non-violent felonies
Focuses on offenders with limited criminal history	Highest need participants receive priority.
12 to 18 mos. to complete	Length to complete is individualized, but estimated average of 30 months
31 graduates 0% recidivism	47 graduates, recidivism rates unavailable

Figure 7. Emerging adult courts in the federal system (by Author).

1. *EDNY*.—Started in 2000 as a specialized pretrial service, the Special Options Services program (“SOS”) serves high-needs eighteen- to twenty-five-year-olds.²⁰¹ Participants are screened at the arrest stage and admitted into the program by pretrial services.²⁰² The court intensively supervises participants and ensures they set individual educational and vocational goals.²⁰³ Each participant is also connected with relevant community-based counseling services.²⁰⁴

SOS was reconstructed in 2013 and now also involves District Judge Joan M. Azrack and Magistrate Judge Cheryl L. Pollack, who hold monthly sessions to extend further support and encourage meaningful change.²⁰⁵ Usually, the cases are

harvard.edu/centers/wiener/programs/criminaljustice/research-publications/young-adult-justice/developments-in-young-adult-justice/alternatives-to-incarceration-in-new-york-eastern-and-southern-districts [https://perma.cc/8UAX-UMUJ].

201. *Id.*

202. *Id.*

203. *Id.*

204. Personal Interview, *supra* note 1.

205. *Id.*

transferred to Judge Azrack, who will handle sentencing or dismissal.²⁰⁶ The U.S. Attorney considers on a case-by-case basis whether the participant should have charges reduced or the case dismissed.²⁰⁷ Where sentencing includes a probation period, participants may continue in the program under the supervision of a specialized probation officer.²⁰⁸ “Our goal here is not to say we’re going to get you a dismissal,” said Pretrial Officer Ignace Sanon-Jules.²⁰⁹ “Our goal is to stop that revolving door into prison. We want to lower recidivism. We want to put this person in a position where they do not come back into the criminal justice system.”²¹⁰

All SOS participants must wear ankle monitors and abide by a curfew to reduce the risk of further criminal activity.²¹¹ SOS participants must not have a violent criminal history or a lengthy criminal record.²¹² Unlike most of their state counterparts, the prosecutor in the federal system is not involved in selecting participants and makes no promises about the resolution of the case.²¹³ Participants can complete the program and still go to prison and be convicted of felonies.²¹⁴ However, according to EDNY’s Pretrial Services Officer, Amina Adossa-Ali, graduation from the program typically ends the prosecution.²¹⁵

SOS programming focuses on education, job skills, and financial management.²¹⁶ Many participants come to the program without a high school diploma or GED and have never made a resume.²¹⁷ Adossa-Ali helps them enroll in educational programs, connect with community resources, open bank accounts and decode their credit reports.²¹⁸ With these tools, graduates are able to find stable employment and begin to build financial security.²¹⁹ This type of support does not end at graduation.²²⁰

2. *SDNY*.—SDNY’s Young Adult Opportunity Program (“YAOP”) sits three miles away from EDNY, across the Brooklyn Bridge in lower Manhattan.²²¹ Influenced by EDNY’s SOS program, YAOP concentrates on medium-risk

206. *Id.*

207. Cordeiro & Penny, *supra* note 200.

208. Zoom Interview with Amina Adossa-Ali, U.S. Pretrial Servs. Officer, EDNY, and Ignace Sanon-Jules, U.S. Pretrial Servs. Officer, EDNY, (Apr. 28, 2021) [hereinafter Zoom Interview with Amina Adossa-Ali and Ignace Sanon-Jules].

209. *Id.*

210. *Id.*

211. *Special Operations Services*, *supra* note 70.

212. Zoom Interview with Amina Adossa-Ali and Ignace Sanon-Jules, *supra* note 208.

213. Cordeiro & Penny, *supra* note 200.

214. *Id.*

215. Zoom Interview with Amina Adossa-Ali and Ignace Sanon-Jules, *supra* note 208.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. Zoom Interview with Rena Bolin, U.S. Pretrial Servs. Officer, SDNY, (May 11, 2021).

defendants charged with drug offenses and financial crimes.²²² Of its fifty-seven participants to date, forty-one have graduated—including Leroy.²²³ More than half of the graduates have had their charges completely dismissed, and only four participants have ever been asked to leave.²²⁴ Twelve are still working their way through the program, which lasts twelve to eighteen months and emphasizes enrollment in school or employment.²²⁵

YAOP includes judges and pretrial services in the entry process, with input from the U.S. Attorney’s office.²²⁶ Programming tends to focus on the “why” behind participants’ behavior, asking them to approach decision-making systematically, identify what motivates them, set achievable goals, and write essays reflecting on their time in the program in six-month intervals.²²⁷ Unlike other courts, YAOP eschews set phases because participants’ needs are so diverse.²²⁸ Counselors meet with participants at least monthly and assist them with job training, resume-building, and education.²²⁹

SDNY shares EDNY’s funding difficulties and relies on free and low-cost incentives to encourage YAOP participants.²³⁰ The primary “carrot” is a potential dismissal with words of praise throughout, but the court is working on incorporating a wider array of incentives.²³¹ At the very least, YAOP hopes to serve as a source of stability and wisdom for participants who might not have anyone to rely on at home.²³² The program uses harsh sanctions hesitantly, in accordance with their graduated sanctions approach.²³³ A participant has been punished with an ankle monitor only once in the program’s five-year history.²³⁴ Incarceration is equally rare.²³⁵

YAOP uses participants’ six-month reflection essay to gauge their progress through the program.²³⁶ When a participant is ready to graduate, program administrators write a memo about the participant’s time in the program that is submitted to their defense attorney and the government.²³⁷ The government gets the final say as to what, if any, relief the participant receives.²³⁸

222. *Id.*

223. *Id.*

224. *Id.*

225. *Young Adult Opportunity Program*, *supra* note 8.

226. Zoom Interview with Rena Bolin, *supra* note 221.

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

IV. EMERGING ADULT JUSTICE IS A RACIAL JUSTICE ISSUE

If built well, emerging adult courts could mitigate the ruining effect the criminal justice system has on communities of color. Racial disparity rears its ugly head early, first in school disciplinary actions, then in juvenile arrests.²³⁹ Data from 2013 show that Black kids are suspended, expelled, and arrested at school about three times the rate white kids are.²⁴⁰ These gaps are associated with racial bias.²⁴¹

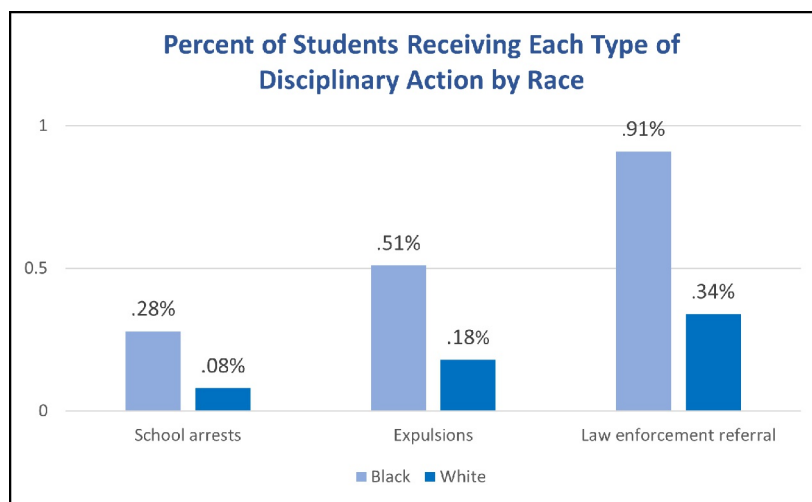


Figure 8. “Percent of students receiving each type of disciplinary action by race.”²⁴²

The 2013 data also show that forty percent of committed juveniles are Black, more than double the percentage of Black juveniles in the U.S. population.²⁴³ Similar disparities exist for Hispanic and Native youth.²⁴⁴ Racial disparities are worst of all for emerging adults.²⁴⁵ Bureau of Justice Statistics data show that in 2019, “Black and Latinx 18- and 19-year-old males were 12.4 times and 3.2 times

239. Joshua Rovner, *Racial Disparities in Youth Commitments and Arrests*, THE SENTENCING PROJECT (Apr. 1, 2016), <https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests> [<https://perma.cc/ADA9-88FY>].

240. Travis Riddle & Stacey Sinclair, *Racial Disparities in School-Based Disciplinary Actions are Associated with County-Level Rates of Racial Bias*, PNAS (Apr. 2, 2019), <https://www.pnas.org/content/116/17/8255> [<https://perma.cc/RH5Y-TVM3>].

241. *Id.*

242. Ronald Kessler et. al., *Age of Onset of Mental Disorders: A Review of Recent Literature*, 20(4) Nat’l Library of Medicine 359, 359-64, fig.3 (July 2007).

243. *Id.*

244. *Id.*

245. Lindell & Goodjoint, *supra* note 20; E. Ann Carson, *Prisoners in 2019*, BUREAU JUST. STAT. (Oct. 2020), <https://bjs.ojp.gov/library/publications/prisoners-2019> [<https://perma.cc/Y2YY-Q4M2>].

more likely to be imprisoned than their white peers, respectively.”²⁴⁶ Between ages 20 and 24, the numbers drop only slightly, to eight and three times, respectively.²⁴⁷

A recently released report from the Emerging Adult Justice Learning Community at Columbia University observed:

These disparities pose serious civil rights issues and create a “crisis of legitimacy” in the criminal justice system. Racial and ethnic disparities in the criminal justice system perpetuate other societal inequalities among vulnerable and minority communities, curtailing the ability to join the workforce, pursue higher education, participate in civic activities like voting, and secure housing.²⁴⁸

People of color are criminalized from a young age, which has a lasting effect on their lives.²⁴⁹

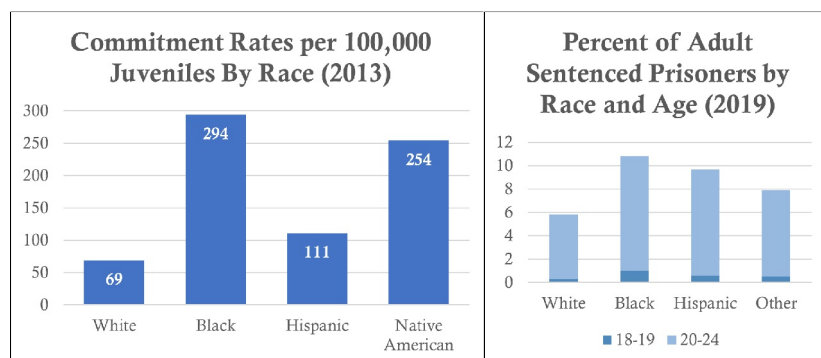


Figure 9. “Commitment rates per 100,000 Juvenile by race”; “percent of adult sentenced prisoners by race and age.”²⁵⁰

Senior Attorney Alicia D’Addario at the Equal Justice Initiative (EJI), a Montgomery, Alabama-based organization committed to challenging racial injustice and ending mass incarceration, noted:

One of the ways that race plays out in these cases is that children of color are not afforded the benefit of youth. Maybe a white person who’s eighteen or nineteen would be seen as engaging in youthful misbehavior, whereas a Black male who’s eighteen or nineteen will be seen as permanently corrupt and more deserving of harsh punishment.²⁵¹

246. JUST. LAB AT COLUMBIA UNIV., *supra* note 31, at 3.

247. *Id.*

248. *Id.*

249. *Id.*

250. Rovner, *supra* note 239, fig. 5.

251. Zoom Interview with Alicia D’Addario, Senior Att’y, Equal Justice Initiative, in (April

Black girls get similar treatment. A 2017 study found that adults viewed Black girls as needing less nurturing, support, and comfort than white girls.²⁵² They also perceived Black girls as more knowledgeable about adult topics, including sex.²⁵³

Misperceptions of Black youth leads to disparate treatment. One study found that white people are more likely to support harsher sentences for juveniles when primed to think of the defendant as Black rather than white.²⁵⁴ These attitudes can have deathly consequences. Tamir Rice was twelve when he was killed by police.²⁵⁵ Emmett Till was fourteen when he was brutally lynched.²⁵⁶ Latasha Harlins was fifteen when she was shot and killed by a shop owner, who mistakenly believed she was trying to steal a \$1.79 carton of orange juice.²⁵⁷

Emerging adult courts geared toward rehabilitation, rather than punishment, could reduce the devastating impacts of this type of disparate treatment and put a dent in the mass incarceration that plagues Black communities. As of 2019, the U.S. incarcerated five to ten times more people than other industrialized countries.²⁵⁸ Thirty-four percent of that prison population is Black, though Black people are only about thirteen percent of the U.S. population.²⁵⁹ Emerging adult courts represent a second chance for young offenders, but they are also a second

7, 2021); research backs this claim: A 2014 study by the American Psychological Association found that Black youth as young as ten were viewed by test subjects as older and less innocent than white youth. *Black Boys Viewed as Older, Less Innocent Than Whites, Research Finds*, AM. PSYCH. ASS'N (2014), <https://www.apa.org/news/press/releases/2014/03/black-boys-older>, [https://perma.cc/549U-AXSV]. Subjects overestimated Black boys' age by at least four and a half years, meaning that Black children as young as 13 may be perceived as adults. *Id.*

252. *New Study: The "Adultification" of Black Girls*, THE ANNIE E. CASEY FOUNDATION (July 26, 2017), <https://www.aecf.org/blog/new-study-the-adultification-of-black-girls/> [https://perma.cc/BG4Q-QLSU].

253. *Id.*

254. Aneeta Rattan et. al., *Race and the Fragility of the Legal Distinction Between Juveniles and Adults*, 7 PLoS ONE 5, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0036680> [https://perma.cc/T6FD-SV2A].

255. Brad Bennet, *Remembering Tamir Rice: Police Shooting of 12-Year-Old Playing with Toy Gun Energized Criminal Justice Reform Efforts*, S. POVERTY L. CTR (Nov. 20, 2020), <https://www.splcenter.org/news/2020/11/20/remembering-tamir-rice-police-shooting-12-year-old-playing-toy-gun-energized-criminal> [https://perma.cc/BWC7-USSB].

256. Audra D. S. Burch, Veda Shastri, and Tim Chaffee, *Emmett Till's Murder, and How America Remembers Its Darkest Moments*, N.Y. TIMES (Feb. 20, 2019), <https://www.nytimes.com/interactive/2019/02/20/us/emmett-till-murder-legacy.html>.

257. Salamishah Tillet, *What the 'Cuties' Critics Can't See: The Complexities of Black Girlhood*, N.Y. TIMES (Oct. 2, 2020), <https://www.nytimes.com/2020/10/02/movies/cuties-netflix.html>.

258. *Id.*

259. *Criminal Justice Fact Sheet*, NAACP, <https://www.naACP.org/criminal-justice-fact-sheet/> (last visited Sept. 22, 2021) [https://perma.cc/R6KN-TAZD]; *Quick Facts*, CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045219> (last visited Sept. 22, 2021) [https://perma.cc/VYY8-DX8C].

chance for the justice system. By focusing on racially informed therapeutic goals instead of carceral ones, these courts can work to undo the devastating impact our justice system has had on communities of color.

V. EMERGING ADULT COURTS OFFER LIMITED, BUT PROMISING, RESULTS DATA

The relatively recent emergence of emerging adult courts means there is little data to determine if their approach is working. There is even dispute among stakeholders concerning what constitutes success. Low recidivism rates are desirable, of course, but they are not all that matters. According to Jessica Kay Wachler, Senior Associate Director of Special Projects at the Center for Court Innovation, which seeks to “create a fair, effective, and humane justice system,”²⁶⁰ important measures of success include improving access to education, employment, and mental health care. Moreover, avoiding a conviction has a particularly profound impact on future earnings potential. According to the Brennan Center of Justice, the average earnings loss due to criminal system involvement is: 16% for people with a misdemeanor conviction; 21.7% for those who have had a felony conviction but did not go to prison; and 51.7% for people who have been imprisoned.²⁶¹

“Today, we know that even short-term incarceration is going to harm someone,” said Monsalve from the Brooklyn court.²⁶² This harm is not just economic. People who spend time locked up often end up traumatized.²⁶³ Incarceration exacerbates mental health problems in a population that already has serious mental illness at a rate about five times more than the general population.²⁶⁴ Solitary confinement—a common disciplinary tool—can cause inmates to develop mental illnesses or can aggravate existing mental illness.²⁶⁵ Prison overcrowding, another common problem in the age of mass incarceration, can also worsen physical and mental health outcomes and increase the risk of suicide.²⁶⁶ Both mental health and medical treatment can be difficult to acquire in prison.²⁶⁷

What can emerging adult courts do that traditional incarceration cannot?

260. *About*, CTR. FOR CT. INNOVATION, <https://www.courtinnovation.org/about> (last visited Sept. 22, 2021) [<https://perma.cc/5DP5-6P8Z>].

261. TERRY-ANN CRAIGIE ET AL., CONVICTION, IMPRISONMENT, AND LOST EARNINGS 15 (Brennan Center for Justice 2020).

262. Zoom Interview with Jonathan Monsalve, *supra* note 101.

263. *Id.*

264. Lorna Collier, *Incarceration Nation*, 45.9 MONITOR ON PSYCH. 56 (Oct. 2014), <https://www.apa.org/monitor/2014/10/incarceration> [<https://perma.cc/Z5UC-WGBM>].

265. Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38(1) J. AM. ACAD. PSYCHIATRY L. 104 (2010), <https://pubmed.ncbi.nlm.nih.gov/20305083/> [<https://perma.cc/3VZY-9D7Z>].

266. Meredith Huey & Thomas McNulty, *Institutional Conditions and Prison Suicide: Conditional Effects of Deprivation and Overcrowding*, THE PRISON J (2005), <https://doi.org/10.1177/0032885505282258> [<https://perma.cc/G7UW-6BPE>].

267. Personal Interview, *supra* note 1.

“We’re accomplishing things the Bureau of Prisons and corrections don’t address,” said Adossa-Ali from EDNY, referring to life skills such as opening a bank account, applying for a credit card, and filling out job applications.²⁶⁸ “We’re teaching them how to navigate in their neighborhoods lawfully. People come out of jail and go back in because they don’t know how to do those things.”²⁶⁹ According to Professor Cauffman from UC Irvine, “When you incarcerate someone, you actually see a decrease in maturity . . . [because] you don’t have the opportunity to do the things we know developmentally you need to be doing, like making mistakes.”²⁷⁰

The SDNY program stresses job preparedness and is particularly proud of its graduates who have gone on to become EMTs, flight attendants, store managers, and union laborers.²⁷¹ Leroy, in particular, said leaving prison with a felony would have sent him back to the street, running with his old friends instead of managing the Wall Street Starbucks.²⁷² Participants who successfully complete emerging adult court programs get the chance to follow their dreams: buy homes, start families, establish businesses, and build community.²⁷³ That type of success is difficult to capture in raw statistical data. “Numbers matter, but really what matters to me is that we are creating the best opportunity for each participant,” said Tanya Tijerina of the Albuquerque court.²⁷⁴

Whereas a stint in prison can tear a family apart, emerging adult courts can repair relationships. In Brooklyn, for instance, court personnel watched a young man with severe mental illness get needed treatment and build “a better emotional connection with his child,” said Monsalve.²⁷⁵ “The tone of the sessions really changed from a young man who was in despair to someone who was coming in talking about how much fun he had with his daughter over the weekend.”²⁷⁶ Even after his court engagement ended, the young man often brought his daughter to the courthouse to visit with staff.²⁷⁷

An Albuquerque participant similarly credits her trip through emerging adult court as the reason she regained custody of her two young children.²⁷⁸ Andrea Campos became addicted to heroin at age nineteen, and over the next four years,

268. Zoom Interview with Amina Adossa-Ali and Ignace Sanon-Jules, *supra* note 208.

269. *Id.*

270. Zoom Interview with Elizabeth Cauffman, *supra* note 37.

271. *The Young Adult Opportunity Program*, SDNY YAOP NEWSLETTER (Mar. 25, 2021), https://www.nysd.uscourts.gov/sites/default/files/pdf/YAOP/YAOP%20newsletter%20with%20seal_final.pdf [<https://perma.cc/U4BS-R77C>].

272. Interview with Leroy Smith, *supra* note 1.

273. Personal Interview, *supra* note 1.

274. Zoom Interview with Tanya Tijerina, *supra* note 128.

275. Zoom Interview with Jonathan Monsalve, *supra* note 101.

276. *Id.*

277. *Id.*

278. Zoom Interview with Andrea Campos, (Apr. 27, 2021); Elise Kaplan, *Two Graduate from Young Adult Court Program*, ALBUQUERQUE JOURNAL (Nov. 8, 2019), <https://www.abqjournal.com/1389329/two-graduate-from-young-adult-court-program.html> [<https://perma.cc/3PYV-DGSX>].

she gave birth to—and immediately lost custody of—a daughter and then a son.²⁷⁹ Now twenty-six, Campos is drug-free, has full custody of her children, and owns a barbershop with her boyfriend.²⁸⁰ She said the program gave her the support she needed to stop using and become a good parent.²⁸¹ She now mentors emerging adults in the Albuquerque program and dreams of converting apartments down the street from the courthouse into a sober living facility to serve the court.²⁸²

It would be premature to say that emerging adult courts reduce recidivism, but the preliminary findings are encouraging. Seventy-three percent of San Francisco's 130 graduates have avoided rearrest.²⁸³ None of the graduates from either the SDNY program or the North Lawndale restorative justice program in Chicago have reoffended.²⁸⁴ “Even if it were a handful, I’d still be happy because this is a lifesaving process,” said Judge Spratt, who oversees the North Lawndale program.²⁸⁵

The preliminary financial data also look promising. The total 2021 budget for the North Lawndale program in Chicago will be about \$593,000.²⁸⁶ The cost to imprison someone for one year in Illinois is \$38,000.²⁸⁷ Proponents of the North Lawndale program believe these numbers provided such compelling potential cost savings to justify two more restorative justice youth courts in Chicago, one in Avondale and one in Englewood.²⁸⁸ As for the federal courts, Magistrate Sarah Netburn from the SDNY program commented, “It has to be saving money. Compared to sending someone to federal prison for eighteen months or longer, these [programs] are much less expensive.”²⁸⁹

VI. EMERGING ADULTS COURTS ARE NOT WITHOUT THEIR CRITICS

Emerging adult courts show a lot of promise, but they are by no means perfect. Law-and-order proponents might worry that the programs are soft on crime and allow offenders to escape accountability. At an April 2021 webinar²⁹⁰ examining new approaches to young adult justice, Justice Policy Institute

279. Zoom Interview with Andrea Campos, *supra* note 278; Kaplan, *supra* note 278.

280. Zoom Interview with Andrea Campos, *supra* note 278; Kaplan, *supra* note 278.

281. Zoom Interview with Andrea Campos, *supra* note 278; Kaplan, *supra* note 278.

282. Zoom Interview with Andrea Campos, *supra* note 278; Kaplan, *supra* note 278.

283. Personal Interview, *supra* note 1.

284. *Id.*

285. Editorial, *Reducing Crime in Chicago: Instead of Jail and a Record, a Second Chance*, CHI. TRIB., Nov. 13, 2020, available at <https://www.chicagotribune.com/opinion/editorials/ct-editorial-restorative-justice-court-north-lawndale-second-chance-20201113-r74ushfv6re6rfgo2oklslvai-story.html> [<https://perma.cc/5EBH-3TG8>].

286. *Id.*

287. *Id.*

288. *Id.*

289. Telephone interview with the Hon. Sarah Netburn, U.S. Magistrate Judge, U.S. Dist. Ct. for the S. Dist. of N.Y. (wk. of Nov. 16, 2020).

290. *Justice for Emerging Adults: Session 4—A Different Approach: How Do We Get There?*, RACE TO EQUITY, at 18:47, <http://racetoequity.net/justice-for-emerging-adults-webinar-series/> [<https://perma.cc/NQK9-ZW2S>].

associate Tyrone Walker spoke from personal experience. Though he now advocates for specialized programming for emerging adults, he served twenty-five years in prison for a crime committed when he was seventeen years old.²⁹¹ As to the concern about accountability, Walker said:

In no shape or form are we suggesting that people shouldn't be held accountable . . . I know that I was 17 years old and I did something I called the worst mistake of my life. I took a life. And by no shape, form or fashion am I happy about that. Nor am I proud. Nor am I the same 17-year-old. I'm 46 today.

....

Secondly, we know that locking Black and Brown boys up for a long prison term does not solve safety in the community. If we look to date, we have nearly 2.3 million people who are currently incarcerated, and our communities are no safer. That's a fact.²⁹²

Ann McCullough of Youth Justice Milwaukee and Kids Forward added, "We just believe and have collectively been taught that incarceration is accountability, and that incarceration is public safety It simply isn't true when we look at the data, and when we look at cultures across time and communities across time."²⁹³

Civil libertarians, on the other hand, have raised concerns that problem-solving courts more broadly violate constitutional due process protections:

Critics have argued that defendants are pressed to plead guilty, waive their right to appeal, and collaborate with the specialized court they have been referred to . . . defense attorneys are expected to collaborate with the other court team members. Consequently, clients of specialized courts are pressed to engage in an intensive rehabilitative program without any due process protections. When many of them fail . . . they face penalties that go beyond what they could have expected in a mainstream court.²⁹⁴

For instance, the North Lawndale court faced criticism for requiring their participants to perform manual labor, like sweeping up dirt in community buildings.²⁹⁵ Following a complaint that this might be akin to indentured servitude, the program pivoted to allow participants to help needy or elderly community members instead.²⁹⁶

291. *Id.*

292. *Id.* at 18:44-19:47.

293. *Id.* at 4:53-5:09; See generally Danielle Sered, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration*. NEW YORK: VERA INSTITUTE OF JUSTICE, 2017; Nina Bala & Marc Schindler, *For Youth Offenders, Incarceration Doesn't Always Equal Accountability* (Sept. 17, 2018, 7:30 AM), <http://www.thehill.com/opinion/criminal-justice/405390-for-youthful-offenders-incarceration-doesn-t-always-equal> [<https://perma.cc/FSE6-MEPN>].

294. Tali Gal, Hadar Dancig-Rosenberg, "I am Starting to Believe in the Word 'Justice'": *Lessons from an Ethnographic Study on Community Courts*, 68 AM. J. COMP. L. 376, 384 (2020).

295. Personal Interview, *supra* note 1.

296. *Id.*

Due process rights might also be a concern for specialty courts generally.²⁹⁷ Advocates fear that emerging adults who might otherwise have had their cases dismissed will be swept into these courts.²⁹⁸ Alternatively, participants may find themselves repeatedly attempting to meet unrealistic court expectations when they might prefer to face a jury of their peers. But the ACLU has suggested solutions that would not require courts to abandon the specialty court model altogether:

People in these courts must have access to counsel, and supervision should not last beyond the length of any sentence that would have been imposed for the underlying charge. Participants should be allowed to quit the program and either take a plea agreement or stand trial, protected by all due process rights, at any time.²⁹⁹

There is also some concern that specialty courts make the justice system the center of the community safety net when money might be better spent in soup kitchens, mental health services, parenting assistance, and a multitude of other community-based resources. The ACLU notes in their Smart Justice Blueprints that specialty courts “require significant resources that would be better spent providing upfront services in the community.”³⁰⁰

Additionally, these courts can sometimes miss the mark by focusing on individual behavior rather than the societal and economic forces that often drive criminality.³⁰¹ For example, researcher Victoria Malkin observed a woman charged with prostitution break down in tears when discussing her experience in drug court, which showed her how to put on a condom instead of helping her find some other line of work.³⁰² Likewise, criminality attributed to youth might also be influenced by poverty and systemic racism, which a specialized emerging adult court cannot solve alone.³⁰³

There are also practical concerns. Judges who create these programs may be kind-hearted but lack essential know-how for successful follow through.³⁰⁴ “A lot of these specialty courts . . . [have] a bunch of very well-meaning people, but there’s no substantive changes that research says is going to actually make a significant difference,” said Chester from the Emerging Adult Justice Initiative.³⁰⁵

297. See, e.g., *Blueprint for Smart Justice: Arkansas*, ACLU SMART JUSTICE (2019).

298. *Id.*

299. *Id.* at 16.

300. *Id.*

301. See Eric J. Miller, *Drugs, Courts, and the New Penology*, 20 STAN. L. & POL’Y REV. 417, 432-49 (2009).

302. *Id.* at 449.

303. See, e.g., *Blueprint for Smart Justice: Arkansas*, ACLU SMART JUSTICE (2019).

304. The ACLU urges: “Specialty court providers must be disability-competent and informed in public health, addiction, and treatment . . . All programs must be tailored to meet individual needs, including having specialized, evidence-based options for people with dual diagnoses (mental health and substance use disorders).” See, e.g., *Blueprint for Smart Justice: Arkansas*, ACLU SMART JUSTICE (2019).

305. Zoom Interview with Lael Chester, *supra* note 41.

Few judges are social science scholars, and they may not understand the best approaches to apply to their respective programs. Engaging with these concerns is essential to building a successful emerging adult court system.

VII. STAKEHOLDERS FROM EXISTING EMERGING ADULT COURTS OFFER VALUABLE LESSONS

It is also vital that anyone contemplating establishing an emerging adult court take advantage of the wisdom from today's courts and the researchers who study them. When developing an emerging adult court, stakeholders should ask themselves: What does my community need? What can I get funding to do? What is politically feasible? What services do I have to meet my community's needs? Is there any overlap between the answers to these questions?

A. Funding Obstacles Can Be Overcome

One of the biggest hurdles faced by existing courts was finding a source of funding. Many courts rely on grant money.³⁰⁶ For instance, the San Francisco and Chicago courts have both received Federal Justice Assistance Grants.³⁰⁷ The Brooklyn court began from a Smart Prosecution grant procured by the DA's office³⁰⁸ and now also receives part of its funding through private foundations.³⁰⁹

Other jurisdictions utilize resources already at their fingertips. The Omaha court started a post-plea program and uses services allocated to the probation department.³¹⁰ EDNY operates in the pretrial and post-trial court divisions already functioning within the court system.³¹¹ As federal agencies, the federal courts are funded by Congress and restricted from applying for independent grant funding. Therefore, EDNY relies on community organizations that serve New Yorkers free of cost.

Admittedly, New York City is flush with community-based services that do not exist elsewhere. But smaller jurisdictions should not be discouraged into inaction. According to Wachler from the Center for Court Innovation, smaller jurisdictions with fewer resources must think creatively and start small.³¹² "There are a lot more resources in your community than you would think," she said.³¹³ She pointed to local departments of health and housing, Medicaid and insurance

306. JUST. LAB AT COLUMBIA UNIV., *supra* note 31, at 7.

307. *Id.*

308. Pooler & Davis, *supra* note 103, at 3.

309. *Id.*; JUST. LAB AT COLUMBIA UNIV., *supra* note 31.

310. JENNIFER HENDERSON-FRAKES, SENGSOUVANH (SUKEY) LESHNICK, & HANNAH DIAZ, AN EVALUATION OF SAN FRANCISCO'S YOUNG ADULT COURT E-2 (MAY 2017) https://www.sfsuperiorcourt.org/sites/default/files/images/YAC%20Interim%20Report_05252017.pdf [<https://perma.cc/F99D-BUDZ>].

311. Cordeiro & Penny, *supra* note 200.

312. Zoom Interview with Jessica Kay Wachler, Senior Planner, Ctr. for Ct. Innovation, (Mar. 30, 2021).

313. *Id.*

providers, and local colleges and universities.³¹⁴

Jurisdictions itching to change the way they do justice do not need every imaginable resource from the very beginning. “If you know that substance use is the main type of case you’re seeing . . . all you need is one or two really solid agencies willing to create something for you,” Wachler said.³¹⁵ “You don’t need too many options to get started.”³¹⁶ For instance, no money was allocated to start the Albuquerque court, so founders leaned on community support to get the program up and running.³¹⁷

The Omaha court also started without an independent allocation of funds, requiring it to get creative with services the broader court system was already providing.³¹⁸ Since its inception, the Omaha court has helped develop state-wide protocols with consideration given to smaller courts with fewer resources.³¹⁹ Released in October 2020, the one hundred twenty-one-page Nebraska Young Adult Court Best Standards Practice is a how-to manual for other Nebraska counties considering formation of their own courts.³²⁰

B. Stakeholders Need to Act in Accord

The existing emerging adult courts began as visions by different stakeholders—i.e., a judge in Omaha; pretrial service officers in both EDNY and Albuquerque; and the district attorney’s office in Hampden County, Massachusetts.³²¹ The Brooklyn court began as a collaboration between the District Attorney’s office and the Center for Court Innovation.³²² Regardless of who spurs the initial action, a new court needs support from all corners, including the defense bar, the prosecutor, the probation office, the county’s funding source, service providers, and community members themselves.

Getting everyone on board can be tricky. The court in Orange County—where, according to President Reagan, “the good Republicans go to die”³²³—convinced its conservative constituents to buy into its program by

314. *Id.*

315. *Id.*

316. *Id.*

317. Zoom Interview with the Hon. Shelly R. Stratman, *supra* note 158.

318. *Id.*

319. NEB. SUPREME COURT ADMIN. OFFICE OF THE COURTS AND PROBATION, NEBRASKA YOUNG ADULT CT. BEST PRACTICE STANDARDS (Oct. 2020) https://supremecourt.nebraska.gov/sites/default/files/Programs/psc/Nebraska_Young_Adult_Court_Best_Practice_Standards.pdf [<https://perma.cc/KQ3W-9LX4>].

320. *Id.*

321. Personal Interview, *supra* note 1; *see also* Sarah Betancourt, *Hampden DA Behind State’s First Court for Young Adults*, COMMONWEALTH (Aug. 25, 2019), <https://commonwealthmagazine.org/courts/hampden-da-behind-states-first-court-targeting-young-adult-offenders/> [<https://perma.cc/BQD4-XKRP>].

322. Pooler & Davis, *supra* note 103, at 3.

323. Gustavo Arellano, *When Did Ronald Reagan First Utter His Infamous OC Quote?*, OC WEEKLY (Nov. 18, 2008), <https://www.ocweekly.com/when-did-ronald-reagan-first-utter-his->

creating a post-plea court, satisfying community concerns that participants demonstrate responsibility for their illegal acts.³²⁴ Meg Reiss, a Brooklyn District Attorney, noted that everyone really has the same end goals.³²⁵ “The common denominator for everyone is enhancing public safety and having a fair system. If these are our goals, how do we achieve those goals in the best way possible? We do that by doing what allows people to be restored to the community in the best possible way.”³²⁶

Stakeholders should understand that this process takes time. Judge Sheehan, who was integral to establishing the North Lawndale court in Chicago, admitted to being unrealistic about how quickly she could secure help and support from the community.³²⁷

C. Courts Must Know How to Best Engage Emerging Adults

Courts must understand and apply neuroscience to structure programs based on how young people learn best. Many courts train their entire staff in basic cognitive brain development so everyone can tailor their work to the specific needs of emerging adults.³²⁸ Icenogle, a Postdoctoral Scholar with UC Irvine monitoring the Orange County program, said, “Young adults respond better to the carrot than the stick.”³²⁹ This can be a difficult mandate to follow when our entire justice system is built on looking at the negative.

But emerging adult courts are trying. For instance, many courts give participants a “skip day” privilege, allowing defendants to miss one of their court meetings. The EDNY court softens its curfew requirement as participants meet goals. Gifts are also common.³³⁰ Orange County court participants receive words of encouragement, gift cards for cell phone data, and even work clothes or boots if needed for a new job.³³¹ Court participants in San Francisco receive personalized incentives such as gifts of children’s books for new parents.³³² The Brooklyn court gives participants metro cards, food, and gifts for life-affirming

infamous-oc-quote-6454908/ [https://perma.cc/2X5J-9FFT].

324. Personal Interview, *supra* note 1.

325. *Id.*

326. *Id.*

327. Zoom Interview with the Hon. Colleen Sheehan, *supra* note 147.

328. JUST. LAB AT COLUMBIA UNIV., *supra* note 31.

329. Telephone Interview with Grace Icenogle, PhD., Postdoctoral Scholar, Univ. of Cal., Irvine, (Nov. 24, 2020).

330. Personal Interview, *supra* note 1; *see also* HENDERSON-FRAKES ET AL., *supra* note 293, at 6; SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE, *Welcome to the Young Adult Court* (last visited Sept. 14, 2021), https://www.occourts.org/directory/collaborative-courts/YAC_Pamphlet.pdf [https://perma.cc/4XRH-69GB]; JUST. LAB AT COLUMBIA UNIV., *supra* note 33.

331. Personal Interview, *supra* note 1; *see also* SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE, *supra* note 330.

332. Telephone Interview with the Hon. Bruce E. Chan, *supra* note 78.; *see also* JUST. LAB AT COLUMBIA UNIV., *supra* note 33.

events such as birthdays and weddings.³³³ In Albuquerque, participants receive gifts like Thanksgiving dinners, gas vouchers, and food, sometimes delivered to their homes.³³⁴ EDNY participants sometimes are entered into drawings for special prizes like movie tickets.³³⁵ And in Springfield, a \$10,000 bequest allowed the court to purchase dress clothes for participants to wear to job interviews and gift cards to reward positive behavior.³³⁶ Judge Walsh of the Springfield, Massachusetts, court also believes in the power of a caring gesture.³³⁷ She sometimes stops in at participants' workplace just to praise them.³³⁸

Sometimes the most powerful incentive comes from the emerging adult's peers. In the EDNY court, participants are learning about budgeting and credit for the first time.³³⁹ "There is a major competition with the participants on whose [FICO] credit is the highest now," said Adossa-Ali.³⁴⁰ The Omaha court's participants attend group meetings and hold each other accountable.³⁴¹ "It's very impactful for them to have another nineteen-year-old say, 'Hey, what are you doing? It's not that difficult,'" Judge Stratman explained.³⁴² Not only does the program give participants access to people who know exactly what they are going through, it encourages them to succeed.

Emerging adult courts must also consider which incentives may have unintended negative consequences for this population. For example, reducing a misdemeanor charge to a fine seems like a win on paper. But in practice, the Brooklyn court quickly realized it was saddling participants with fines they could not afford to pay.³⁴³ Moreover, reducing a felony to a misdemeanor may not be enough. Omaha learned this lesson early on when they rewarded graduates by reducing their felony convictions to misdemeanors.³⁴⁴ Participants found that even a record of misdemeanors could disqualify them from employment.³⁴⁵ Not only does the Omaha court now vacate the conviction after successful completion of its program, but the participant's entire record is sealed.³⁴⁶

Long-term monitoring meant to keep young offenders on track may also backfire by hindering their ability to gain independence. District Attorney Reiss

333. Zoom Interview with Jonathan Monsalve, *supra* note 101.

334. Zoom Interview with Tanya Tijerina, *supra* note 128.

335. Personal Interview, *supra* note 1.

336. Zoom Interview with the Hon. Maureen Walsh, *supra* note 181.

337. *Id.*

338. *Id.*

339. Zoom Interview with Amina Adossa-Ali and Ignace Sanon-Jules, *supra* note 208.

340. *Id.*

341. Zoom Interview with the Hon. Shelly R. Stratman, *supra* note 158.

342. *Id.*

343. Personal Interview, *supra* note 1.

344. *Id.*

345. Zoom Interview with the Hon. Shelly R. Stratman, *supra* note 158; *see also* Tim Lau, *The Misdemeanor System Reinforces Inequality*, Brennan Ctr. For Just. (Oct. 6, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/misdemeanor-system-reinforces-economic-inequality> [<https://perma.cc/84NE-5S6N>].

346. Zoom Interview with the Hon. Shelly R. Stratman, *supra* note 158.

noted, “The lighter the touch, the less likely a person is to recidivate. Which makes sense because it’s that whole reinforcement of labels [as a criminal] and the implication that you’re not worth anything.”³⁴⁷ Sometimes court involvement can even stall educational opportunities. For instance, Dr. Dir, an Indiana psychiatrist, worked with someone whose long-term participation in a felony diversion program prevented her from enrolling in a certified nursing program because the school would not accept her with a pending felony.³⁴⁸ Rather than helping this woman gain independence, the diversion program hindered her development.³⁴⁹

Deep familiarity with the participant population is essential to an emerging adult court’s success. New courts do not want to set themselves up for failure by making promises to funders that their participant population simply cannot deliver. For instance, programs that last too long or require too many steps run antithetical to the wiring of emerging adult brains. Because emerging adults thrive on quick rewards and lack the mental bandwidth for years of active participation, requiring an emerging adult to agree to lengthy court involvement may backfire. The offender may reason that a few days in jail and a criminal conviction is better than jumping through a bunch of judicial hoops.

Chester from the Emerging Adult Justice Lab cautions emerging adult courts to know when to let go.³⁵⁰ Courts often want to “solve *all* the problems. You’re not going to solve all their problems. A year’s going to go by, eighteen months is going to go by, and they’re going to have new problems. That is part of growing up.”³⁵¹ The best courts help the emerging adults form relationships in their communities so they can rely on community resources rather than the legal system to better meet their needs.

D. Courts Must Know Their Unique Emerging Adults Population

Monsalve from the Center for Court Innovation, recommended data-based approaches to determine what participants should be admitted into the court:

Allow the data to do some of the work for you . . . Is [your population] mostly females or males? What are the top charges you’re seeing? The data eventually gave us all of that, so I can tell you the top charges in our court room. I can tell you the top needs on our screener.³⁵²

Their top needs ended up arising from mental health issues, housing insecurity, and drug use.³⁵³ These data allowed the court to intentionally focus services in those areas. Data gleaned from Brooklyn court participants later prompted the court to develop a separate track tailored to female offenders’ specific needs, as

347. Personal Interview, *supra* note 1.

348. *Id.*

349. *Id.*

350. Zoom Interview with Lael Chester, *supra* note 41.

351. *Id.*

352. Zoom Interview with Jonathan Monsalve, *supra* note 101.

353. *Id.*

opposed to treating men and women identically.³⁵⁴ Other jurisdictions have made similar adjustments. San Francisco chose to focus on serious crimes like assault and robbery because those were the most common offenses committed by emerging adults in its community.³⁵⁵ The EDNY court focuses on participants who need extra help accessing education, job training, and mental healthcare.³⁵⁶

Because courts have limited spots, careful consideration must be given to selecting the participants with the greatest need for the program. Stakeholders insist courts should screen cases very carefully to determine if they are appropriate for alternatives to incarceration.³⁵⁷ Academics recommend designing courts to avoid “net widening,” which is “the idea that the presence of well-resourced courts may attract referrals of young people who otherwise would have been diverted or simply never charged.”³⁵⁸ They also caution against admitting participants who would thrive with or without the court.³⁵⁹ Instead, courts should target young people most in need of the services they offer. Courts are frequently criticized for “cherry picking” participants, but many expressed a preference for harder cases.³⁶⁰

Jurisdictions exploring an emerging adult court should also ask themselves tough questions about race. Failing to consider race in every aspect of the court’s design could re-entrench the racial disparities the court could instead unravel. For example, many courts limit the charges they handle.³⁶¹ Chester pointed out that, depending on the jurisdiction, Black people are more likely to face certain charges.³⁶² Excluding those offenses—perhaps out of political expediency unrelated to race—could disproportionately deny Black participation in the program, sending the unintended message that Black people are unworthy of a second chance. Beyond admission, court programming must consider race, too. Many participants arrive traumatized after years of racial injustice. One of Orange County Judge Hernandez’s participants was arrested for possession after he was stopped for jaywalking.³⁶³ “Had he been the white surfer boy crossing the street, nobody would have stopped him,” she said, “and he picked up on that, too. He was like, ‘I can’t do anything without being targeted.’”³⁶⁴ Courts must be able to earn participants’ trust by building their program to avoid repeating this trauma.

E. Careful Consideration Should Be Given to the Structure of the Court

Court structure—from the physical space to its internal components—

354. *Id.*

355. Telephone Interview with the Hon. Bruce E. Chan, *supra* note 87.

356. Zoom Interview with Amina Adossa-Ali and Ignace Sanon-Jules, *supra* note 208; *see also* Cordeiro & Penny, *supra* note 200, at 10.

357. JUST. LAB AT COLUMBIA UNIV., *supra* note 31, at 14.

358. *Id.*

359. Personal Interview, *supra* note 1.

360. *Id.*

361. *See* JUST. LAB AT COLUMBIA UNIV., *supra* note 31, at 4-5.

362. Zoom Interview with Lael Chester, *supra* note 41.

363. Zoom Interview with the Hon. Maria D. Hernandez, *supra* note 170.

364. *Id.*

matters. The layout of a courtroom can kickstart the healing process by allowing participants to feel comfortable expressing themselves. Some courts arrange tables into makeshift circles, where everyone, from judge to participant, can sit on an even plane. Judges often eschew their robes. The North Lawndale court in Chicago opted to house its operations in a community center instead of a courthouse.³⁶⁵

These settings must be tailored to more than just the participant's needs. For instance, victims can be instrumental to reforming participants. And the process can likewise help the victim find some measure of healing. "Most victims don't want this to happen again to them or to anyone else. And many want to help that process succeed," said Meg Reiss, a Brooklyn District Attorney.³⁶⁶

The North Lawndale court shared the story of an unlikely connection between victim—a police officer—and perpetrator forged during peace circles: "They both realized that they had a similar experience. Both had grown up without a father," said retired-Judge Sheehan.³⁶⁷ "The police officer then became this young man's mentor and was there for him well beyond the conclusion of the case."³⁶⁸

Courts must also consider how to best structure services to aid emerging adults. For instance, in Nebraska, the program is structured into phases, beginning with stabilization and ending with repair of harm.³⁶⁹ SDNY eschews this approach in favor of more individualized treatment. "We don't have phases," said pretrial officer Rena Bolin.³⁷⁰ "I feel like phases are beneficial for drug court because it's more tangible. Our participants . . . come in at all different stages It's difficult to say our participants are in particular phases."³⁷¹

Parents are another factor to consider. Because participants are *emerging* adults, their parents may still want to be included in the process. That can be tricky because participants' parents usually have no legal right to be involved. And too much parental involvement can weaken the goal of helping the emerging adult gain independence. "Accommodating and accounting for the familial aspect is huge We need to account for what role the family will play and how to leverage that in an appropriate way," said Monsalve.³⁷²

F. Emerging Adults Often Make Mistakes During the Process

Accommodating how young people learn best also means sticking with them when they have "hiccups," as representatives from the Omaha court put it.³⁷³ That court expects its participants to need second chances and third, and fourth

365. Zoom Interview with Meg Reiss, Chief Assistant Dist. Att'y, N.Y. Cnty., (May 4, 2021).

366. *Id.*

367. Zoom Interview with the Hon. Colleen Sheehan, *supra* note 147.

368. *Id.*

369. Personal Interview, *supra* note 1.

370. *Id.*

371. *Id.*

372. Zoom Interview with Jonathan Monsalve, *supra* note 101.

373. Zoom Interview with the Hon. Shelly R. Stratman, *supra* note 158.

chances, too.³⁷⁴ The Albuquerque court supervises its participants for at least eighteen months, but most are with the program much longer.³⁷⁵ Because participants in this court face serious felonies and often have traumatic pasts, the court expects the participants will need longer-term support through the mistakes they will inevitably make.³⁷⁶ The EDNY court, which takes high-needs participants charged with serious federal felonies, likewise expects missteps and regression.³⁷⁷ That court recently graduated a participant who took five years to complete the program.³⁷⁸

According to Omaha's Judge Stratman, "A lot of our participants start out of the gate way behind everyone else, and that's because of the adults that have let them down."³⁷⁹ She likes to tell her participants:

You may have been completely disappointed and disregarded by the adults in your life who should not have done that to you, but now you're meeting people who are in it with you . . . They need to know I believe in them and that I'm going to treat them like my own kid. I'm going to be disappointed if you have some screwups, and we're going to figure out how you're going to rebound from this.³⁸⁰

Judge Hernandez of Orange County found that participants who had aged out of foster care were especially prone to self-sabotage.³⁸¹ These emerging adults often felt serially abandoned by the people and institutions meant to care for them and were testing the court's promises: "Are you really going to still be here even when I screw up?"³⁸²

Each court anticipates setbacks and reacts accordingly. For instance, in Albuquerque, participants who admit a relapse will be sent for additional therapy; those who try to hide their mistake may spend a night in jail.³⁸³ In Brooklyn, where participants face misdemeanor charges far less serious than the cases in the Albuquerque court, a slip-up might mean the participant must write an essay explaining what happened.³⁸⁴ In Springfield, Massachusetts, the judge often orders participants to volunteer at the local soup kitchen or animal shelter depending on their interests, rather than sending them to jail for a minor mistake.³⁸⁵

374. *Id.*

375. Zoom Interview with Tanya Tijerina, *supra* note 128; *see also New Mexico, Juvenile and Young Adult Program* NM-3 (2020) https://www.rsat-tta.com/pdfs/NM_RSAT_Compndium_1-21 [<https://perma.cc/YT63-JZYL>].

376. Zoom Interview with Tanya Tijerina, *supra* note 128.

377. Zoom Interview with Amina Adossa-Ali and Ignace Sanon-Jules, *supra* note 208.

378. *Id.*

379. Zoom Interview with the Hon. Shelly R. Stratman, *supra* note 158,

380. *Id.*

381. Zoom Interview with the Hon. Maria D. Hernandez, *supra* note 170.

382. *Id.*

383. Zoom Interview with Tanya Tijerina, *supra* note 128.

384. Zoom Interview with Amina Adossa-Ali and Ignace Sanon-Jules, *supra* note 208.

385. Zoom Interview with the Hon. Maureen Walsh, *supra* note 181.

G. Emerging Adult Input Is Critical

One easily overlooked component to the creation of a successful emerging adult court is direct input from emerging adults. Young people were crucial to the inception of Chicago's courts: they called out police violence, they made Judge Sheehan listen, and they showed that peace circles—now the cornerstone of the North Lawndale court—can work.³⁸⁶ “Including young people in designing the things that are going to have bearing on their lives is incredibly important,” said Karen Lindell, senior attorney for the Juvenile Law Center.³⁸⁷ In most emerging adult courts, the young adult is essential to the development of the young adult's own action plan.³⁸⁸ But Lindell encourages jurisdictions exploring emerging adult courts to think bigger by bringing emerging adults to the table at the policy level.³⁸⁹ Monsalve agrees.³⁹⁰ “None of us here are young adults, and we are making decisions on behalf of them for what their services should look like. We need to figure out ways to include their voice in that.”³⁹¹

Not only should emerging adults give input to the creation of the court, but those who graduate from the program should have an opportunity to help others. Academics and practitioners alike highlight the importance of mentorship to a participant's success. The movement from needing help to becoming a mentor is a critical aspect of emerging adulthood. “We often talk about how important it is for young people to have mentors. But what we forget is that the research is really, really clear that people desist from crime—they grow up—when *they* can mentor. When *they* take on adult responsibilities,” said Chester.³⁹² The Chicago and Albuquerque courts offer mentorship opportunities to graduates.³⁹³ Albuquerque believes these opportunities prevent participants from self-sabotaging at the end of their program.³⁹⁴

H. Those Who Study Emerging Adult Courts Should Have Additional Tips

Would-be courts should call researchers before starting a program. “I’m always last invited to the party,” Professor Cauffman said.³⁹⁵ When she is first on the guest list, she can ensure that the right metrics are in place to accurately evaluate the program later.³⁹⁶ By including researchers at inception, courts can ensure they have access to the reliable data they need to evaluate whether the

386. Zoom Interview with the Hon. Colleen Sheehan, *supra* note 147.

387. Personal Interview, *supra* note 1.

388. *Id.*

389. *Id.*

390. Zoom Interview with Jonathan Monsalve, *supra* note 101.

391. *Id.*

392. Zoom Interview with Lael Chester, *supra* note 41.

393. Personal Interview, *supra* note 1.

394. Zoom Interview with Tanya Tijerina, *supra* note 128.

395. Zoom Interview with Elizabeth Cauffman, *supra* note 37.

396. *Id.*

program is actually working. “Trying to do it after the fact is too late.”³⁹⁷

Researchers can also help guide the structural and procedural development of a court. A learning community formed through the Columbia Justice Lab met for three years to study best practices in emerging adult justice.³⁹⁸ In its report published on April 22, 2021, the Emerging Adult Justice Learning Community suggested five key components of a successful emerging adult court:³⁹⁹



Figure 10. A Roadmap to Reform: Key Elements of Specialized Courts for Emerging Adults, Emerging Adult Justice Learning Community (by Author).⁴⁰⁰

VIII. THE JUDICIAL BRANCH ALONE CANNOT FIX HIGH RATES OF EMERGING ADULT INCARCERATION

Problem-solving courts are often implemented by the judicial branch alone without any support from the policy-making branches of government.⁴⁰¹ According to Dr. Mee-Lee, criminality among emerging adults flows from a

397. *Id.*

398. JUST. LAB AT COLUMBIA UNIV., *supra* note 31, at 1.

399. *Id.* at 3.

400. JUST. LAB AT COLUMBIA UNIV., *supra* note 31, at 8.

401. Miller, *supra* note 301, at 444-45.

variety of factors—childhood trauma, poverty, mental illness, and other circumstances that the judicial system is ill-equipped to address without help.⁴⁰² Racial disparities are also at play, with almost half of all young Black men having been arrested once by age twenty-three.⁴⁰³ The EDNY court sees this problem firsthand, noting that the young Black men they work with come to them traumatized by racial injustice.⁴⁰⁴ Female participants often have the added burden of trauma stemming from rape and intimate partner abuse.⁴⁰⁵ These issues stem from deep-seated problems across multiple segments of society best addressed by a variety of stakeholders in all branches of government. Political gridlock often discourages broader sign-on. But police enforcement priorities, prosecutor policy preferences, and the criminal code will be in disharmony with the problem-solving court's vision without wider buy-in.⁴⁰⁶

The concern over best interventions and responses for justice-involved emerging adults is a subject currently being studied by the National Conference of State Legislatures.⁴⁰⁷ Five teams from different states “are working to identify and align policies at the different levels of government to better serve this population group. Some examples include improving data collection and sharing, developing pretrial alternatives, and establishing emerging adult courts.”⁴⁰⁸ However, there is not yet a nationwide consensus to generate uniform legislation. So far, emerging adult courts have sprung organically from the hearts of well-meaning judges. And because these programs are often implemented by singular visionaries within their court systems, a program can live or die with its champions. Programs can also fail without adequate buy-in by all parties, including the prosecutor, defense counsel, the community, the court, and the defendant.

IX. EMERGING ADULT COURTS ARE WORTH EXPLORING AS A COST-EFFECTIVE MEANS TO PLACE EMERGING ADULTS ON A LAWFUL PATH

The models presented by the existing emerging adult courts seem to be working, at least anecdotally. Every graduate is a success story.

The Orange County court fondly remembers a participant who robbed a massage parlor with a friend.⁴⁰⁹ Getting him to graduation took hard work.⁴¹⁰ Raised in the foster system with inconsistent caregivers who often let him down,

402. Zoom Interview with David Mee-Lee, *supra* note 38.

403. Robert Brame et. al., *Demographic Patterns of Cumulative Arrest Prevalence by Ages 18 and 23*, 60(3) CRIME & DELINQ. 471, 471 (2014).

404. Zoom Interview with Amina Adossa-Ali and Ignace Sanon-Jules, *supra* note 208.

405. Personal Interview, *supra* note 1.

406. Jeffrey Fagan & Victoria Malkin, *Theorizing Community Justice Through Community Courts*, 30 FORDHAM URB. L.J. 897, 943 (2003).

407. Rebecca Pirius, *What Science Tells Us About Young Adults in the Justice System*, NCSL BLOG (Feb. 12, 2019), <https://www.ncsl.org/blog/2019/02/12/what-science-tells-us-about-young-adults-in-the-justice-system.aspx> [<https://perma.cc/VV4V-MND6>].

408. *Id.*

409. Zoom Interview with the Hon. Maria D. Hernandez, *supra* note 170.

410. *Id.*

the young man had trouble trusting that the court really wanted to help him.⁴¹¹ When he finally made it to graduation, he bought a new suit for the occasion.⁴¹² He now works in a doctor's office.⁴¹³

A particularly vocal Dallas court participant complimented Judge Birmingham's tie early on in his time with the court.⁴¹⁴ As a graduation gift, Judge gave him the tie, which the graduate later wore to a successful job interview.⁴¹⁵ He now dreams of a college degree and a job on the police force.⁴¹⁶

The EDNY court remembers a young lady charged under the Hobbs Act⁴¹⁷ who had been molested by various family members from the time she was three years old.⁴¹⁸ The participant finally received treatment for her childhood trauma, and she enrolled in college classes.⁴¹⁹ After graduating, she proudly sent her pretrial officer a walk-through video of the apartment she was able to rent without a co-signer.⁴²⁰

Workers in the SDNY court spoke about a woman who became a single mother early on in her involvement in the program.⁴²¹ Staff worked with her on informed decision-making, which helped her move out of an unhealthy living situation.⁴²² She now has her own apartment and her first job.⁴²³ And like many participants highlighted by the courts, her self-esteem also improved.⁴²⁴

In Springfield, Massachusetts, the judge is proud of the progress made by a young man whose entire family was well known within the criminal system.⁴²⁵ He began the program downtrodden and withdrawn.⁴²⁶ Since joining the court, he has obtained his driver's license, become a team leader at work, and is on track to become the first in his family to graduate high school.⁴²⁷ Judge Walsh bragged, "[h]e's doing everything he can to be a role model to his son."⁴²⁸ His demeanor has also completely changed.⁴²⁹ He is now engaged and known to crack a smile.⁴³⁰

Judge Stratman of the Omaha court is particularly proud of a young high

411. *Id.*

412. *Id.*

413. *Id.*

414. Zoom Interview with the Hon. Brandon Birmingham, *supra* note 116.

415. *Id.*

416. *Id.*

417. The Hobbs Act, 18 U.S.C. § 1951.

418. Zoom Interview with Amina Adossa-Ali and Ignace Sanon-Jules, *supra* note 208.

419. *Id.*

420. *Id.*

421. Personal Interview, *supra* note 1.

422. *Id.*

423. *Id.*

424. *Id.*

425. Zoom Interview with the Hon. Maureen Walsh, *supra* note 181.

426. *Id.*

427. *Id.*

428. *Id.*

429. *Id.*

430. *Id.*

school drop-out who came into court drug addicted and with no family support.⁴³¹ By the end of the program, the participant had earned his GED and enrolled in college on his employer's dime.⁴³² He even ran a marathon.⁴³³ "It still just gives me chills thinking how far he came," said Judge Stratman.⁴³⁴

As for Leroy, the SDNY program worked so well that he now gives motivational talks to middle schoolers and acts as a role model for other participants in the program.⁴³⁵ "The judges saw so much potential, and I just had to tap into that potential," Leroy said.⁴³⁶ He also noted:

The judges spoke so highly of me and I was just like 'Wow!' That kind of opened my eyes to see more potential and more things I could do . . . I should have ended up in jail with a felony and I never would have had a chance at a second chance.⁴³⁷

When entering the program, Leroy knew there were no guarantees that he would avoid federal prison.⁴³⁸ He got the happy news that his charges had been dismissed while he was attending a Christian convention in Indiana.⁴³⁹ "I was just jumping up, and I couldn't stop smiling. I just wanted to get a fresh start. If I go to jail and I have a felony, my life is changed forever. I wasn't trying to do that."⁴⁴⁰

431. Zoom Interview with the Hon. Shelly R. Stratman, *supra* note 158.

432. *Id.*

433. *Id.*

434. *Id.*

435. Zoom Interview with Leroy Smith, *supra* note 1.

436. *Id.*

437. *Id.*

438. *Id.*

439. *Id.*

440. *Id.*